IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2103 OF 2018

Vikas Kalyanam Narayan **...Applicant**

Versus

The State of Maharashtra **...Respondent**

Mr.Rafique Ahmed Shaikh a/w. Mr.Shariff Khan for the applicant.

Mr.R.M. Pethe, APP for the respondent/State.

Mr.Aabad Ponda a/w Mr.Swapnil Ambure i/b. Mr.Dinesh Tiwari & Associates for intervener.

Mr.Santosh Kotwal, P.I., Cyber P.S. , Crime Branch CID, Mumbai.

CORAM : PRAKASH D. NAIK, J.

DATE : 7th SEPTEMBER 2018

P.C. :

1. This is an application for bail in connection with CR No.3 of 2018 registered with Cyber Police Station, Crime Brancch, CID, Mumbai. The offences registered are under Sections 419, 465, 468, 469, 471, 474, 500, 501, 502 and 504 read with Sections 120-B and 34 of the Indian Penal Code (IPC) and Sections 66(c) and 66(d) of the Information and Technology Act (IT Act). The

applicant was arrested on 7th July, 2018. The chargesheet is filed on 1st September, 2018.

2. The case of the prosecution is as follows;

(a) The applicant is ex-employee of the complainant company whose services were terminated on 5th August, 2016 due to insubordination and loss of confidence.

(b) Mr. Tarun Samant is the former CEO of Company viz. M/s. Tata Motors Insurance Broking and Advisory Services Ltd. (Company) He graduated with a degree of Bachelor of arts in the year 1983 from Chaudhary Charan Singh University (formerly known as Meerut University) He was hired as the CEO of the said Company on 17th November, 2014. On taking up assignment with the said Company, he enrolled himself with the Insurance Institute of India. For the purpose of enrollment for the aforesaid course conducted by the Insurance Institute of India, it was mandatory to submit a copy of the Graduation Certificate on the date of enrollment. As Tarun Samant was not having a copy of the Graduation Degree in the month of January, 2015 but was holding the requisite mark sheet for passing the graduation examination. While issuing the Graduation Degree Certificate on 21st January, 2015, Chaudhary Charan Singh University misspelled his surname as 'Sawant' instead of 'Samant'. The aforesaid error is apparent from the B.A. Degree Certificate issued by the University. Capitalizing on the aforesaid spelling error in the Certificate issued, due to inadvertence by the Chaudhary Charan Singh University, Arise India Foundation (NGO) has addressed innumerable Email complaints as well as 4 letters all dated 4th December, 2015 to various authorities regarding the educational qualifications of Tarun Samant. The aforesaid allegations contained in the aforesaid correspondence made and published by NGO to various persons and entities are totally malicious, defamatory, baseless and made with the sole intention of maligning, defaming and harassing said company as well as Mr.Samant and by said criminal act wrongful gain is caused to accused persons and wrongful loss is caused to the Company by way of loss of business.

(c) Tarun Samant's candidature as CEO of the company was forwarded by the said company to IRDAT, Hyderabad, after duly scrutinizing the same, IRDAI approved his appointment on 7th April, 2015 and requested said Company to submit a copy of the letter relieving the outgoing CEO.

(d) Subsequently to the appointment of Mr. Samant as CEO as M/s. Tata Motors Insurance Broking & Advisory services Ltd., the Arise India Foundation having its registered address at 6, D Main West End, 9th Block, Jayanagar Bengaluru 560 069 sent numerous emails to various authorities, Ministers, Functionaries and others containing false, malicious, par se dematory and baseles allegations with sole intention to malign and harm the reputation of M/s. Tata Motors Inurance Broking and Advisory Services Ltd., Mr. Tarun Samant, Senior Management of Tata Motors Insurance Broking & Advisory Service Limited, Senior Management of Tata Group Companies, etc.

(e) Accused knowingly circulated various emails knowing the same to be false for the purpose of causing annoyance, inconvenience and maligning to the reputation as well as the prestige of M/s. Tata Motors Insurance Broking and Advisory Services Ltd., Mr. Tarun Samat and also Board Members / Senior official of TATA group of companies thereby committing serious offence.

(f) The NGO acted at the behest of the accused. Dr. Kodur Venkatesh, founder and Raghvendra Kowalgi, Western India Head are concerned with day to day activities of the said NGO and are together responsible for taking all decisions with regard to the NGO. They had started initial campaign of sending not only defamatory email but full of falsity only for the sole reason that wrongful loss is caused to company and wrongful gain to the accused person.

(g) Due to large number of false emails received by the IRDA from NGO in this regard, IRDA conducted their own inquiries into the matter of Tarun Samant's educational qualifications and certificates as well as other defamatory allegations made in the emails. Extensive correspondence was exchanged between Mr.Samant, said Company, IRDA and Choudhary Charan Singh University to ascertain the truth of the matter and the same was resolved and the truth ascertained to the satisfaction of all concerned parties. However, the sending of such knowingly false, defamatory, harmful emails did not stop and continued to harm the reputation of said company, Mr. Samant and Board members, Senior officers of TATA group of companies. The accused person Dr. Kodur, Venektesh and Raghvendra Kowalgi were fully aware that in respect of alleged fake certificate pertaining to Tarun Samant, the matter was fully investigated by MRA marg police station which was based on their complaint and even though they were intimated by the police about the closure of the complaint still the defamatory emails were send by them alongwith other accused person by impersonating the email id etc. not only to defame Tarun Samant, TATA group but with sole intention to cause wrongful loss to company and wrongful gain to them by the said process of impersonating.

