IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 389 OF 2016

Roopesh Hariom Bajaj … Applicant
vs.
The State of Maharashtra … Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 367 OF 2016

Deepak Ratanlal Walecha … Applicant
vs.
The State of Maharashtra … Respondent

Mr. Sahil Saiyed i/b. Wadia Ghandy & Co. for the applicant in ABA/389/2016.
Mr. Vikas B. Shivarkar, for the applicant in ABA/367/2016.
Ms. Veera Shinde, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 20th October, 2016.

P.C.

1. These are the applications under Section 438 of Cr.P.C. The applicants herein are apprehending their arrest in Crime No.48 of 2016 registered at Hinjewadi Police Station, Pune for the offences punishable under Sections 416, 417, 418, 419 and 420 of the Indian Penal Code and under Sections 66, 66(c) and 66(d) of Information Technology Act, 2000.

2. It is the case of the prosecution that on 6.2.2016, Sanjay Thenge, API, Cyber Crime Cell Offences Wing, lodged a report at Hinjewadi Police Station alleging therein that, on the basis of a secret information, on 6.2.2016 at midnight, they raided the office of R.R.Communication, a Business Process Outsourcing (hereinafter referred to as the **BPO)** run by Mr. Aditya Rathi and Prashant Rathi. It was noticed that the BPO was indulged into illegal activities. Aditya Rathi, Harish Khushlani, Ritesh Navani, Deepak Walecha (applicant in ABA No.367 of 2016) and Roopesh Bajaj (applicant in ABA No.389 of 2016) were shown as accused.

3. It is alleged that Roopesh Bajaj had provided the services of Voice Over Internet Protocol facilitation (hereinafter refereed to as **`VOIP')** services and potential customer information to RR Communications. It is the allegation that in the said BPO, employees were trained to contact American citizens. They spoke to them in an American accent and informed them that they were speaking on behalf of Microsoft Company and that there was virus in their computers, etc. and in the course of conversation, had hacked their personal information by using a software called `Team Viewer' and benefited in U.S. Dollars. In the course of

interrogation of Aditya Rathi, it had revealed that the applicant – Roopesh Bajaj had provided VOIP services and also data in respect of the American citizens.

4. It was revealed in the investigation that the applicant – Roopesh Bajaj was providing services under the name and style of "Cross Deers".

5. The learned counsel for the applicant has submitted that the applicant herein has been falsely implicated as providing VOIP services by itself is not an offence. He is a service provider and there is o illegality in the same. It is also submitted that the applicant – Roopesh Bajaj has completed his Post Graduate Diploma in Information Technology from Sydney, Australia. It is admitted that the applicant has worked in BPOs over the years and has also given "Voice & Accent" training as well as personality development training to BPO employees. he has acted as Vice-President of Moksha Business Solutions in Ahmedabad.

6. It is submitted that in the year 2012, the applicant had started his own business of supplying services to BPO and was conducting BPO Consultancy and Outsourcing organizations, amongst others, with Dialer &

Merchant processing and VOIP services. The applicant is the proprietor of the sole proprietary concern of Cross Deers.

7. For the purpose of VOIP facilitation, the applicant – Roopesh Bajaj acts as a re-seller by procuring VOIP minutes from a U.K. based company viz. ICON Global.

8. Initially, the applicant had submitted before this Court, in the course of hearing on 10.3.2016, that there is a legitimate agreement between Cross Deer and ICON Global Services. It was submitted that the software which was provided by him was misused by RR Communications and he cannot be held liable for the same.

9. Taking into consideration these arguments, the Hon'ble Predecessor Court was pleased to grant interim relief in favour of the applicant – Roopesh Bajaj. The interim relief was extended from time to time. The learned APP was directed to file an affidavit in respect of the agreement between ICON Global and Cross Deers. The letters were issued to the Deputy Director General , Department of Telecommunication, Pune and the Assistant Divisional Engineer, Department of Telecommunication

