



2026:DHC:4866



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Judgment delivered on: 29.05.2026*

+ W.P.(CRL) 3845/2025 & CRL.M.A. 34762/2025, CRL.M.A. 4526/2026

SHABIR MOMIN & ANR.

.....Petitioners

Through:

Mr. Jayant K. Sud, Sr. Advocate with Mr. Samarjit G. Pattnaik, Mr. Sahib Kochhar, Ms. Kashish Seth, Mr. Gaurav Vutts, Mr. Aryan Mishra, Advocates for P-1.

Mr. Ujjawal Anand Sharma with Mr. Prashant Sivarajan, Mr. Tushar Saigal and Ms. Shweta Divedi, Advocates for P-2.

versus

STATE NCT OF DELHI & ORS.

.....Respondents

Through:

Mr. Amol Sinha, ASC for State with Mr. Kshitiz Garg, Mr. Ashvini Kumar, Mr. Manan Wadhwa and Mr. Nitish Dhawan, Advocates.

Mr. Hrishikesh Baruah, Mr. Kumar Kshitij, Mr. Sundeep Goel, Mr. Utkarsh Dwivedi, Ms. Pragya Agarwal, Ms. Nishtha Sachan, Mr. Yashaswy Ghosh and Ms. Simran Dhingra, Advocate for R-2 and 3.

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**J U D G M E N T**

**ANUP JAIRAM BHAMBHANI, J.**

By way of the present petition filed under Articles 226 and 227 of the Constitution of India read with section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') the petitioners seek setting-

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aside of order dated 06.11.2025 passed by the learned Chief Judicial Magistrate, New Delhi District, Patiala House Courts, New Delhi ('CJM'), whereby travel restrictions have been imposed upon the petitioners requiring them to seek prior permission of the learned Magistrate before travelling abroad.

2. Notice on the present petition was issued on 21.11.2025; pursuant to which Status Report dated 06.02.2026 has been filed by the State; and Reply dated 29.11.2025 alongwith an additional affidavit dated 10.03.2026 have been filed by respondents Nos. 2 and 3. Written submissions have also been filed by the petitioners and respondents Nos. 2 and 3.
3. The court has heard Mr. Jayant K. Sud, learned senior counsel for petitioner No.1, Mr. Ujjawal Anand Sharma, learned counsel for petitioner No.2, Mr. Amol Sinha, learned ASC for the State, as well as Mr. Hrishikesh Baruah, learned counsel appearing for respondents Nos. 2 and 3.

#### **BRIEF FACTS**

4. The brief factual background necessary for deciding the present petition is set-out below:
  - 4.1. *Vidé* order dated 23.03.2021 passed by the learned CMM, New Delhi District, Patiala House Courts, New Delhi ('CMM'), the petitioners herein were granted bail in CC No. 10/2019 arising from case FIR No. 337/2016 dated 27.04.2016 registered under sections 420/406/422/424/409/120B of the Indian Penal Code, 1860 ('IPC') at P.S.: Vasant Kunj South, Delhi. Consequent upon completion of



- investigation, chargesheet dated 21.12.2018 was filed under sections 420/120B of the IPC.
- 4.2. Upon an apprehension that the petitioners would abscond, in September 2024, the authorized representative of the complainant company/respondent No. 2 filed an application before the learned CJM praying that restrictions be placed upon the petitioners requiring them to seek prior permission of the court before travelling outside India.
- 4.3. *Vidé* order dated 15.02.2025, on the complainant's application, the learned CJM introduced the condition directing the petitioners to take prior permission of the court before leaving the country.
- 4.4. Aggrieved by the aforementioned condition imposed, the petitioners filed revision petitions before the learned Sessions Court. *Vidé* order dated 28.02.2025, the learned Sessions Court stayed the operation of order dated 15.02.2025 passed by the learned CJM *qua* petitioner No. 2; and opined as under:

*“Suffice to note herein that at the time of initial bail order, no condition was imposed on applicant/accused no. 3 Vikramjit Roy, **I am of the opinion that the Ld. Magistrate Court have no power to review its own order passed earlier as such power is vested with the Sessions Court or by the Hon'ble High Court.***

*“In view of the above observations, **the operation of order dated 15.02.2025 is stayed till further orders.** At the same time, one more aspect, to my mind, **is required to be considered that trial should not suffer in any manner owing to the absence of the accused. Thus, it can be said that in the fitness of things intimation of going abroad can be given by the applicant/accused before hand, in case of any foreign***



visit. Needless to say that the accused No. 3 shall give due instructions to his advocate to appear.

