

2025 LiveLaw (SC) 874

IN THE SUPREME COURT OF INDIA

J.K. MAHESHWARI; J., VIPUL M. PANCHOLI; J.

Petition(s) for Special Leave to Appeal (Crl.) No(s).6677-6681/2025; 04-09-2025

SREEJA D G & ORS. *versus* ANITHA R. NAIR & ANR.

Judicial Impropriety - Bail Order - Supreme Court criticises High Court for modifying bail condition when bail order was under challenge before Apex Court – Held, while High Courts are not subordinate to the Supreme Court, as the highest appellate authority, can issue corrective directions binding on the lower forums - The High Court’s action in modifying an order that was pending challenge before the Supreme Court ran contrary to the principles of judicial propriety and comity - When a matter is pending before the Supreme Court, a High Court should restraint and avoid passing orders that could ‘circumvent, prejudice or render infructuous’ the proceedings - High Court’s conflicting exercise of jurisdiction should be strictly avoided - Supreme Court also expressed displeasure at the respondent’s conduct, noting that respondent’s counter-affidavit filed with the Supreme Court did not mention the application or High Court’s orders - Set aside the High Court’s order modifying bail and notice was issued to respondent. [Relied on *Tirupati Balaji Developers (P) Ltd. & Ors. v. State of Bihar & Ors.* (2004) 5 SCC 1; *Chhavi Mehrotra v. Director General, Health Services* 1995 Supp (3) SCC 434; Paras 8-13]

[Arising out of impugned final judgment and order dated 04-02-2025 in BA No. 914/2025 04-02-2025 in BA No. 922/2025 04-02-2025 in BA No. 924/2025 04-02-2025 in BA No. 925/2025 04-02-2025 in BA No. 971/2025 passed by the High Court of Kerala at Ernakulam]

For Petitioner(s): Mr. V Chitmbaresh, Sr. Adv. Mr. Jogy Scaria, AOR Mr. C Govind Venugopal, Adv. Mr. E Krishna Perumal, Adv.

For Respondent(s): Mr. Ragenth Basant, Sr. Adv. Mr. Bijo Mathew Joy, AOR Ms. Hina Bhardwaj, Adv. Ms. Gifty Mariam Joseph, Adv. Mr. Harshad V. Hameed, AOR Mr. Dileep Poolakkot, Adv. Mrs. Ashly Harshad, Adv. Mr. Anshul Saharan, Adv.

ORDER

1. The instant special leave petition has been filed assailing the order of grant of anticipatory bail to Respondent No. 1, namely, Anitha R. Nair. The complainant approached this Court by filing the special leave petition on 24.03.2025. Notice was issued on 09.04.2025, which was served on the respondent no. 1 accused and as per Office Report, vakalatnama was filed on her behalf on 16.05.2025.

2. On research made at the residential office, it was found that an application bearing Criminal M.C. No. 6178 of 2025 was filed before the High Court on 06.07.2025 seeking permission to travel abroad, in terms of the conditions as specified in the order of the High Court. As submitted by the learned senior counsel for respondent, it was filed in order to travel to Dubai for immigration requirements. The same was ordered to be registered by the High Court on 10.07.2025 with an observation that the maintainability will be considered at the time of admission and it was directed to be listed on 14.07.2025. *Vide* order dated 14.07.2025, the High Court observed that the petition is maintainable, and the Public Prosecutor may seek directions, posting the matter on 07.08.2025. On 07.08.2025, when the matter was taken up by High Court, the following order was passed:

“The prayer in this Criminal Miscellaneous Case is to permit the petitioner to travel to Singapore for resuming his employment. The permission has been sought in view of the restriction against traveling abroad imposed by this Court while granting bail to the petitioner as per Annexures A-1 and A-2 common orders passed in separate bail applications.