(h) As a result of these dishonest and illegal actions, the said company was forced to file a suit for defamation bearing Suit

No.387 of 2017 in the High Court of Bombay on 25th April, 2017 setting out in great details all the events as narrated aforesaid. By order 3rd May, 2017, this Court has directed Dy. Commissioner of Police, Cyber crimes Investigation Cell (CCIC) to investigate into the matter and submit a report by 15th May, 2017. On 22nd May, 2017, this Court has granted liberty to file appropriate proceedings against Arise India Foundation in Bengalure and Mumbai, Dr. Kodar Venkatesh, Mr. Raghavendra Kowalgi and Mr. Vikas K. Narayan under IPC and IT Act to restrain them from making and publishing defamatory material against the complainant.

(i) It is alleged that the accused had created various fake emails for the purpose of causing annoyance, inconvenience and maligning the prestige of M/s. Tata Motors Insurance Broking and Advisory Services Ltd. Despite order of High court restraining Foundation and related parties, the malicious defamatory and harmful emails were sent to various authorities amounting to contempt.

3. The applicant was arrested on 7th July, 2018 and he was remanded to police custody till 10th July, 2018. Thereafter, he was remanded to the Judicial custody. The grant of judicial custody was challenged before this Court. The original complainant filed Criminal Application No.817 of 2017. The said application was disposed of vide order dated 17th July, 2018. The applicant

subsequently preferred an application for bail before the learned Magistrate which was rejected on 18th July, 2018. The application before the Sessions Court was rejected on 14th August, 2018.

4. The learned Counsel for the applicant submitted that all the offence except the charge under Section 468 is bailable. It is further submitted that the said charge was added subsequently. It is submitted that the accused who was arrested in the same case was in custody for a period of about 50 days and subsequently he was granted bail. The applicant is in custody from 7th July, 2018 and he is undergone detention for a period of 60 days. It is submitted that chargesheet has been filed against the applicant. The charge under Section 468 which is non bailable attract punishment of seven years imprisonment. The police are in possession of all emails addresses. The applicant is in judicial custody and no useful purpose will be served by detaining him in custody. Section 468 is implanted at the instance of complainant to enhance the gravity of allegation and to detail the applicant for considerable long period of time in custody. The FIR is lodged out of vendetta. The applicant is in custody from 7th July,2018. The applicant hails from respectable family. He is a qualified MBA from USA and was studying in a prestigious college Rochester Institute of Technology, New York USA.

5. Learned APP submitted that the accused was involved in

circulating the emails. As per prosecution, the accused sent about 3000 emails inspite of injunction by High Court. The applicant had opened email accounts out of which some imp ID's are yet to be opened. In the event of grant of bail there is likelihood of tampering with evidence.

6. The learned Counsel for the intervener had vehemently opposed grant of bail. It is submitted that the accused was involved in sending about 3000 emails. The applicant used his skill in sending fake email. He is likely to tamper with evidence. He has committed breach of order of High Court. It is submitted that complainant was forced to file suit in High Court on 28th March, 2017 and the said proceeding is pending in this Court. The Court has directed DCP Cyber Crime to investigate the matter and submit report. The Court also directed formation of special team to investigate the matter. It is submitted that in accordance with direction of the High Court, the police have conducted investigation. The applicant and the co-accused had acted in connivance with each other. The applicant would tamper electronic evidence if granted bail. His role is different than the role of Piyushkanti Roy. He has created fake email ID's with the help of and in conspiracy with other accused.

7. I have perused the FIR and other documents. It is noted that the applicant is in judicial custody from 10th July, 2018. The

investigation is conducted by the police and chargesheet has been filed. The co-accused Piyushkanti Roy was in custody from 31st May, 2018 till 7th July, 2018. He is granted bail. It is noted that initially the offences were registered under Sections 419, 500, 501, 502, 504 read with Section 34 of the Indian Penal Code. Subsequently, charge of forgery were added by the prosecution. He was arrested on 7th July, 2018 and produced for remand on 8th July, 2018. He was remanded to police custody till 10th July, 2018. The learned Magistrate refused to grant of police custody beyond 10th July, 2018. While granting judicial custody vide order dated 10th July, 2018, the learned Magistrate has observed that the accused is in police custody since 7th July 2018 and there is no need to extend police custody. The applicant was employed as Assistant Vice President with complainant. His services were terminated on 5th August, 2016. It is alleged that accused circulated large number of emails maligning reputation of company and other. Additional charges under Sections 465, 468, 469, 471, 474 of IPC were added subsequently. Except Section 468, the other offences involved under provisions of IPC were bailable. While granting bail to Mr.Roy it was observed by Sessions Court that the crime shows involvement of documentary evidence. The applicant is in custody for substantial period of time. There is no need to continue his detention in custody.

8. Taking into consideration the aforesaid circumstances, more

particularly the fact that the investigation is already completed and the chargesheet is filed, no purpose will be served by detaining the accused. Hence, I pass following order;

:: ORDER ::

(i) Bail Application is allowed.

(ii) The applicant is directed to be released on bail in connection with CR No.3 of 2018 registered with Cyber Police Station, Crime Branch, CID, Mumbai, on his furnishing P.R. Bond in the sum of Rs.25,000/- with one or more surety in the like amount.

(iii) The applicant shall not tamper with evidence

(iv) The applicant shall not commit similar types of offences while on bail.

(v) The applicant shall report the concerned police station once in a month on first Saturday of the month between 10.00 to 12.00 noon till the completion of the trial.

(vi) The applicant shall attend the trial Court proceedings as and when the matter is fixed for hearing unless he is exempted by the trial for some reasons.

(vii) The applicant is permitted to furnish cash security in the sum of Rs.25,000/- for a period of four weeks.

[PRAKASH D. NAIK, J.]