\* \* \* \* \*

“Ld. Counsel for the revisionist submits that this condition would again tentamount to a condition in the bail order.”

“I shall dispose off the revision petition on the NDOH and this order is only till the interregnum.”

(emphasis supplied)

4.5. In view of the above, *vidé* order dated 05.04.2025 learned Sessions Court stayed the operation of order dated 15.02.2025 passed by the learned CJM *qua* petitioner No. 1 as well; and observed as under:

*“I have already granted the similar relief to co-accused Vikramjit Roy. Considering the same, Shabir Momin is granted permission to travel abroad on the same terms and conditions as incorporated in order dated 28.02.2025.*

*“In view of the above observations, **the operation of order dated 15.02.2025 is stayed till further orders.** At the same time, one more aspect, to my mind, is required to be considered that trial should not suffer in any manner owing to the absence of the accused. **Thus, it can be said that in the fitness of things intimation of going abroad can be given by the applicant/accused before hand, in case of any foreign visit.** Needless to say that the revisionist shall give due instructions to his advocate to appear.”*

(emphasis supplied)

4.6. Subsequently, *vidé* its judgment dated 24.07.2025, the learned Sessions Court set-aside order dated 15.02.2025; and directed the learned CJM to consider the application filed by the complainant *afresh* taking into account the entire factual background of the matter.



4.7. Pursuant to the aforementioned directions of the learned Sessions Court, and while taking into account that the condition directing the petitioners to seek prior permission before travelling abroad “*does not find a mention in the bail order*” and acknowledging that the “*Court has already become functus officio, qua the bail order and the same cannot be revisited in view of the settled principles of law on the subject*”, *vidé* impugned order dated 06.11.2025, the learned CJM proceeded to opine as under:

*“It is observed that in every bail order passed by any Court of law, certain conditions are imposed, inter-alia, to secure the appearance of the accused for effective and timely proceedings in the matter. The aforesaid import and purpose of a bail order expressly or impliedly captured in the conditions imposed can be achieved effectively only so long as the Accused persons are on the Indian soil. In the event the accused travels abroad, he leaves jurisdiction of the Indian authorities/ Courts, which may delay/prejudice the proceedings in future. Article 21 of the Indian Constitution guarantees, inter alia, right to life and liberty, which includes the right to free movement and travel. The jurisprudence on the subject is not in dispute. However, in order to strike a balance inter-se the need for timely proceedings before this Court, especially in a matter which is subjudice as also the rights of the accused to travel beyond the Indian soil, it is ideal for the accused persons to seek a prior permission from the Court before leaving the country, which expectation cannot even remotely be construed as inhibiting the rights of the accused for free travel. Accordingly, the Order dated 23.03.2021 imposing bail conditions with respect to the accused persons viz. Shabbir Momin and Vikramjit Roy as passed by the Ld. Predecessor is **hereby clarified to the extent that the said accused persons shall seek permission prior to their travel abroad. This Order is clarificatory in import and***



**effect and clearly not in the nature of review, of the previous relevant orders.** Application is accordingly disposed of.”

(emphasis supplied)

4.8. Arising from the above position, the petitioners herein are seeking setting-aside of order dated 06.11.2025 passed by the learned CJM.

**SUBMISSIONS ON BEHALF OF THE PETITIONERS**

5. In support of the petitioners’ case, the following principal submissions have been made:

5.1. *Firstly*, it has been emphasized, that the *original* bail order dated 23.03.2021 passed by the learned CMM *did not contain any travel restrictions*; and the learned Magistrate had no power to *review* or *modify* the original order first by order dated 15.02.2025 and then finally by way of impugned order dated 06.11.2025. It has been submitted, that the power to modify bail conditions is vested *exclusively* in the Sessions Court and the High Court under section 439(1)(b) of the Code of Criminal Procedure, 1973 (‘Cr.P.C.’), and *not* in the Magistrate. Therefore, it has been submitted, that the subsequent introduction of a condition which was not a part of the original order, under the guise of a ‘clarification’ is entirely untenable since it is settled law that there exists no provision in the Cr.P.C. which empowers a Magistrate to ‘clarify’ a bail order let alone introduce a new bail condition by way of a so-called clarification.

