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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****ANTICIPATORY BAIL APPLICATION NO. 229 OF 2018**

1. Dhanaji Ramchandra ShindeApplicants
2. Ajay Bhalerao Ahirekar
3. Kalidas Gole

V/s.

The State of MaharashtraRespondent

Mr. Ashok M. Mundargi Senior Advocate i/b Mr. Veerdhaval Kakade
advocate for the applicants

Smt. J. S. Lohokare APP for the State

Mr. Ashwin Thool i/b Ms. Reshma for intervener

Mr. Laxman Sonawane, API, Nigadi Police Station

CORAM : NITIN W. SAMBRE, J.

DATE : JANUARY 24, 2019.

P.C.

In Crime No. 677/2017 registered with Nigdi Police Station,
Pune for offence punishable under Sections 406, 427, 409, 506 r/w
34 of the Indian Penal Code, applicants are seeking pre-arrest bail.

2 There appears to be Agreement of Agency in between the

applicants and the complainant. Complainant appointed agencies viz. Dhanraj Datacom and Space Communications so as to transmit the digital signal through their Hathway Communication to the customers.

3 The case of prosecution is set-top box is the property of Hathway and after the applicants abruptly discontinued almost 54,000 connections, had not returned the said property, as such offence in question.

4 Shri. Mundargi, the learned senior counsel for the applicants submits that the dispute is contractual in nature and the parties to the contract are governed by terms of the agreement. According to him, if the set-top boxes are not returned by the applicants as without admitting to be property of the complainant, the remedy lies with the complainant before the competent forum for recovery of the same. According to him, in any case, in the backdrop of aforesaid business transaction, custodial interrogation is not warranted.

5 *Per contra* the learned APP assisted by the learned counsel for the complainant would strenuously urge that Agreement in categorical terms speaks of set-top boxes being property of the complainant and what is permitted to the applicants is to provide the same to the consumer so as to facilitate the transmission of the digital signals. According to them, the set-top boxes remain to be property of the complainant and the applicants are duty bound to return the same pursuant to the terms of the agreement entered into including of clearing of all arrears. The learned APP then would urge that when the representatives of the complainant went in the field to collect set-top boxes, applicants had issued threats and restrained the representatives from collecting the set-top boxes.

6 Having considered rival submissions, what is noticed is offence in question is based on a contract of agency and such agency was governed by terms of Agreement entered into between the parties. If the terms of the Agreement are not honoured, the right is reserved with the complainant to take out such proceedings as are permissible and advisable in law for recovery of their assets or else

to sue for damages, compensation etc. In my opinion, right of the complainant to aforesaid extent needs to be protected with liberty to the complainant to take out such proceedings for the said relief.

7 As far as the custody of the applicants is concerned, since the contents of the F.I.R. and other documents speaks of contractual obligation and the parties to the proceedings are governed by terms of Agreement, custodial interrogation, in my opinion is not justified. In view thereof, following order:

(A) In the event of arrest of the applicants in Crime No. 677/2017 registered with Nigdi Police Station, Pune, applicants be released on bail on furnishing P.R. bond in the sum of Rs. 50,000/- each with one or more sureties in the like amount.

(B) Applicants shall not influence witnesses or tamper with evidence.

(C) Applicants are put to notice that they shall not issue any threats or shall not create any hindrance or interference in the act of complainant through its

representatives or agents to collect set-top boxes which is admittedly their property as could be inferred from the contents of the Agreement.

8 Application stands disposed of.

[NITIN W. SAMBRE, J.]