2. *It is pointed out by the learned Public Prosecutor that the petitioner ought to have filed separate cases for modification of the condition in each bail application.*

3. *Although I find merit in the said submission, insofar as the Crl.M.C. is numbered, rather than filing separate cases, the petitioner can be directed to remit court fees separately.*

4. *The petitioner is therefore directed to pay court fee separately on each bail application, regarding which he is seeking modification of the condition imposed as per Annexures A-1 and A-2 common orders. Post on 11.08.2025."*

3. In order to mitigate the objection of the Public Prosecutor, the High Court directed the applicant (respondent no. 1 herein) to pay separate court fees on each application seeking modification of the conditions imposed in Annexure A-1 and A-2, and further directed the matter to be listed on 11.08.2025. The Court on 12.08.2025 passed the following order:

"Petitioner is the accused in 31 crimes registered at the Chingavanam Police Station for offences under Sections 406 and 420 of IPC and Sections 21 and 23 of the Banning of Unregulated Deposit Schemes Act, 2019. The petitioner was granted bail in all 31 crimes as per Annexures A-1 and A-2 orders of this Court, subject to conditions. This Crl.M.C. is filed seeking modification of condition No. 4 requiring the petitioner to seek permission of the jurisdictional court for leaving India.

2. *Learned counsel pointed out that in view of the objection raised by the learned Public Prosecutor and the order passed by this Court, separate court fees have been paid for modification of the condition in each application for anticipatory bail, on which the common order is passed.*

3. *Learned Public Prosecutor submitted that, considering the number of cases in which the petitioner is an accused, her presence for the purpose of investigation and trial of the cases must be ensured.*

4. *Considering that the restriction, if continued, will result in the petitioner's Visa expiring and that the pendency of crimes cannot be a bar for the movement of a citizen, I deem it appropriate to modify the condition.*

The Crl.M.C. is accordingly disposed of by deleting condition No. 4 in Annexures A-1 and A-2 orders and permitting the petitioner to leave India for a period of two weeks, subject to the following conditions;

i) Before leaving the country, the petitioner shall file an affidavit before the jurisdictional court containing details of her travel program, her overseas address including mobile numbers and email ids. She shall also produce copies of the travel documents.

ii) The petitioner shall appear before the court below as and when directed.

iii) The petitioner shall file a memo in the court below of her return from abroad.

iv) Breach of any one of the conditions mentioned above shall be a ground for the cancellation of the permission granted by this order."

4. By the aforesaid order, permission to leave the country was granted to the respondent No. 1 - accused, subject to filing an affidavit before the jurisdictional Court containing details of her travel programme, her overseas address including mobile numbers, email IDs along with her travel documents, with a further direction to appear before the trial Court as and when directed. It was also directed that she shall file a memo of her return from abroad before the trial Court. Consequently, the High Court deleted Condition No. 4 in the order dated 02.02.2025 granting anticipatory bail to the respondent no. 1, which provided that the respondent no. 1 shall not leave India without permission of the jurisdictional Court.

5. Thereafter, on 22.08.2025, an application styled as 'Crl.M.Appl. 1 of 2025 in Crl.MC. 6178 of 2025' was filed seeking clarification of the High Court order dated 12.08.2025 for release of the passport, contending *inter-alia* that the order granting permission to leave the country would become *otiose* in the absence of a specific direction to the effect that the passport of respondent no. 1 be released. The High Court *vide* order dated 23.08.2025 remarked that the said submission is "well founded", since the Crl.MC. contained a specific prayer for release of the passport, which was not noticed while passing order dated 12.08.2025. As such, the Criminal Miscellaneous Case No. 6178 of 2025 and Criminal Miscellaneous Application No.1 of 2025 were disposed of, clarifying that since permission has been granted to the respondent no. 1 to leave the country, passport should also be released.

6. In the said sequel of facts, it is required to be observed that after issuance of the notice and tendering appearance by the respondent no. 1 - accused before this Court, in proceeding dated 14.07.2025 of this Court, i.e., the same date on which the Crl.MC. was listed before the High Court, learned counsel appeared before us and sought time to file counter affidavit, which was allowed, directing the present petition to be listed on 25.07.2025. On 25.07.2025, when the matter was taken up, it was informed that it is only the respondent no. 1 who is in India and the other co-accused including the husband and children have already left the country. In view of the same, this Court sought information from the State about the position of other co-accused persons/family members of respondent no. 1 and posted the case on 25.08.2025. The matter was heard on 25.08.2025 and the State was directed to file an affidavit clarifying how many cases are registered against respondent no. 1 – accused and the main allegation put forth against her in those cases. As such, the case is listed for orders today.

