

# Mrs Hu Xiaolin vs The State Of Karnataka By on 1 December, 2023

**Author: S Vishwajith Shetty**

**Bench: S Vishwajith Shetty**

- 1 -

NC: 2023:KHC:43379  
CRL.P No. 9459 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF DECEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY

CRIMINAL PETITION NO. 9459 OF 2023

BETWEEN:

MRS. HU XIAOLIN  
W/O ANAS AHMED  
AGED ABOUT 37 YEARS  
R/AT PRESTIGE LAKE  
SIDE HABITANT TOWER 11  
UNIT NO.11205, VARTHUR  
HOBLI, GUNJUR VILLAGE  
MARATHALLI, SARJAPURA  
WHITEFIELD MAIN ROAD  
BENGALURU - 560 087.

...PETITIONER

(BY SRI LOKESHA M.Y, ADV.)  
AND:

Digitally  
signed by  
NANDINI MS  
Location:  
HIGH  
COURT OF  
KARNATAKA

THE STATE OF KARNATAKA BY  
COD, CYBER CRIME POLICE STATION  
BENGALURU - 560 001

REP BY STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDING

HIGH COURT, BENGALURU - 560 001.

...RESPONDENT

(BY SRI RANGASWAMY R, HCGP)

THIS CRL.P FILED U/S.439(1)(b) CR.P.C PRAYING TO RELAX THE CONDITION NO.2, I.E., THE PETITIONER SHALL NOT LEAVE THE JURISDICTION OF THE COURT WITHOUT PRIOR PERMISSION, IN THE BAIL ORDER DATED 07.07.2021 PASSED IN CRL.MISC.NO.5035/2021 PASSED BY THE HONBLE PRINCIPAL CITY CIVIL AND SESSIONS JUDGE BENGALURU CITY.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

-2-

NC: 2023:KHC:43379  
CRL.P No. 9459 of 2023

#### ORDER

1. Petitioner, who is a Chinese national has approached this Court under Section 439(1)(b) of Cr.PC, with a prayer to relax condition no.2 imposed by the Court of Prl. City Civil & Sessions Judge, Bengaluru, in Crl. Misc. No.5035/2021 disposed of on 07.07.2021, wherein regular bail was granted to the petitioner in Crime No.8/2021 registered by Cyber Crime Police Station, Bengaluru, for the offence punishable under Section 420 IPC and Section 66(D) of the Information Technology Act, 2008.

2. Heard the learned Counsel for the parties.

3. FIR in Crime No.8/2021 was registered by Cyber Crime Police Station, Bengaluru, for the offences punishable under Section 420 IPC and Section 66(D) of the Information Technology Act, 2008, on the basis of the complaint lodged by Abhishek Abhinav Anand, authorized representative of the Company known as Razor Pay Software Private Limited. During the course of investigation of the said case, the petitioner herein was arrested and her bail application filed under Section 439 Cr.PC in Crl. Misc. No.5035/2021 was allowed by the NC: 2023:KHC:43379 Sessions Court on 07.07.2021 subject to the following conditions:

"1. The petitioners shall appear before the court on every date of hearing, unless otherwise exempted for genuine reason.

2. The petitioners shall not leave the jurisdiction of the court without prior permission.

3. The petitioners shall not tamper with the prosecution witnesses in any manner.

4. The petitioners shall surrender their passports to the Investigating Officer or file declaration in the form of affidavits if they are not possessing the passports.

5. The petitioners shall produce address proof of themselves and that of the sureties subject to police verification.

6. The petitioners have to report their change of address if any to the Investigating Officer and to the court.

7. The petitioners shall appear before the Investigating Officer to mark their attendance on First for every month till further orders or until filing of the charge-sheet, whichever is earlier.

NC: 2023:KHC:43379

3. The applicants in Crl. Misc. No.5035/2021, had thereafter filed Crl. Misc. No.5863/2021 with a prayer to modify condition no.1 and to relax condition nos.4 to 7. The learned Sessions Judge partly allowed Crl. Misc. No.5863/2021 by order dated 03.08.2021. Condition no.1 was modified and the applicants were directed to execute personal bond and deposit cash of Rs.2,00,000/- each as surety, and condition nos.5 & 7 were ordered to be relaxed. Thereafter, the applicants in Crl. Misc. No.5035/2021 had filed another application in Crl. Misc. No.4710/2023 with a prayer to relax condition no.2 in the order dated 07.07.2021 passed in Crl. Misc. No.5035/2021. The said application was dismissed on 09.06.2023. Therefore, the petitioner is before this Court.

4. Learned Counsel for the petitioner submits that the petitioner is a Chinese national and in view of condition no.2 imposed in Crl. Misc. No.5035/2021, she is not in a position to visit her country. He submits that the entire proceedings in the case has been stayed against the petitioner in W.P.No.10986/2021 by this Court, and therefore, there is no justification on the part of the learned Sessions Judge in NC: 2023:KHC:43379 rejecting the application filed by the petitioner seeking relaxation of condition no.2.

5. Per contra, learned HCGP has opposed the petition. He submits that condition no.2 does not in any manner come in the way of petitioner visiting her country. Instead of filing necessary application before the Trial Judge seeking necessary permission to travel to her country, she has filed an application to relax condition no.2. If the same is relaxed, there is likelihood of petitioner fleeing from justice. Accordingly, he prays to dismiss the petition.

6. Undisputedly, the petitioner is a foreign national and she allegedly has committed the offences punishable under Section 420 IPC and Section 66(D) of the Information Technology Act, 2008, registered by Cyber Crime Police Station, Bengaluru, in Crime No.8/2021. The learned Sessions Judge while granting bail to the petitioner in Crl. Misc. No.5035/2021 has imposed condition no.2 directing the petitioner not to leave the jurisdiction of the court without prior permission. If the petitioner intends to

travel abroad or to leave the jurisdiction of the court, all that she is required, is to make necessary NC: 2023:KHC:43379 application before the concerned court seeking permission to leave the jurisdiction of the court.

7. As rightly contended by the learned HCGP, since the petitioner is a foreign national, in the event she is allowed to leave the country or leave the jurisdiction of the court unconditionally, there is all likelihood of she fleeing away from justice and it would be highly difficult to secure her presence for the purpose of trial in the case. As per condition no.4, petitioner is required to surrender her passport to the Investigating Officer or file declaration in the form of affidavit if she is not possessing the passport. The said condition is neither relaxed nor modified till date. Therefore, the submission made by the learned Counsel for the petitioner that the petitioner is not in a position to travel to her country in view of condition no.2 in Crl. Misc. No.5035/2021 cannot be appreciated in the absence of any prayer either to modify or relax condition no.4 imposed in Crl. Misc. No.5035/2021.

8. Petitioner had earlier filed similar application before the learned Sessions Judge seeking modification of condition no.1 and to relax condition nos.4 to 7. The said application was NC: 2023:KHC:43379 allowed in part and condition no.1 was modified and condition nos.5 & 7 was relaxed. Condition no.4 remained undisturbed by the learned Sessions Judge, and in the present application, there is no prayer to relax or modify condition no.4. Therefore, I am of the view that the learned Sessions Judge was fully justified in rejecting the application filed by the petitioner to modify/relax condition no.2 imposed in Crl. Misc. No.5035/2021. I find no error in the said order. Accordingly, I decline to entertain this petition, and the same is, therefore, dismissed.

Sd/-

JUDGE KK