

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1897 OF 2018

Miraj Ahamed Khan, Age 43 years,
Occ.Business, R/o.A-701, Orchid Building,
Tulip Orchido CHS Limited,
Mira Road (East), Thane.

Applicant

versus

The State of Maharashtra

Respondent

Ms.Sudha Dwivedi for applicants.

Mrs.A.A.Takalkar, APP, for State in ABA No.1897/2018.

CORAM : PRAKASH D. NAIK, J.

DATE : 25th September 2018

PC :

1. This is an application for anticipatory bail. The applicant apprehend arrest in connection with CR No.I-235 of 2018 registered with Mira Road Police Station for offences under Sections 420 and 120(B) of Indian Penal Code and under Sections 20, 20A and 21 of Indian Telegraph Act, 1885.

2. The contention of the applicant is that he is partner of Tu-pac Broadband having its registered office at Shop No.76, Cinemax Kanakia Space, Mira Road. The said partnership firm viz Tu-pac Broadband had entered into an agreement with Joister Infoserve Private Limited on 1st April 2017. In the said agreement it is mentioned that Joister Infoserve Pvt.Ltd has an internet service provider license (ISP) for providing internet service from the Department of Telecommunications, Government of India. Joister Infoserve Pvt.Ltd has agreed to grant coverage of its license to Tu-pac

Broadband on terms and conditions contained in the aforesaid agreement.

3. The prosecution case is that the complainant is the Director under Senior Director General, Department of Telecommunications, Mumbai. Information was received that unauthorized internet service is provided to customers in the area of Mira Road, Bhayender and Mumbai and instructions were received to initiate action against concerned persons. The applicant and others were directed to conduct raid in the area of Mira road, Bhayender and Mumbai. With the assistance of police, raid was conducted at the office of Tu-Pac Broadband, Shop No.3, Cinemax Shopping Centre, Mira Road (East) since accused Vijaykumar Mourya was providing internet services without license. Several articles were found. Applicant was allegedly present who disclosed that the main person is Mr.Vijaykumar who is providing internet service to consumers, and he is partner of the said concern. He further stated that they do not have license and there is franchise agreement with Five Network Solution and Joister Infoservice Pvt.Ltd. Documents, pen drives, hard disks were seized. There was violation of provisions of Indian Telegraph Act.

4. Learned advocate for applicant submitted that the applicant has not violated any provisions of law. The penal provisions under Section 124 of Indian Penal Code are not attracted against applicant, nor there is breach of Sections 20, 20A and 21 of Indian Telegraph Act. It is submitted that the applicant is partner of a firm named Tu-pac Broadband, which had executed an agreement with Joister Infoserve Pvt.Ltd. As per clause-5 of the distributor agreement, it is

clearly mentioned that the distributor shall pay the supplier as per invoices raised upon them from time to time. All payments shall be as per terms agreed upon and as stated in the invoices presented by the supplier to the distributor. It is further submitted that as per the agreement, the supplier has to provide invoices and bills to the distributor and against which payments will be made for the services provided and question of paying any GST does not arise. The applicant has been lawfully running their ISP providing business and having valid documents and agreement in that regard. The accused are providing ISP service since long and there were no complaints of the customers against their service. It is further submitted that the offence under Section 20, 20A and 21 of the Indian Telegraph Act are punishable with fine. They are bailable in nature. Section 420 of IPC is not attracted in this case as the applicant has not deceived the Government or any other person. It is, therefore, submitted that custodial interrogation of the applicant is not necessary.

5. Learned APP submitted that there is serious breach of the provisions of Indian Telegraph Act at the instance of accused- applicant. It is submitted that the offence is serious as the accused are unauthorizedly selling internet service to the customers by showing that they are authorized to do so. The act also amounts to lapses and threat to national security. Investigation is required to be conducted and custody of applicant is necessary. Learned APP pointed out the requirements of license agreement for providing internet service, restrictions on transfer of license, quality of performance, responsibility of the licensee and security conditions, which include power of Government through appropriate circular/notification to debar the use of mobile terminals in certain areas of the country.

6. Learned counsel for applicant has placed on record a true copy of the certificate of incorporation reflecting change in the name of erstwhile Syscom Infoway Pvt.Ltd to Joister Infoserve Pvt.Ltd. Learned counsel also tendered copy of relevant part of license agreement dated 4th March 2008 and relevant part of license agreement dated 11th August 2008.

7. It is noted that the applicant is the partner of Tu-pac Broadband and there is a distributorship agreement between the said firm with M/s.Joister Infoserve Pvt.Ltd. The agreement stipulates that M/s.Joister Infoserve Pvt.Ltd has internet service provider license for providing internet service from the Department of Telecommunications, Government of India and M/s.Joister Infoserve Pvt.Ltd has agreed to grant coverage of its license to Tu-pac Broadband in accordance with terms and conditions. The distributorship agreement provides that the distributor shall pay the supplier as per invoices raised upon them from time to time by the supplier to the distributor. It is also pertinent to note that Section 20 of Indian Telegraphic Act provides for punishment which may extend to three years or with fine or with both. Section 20A of the Act provides for fine up to Rs.1,000/- and Section 21 provides for punishment of fine which may extend to Rs.50/-. The offences are bailable in nature.

8. Taking into consideration the aforesaid aspects, I do not find any reason to hold that custodial interrogation of applicant is necessary. Hence, the application is required to be allowed.

9. Hence, I pass following order :

ORDER

- (i) Criminal Anticipatory Bail Application No.1897 of 2018 is allowed and disposed off;
- (ii) In the event of arrest of applicant in connection with CR No.I-235 of 2018 registered with Mira Road Police Station, District Thane, he may be released on bail on furnishing PR bond in the sum of Rs.20,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report the investigating officer once in a week on every Friday between 10 am and 12 noon, for a period of three weeks from today;
- (iv) The applicant shall not tamper with the evidence;
- (v) Anticipatory Bail Application No.1897 of 2018 stands disposed off.

(PRAKASH D. NAIK, J.)

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