regarding any information about the agreement. By a letter dated 10.10.2016, issued from the Office of the Government of India, Ministry of communications and Information technology, Department of Telecommunications. It was reported that no ISP/ITSP licence was issued to Cross Deers and ICON Global Services. It was also stated that providing telecom services which includes sale of VOIP Minutes without a valid licence is a violation of Section 4 of the Indian Telegraph Act,1885 and attracts penal provision under Section 20 of Indian Telegraph Act, 1885. It was further reported that if the Investigating Officer has concluded that the companies mentioned above i.e. Cross Deers and ICON Global Services are involved in selling of VOIP Minutes and do not possess a valid licence, then violation under Sections 4 and 20 of the Indian Telegraph Act should also be added in the FIR and the copy of FIR be supplied to the Office of the Assistant Director General, Department of Telecom, Ministry of Communications and Information Technology, Government of India. Thus, it was clear that the company providing the VOIP Minutes had no licence and neither Cross Deers had a licence and therefore, it could not have been said by any stretch of imagination that there was a “legitimate agreement” between ICON Global Services and Cross Deers.

10. It is the submission of the learned counsel for the applicants that he had no knowledge that a licence was required for selling the VOIP Minutes. He feigned ignorance about the same. However, the said contention does not inspire confidence by any stretch of imagination. It is pertinent to note that the agreement was signed on line.

11. In the course of investigation, the applicant had submitted the licence issued under the Maharashtra Shops and Establishment Act. The Shop Act is in the name of the firm Cross Deers. The Investigating Officer has placed on record the original licence under the Shop Act which shows that the original registration under the Shop Act is in the name of `Cross Deerses'. In the course of hearing of the application, when this aspect was brought to the notice of the learned counsel for the applicant, it was submitted that in all probability, he had cancelled the registration of Cross Deerses and then was registered as Cross Deer. A query was made as to whether the copy of the application was annexed to the application for opening account in the Bank and it was submitted that the certificate which was submitted is in the name of Cross Deers. That means the photocopy of the original Shop Act licence was also not produced at the time of opening the account.

12. On the next date of hearing, the learned counsel for the applicant, upon instructions, had submitted that the applicant had filed the application for registration in the name of Cross Deerses. He had never gone to the office of the Municipal Corporation for obtaining the licence. According to him, one of th employees had sent him the image of the licence issued in Marathi which appeared as Cross Deereses. According to the learned counsel, `Cross Deereses' would be a misplaced name for the service centre and then he had told the employee to change the name to Cross Deers and the employee had then sent the image of the licence which read as Cross Deers. According to the learned counsel, the applicant had taken out the print-out of the said image and had used it for all official purposes. The learned counsel vehemently submits that the applicant had been negligent and had not bothered to find out from the office whether there was a change in the original records also.

13. The said submission cannot be accepted for the simple reason that there is an attempt to mislead the Court and as and when a query is made in respect of any default, the applicant's employee feigns ignorance and admits his negligence and thereafter a submission is made that whether

being negligent would be a penal offence. The answer would be in the affirmative for the reason that in the present case, negligence is admitted only after the applicant is confronted with an act where there is mens rea. That initially, at the time of first hearing, the applicant had come up with a case that there is an allotment agreement between ICON Global and Cross Deers and, therefore, was granted protection. It was the contention that he had no knowledge that a licence is required for the facilitating VOIP Services. The Court cannot be oblivious of the fact that the applicant has done his Post Graduation from Australia. He was working as a consultant with several BPO Centres and thereafter he feigns ignorance that he had no knowledge about the requirement of a licence. Same is the case when we confronted with the Shop Act licence. It is only this Court on directing the investigating officer to verify the genuineness of the Shop Act licence, it has transpired that the firm is registered in the name of Cross Deers and the official document is `Cross Deereses'. This Court holds that this is a deliberate act on the part of the applicant – Roopesh Bajaj and his activities do not seem to be fair.

14. The learned APP submits that there are statements of witnesses which show that the applicant had also given training programme to the