7. We have perused the proceedings of this case and the orders passed by the High Court in Criminal Miscellaneous Case No. 6178 of 2025 and Criminal Miscellaneous Application No. 1 of 2025. It is pertinent to note that, this Court issued notice in the present petition on 09.04.2025; later, the application for permission to travel/modification was filed by respondent no. 1 - accused before High Court on 06.07.2025 which was allowed by the High Court on 12.08.2025 and the said order dated 12.08.2025 was further clarified by High Court *vide* order dated 23.08.2025. All these orders have been passed during pendency of special leave petition wherein the order of the High Court was under challenge.

8. At this juncture, we can gainfully refer to the judgment of this Court in ***Tirupati Balaji Developers (P) Ltd & Ors. v. State of Bihar & Ors.***¹ to understand the mutual interaction between the Supreme Court and High Courts. The relevant paragraphs are reproduced as under:

"8. Under the constitutional scheme as framed for the judiciary, the Supreme Court and the High Courts, both are courts of record. The High Court is not a court "subordinate" to the Supreme Court. In a way the canvas of judicial powers vesting in the High Court is wider inasmuch as it has jurisdiction to issue all prerogative writs conferred by Article 226 of the Constitution for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose while the original jurisdiction of the Supreme Court to issue prerogative writs remains confined to the enforcement of fundamental rights and to deal with some such matters, such as Presidential elections or inter-State disputes which the Constitution does not envisage being heard and determined by High Courts. The High Court exercises power of superintendence under Article 227 of the Constitution over all subordinate courts and tribunals; the Supreme Court has not been

¹ (2004) 5 SCC 1

conferred with any power of superintendence. If the Supreme Court and the High Courts both were to be thought of as brothers in the administration of justice, the High Court has larger jurisdiction, but the Supreme Court still remains the elder brother. There are a few provisions which give an edge, and assign a superior place in the hierarchy, to the Supreme Court over High Courts. So far as the appellate jurisdiction is concerned, in all civil and criminal matters, the Supreme Court is the highest and the ultimate court of appeal. It is the final interpreter of the law. Under Article 139-A, the Supreme Court may transfer any case pending before one High Court to another High Court or may withdraw the case to itself. Under Article 141 the law declared by the Supreme Court shall be binding on all courts, including High Courts, within the territory of India. Under Article 144 all authorities, civil and judicial, in the territory of India — and that would include High Courts as well — shall act in aid of the Supreme Court.

9. In a unified hierarchical judicial system which India has accepted under its Constitution, vertically the Supreme Court is placed over the High Courts. The very fact that the Constitution confers an appellate power on the Supreme Court over the High Courts, certain consequences naturally flow and follow. Appeal implies in its natural and ordinary meaning the removal of a cause from any inferior court or tribunal to a superior one for the purpose of testing the soundness of decision and proceedings of the inferior court or tribunal. The superior forum shall have jurisdiction to reverse, confirm, annul or modify the decree or order of the forum appealed against and in the event of a remand the lower forum shall have to rehear the matter and comply with such directions as may accompany the order of remand. The appellate jurisdiction inherently carries with it a power to issue corrective directions binding on the forum below and failure on the part of the latter to carry out such directions or show disrespect to or to question the propriety of such directions would — it is obvious — be destructive of the hierarchical system in administration of justice. The seekers of justice and the society would lose faith in both.”

9. In light of the above judgment, and in the factual conspectus of the present case, we are constrained to observe that where the order granting anticipatory bail by the High Court was impugned in the instant special leave petition and this Court was seized of the matter, an order modifying the conditions of anticipatory bail set out therein, runs contrary to the principles of judicial propriety and comity. The proper administration of justice demands that when an order passed by the High Court is under challenge and notice has been issued by this Court, thereafter, if any application is filed for modification of the said order, the High Court must exercise restraint, as far as practicable, in passing any orders which can possibly have the effect of circumventing, prejudicing, or rendering infructuous the proceedings pending before this Court.

