Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 721 OF 2015

1. Ronald D'Mello
2. Vinay Chandrashekhar Singh
3. Sanjay S. Bhatkar ... Applicants

Vs.

1. The State of Maharashtra
2. Flomic Freight & Services Pvt. Ltd. ... Respondents

ANTICIPATORY BAIL APPLICATION NO. 700 OF 2015

1. Ms. Reshma A. Parab
2. Ms. Nasreen Shaikh ... Applicants

Vs.

1. The State of Maharashtra
2. Flomic Freight & Services Pvt. Ltd. ... Respondents

ANTICIPATORY BAIL APPLICATION NO. 701 OF 2015

1. Harilal K. Nair
2. Deepak Kumar Upadhyay ... Applicants

Vs.

1. The State of Maharashtra
2. Flomic Freight & Services Pvt. Ltd. ... Respondents

ANTICIPATORY BAIL APPLICATION NO. 724 OF 2015

Ms. Hetal Jitendra Mehta ... Applicant

Vs.

1. The State of Maharashtra
2. Flomic Freight & Services Pvt. Ltd. ... Respondents

Mr. A.H.H. Ponda, Advocate i/b. Mr. Apoorv Singh, Advocate for the applicants in ABA/721/2015 and ABA/724/2015.
Mr. A.P. Mundargi, Senior Advocate i/b. M/s. Mahesh Menon & Co., for the applicants in ABA/700/2015 and ABA/701/2015.
Mrs. S.S. Kaushik, APP for the State.
Mr. Ravi Sardesai, P.I., Cyber Police Station present.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **11th March, 2016.**

P.C.:

All these Applications are heard together and decided by one commonorder. One Jaychandra Menon, who is working as Vice-President of Flomic Freight & Services Pvt. Ltd. gave FIR against the applicants/accused on 10th December, 2014 and the offences punishable under sections 408, 420 r/w. 34 of the Indian Penal Code and Section 66 r/w. 43(b), 72A of Information Technology Act of 2008 (Amended) are registered at C.R. No. 36 of 2014 with Cyber Police Station, BKC, Mumbai.

2. It is the case of the complainant that Flomic Freight & Services Pvt. Ltd. is having a business of freight forwarding, export, import, custom clearance, brake bulk, consolidation and project cargo handling etc. The company is having the business all over the world and the clients are contacted on internet only. The company has employed approximately 140 employees. At the time of employment, a contract is executed between the employees and the employer with confidentiality clause. It is the case of the complainant that applicants Harilal Nair and Deepak Upadhyay, who were working as officers in the said company and applicants/accused Ronald D'Mello, Vinay Chandrashekhar Singh and Sanjay S. Bhatkar have conspired and they deceptively contacted the clients of the company and hijacked the business of the company by establishing different two

companies, namely, Berrio Logistics India Pvt. Ltd. on 13th February, 2014 and RSV Logistic and Services LLP on 28th February, 2014. One Delhi based company was also established by other staff members, i.e., Cargo Trans Solution in February, 2014 Thus, it is the case of the complainant that Deepak Upadhyay was working as Sales manager and Harilal Nair was working as Regional Sales Manager in the company at CBD Belapur since 2006. The company noticed that its business was nearly Rs.75 crores, however, in the year 2014, it was dropped to Rs.35 crores. Hence, on enquiry, it was found that these applicants/accused, on the basis of data and rate of clearance of the company, has cheated the company and thereby committed an offence of cheating and criminal breach of trust.

3. At the outset, it is to be said that learned APP has submitted that the custody of the applicants/accused in Anticipatory Bail Application No. 700 of 2015 and 724 of 2015 are not required, however, the custody of the applicants/accused in Anticipatory Bail Application Nos. 701 of 2015 and 721 of 2015 is required.

4. The learned counsel for the applicants/accused has submitted that the applicants/accused have not committed any offence. They are innocent. They have not hijacked any business of the company. The

learned senior counsel has submitted that the applicants/accused have formed different companies and started functioning. It is a business rivalry for which it cannot be said that the applicants/accused have committed any offence.

5. Learned APP relied on the affidavit of Dinkar Shilvate, Police Inspector, Cyper Police Station.

6. The learned counsel for the complainant opposed this Application and submitted that the complainant company has suffered huge losses in the business. The turnover of the company from Rs.75 crores has considerably dropped down to Rs.35 crores. The secret information of the company is leaked and used by the applicants/accused for the purpose of their personal benefit and these applicants were fully conversant with the clients of the company and the rates of clearance and data. They have breached the confidentiality clause in the service contract and per se they have committed offence of criminal breach of trust. It is further submitted that the custody of the applicants are required as they are not cooperating in the investigation and they also want to know how much information of the company is diverted for the purpose of acquiring the business of their own companies.

6. Perused the FIR, documents, affidavit filed by the parties. The applicants/accused have started their companies and they are in the same business. It appears from the record that the applicants/accused have hijacked some clients of the complainant company. A possibility of use of secret information of the complainant company by the applicants/accused for getting business for their other companies cannot be overruled at this stage. The main contention of the learned counsel for the complainant is that the applicants/accused have represented before the foreign clients that they are sister concern of Flomic Freight & Services Pvt. Ltd. and it was also represented that three companies, namely, Berrio Logistics, RSV Logistic and Services LLP and Cargo Trans Solution are working with the complainant company. All applicants/accused are the ex-employees of the complainant company, so they are also in the same business. If these persons have started some other firm or company which may be having the parallel business with the complainant company, that cannot be said as an offence. However, in the event of breach of clause of confidentiality in the service contract, then it is a case of criminal breach of trust. On the submissions advanced by both the parties, it is found that the business of complainant company and business of other companies was entirely through the internet. Under such circumstances, the information which was leaked or any representation is made by these applicants/accused to

the clients of the complainant company that they are sister concern or working for complainant company can be detected by Cyber Crime Branch and that can be stopped. For this purpose, I am of the view that custodial interrogation is not required and without that the investigation can proceed effectively. The following order and the terms and conditions imposed therein will suffice the purpose:

O R D E R

i) Applications are allowed

ii) In the event of arrest, the applicants/accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.30,000/- each with one or two sureties in the like amount;

iii) The applicants/accused shall not tamper with the evidence or pressurize the complainant;

iv) The applicants-accused shall not indulge into any criminal activity;

v) The applicants/accused shall attend the concerned police station on every Friday between 4 p.m. to 6 p.m. till the filing of the charge sheet.

vi) The applicants/accused shall cooperate the police by furnishing all the details in respect of their business through internet services.

vii) The applicants/accused are precluded from using any reference or association with the complainant company while dealing with any client.

viii) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

7. The Anticipatory Bail Applications are disposed of on the above terms.

(MRIDULA BHATKAR, J.)