IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1051 OF 2022
WITH
INTERIM APPLICATION NO.1244 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.1051 OF 2022

Piyush Arjunkumar Dave .. Applicant.
v/s.
The State of Maharashtra .. Respondent.

Mr. Manoj Mohite, Sr. Advocate with Mukund Pandya and Mr. Yashpal M. Thakur, for the Applicant.
Mr. Y. Y. Dabke, APP for the Respondent-State.
Mr. Vishwajeet V. Mohite with Mr. H. D. Gokhale and R. R. Ganoo, for the Intervenor in IA No.1244 of 2022.

CORAM: VINAY JOSHI, J.
DATED : 21st APRIL, 2022.

P. C.:

In anticipation of arrest in Crime No.31 of 2021 registered at Shirwal Police Station, Dist. Satara, for the offences punishable under Sections 408, 420, 467, 471 and 381 of the Indian Penal Code and Sections 43-A, 43(b), 43(i), 66-C and 72 of the Information and Technology Act, the applicant is seeking pre-arrest bail in terms of Section 438 of the Code of Criminal Procedure.

2 At the instance of report lodged by Director namely – Sameer Sambhaji Shinde of Vikarsh Nano Technology and Alloys Private Limited, the crime was registered.

3 The said company deals in manufacturing of Nano – crystalline ribbons, amorphous ribbons and high frequency transformer cores. These products are invented by Company and they are unique. The Company, through Rediff Mail has created domen and various e-mail ID which were provided to the Officer of the Company for administrative purpose. The Applicant was employed in the company in the year 2017 on the post of Senior Engineer. The applicant tendered his resignation on 11th March, 2020, stating that he has joined another company. However, his resignation was not accepted. Once again, applicant sent resignation and finally joined another company.

4 It is informant's case that Rediff Mail Company has communicated on 15th September, 2020 that the applicant is using foreign device to access the company's data. On confirmation of e-mail ID of the applicant, it was transpired that he has forwarded the information/ data on his private e-mail ID. The said information was unique. The Applicant has joined another company, dealing in the similar business. The applicant has also carried gadgets with him. The applicant has prepared forged salary slips and appointment letter, same was used by him while joining another company. The applicant has transmitted secret data on his personal e-mail. He has committed breach of trust as well as cheated the company, therefore, the offence.

5 The learned Counsel appearing for the applicant has submitted that though the company has provided e-mail ID, however, simultaneously he was using his private e-mail also. According to him, it was known to the Director of Company and

since beginning, Company and authorities were corresponding him on his private e-mail. It is contended that though applicant transmitted data on his private e-mail, however, there are no allegation that the applicant has miss-used the data. It is submitted that, during process of investigation, two hard disks and computer related material was also seized. Moreover, it is contended that the appointment letter cannot be termed as valuable security. There is no complaint about forgery by applicant's existing employer where alleged forged documents were tendered. The informant also intervened to resist the application.

6 The State resisted bail by tendering the document. It is stated that the applicant is not co-operating in the investigation, though hard-disk and mobiles were seized. There is every possibility that the applicant might have transferred the secrete data for some alternate purpose. Considering seriousness of the offence, bail is prayed to be rejected.

7 The learned Counsel appearing for the applicant has contended that the provisions of Section 408, 420 and 438 would not apply due to invocation of the provisions of Section 43 43-A, 43(b), 43(i), 66-C and 72 of the Information and Technology Act. All the essential ingredients of these offences are covered under the provisions of Information Technology Act. For this purpose, heavy reliance is placed on the decision of this Court in case of ***Gagan Harsh Sharma and Others v/s. The State of Maharashtra & Others (Criminal W P No.4361 of 2018)*** wherein Division Bench of this Court took a view that the offence of criminal, breach of trust, cheating and theft are well covered by the provisions of

Information Technology Act, therefore, it would violate the protection against double jeopardy. On the same point, the reliance is placed on the decision of this Court in ***Mr. Awadhesh Kumar Parasnath Pathak v/s. The State of Maharashtra & Another*** (ABA No. 297 of 2020). In view of above, applicability of the provisions of the Indian Penal Code are in question.

8 In substance, allegations are about transmitting the secrete data to own e-mail ID. Pertaining to note that, there are no specific allegations in report of misuse of the said data. *Prima facie,* it was shown that applicant was using his private e-mail for official purpose. Already incriminating material as well alleged forged appointment letter has been seized. Applicant is young engineer and has joined another company. The incriminating material is seized. The alleged offences under Information Technology Act would attract the punishment of imprisonment which may extend to seven years of imprisonment. *Prima facie,* there is no material to indicate dis-honest intention since in usual course, the private e-mail was used. The applicant has no criminal antecedents. The purpose of investigation would be served, if the applicant is directed to co-operate. In view of that, applicant's liberty can be protected by putting him on certain terms. Hence, following order:-

ORDER

(i) Application stands allowed.

(ii) In the event of arrest of the applicant in connection with Crime No.31 of 2021 registered at Shirwal Police Station, Dist. Satara, for the offences punishable under

Sections 408, 420, 467, 471 and 381 of the Indian Penal Code and Sections 43-A, 43(b), 43(i), 66-C and 72 of the Information and Technology Act, he be released on bail on furnishing P. R. bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

(iii) The applicant shall attend the concerned Police Station on every Sunday in between 10.00 a.m. to 12.00 noon to facilitate the investigation till the charge-sheet is filed or for 90 days whichever is earlier.

(iv) The applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not temper with the prosecution evidence.

9 Interim Application also stands disposed of.

(VINAY JOSHI, J.)