

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

A.B.APPLICATION NO.1356 OF 2015

Pratap Kashyap	..Applicant
-Versus-	
State of Maharashtra	..Respondent

Mr. Pandit Kasar for applicant
Ms. M.H.Mhatre, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 14th December 2015

P.C.

1] The applicant is seeking pre-arrest bail in C.R.No.90 of 2015 dated 10th February 2015 registered with MIDC police station , Andheri, Mumbai under section 408 of IPC.

2] The complainant Rakesh Jha has lodged the F.I.R. dated 10th February 2015. It is the precise case of the complainant that the applicant herein was an acquaintance of the complainant. The complainant wanted to start business in the field of computers and, therefore, after taking into consideration the expertise of the applicant, the complainant asked the applicant to join his business.

The FIR further discloses that the applicant was employed by the complainant in his business of computer repairs. The applicant along with the help of his brother used to look after the said business in his capacity as the employee of the complainant. Off late, the complainant came to know that the applicant, instead of depositing the amount received from the customers in the account of complainant's firm, has deposited the same in his own account. The applicant realised that the applicant has defalcated the amount of Rs.10,07,794/-. The complainant in the premise has lodged the FIR.

3] Learned Counsel for the applicant submitted that to attract section 408 of IPC, the applicant either has to be a servant or clerk of the employer. The plain reading of the F.I.R. discloses that the applicant was employed by the complainant as his servant. Though the word business is used in FIR, it is used with reference and in the context of complainant's version of his own business. Prima facie, undoubtedly, the applicant was working as a servant/employee and therefore, section 408 of IPC squarely applies to the present case. The F.I.R. further discloses that the applicant by taking undue

advantage of his position has defalcated an amount of Rs.10,07,794/-.

4] In view of the above, custodial interrogation of the applicant is necessary, firstly to verify in which bank account the applicant has deposited the said amount and secondly, to trace out the trail of money which was defalcated. The serious allegations against the applicant does not make him entitled from the protection of pre arrest bail.

In view of the above, I find no merit in the application. The same is rejected.

(A.S.GADKARI, J)