

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO. 297 OF 2020

Mr. Awadhesh Kumar Parasnath Pathak,
Age 58 years, Occ. Service,
R/o. House No. B-2, Plot No. E-408,
N-1, CIDCO, Aurangabad,
District Aurangabad. ... **Applicant.**

VERSUS

1. The State of Maharashtra,
Through : Investigating Officer,
MIDC Waluj Police Station,
Aurangabad, Dist. Aurangabad.
2. The Superintendent of Police
Aurangabad. ... **Respondent.**

...

Advocate for the Applicant : Mr. V.D. Sapkal, Senior Advocate, h/d Mr. S.R.
Sapkal.

A.P.P. for the Respondents/State : Mr. V.S. Badakh.

CORAM : MANGESH S. PATIL, J.
DATE : 12.01.2021.

PER COURT :

This is a successive application under Section 438 of the Code of Criminal Procedure by the same accused seeking bail in the event of his arrest in connection with Crime No. 532/2019 registered with MIDC Waluj Police Station, Aurangabad, for the offences punishable under Sections 408, 420 of the Indian Penal Code and punishable under Section 66 read with Section 43(b), 66(c) and 72 of the Information Technology Act, 2000.

2. In substance the allegations as can be discerned from the F.I.R. are to the effect that the applicant was serving as a Manufacturing Head in a company producing film roles. It is alleged that he tendered resignation on 04.12.2018 and it was accepted on 31.12.2018. Subsequently he joined another company

manufacturing the same product at a different place. It is alleged that he was provided a laptop which he had surrendered while quitting the job. However, subsequently he approached an employee of the company by name Sachin Gore and by providing him a pen drive requested him to transmit a folder styled as 'APK115' stating that it was his personal folder. Accordingly Mr. Gore copied it in the pen drive and handed it over to the applicant. After coming to know about these details the informant who happens to be the Information Technology Head of the company since the year 2010 came to know that valuable data of the Company was transmitted through the pendrive. The information being secrete and vital has potential of causing grave loss to the company. On the basis of such allegations, the offence was registered as mentioned herein above.

3. The learned Senior Advocate Mr. Sapkal for the applicant by referring to the decision of the Division Bench in the case of **Gagan Harsh Sharma and Ors. Vs. The State of Maharashtra and Ors.; MANU/ MH/3012/2018** submits that whether the self-same act which constitutes offence under the Indian Penal Code as well as under the Information Technology Act, cannot form basis for prosecution of simultaneously under both the laws. He submits that in fact the applicant has already approached the Division Bench for quashment of the offence relying upon the observations of the Division Bench in the case of **Gagan Harsh Sharma (supra)**. Since the Division Bench has now referred the issues to the Full Bench, the matter is still awaited.

4. The learned Senior Advocate submits that as far as the offences being charged against the applicant under the Information Technology Act are concerned, accepting the allegations at their face value, those would be punishable up to three years of imprisonment and by virtue of Section 77B of the Act, the offences under that Act being charged against the applicant, would be bailable.

5. As far as the offence of criminal breach of trust and cheating are concerned he would submit that even according to the F.I.R. the applicant had already ceased to be an employee of the Company and cannot be charged under Section 408 of the Indian Penal Code as if he is a servant.

6. As far as offence of cheating is concerned, no property has been delivered to

the applicant. It is only being apprehended that the data that was transmitted has some potential. However, so long as there is no wrongful loss to the company of the informant and consequential wrongful gain to anybody else, it would be premature to charge the applicant with the offence of cheating.

7. The learned Senior Advocate would submit that in the proceeding for quashment the Division Bench has referred the issues to the Full Bench and that would not dilute binding efficacy of the judgment of the Division Bench in **Gagan Harsh Sharma (supra)**. Since in that case all the aspects being agitated now have been dealt with, covered and commented upon, the inescapable conclusions that needs to be drawn is that the applicant cannot be made to face the charges simultaneously for the self same act under two different statutes i.e. Information Technology Act and Indian Penal Code.

8. He would lastly submit that going by the allegations, custodial interrogation of the applicant is not necessary. He is ready to cooperate the Investigating Officer. There are no criminal antecedents and he may be protected by granting anticipatory bail.

9. The learned A.P.P. at the out set opposes the application on the ground that this is a successive attempt by the applicant to seek anticipatory bail. The earlier application was withdrawn without any liberty and therefore the successive application is not maintainable.

10. The learned A.P.P. would then submit that it is a matter of grant of anticipatory bail. The investigation is in progress. The stand of the applicant as regards maintainability of prosecution against him is a matter which is sub judice before the Division Bench. Nothing can be prejudged. It is a matter of stealing of an important data of the company. Custodial interrogation of the applicant is necessary and the application may be rejected.

11. In reply the learned Senior Advocate for the applicant would submit that though the earlier application for anticipatory bail was withdrawn, it was withdrawn simplicitor. It was not a decision on merit. Since the applicant was prosecuting the matter for quashment he had chosen to withdraw that application

unconditionally. It is his right to seek bail by filing successive application. He would therefore submit that the successive application is maintainable.

12. Obviously, the earlier application for anticipatory bail was not decided on merit. There is no prohibition prescribed in any law preventing a person from making the request again, more so, when the earlier request is simply withdrawn.

13. Now coming to the factual aspect, as has been pointed out herein above, admittedly the applicant has applied for quashment of the crime. The matter has now been referred to the Full Bench and therefore it would not be appropriate to indulge in making comment on the merits or otherwise of the submissions which would have a bearing on the decision by the Full Bench.

14. Suffice for the purpose to observe that accepting the allegations at their face value, even according to the prosecution, the offences under the Information Technology Act which are being pressed against the applicant are punishable up to three years. By virtue of Section 77B of that Act, the offence would be bailable.

15. As far as the aspect of criminal breach of trust punishable under Section 408 of the Indian Penal Code is concerned, even according to the F.I.R., the date on which the offence was committed the applicant was not in the employment of company.

16. As regards the aspect of cheating punishable under Section 420 of the Indian Penal Code, except the alleged data nothing tangible was delivered to the applicant much less there is any material to *prima facie* ascertain if such transmission of data has resulted in any wrongful gain to somebody or wrongful loss to the informant's company.

17. Coupled with the aforementioned facts and circumstances, there being no criminal antecedents, when the custodial interrogation of the applicant does not seem to be imperative, the applicant deserves to be granted anticipatory bail subject to suitable conditions.

18. The Application is allowed. In the event of arrest of the applicant Awadhesh

Kumar Parasnath Pathak in connection with Crime No. 532/2019 registered with MIDC Waluj Police Station Aurangabad District Aurangabad for the offences punishable under Section 408, 420 of the Indian Penal Code and under Section 66 read with Section 43(b), 66(c) and 72 of the Information Technology Act, he shall be released on bail on his executing personal recognizance for an amount of Rs. 25,000/- (Rs. Twenty Five Thousand only) and furnishing a solvent surety in the like amount, subject to following conditions:

- (a) He shall attend the concerned police station on every Saturday between 11 a.m. and 1 p.m. till filing of the charge sheet and shall cooperate the Investigating Officer.
- (b) He shall not tamper the evidence or influence the witnesses.
- (c) He shall surrender his passport before the Trial Court and shall not leave the country without its permission.

(MANGESH S. PATIL, J.)

mkd/-