IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.227 OF 2017
WITH
CRIMINAL APPLICATION NO.135 OF 2017

Abhmanyu Shivraj Bhosale ... Applicant

Vs.

The State of Maharashtra … Respondent

Mr.M.S. Mohite i/b Gaurav Jachak for the Applicant
Mr.Prashant Jadhav, A.P.P., for Respondent – State
Mr.Pankaj Purway for Intervenor
Mr.Nitin Hanumant Kamgal, PSI, Cyber Crime, Pune city – present

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: FEBRUARY 14, 2017

P.C. :

1. This application is moved for pre-arrest bail as the applicant/accused is apprehending arrest in C.R. No.316 of 2016 registered with Chaturshrungi police station, Pune for the offences punishable under sections 420 and 406 of the Indian Penal Code and sections 43A, B and J r/w sections 66 and 66C of the Information Technology Act, 2000. The offence is registered at the instance of one Abhay Ramchandra Dani, who was owner of Technovate Consultancy Services, a software company. The

applicant/accused is the CEO and Managing Director of Creliant Labs Pvt. Ltd. In April, 2016, the business stopped between the applicant and the complainant companies. Both the companies were dealing in software related to Doctor and Patients. However, the company of the complainant was dealing with the Doctor Patient and medical report software and while the company of the accused was dealing with Doctor Patient and Diagnostic services. It is the case of the complainant that the applicant/accused entered into non-disclosure agreement on 9.4.2016 and as per the said agreement, the applicant/accused was not supposed to part with any information in respect of the company as it was a secret information in respect of the complainant's company. However, the complainant found that on 18.4.2016, the applicant/accused circulated the secret information of the software/data of the company of the complainant to other two Directors namely Mukund Malani and Dr.Promod Dembre on their official email. It is the case of the complainant that the secret information is in respect of customers and the services and software and system of the complainant's company was used by those customers. Similarly, sensitive information such as database, architecture, PHP Source Code, were collected by hacking and, therefore, the applicant/accused started selling the software product by using the secret information of the company of the complainant and thus, has caused a financial loss to the complainant. Therefore, he approached the police and after recording of his statement on 25.7.2016, the offence was registered at C.R. no.316of 2016 with Chatursbrungi police station, Pune.

2. The learned Counsel for the applicant/accused has submitted that the applicant/accused has not committed any offence of cheating or criminal breach of trust or any offence under the information Technology Act. The learned Counsel submitted that considering the nature of the offences, if these offences are pertaining to only Information Technology, then, they are to be covered under the Special Act only i.e., the Information Technology Act. There is no offence of either cheating or criminal breach of trust is made out. The learned Counsel has further submitted that there was a deal between the applicant/accused and the complainant and as per the terms and conditions of the non-disclosure agreement, the applicant/accused was authorised to collect the information with due diligence in order to proceed with the business and without ascertaining the credentials of the

company of the complainant. It is further submitted that assuming that the offence of hacking is committed by the applicant/accused and the complainant has suffered damages as per the agreement, the complainant should file arbitration proceedings to recover damages. The learned Counsel further submitted that there is one server with attachment of 20 computers and the Investigating Officer has taken away the hard disk of the server. So all the information is available on the hard disk which is seized by the police. The learned Counsel further submitted that considering the nature of the offence, his custodial interrogation is not required and bail be granted.

3. Learned Prosecutor while opposing the Bail Application, has submitted that the applicant/accused has committed the offence of cheating and criminal breach of trust and has caused financial loss to the company of the complainant.

4. The learned Counsel appearing for the Intervener / original complainant has opposed the application. He relied on the terms and conditions of the non-disclosure agreement and had submitted that the applicant/accused had shared the secret and confidential

information and the database and has misused the said information. The company of the complainant was having a software of the medical record of patient and doctors and the company of the applicant/accused did not have the same. However, the applicant/accused has hacked the confidential information of the medical records and the customers of the complainant and have contacted the customers of the complainant company directly. The learned Counsel further relied on emails shared by the applicant/accused and the complainant. He pointed out that on 18.4.2016, the applicant/accused has sent e-mail where he has mentioned about current list of customers of the company and has also stated that the complainant has 28 customers and has mentioned that his company got the data from his servers. He also mentioned that there are 7 specialities and 4 customers on each speciality and also has given a list of the persons who have paid. The learned Counsel has submitted that this e-mail shows that the applicant/accused has admitted that hacked the information and he has stolen the secret information from the server of the complainant company. The learned Counsel further submitted that his custodial interrogation is required to find out how he had hacked the information. He relied on the report given by Cyber Crime Helpline, where it is mentioned that the server of Technovate Consultancy Services was compromised from 3.4.2016 onwards by means of unauthorised access after initial unsuccessful attempts. He submitted that the police needs to collect more information in respect of the passwords and also the IP address to establish the link between the complainant as a hacker. He further submitted that the complainant has suffered a loss of Rs.1 crore.

5. Perused the FIR, the relevant e-mails sent by the complainant and the accused as also the report of Cyber Crime Helpline, which is a private firm where it is mentioned that the secret information was hacked from the server of the complainant company. I have perused the terms and conditions of the non-disclosure agreement. It shows that the complainant and the applicant have entered into business in respect of sharing secret information and software. However, it appears that the applicant/accused has prima facie, violated the terms and conditions of the agreement. However, the offences committed are covered under the Information Technology Act. If at all, it is an offence committed under the Indian Penal Code i.e., cheating and

criminal breach of trust, the hard disk is recovered by the police and the report of the hard disk is awaited. On query, it is informed that the report will be received after four months. In the non-disclosure agreement, there is a clause of arbitration which is mentioned. Under such circumstances, considering the nature of the offence, I grant pre-arrest bail as follows:

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

b) The applicant-accused shall cooperate with the Investigating Officer and attend the concerned police station as and when called.

c) The applicant-accused shall not tamper with the evidence or pressurise the complainant;

d) The applicant-accused shall not indulge into any criminal activity especially under the Information Technology Act;

e) The applicant/accused shall not use any information or any software or database and clients' confidential information of the complainant company. Further, the applicant/accused shall not contact the clients of the complainant company to give information or any software, database, which belongs to the complainant;

f) The applicant-accused shall not abscond or leave India without prior permission of the Court and furnish his permanent address to the Investigating Officer alongwith documentary proof of his address.

g) 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.

6. Anticipatory Bail Application is disposed of on the above terms.

(MRIDULA BHATKAR, J.)