10. This Court in **Chhavi Mehrotra v. Director General, Health Services**², while dealing with a Writ Petition filed under Article 32 of the Constitution of India, deprecated the parallel litigation entertained by High Court under Article 226 of the Constitution of India, filed by the same petitioner on the same issue, and noted that such conflicting exercise of jurisdiction by High Court should strictly be avoided by High Court. *Vide* interim order dated 26.07.1993, while staying the order passed by the High Court, this Court observed as thus:

“IA No. 1 of 1993 (For Stay and Direction) in WP No. 370 of 1993

1. The petitioner, Miss Chhavi Mehrotra, has moved this writ petition before this Court under Article 32 of the Constitution of India for directions for consideration of her admission to the MBBS course against the 15% all-India quota of 1992. This writ petition along with other similar petitions came for consideration and certain comprehensive directions were issued in matters for admission of students in the waiting list to various colleges in the country. In obedience to the orders of this Court a notification dated 28-5-1993 was issued by the Director General of Health Services calling upon the candidates to signify their willingness to be considered for admission

² 1995 Supp (3) SCC 434

under the scheme evolved by the court. Despite the whole matter being seized of by the court, the petitioner moved — and what is disturbing us is that the learned Judge of the High Court entertained — an independent Writ Petition No. 1508(M/S) of 1993 before the Lucknow Bench of the High Court and obtained certain directions which would not only be consistent with the consequences of the implementation of this Court's order but would also interfere and detract from it. Learned counsel would say that it was a direct interference with the proceedings before this Court. It is a clear case where the High Court ought not to have exercised jurisdiction under Article 226 where the matter was clearly seized of by this Court in a petition under Article 32. The petitioner was eo nomine a party to the proceedings before this Court. It is an unhappy situation that the learned Judge of the High Court permitted himself to issue certain directions which, if implemented, would detract from the plenitude of the orders of this Court. The learned Single Judge's perception of justice of the matter might have been different and the abstinence that the observance of judicial propriety, counsels might be unsatisfactory; but judicial discipline would require that in a hierarchical system it is imperative that such conflicting exercise of jurisdiction should strictly be avoided. We restrain ourselves from saying anything more.

2. *The Director General of Health Services has filed this IA for stay of the orders of the High Court. We stay the orders dated 4-7-1993 as well as the order dated 19-7-1993 made by the Single Judge of the High Court in WP No. 1508(M/S) of 1993 and direct the High Court not to proceed with that writ petition.*

3. *Though, by this legal manoeuvre the petitioner has, prima facie, disentitled herself to any discretionary relief, we, however, do not intend to deny her, such benefit as she may obtain pursuant to the selection made in terms of the orders of this Court. We are told at this stage that the petitioner has been allotted to a college in Rajasthan. That benefit may not be denied to her.*

4. *The order of the High Court directing that a seat be kept vacant in the King George's Medical College, Lucknow, is stayed and the Director General of Health Services is at liberty to fill it up otherwise.*

5. *List this matter for final hearing on 24-8-1993."*

11. In view of the foregoing, in our view, the orders passed by the High Court modifying the order which is under challenge before this Court, during the pendency of this special leave petition, is contrary to the judicial propriety and discipline which is expected from the High Court. Considering the aforesaid, we stay all the orders passed by the High Court in Criminal Miscellaneous Case No. 6178 of 2025 and in Criminal Miscellaneous Application No. 1 of 2025 until further orders.

12. On a query being put as to whether the High Court was apprised about the pendency of the present special leave petition, the learned Senior Counsel appearing for the respondent no. 1 - accused submitted that the pleadings in the CrI.MC filed before the High Court categorically mentioned the factum of pendency of the present SLP. In our view, even though the CrI.MC. was filed by the respondent no. 1 - accused before the High Court on 06.07.2025, whereafter, this special leave petition has been listed before this Court on 14.07.2025, 25.07.2025 and 25.08.2025, yet, the said fact of filing of the application for modification and passing of orders thereon, was not brought to the notice of this Court. The Counter Affidavit of respondent no. 1 - accused in the present matter has been filed on 14.07.2025 without making a whisper about any such application for modification being filed. We would like to reserve our views in respect of the conduct of the respondent no. 1 - accused for the time being, while expressing our grave displeasure.

13. Meanwhile, let notice be issued to respondent no.1 - accused as to why, on account of concealment of facts, the protection of pre-arrest bail as allowed by the order impugned, should not be cancelled on account of her conduct. The response be filed within three

weeks attaching all the relevant documents produced before the High Court or before the concerned trial Court.

14. List this case for further orders on 26.09.2025.

15. In the meanwhile, respondent No. 1 – accused shall immediately surrender her passport and she shall not leave India without the permission of this Court.

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