

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.84 OF 2016

Shri Suraj Singh

...Applicant

vs.

The State of Maharashtra & Anr.

...Respondents

...

Mr. Rahul Totala i/b Mr. Aashish Satpute for the applicant.

Mrs. P. P. Shinde, APP for the State.

Mr. S. R. Pasbola for the Intervenor.

...

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 15th APRIL, 2016.

P.C. :

1. This application is moved for pre-arrest bail as the applicant/accused is facing charge for the offences punishable under sections 406 r/w.120-B of the Indian Penal Code and section 66 r/w 43(b) and 43(j) of the Information Technology Act, 2000. Pursuant to information given by Mr. Surva Roy, an offence came to be registered in C. R. No.I-239 of 2015 at Rabale MIDC Police Station, Mumbai.

2. It is the case of the prosecution that the complainant is legal Head of M/s Naaptol Online Shopping Pvt. Ltd. The applicant/accused was working as a project Manager since 2009. The company had created a source code as the company was selling products online and has created various systems. The work of these systems were based on source code. The information of source code and program was given to the applicant/accused. He

developed the said system by using the source code in January 2015. He designed the company and, thereafter, in June 2015 he was relieved. Then in October and January 2015 other persons were also relieved. The applicant/accused has started a new company Expert Thought Technologies Pvt. Ltd. in the name of his wife and the persons who had left the job had joined the company of the applicant/accused. The complainant and officers of the company realized that the applicant/accused has committed theft of source code and made the entire data available to his company. The two companies i.e. Best Deal TV Pvt. Ltd. and Big Deal TV Pvt. Ltd. got the work on the basis of source code sold by M/s Viral Technologies Pvt. Ltd., in which one of the co-accused is the director. Thus, the case of the prosecution is that the applicant/accused supplied the source code to M/s. Viral Technology Pvt. Ltd. through his wife's company Expert Thought Technologies Pvt. Ltd. and thereafter the source code was sold to Big Deal TV Pvt. Ltd. for consideration of Rs.28,09,000/- and M/s.Viral Technology Pvt. Ltd. transferred the amount of Rs.11,70,000/- in the account of Expert Thought Technologies Pvt. Ltd. i.e. in the company of the wife of the applicant/accused. Therefore, an offence was registered against the applicant/accused and hence this anticipatory bail application.

3. Learned counsel for the applicant/accused has submitted that the applicant/accused is innocent. He has not committed theft of source code. He further submitted that since the interim bail is granted to the applicant/accused, he has been

attending the Court. He further submitted that the complainant has filed Regular Civil Suit No.5/2015 against the applicant/accused and the co-accused in the District Court, Thane. At the time of hearing of the interim application in the said matter, District Judge, Thane refused to grant any interim relief in favour of the complainant i.e. original plaintiff. He submitted that the learned District Judge found that the complainant failed to make out prima facie case and therefore not entitled to relief of temporary injunction. He further pointed out that submissions made before this Court in AO (st) No.5461/2016 on 2/3/2016 by counsel of the appellant i.e. the complainant that the parties are trying to settle the matter. Learned Counsel further submitted that this is a case where the applicant/accused has co-operated with the police. He further submitted that laptop, cell phone and pendrive are handed over to police on 22/2/2016 and thus his custody is not required. Learned counsel in support of his submissions relied on the case of ***State vs. Rajesh Gosain & Anr. (Cri. M.C.1012 and 1635/2013 and Cri. M.A. 3158/2013) decided on 7/2/2014*** by a learned Judge of Delhi High Court confirming the order of grant of anticipatory bail. Learned counsel for the applicant/accused submitted that this is an identical case wherein the Delhi High Court has taken a view that the custody of the applicant/accused is not required.

4. Learned APP for the State opposing this application stated that applicant/accused is one who has committed theft of source code of the complainant/company. Learned prosecutor

relied upon the affidavit of Pratibha Pralhad Shendge, Police Inspector, Cyber Cell, Crime Branch, Navi Mumbai. Learned prosecutor submitted that the applicant/accused has not produced his laptop, cell phone and pendrive which he had used during January 2015 to May 2015. He has not co-operated the police and therefore his custodial interrogation is required. Learned counsel for the complainant has submitted that in the order dated 14/12/2015 which is passed on the interim application of the complainant, learned District Judge has made observations in favour of the complainant though interim relief was rejected. It is submitted that the applicant/accused is the main accused and therefore his custody is required.

5. Perused the FIR, the other documents, affidavit of Investigating Officer and the order dated 15/12/2015 which is passed in the application for interim relief made by the complainant before the District Judge. It appears that the applicant/accused is the main culprit in this case and there is prima facie evidence against the applicant/accused that he has violated the contract of confidentiality entered into by the complainant and the applicant/accused. There is material on record that the source code of the complainant was used by the applicant/accused and the information was given to other companies i.e. Viral Technology, Big Deal TV Pvt. Ltd. and he has received consideration of Rs.11,70,000/- in the account of his company i.e. Expert Thought Technologies Pvt. Ltd. Considering the nature of the offence and the manner in which the entire activity is conducted, it looks that it

is not a case of mere business rivalry but element of cheating prima facie appears to be involved. On perusal of the affidavit, it is found that the applicant/accused did not handover the pendrive, cell phone and the laptop which he was using as per the prosecution during the period of offence from January 2015 to May 2015. So far as order of grant of anticipatory bail to other two co-accused is concerned, role of the other two accused is different than the role of the present applicant/accused. In the case of Delhi High Court in ***State vs. Rajesh Gosain & Anr. (supra)***, there is observation made by the learned Judge in paragraphs 22 and 23 that the police seized laptops, mobile phones, hard disks, CDs, DVDs from the residence and office of the respondents/accused and it was not disputed by the State that the respondent did not join the investigation and whatever material was produced by the accused in that case was sent for analysis and, therefore, in such circumstances, the learned Judge has rightly held that the custodial interrogation is to be avoided. Moreover, in the said case, similar to this case a Civil Suit was filed by the complainant however necessary restraint order had been passed to safeguard the interest of the complainant. In the present case, as pointed out by the learned counsel for the applicant/accused, learned District Judge has rejected the application as prima facie case was not made out. However, after going through the relevant portion of the order, I find that learned Judge has observed that defendant Nos.4 and 5 has infringed the copyright of the plaintiffs portal and it is also observed that defendant Nos.4 and 5 create doubt in the mind of customer and in that contingency the loss which is suffered by the

complainant cannot be compensated in terms of money.

6. In such circumstances, I am not inclined to accept that the present case is not distinguishable from the case of ***State vs. Rajesh Gosain & Anr. (supra)***. Anticipatory bail application is hereby rejected. Interim bail granted earlier stands cancelled.

7. At this stage, learned counsel for the applicant/accused states that he wants to challenge the order before the Supreme Court and therefore interim protection granted earlier be continued.

8. In view of the request made by the learned counsel for the applicant/accused, interim protection is continued upto 5/5/2016.

(MRS.MRIDULA BHATKAR, J.)