5.2. It has been argued that section 362 of the Cr.P.C. bars criminal courts from altering or reviewing final orders passed by them *except*



to correct clerical or arithmetical errors. Attention in this behalf is drawn to section 362 of the Cr.P.C., which reads as under:

**362. Court not to alter judgment.**—*Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.*

- 5.3. *Secondly*, it has been submitted, that order dated 15.02.2025 which introduced the condition of seeking prior permission before travelling abroad, was initially stayed by the learned Sessions Court *vidé* orders dated 28.02.2025 and 05.04.2025; and was subsequently set-aside *vidé* judgment dated 24.07.2025, remanding the matter for *fresh consideration* to the learned CJM. Despite this, the learned CJM proceeded to pass impugned order dated 06.11.2025, purportedly “*clarifying*” the original bail order of 23.03.2021, which was an impermissible attempt to impose new conditions under the guise of clarifying order dated 23.03.2021, bypassing the setting-aside of order dated 15.02.2025 by the learned Sessions Court.
- 5.4. *Thirdly*, going into the genesis of the issue, it has been argued that the apprehension of the complainants is entirely unfounded and baseless. The petitioners maintain that they have had an unblemished record of several years in the proceedings before the learned Magistrate, since they have been represented at almost every hearing, either in person or *via* video-conferencing or by counsel. It has been argued that it is this baseless and



uncorroborated apprehension of the complainants that the petitioners are a flight risk, that has resulted in the learned CJM imposing the said travel restriction apparently to ensure timely proceedings, and requiring that the petitioners should remain on “*Indian soil*”. Attention has also been drawn to the provision introduced by section 530 of the BNSS, which permits trials and proceedings to be held by electronic mode, satisfactorily addresses the learned CJM’s concern of the trial getting delayed if the petitioners temporarily leave the country for a few days. It has been further submitted that the complainant’s “apprehension” and actions constitute to harassment and abuse of process.

#### SUBMISSIONS ON BEHALF OF THE STATE

6. In Status Report dated 06.02.2026, filed upon a direction of this court, in relation to the dates on which the petitioners travelled abroad, the State has said that the petitioners travelled abroad multiple times *without* obtaining prior permission from the court, thereby violating order dated 06.11.2025. The State has submitted, that according to the travel history obtained from the Foreigners Regional Registration Office, petitioner Shabir Momin has violated the court orders on 02 occasions (travelling from 15.10.2025 to 24.11.2025 and from 26.11.2025 to 19.01.2026), while petitioner Vikramjit Roy has violated the orders on 05 occasions between November 2025 and January 2026.
7. The State has also pointed-out that the investigating officer had received a complaint on 23.12.2025 from the complainant alleging such violations.



8. However, in the course of its submissions the State has *not* expressed any serious concern regarding the petitioners' conduct; and has, on several occasions during the pendency of the present writ petition, expressed its 'no-objection' to the petitioners being permitted to travel abroad, considering their past conduct and since there is no allegation that the petitioners violated the conditions imposed on them previously. The State has also not alleged that the petitioners have been errant in participating in the trial court proceedings.

**SUBMISSIONS ON BEHALF OF RESPONDENTS NOS. 2 & 3**

9. Respondents Nos. 2 and 3, have however vociferously opposed the prayers made in the present petition, premised on the following principal submissions:
- 9.1. *Firstly*, the said respondents have alleged that the petitioners have suppressed material facts, including the fact that they had obtained new passports without informing the passport authorities about the pendency of the criminal proceedings against them; and that the petitioners have violated court orders by travelling abroad on numerous occasions without taking prior permission from the learned Magistrate. The said respondents have further alleged that the affidavit of petitioner No.1 filed in the present petition was attested when petitioner No.1 was apparently not in the country; and that in a different writ petition, both petitioners' affidavits have been attested while they were not present in the country. It has further been claimed that the petitioners have suppressed the fact that they are permanently residing with a Golden Pass Visa in the



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United Arab Emirates, and not in India. Respondents Nos. 2 and 3 have accordingly contended, that such gross suppression of facts warrants dismissal of the present petition.

