

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 1546 OF 2019

Nitu Charles Fernandes

..Applicant

v/s.

The State of Maharashtra

..Respondent/s

Mrs. Mallika Ingale i/b. Ms.PM. Bhansali for the Applicant.

Mrs. Vrushali Raje a/w. Parmeshwar Bhise for the
Complainant/Intervenor.

Mr. P.H.Gaikwad, APP for the Respondent-State.

Ms. Supriya Patil, PI. Bangur Nagar Police Station present.

CORAM : ANUJA PRABHUDESSAI, J.

DATED : 24th AUGUST, 2021.

P.C.

1. This is an Application under Section 438 of Criminal Procedure Code, filed by the aforesaid Applicant apprehending her arrest in Crime No. 202 of 2019 for the offences punishable under Section 408 of IPC r/w. Section 66 and 43 of Information Technology Act, 2000 registered with Bangur Nagar Police Station.

2. Mrs. Ingale, learned Counsel for the Applicant submits that the Applicant has co-operated with investigation. She submits that there are no reasonable grounds to believe the the Applicant

has committed the alleged offence. Per contra, Mrs. Raje, learned Counsel for the Intervenor Company submits that the Applicant is involved in committing offence under Section 408 IPC. The Counsel for the Intervenor states that the interim protection was not granted on merits and hence the fact that the interim relief is operating since 2019 is no ground to grant pre-arrest bail.

3. The learned APP submits that the investigation is yet to be concluded. The mobile phone and hard disc of the personal laptop of the Applicant are yet to be recovered. It is further submitted that the Applicant has not disclosed the password of her personal e-mail id and has thus not co-operated with the Investigating agency.

4. I have perused the record and considered the submissions advanced by the learned Counsel for the respective parties.

5. The crime against the Applicant has been registered pursuant to the FIR lodged by one Abhaykumar Shringarpure the Senior Manager (legal), of M/s. Gandhi Automations Pvt. Ltd. The first information report prima facie indicates that the said Gandhi Automations Pvt. Ltd., is in the business of manufacturing, import, export, installation and after sales service of various automation

systems. The Applicant herein had joined the said Company sometime in the year 2002 and was appointed in Sales Department and was subsequently promoted as Sales Head/General Manager. It is alleged that the Applicant was one of the most trusted employees and was entrusted with all responsibilities and authority for conduct of the day to day affairs as well as functions of marketing. She was given the authority to sign various documents such as tender forms, B Forms, Quotations etc on behalf of the Company. She has also agreed and signed the Employees Non-Disclosure Agreement and as per the said Agreement and Code of Conduct Rules, the employee was not permitted to use the personal e-mail id and/or mobile phones for official purpose. It is alleged that the Company started losing its business to its competitors. The Applicant gave evasive replies and assured that the business will pick up in the next financial year. The Applicant and her husband thereafter resigned on personal grounds. It is alleged that the Company had lost business to the competitor companies because of the higher quotation given by the Applicant. The internal inquiry revealed that the Applicant herein forwarded several e-mails from the

official id to her personal e-mail id in breach of the Code of Conduct. The Company suspects that the Applicant shared the confidential documents and data with the rival companies for unlawful gain and thereby caused financial loss to the Company.

6. The records indicate that the Applicant herein has filed Writ Petition No. 3880 of 2019 for quashing of the FIR. It is stated that the Division Bench of this Court had granted interim protection to the Applicant in the said writ petition. By order dated 05.12.2019, this Court had continued the said interim protection and the said interim protection operates till date. It is stated that the Applicant has reported to the Investigating Officer and she has been interrogated. The application is opposed mainly on the ground that the Applicant has not handed over her personal mobile phone with IMEI No. 359203076324040 and the hard disk of her personal computer, and that she has not disclosed her personal e-mail id. The records prima facie indicate that the Applicant had handed over the personal mobile phone with IMEI No. 359203076324042 and lenova laptop with charger, and that the same were attached under panchanama. The affidavit filed by

the Investigating Officer does not indicate that the personal laptop of which the hard disc is sought to be recovered was used for commission of the offence. The Applicant, in her affidavit-in-rejoinder has stated that she is not in possession of any mobile with IMEI No. 359203076324040. The crime was registered in the year 2019. The records reveal that the Applicant has appeared before the Investigating Officer even during the pendency of the Application and that she has been co-operating with the investigation. Despite which, the Investigating Agency has not been able to recover the mobile phone or the other relevant data.

7. There is no prima facie material to indicate that the Applicant has mis-appropriated the Company property to her personal gain. The nature of the accusations does not justify custodial interrogation. Hence in my considered view this is a fit case to grant pre-arrest bail. Under the circumstances, the application is allowed on the following terms and conditions:

- (i) In the event of arrest of the Applicant in Crime No. 202 of 2019 registered with Bangur Nagar Police station, the Applicant be enlarged on bail on furnishing Bail Bond of

Rs.25,000/- (Rupees Twentyfive Thousand Only) with one or two solvent sureties in the like amount;

(ii) The Applicant shall co-operate with the Investigating Agency and report to the Investigating Officer as and when required;

(iii) The Applicant shall not interfere with the witnesses or tamper with the evidence in any manner;

(iv) The Applicant shall keep the Investigating Officer informed of her current address and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.

8. Application stands disposed of accordingly.

Digitally
signed by
PRASANNA P
SALGAONKAR
Date:
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(ANUJA PRABHUDESSAI, J.)