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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2929 OF 2016

Nilesh s/o Devidasrao Joshi,
Age: 33 years, Occu: Service,
R/o C-304, Magnolia Apartment,
Baner-Pashan Link Road,
Pashan,
Pune-21

..APPLICANT

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Kadim Police Station,
District Jalna

..RESPONDENT

Mr S. B. Talekar, Advocate for applicant;
Mr A.S. Shinde, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 14th June, 2016

ORAL ORDER :

By the present application under section 438 of the Code of Criminal Procedure, the applicant is seeking pre-arrest bail, in connection with C.R. No.3089 of 2014, registered with Kadim Jalna police station, Jalna on 3rd December, 2014, for offences punishable under sections 66-C, 66-A and 67 of the Information Technology Act, 2008 and under section 406 and 420 of the Indian Penal Code.

2. It is the case of the prosecution that the applicant got engaged with

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sister of the complainant Pawan Gurunath Pandav. Subsequent to engagement, applicant took her into confidence and secured password of her face-book account and posted certain messages on the same. On complainant asking applicant as to why he had done so, applicant replied that there is porn/dirty chatting on her face-book account and that her conduct/character is not good. According to the complainant, during the period between 14th October, 2013 and 17th October, 2013, applicant constantly circulated on face-book account of complainant's sister dirty messages assassinating her character and thus causing her defamation and of her family. This resulted in complaint being lodged by complainant with police of which cognizance was taken by registering the above referred crime.

3. Mr Talekar, learned Counsel appearing on behalf of the applicant, while trying to make out a case for grant of pre-arrest bail, would urge that the applicant is falsely implicated in the crime in question. According to him, the investigation in the matter is already complete and the charge-sheet is filed on 25th January, 2016. Mr Talekar then would submit that the complainant somehow wanted to falsely implicate the present applicant in the crime in question, in view of broken relationship between the complainant's sister and the present applicant, in relation to marriage. He would submit that the complainant has lodged complaints at various police stations and being not succeeded in the same, has lastly approached the police station at Jalna. The applicant is in employment is also an issue which is required to be looked into. He would then submit that nothing is to

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be recovered from the applicant, who happens to be an employee of Accentuate company, which has refused to hand over the laptop alleged to have been used by him in commission of the crime, for investigation purpose. Mr Talekar would then submit that there is no entrustment for alleging crime in question and major part of the crime is alleged to have been committed by using mobile phone. According to him, having regard to the fact that the investigation is over and custodial interrogation of the applicant is not necessary, the application be allowed.

4. Mr Shinde, learned Addl. Public Prosecutor opposed the application on the ground that the applicant's earlier application with the same prayer was rejected by this Court on 29th June, 2016. Learned Addl. Public Prosecutor then would submit that the applicant cannot move second application on the same set of facts, with an intention to take advantage of filing of the charge-sheet and seek pre-arrest bail. He then would submit that the reasons as were recorded in the earlier order dated 29th January, 2016 while rejecting the application of the applicant for grant of pre-arrest bail still hold the field and custodial interrogation of the applicant is very much necessary. He then would submit that the applicant cannot take benefit of his own wrong by coming with a defence that the laptop alleged to have been used by him in commission of the crime is with the employer, i.e. Accenture company, which has refused to part with the custody of the laptop for the investigation purpose. According to him, the applicant does not deserve grant of pre-arrest bail and application be rejected.

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5. Having bestowed my anxious thoughts to the submissions made, though my attention is invited to the order passed by the learned Magistrate on 7th June, 2016 releasing the co-accused, i.e. brother and father of the applicant on regular bail, yet the observations made therein by the learned Magistrate granting regular bail will have hardly any bearing over the merits of the present matter.

6. The charge-sheet in the matter came to be filed on 25th January, 2016 and this Court, thereafter had rejected application of the applicant on 29th January, 2016. The applicant, at that point of time, had suppressed the material fact of filing of charge-sheet from this Court and took a chance of arguing pre-arrest bail application and suffered finding of rejection from this Court. The applicant then waited for some time and thereafter surrendered his brother and father, who were released on regular bail and is trying to rely upon the said order for getting benefit of pre-arrest bail provision. Apart therefrom, the fact remains that the applicant has come out with an excuse for not surrendering the laptop, that the same is in the custody of the employer and the employer is not willing to part with the same. In my view, such excuse is canvassed with an intention to suppress the evidence from the Investigating Officer and hence custodial interrogation of the applicant is necessary. This Court has recorded reasons for rejection of the application, in an earlier order, which still holds the field and appears to be germane to the cause for rejection of the present application for pre-arrest bail.

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7. The applicant, after broken relationship, has tried to assassinate the character of his former fiency as is apparent from the investigation till date.

8. In my opinion, no case for grant of pre-arrest bail is made out. Criminal Application fails and stands rejected.

(N.W. SAMBRE, J.)

amj