9.2. *Secondly*, it has been submitted that impugned order dated 06.11.2025 has been passed by the learned CJM well within her powers, since modification, alteration or addition in bail conditions can always be made by a Magistrate; and that therefore, it is incorrect to suggest that the impugned order amounts to a review of the original bail order. It has been argued that the bail order passed by the learned Magistrate was interlocutory in nature, and that conditions of bail can be changed by a Magistrate depending on circumstances of a particular case. To support this contention, the said respondents have placed reliance on **Ramadhar Sahu vs. The State of Madhya Pradesh**<sup>1</sup> and other judgments to submit that section 362 Cr.P.C. does *not* prohibit modification of bail conditions. They have further asserted that impugned order dated 06.11.2025 was merely a ‘clarification’ of the original bail order dated 23.03.2021, and not a review of that order; and that the travel restrictions were imposed *vidé* the impugned order after considering the petitioners’ conviction under section 138 of the Negotiable Instruments Act 1881 (‘NI Act’), in a different case as well as the fact that co-accused Sanju Kapoor also had similar travel restrictions in his bail conditions.

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<sup>1</sup> Order dated 16.10.2023 made in SLP (Crl.) No.11130/2023



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9.3. Respondents Nos. 2 and 3 have also elucidated upon their apprehension that the petitioners are a flight risk, pointing-out that *vidé* judgment of conviction dated 06.09.2024 passed by the learned JMFC, Gurugram District Courts, Haryana ('JMFC') in CIS No. NACT/8703/2016, the petitioners (alongwith other accused persons) stand convicted for the offence under section 138 of the NI Act; and *vidé* sentencing order dated 07.09.2024 they have been sentenced to simple imprisonment of 01 year and have also been directed to pay compensation to the tune of ₹28,50,00,000/- to the complainant within 02 months, with a default sentence of simple imprisonment for 30 days. It is stated that the said sentence was suspended *vidé* order dated 07.09.2024 to enable the convicts to file an appeal. The said respondents have accordingly expressed their fear that the petitioners might flee the country, particularly since they have not deposited 20% of the compensation amount as directed by the learned Sessions Court in the appeal against their conviction under section 138 of the NI Act. They have argued that the travel restrictions placed were justified and supported by precedents including *Barun Chandra Thakur vs. Ryan Augustine Pinto & Anr.*<sup>2</sup>

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<sup>2</sup> 2019 SCC Online SC 1899



### DISCUSSION & CONCLUSIONS

10. Upon a conspectus of the submissions made on behalf of the parties and based on the records, the considerations that weigh with this court are as follows:

10.1. ***Absence of travel restriction in the original bail order:*** The original bail order dated 23.03.2021 passed by the learned CMM did not impose any requirement that the petitioners were to take *prior permission* of the court to travel abroad. This is an undisputed fact. Therefore, the condition of travel restrictions sought to be enforced through subsequent orders *was not part of the original bail conditions*.

10.2. ***Magistrate's lack of power of review:*** It is a well-established principle of criminal jurisprudence that criminal courts *do not* possess inherent power of review in the absence of any express statutory provision. Section 362 Cr.P.C. *categorically* provides that once a court has signed its judgment or final order, it *shall not alter or review* the same except to correct a clerical or arithmetical error. Order dated 15.02.2025, by which the learned CJM imposed travel restrictions, was clearly in the nature of a review or modification of the original bail order dated 23.03.2021 since the court was inserting a new condition by way of the travel restrictions in the original bail order. The learned CJM had *no jurisdiction* to undertake such an exercise. This court notes that for the aforesaid reason, *vidé* its judgment dated 24.07.2025 passed in revisional proceedings, the learned Sessions Court had *correctly*



set-aside order dated 15.02.2025 and remanded the matter for *fresh consideration* to the learned CJM.