employees of RR Communications. The said allegation is vehemently denied in the course of hearing and the learned counsel submits that the applicant is not concerned with any voice training programme. At this stage, it is pertinent to note that in the application itself the applicant has admitted that the applicant has even voice and accent training to BPO employees. It is not admitted by the applicant that he had given training to the employees of RR Communications. It can be safely inferred from the statement of the employees of RR Communications contending that the applicant had given them training to speak to the American citizens in an specific accent in order to impress upon them that they are speaking from Microsoft (India) Company. At one stage of the hearing of the present application, when the applicant was present before this Court, it was submitted that the applicant had co-operated with the investigating agency and on one occasion, the applicant had seen that the investigating officer had, in his presence recorded the statement of one Divakar Naidu, who has admitted that for some time he had given voice training to the employees of RR Communications. It is vehemently submitted that inspite of the same, Divakar Naidu has not been shown as an accused. The investigating agency was confronted with this contention. The I.O. has filed an affidavit that a notice was issued to Roopesh Bajaj and Deepak Walecha to cooperate with the investigation and report to the police station on 8.2.2016. on 8.2.2016, the applicant had not attended the police station and the statement fo Divakar Naidul was recorded. Mr. Naidu had disclosed to the police that he had given training to the employees of RR Communications at the time of opening of the said BPO in August 2015. The training was for medical support and he was paid Rs.35,000/-. The affidavit of the investigating officer also shows that on 8.2.2016, when Divakar Naidu was interrogated, the applicants were not present at Cyber Cell and they had absconded. That they were found at the given address since 8.2.2016 to 10.3.2016 i.e. till they were granted ad-interim relief by the Hon'ble Predecessor Bench. This was the third attempt of misleading the Court by submitting before the Court that the applicant was present when the statement of Diwakar Naidu was recorded. The case diary shows that the applicants had not attended the police station on that day. It appears that the applicants have indulged into illegal activities by starting the business with the aid of a company which had no business. The applicant had also no licence from the Shop Act. The name of the firm in the licence is different from the name for which the firm was registered. The applicant had attempted to shift their responsibility on Diwakar Naidu by candidly stating before the Court that Diwakar Naidu admitted that he had given training and the applicant had not attended the police station on 8.2.2016.

15. At present, such cases are rampant where the accused cheat vulnerable persons . That they hack their details by using VOIP Services. That it is not only the image of the country but it is an economic offence and cannot be simply brushed aside by holding that the offences under the Information Technology Act are bailable offences. In the present case, the offences under Section 416, 417,418, 419 and 420 of IPC are clearly spelt and hence the applicants would not be entitled to the discretionary relief under Section 438 of Cr.P.C.

16. As far as the applicant Deepak Walecha is concerned, he was an employee of RR communications. According to the learned counsel for the applicant, the applicant was not in service of RR Communications at the time when the premises were raided. It is a case of prosecution that Deepak Walecha was regularly indulging into conversation with American citizens and had cheated American citizens. It is specifically contended that the horizontal magnitude of the present offence is in large scale in cities like Pune, Ahmedabad, etc. The statements of the witnesses who are employees of RR Communications clearly show that the applicant Deepak Walecha used to regularly visit the office of RR Communications and data of American citizens to co-accused Aditya Rathi. It is true that on the date

of raid, the applicant Deepak Walecha was not in the office of RR Communications. His complicity with the principal accused cannot be ruled out at this stage. It is commonly seen that only when the offences are registered against the accused, it is contended that they are innocent and had no knowledge of the existing laws. Such ignorance cannot be slightly brushed aside and it could only be a defence at the time of trial. The Court cannot be oblivious of only the magnitude of the offence, but the Court is bound to take into consideration the ramifications of the acts committed by the applicants.

17. The learned counsel for the applicant submits that the offences under the Information Technology Act are bailable offence. That the mode of operation in the Information technology system have many ramifications unforeseen by the law-makers and the accused persons like the applicants take disadvantage of the same and cheat vulnerable innocent people. There is a phenomenal increase in cyber crimes. It is necessary to regulate the rules for conducting BPO's and Call Centres. There has to be some deterence to the Service Providers, like the present applicants who flout the rules deliberately and then feign ignorance.

18. Taking into consideration the papers of investigation, the

statements of the witnesses and the conduct of the applicants, they do not deserve the discretionary relief under Section 438 of Cr.P.C. Hence, the applications stand rejected.

19. Needless to say that the interim reliefs granted in favour of the applicants vide order dated 10.3.2016 stand vacated.

20. At this stage, learned counsel for the applicant orally prays for suspension of the order. Taking into consideration the facts of the case, the order of this Court rejecting the Bail Applications need not be suspended. Hence, prayer stands rejected.

(SMT.SADHANA S.JADHAV, J.)