IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1716 OF 2018

Dheeren Kumar Padhy .... Applicant

versus

The State of Maharashtra .... Respondent

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- Mr. Raja Takare a/w. Chandansingh Shekhawat I/b. Parinam Law Associates, Advocate for Applicant.
- Ms. S. S. Kaushik, APP for the State/Respondent.
- Mr. S. D. Barge, PI, Cyber Police Station, Pune present.

CORAM : SARANG V. KOTWAL, J.
DATE : 6th AUGUST, 2019

P.C. :

1. The applicant is seeking anticipatory bail in connection with C.R. No.226/2016 registered with Chandan Nagar Police Station, Pune, under Sections 406, 408, 417 and 420 of IPC and under Section 72 of the Information Technology Act alongwith Section 447 of the Companies Act.

2. The FIR is lodged on 24/10/2016 by one David Stephen Lloyd. He has mentioned in his FIR that he was a director and major shareholder of M/s. Apparel Compusource Private Limited (hereinafter referred to as "the company"). The company developed software and owned copyright in relation to its client's business involved in the manufacture, import, wholesale and distribution of clothing and footwear. Prior to formation of the company, the first informant had set up and ran two other companies in U.K. They had developed the software known as ASL System which was a market leader in the UK and Belgium in the development and supply of software for clothing and footwear companies throughout those countries. The first informant met the applicant in the year 2002-2003 and he offered the applicant the job as Software Programmer in the UK Company and was sent to Belgium for a period of two years. The applicant persuaded the first informant to start business in India by incorporating software company in Pune. The applicant introduced him to his software programmer friends namely Vineet Khanduri, Atul Kumbhare amongst others. In 2005, the company was incorporated. The

applicant was appointed as a director of the company. There were only two directors in the company i.e. the first informant and the applicant. If any of them wished to resign, they had to appoint the third director. It is the case of the first informant that he placed his implicit trust in the applicant. Since the informant was visiting India only sometimes; day to day affairs of the company were managed by the applicant. According to first informant, as a director of the company, the applicant could not have disclosed confidential information or accepted fees from the clients or others. It is mentioned in the FIR that for his services the applicant was paid more than the others of his level. The applicant was paid Rs.7.2 Lakhs in the year 2006 and it was increased to 16.07 Lakhs in the year 2011. When the company was started in Pune, all UK copyright softwares was transferred to the company's office in Pune. They included the transfer of all the technical aspects of the products and customers including Kidderminster Footwear (KFW). Subsequently, in the year 2010, the applicant expressed his desire to quit the company by end of January 2011. In their interaction, the informant expressed his expectations that the applicant would work diligently and professionally till his departure from the company. Accordingly, the applicant left the company and started his own company known as Cloud Vision Systems Pvt. Ltd. (CVS). The informant came to know that the applicant and aforementioned Vineet and Atul were directors of that company. In 2015, Vineet gave the informant a copy of data file viz. "Copy of KFW Menu Structure". Vineet had also informed that the applicant was using the products developed by his company and the applicant had handed over these secret designs to one John Dowbiggin. He was sure that Dowbiggin was helping the applicant in illegally selling/ licensing the software / source code / software designs and design documentation to KFW who were customers of the company. Thus, according to first informant, he had suffered losses to the tune of INR 1,20,00,000/-. Thus, according to first informant, applicant had committed various offences. On these allegations, the FIR is lodged.

3. Heard Mr. Raja Takare, Ld. Counsel for the Applicant and Ms. Kaushik, Ld. APP for the State.

4. Ld. APP has filed affidavit in reply. In the affidavit, almost all the allegations in the FIR are reiterated and in addition, some averments are made in respect of John Dowbiggin. It is mentioned that it was suspected that the applicant and the said John Dowbiggin were starting business with few more companies. The affidavit mentioned that in the year 2014-2015 the applicant had received different amounts from informant's other clients viz. William Lamb Footwear and Flick Fashion etc. It is mentioned in the affidavit that forensic examination of the hard disk shows that the files related to informant's company were found in the hard disk of the applicant's new company i.e. Cloud Vision System & Solutions Pvt. Ltd, Pune. The affidavit mentions that to find out as to how many such clients had entered into contract with the applicant, his custodial interrogation was necessary. Ld. APP's submission were on the same line.

5. As against these allegations and submissions, Ld. Counsel Shri. Takare submitted that the present applicant has not committed any offence. The FIR is lodged because the major customers of the informant's company had left him and had joined the present applicant's new company. He submitted that the applicant's new company did not access the server of the informant's company. The clients had only provided data files for further software development dealing with such data files. He, therefore, submitted that no offence is committed.

6. I have considered these submission. The main allegations in the FIR are that after the applicant had left the company, he entered into business with clients of the informant's company and for that purpose he used the software developed by the informant's company. The prosecuting agency has not shown any agreement or any stipulation prohibiting the clients of the informant's company to obtain services from different professionals. It cannot be said that the clients of the informant's company were precluded from doing business with or obtaining services from

anybodyelse. The maintenance and further development of the software was not prohibited by any agreement, at least no such agreement was produced before me which was recovered during the investigation carried out so far. There is some force in the submission of Shri. Takare that the applicant's new company had merely used the data structure of the clients of the present applicant. New software was developed by using modern tools and using new language. Earlier the source code was developed based on different methods of development of software and that software hardly was effective after a few years. The applicant had left the informant's company way back in the year 2011. The applicant had entered into dealing with KFW in the year 2015 and the FIR is lodged in the year 2016. All this delay has not been explained by the first informant. Though it is a fact that the applicant has entered into business transaction with the earlier clients of the first informant, that by itself cannot amount to any offence. For maintenance and for keeping the operations going on smoothly, the earlier data and some files of the programms were required to be used by the applicant in developing new software.

If such data was made available by such clients to the applicant's company, then the applicant can not be held criminally liable for using them. Therefore, there is considerable force in Shri. Takare's submission that the clients were owners of the data files and corresponding software. Thus, since everything depends on digital data which is available for forensic examination. Hard disks are already seized by the prosecuting agency. Therefore, custodial interrogation of the applicant is not be necessary. The applicant will of course have to explain the technical details and will have to co-operate with the investigating agency. In this view of the matter, the applicant has made out a case to grant protection of anticipatory bail. Hence, the following order.

ORDER

(i) In the event of his arrest in connection with C.R. No.226/2016 registered with Chandan Nagar Police Station, Pune, the applicant is directed to be released on bail on his executing P.R. Bond of Rs.1,00,000/- (Rupees One Lakh Only) with one or two sureties in like amount.

(ii) The applicant shall attend the concerned Police Station as and when called by the Investigating Officer and shall co-operate with the investigation.

(iii) The application is accordingly disposed of.

(SARANG V. KOTWAL, J.)