- 10.3. ***Effect of remand and subsequent “clarification”***: Once, *vidé* judgment dated 24.07.2025 the learned Sessions Court had set-aside order dated 15.02.2025 passed by the learned CJM; and had remanded the matter back to the learned CJM, the legal effect was that order dated 15.02.2025 *ceased to exist*. Upon remand, the learned Magistrate was required to consider the matter *afresh in accordance with law*.
- 10.4. However, by way of impugned order dated 06.11.2025 the learned CJM has purported to “clarify” the original bail order dated 23.03.2021 by imposing the travel restrictions requiring the petitioners to seek prior permission from court before travelling abroad. To characterise the insertion of a *new bail condition* as a “clarification” was clearly a misnomer. An order can only ‘clarify’ an ambiguity or imprecision in what may have been said in an order. When the original order dated 23.03.2021 did not contain any requirement of obtaining prior permission to travel abroad, there was nothing to clarify on that count; and a new condition could not have been added in view of the bar contained in section 362 Cr.P.C.
- 10.5. It must also be noticed, that by way of the impugned order, and professing to “clarify” the original bail order dated 23.03.2021 (since order dated 15.02.2025 had been set-aside by the learned Sessions Court), the learned CJM has in effect reinstated the same



condition that had been set-aside by the learned Sessions Court, in an exercise that *circumvents* the revisional court's order and effectively *nullifies* the remand.

10.6. ***Jurisdictional limitation under section 439(1)(b) Cr.P.C.:*** To reiterate, under section 439(1)(b) of the Cr.P.C. the power to set-aside or modify conditions imposed in a bail order passed by a learned Magistrate is expressly vested in the High Court or the Court of Session. A Magistrate *does not* possess parallel powers to modify conditions of bail once granted. While respondents Nos. 2 and 3 have cited precedent suggesting that bail conditions can be varied, those principles apply only to superior courts exercising powers under section 439 Cr.P.C., *not to Magistrates seeking to alter their own orders*. The impugned order was therefore also passed without jurisdiction and is *non-est* in law.

10.7. ***Condonation of infraction:*** Having held that the impugned order was *non-est* in law, and based on the status report filed by the State, this court notes that the petitioners did travel abroad on multiple occasions without seeking permission from the learned Magistrate *while order dated 06.11.2025 imposing the travel restraint was still in force*. The court is informed that petitioner No. 1 travelled abroad on 02 occasions between 15.10.2025 to 24.11.2025 and from 26.11.2025 to 19.01.2026; and petitioner No.2 travelled abroad on 05 occasions between November 2025 and January 2026. However, the court also cannot ignore the



*subsequent conduct* of the petitioners in its entirety. The record shows that in the course of the present proceedings:

- 10.7.1. The petitioners have travelled abroad on multiple occasions after taking permission of this court and have complied with all conditions imposed;
- 10.7.2. The petitioners have returned to India each time without fail;
- 10.7.3. The petitioners have maintained a fair record of appearance over several years of pendency of the proceedings before the learned Magistrate, either in person or *via* video-conferencing or through counsel.
- 10.7.4. In particular, considering that the learned CJM's order dated 06.11.2025 imposing the travel restraints was itself *passed without jurisdiction*, and was accordingly *non-est*, this court is persuaded to condone the infraction of the orders of the learned CJM by the petitioners. In the opinion of this court, technical violation of an order that was jurisdictionally flawed, coupled with the petitioners' consistent compliance with court processes and their voluntary return to India after each foreign travel, does not warrant any punitive action against the petitioners, especially since *no actual prejudice* appears to have been caused to any party in the trial.

11. As a sequitur and for the reasons stated above, this court is persuaded to allow the present petition.



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12. Accordingly, impugned order dated 06.11.2025 passed by the learned Chief Judicial Magistrate, New Delhi District, Patiala House Courts, New Delhi, is hereby *set-aside*.
13. It is directed that the petitioners shall remain bound by the conditions imposed in the original bail order dated 23.03.2021, *without any requirement to seek prior permission of the court to travel abroad*.
14. However, by way of atonement for the infraction of the orders by the petitioners as noted above, this court directs the petitioners to pay costs of ₹2,00,000/- *each* to Friendicoes SECA, No.271 & 273, Defence Colony Flyover Market, Jungpura, New Delhi within 02 weeks.
15. The petitioners are directed to place on record proof of payment of costs within 01 week thereafter.
16. The Registry is directed to re-list the matter if costs are not paid as directed.
17. The petition stands disposed-of, in the above terms.
18. Pending applications, if any, also stand disposed-of.

**ANUP JAIRAM BHAMBHANI, J**

**MAY 29, 2026**

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Signature Not Verified

Signed By:VIKAS

RAWAT

Signing

Date:29.05.2026 15:23

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