

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRM-M No.28749 of 2022
Date of Decision: 23.08.2022**

Rajesh Garg

.....Petitioner.

Versus

State of Punjab

.....Respondent.

CORAM: *HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA*

Argued by:- Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Vishal Garg Narwana, Advocate,
Mr. Sanjiv Kumar Aggarwal, Advocate,
Mr. Nitin Sachdeva, Advocate,
Mr. Japjit Singh Johal, Advocate,
Mr. Vasu Ranjan Shandilya, Advocate and
Mr. Sagar Sharma, Advocate
for the petitioner.

Mr. Sandeep Singh Deol, D.A.G, Punjab
for the respondent-State.

Mr. Sunil Chadha, Senior Advocate with
Mr. Saurav Kanojia, Advocate and
Mr. Gaurav Chopra, Senior Advocate with
Mr. Vardaan Seth, Advocate
for the complainant.

MEENAKSHI I. MEHTA, J.

Apprehending his arrest in the criminal case arising out of the
FIR bearing No.151 dated 21.04.2022 registered at Police Station City
Barnala, District Barnala, under Sections 408 & 120-B IPC and Section
72-A of the Information Technology Act, 2000 (for short, 'the I.T. Act'),
the petitioner has preferred the instant petition for seeking the relief of
pre-arrest bail.

2. Shorn and short of unnecessary details, the allegations, as levelled by informant Anubhav Nayyar in the subject FIR, are that the petitioner had been working as 18-2 CXO in the Information Technology Department of the complainant-Company (for short 'the Company') named and styled as 'Trident Limited', since 24.01.2019 with monthly salary @ Rs.16 lac. At the time of joining the Company, he (petitioner) had executed two agreements containing the terms and conditions of his employment, including the specific condition of maintaining the confidentiality during and even after his employment with the Company. However, the services of the petitioner were terminated by the Company due to the commission of certain acts of indiscipline by him and then, he joined 'Yotta Infrastructure Solutions LLP Company'. Thereafter, the co-accused of the petitioner namely Rahul Gupta, who was also employed with the Company, tendered his resignation. Later-on, the senior officials of the Company came to know that the petitioner was trying to entice some officials of the Company and was siphoning-off its (Company's) confidential data through such officials so as to cause wrongful loss to it and on 13.09.2021, it came to their notice that the petitioner and his above-named co-accused had hatched a criminal conspiracy to do so for their vested interests and his said co-accused also made a written confession regarding some transactions having taken place between him and the petitioner in contravention of the policy of the Company. Two more employees of the Company named Yogesh Khond and Ketan Goyal also gave their written statements to the effect that they had been given lucrative offers by the petitioner for sharing the confidential

information of the Company with him. Later-on, the senior officials of the Company also got to know that the petitioner had given similar attractive offers to the other employees of the Company as well.

3. Status-report, submitted on behalf of the respondent-State by way of the affidavit of the Deputy Superintendent of Police, Sub-Division Barnala, is already available on the file and the same is taken on the record.

4. It is pertinent to mention here that the complainant-Company has already filed a separate Reply to this petition along-with the documents Annexures C-1 and C-2.

5. I have heard learned Senior counsel for the petitioner as well as learned State counsel, along-with both the learned Senior counsel for the complainant, in the present petition and have also perused the file carefully.

6. Learned Senior counsel for the petitioner has referred to Annexure P-5, the copy of the screen-shots of the '*Whatsapp* chat' between the Chairman of the Company named Rajender Gupta and the petitioner and he has contended that the petitioner had resigned from the job with the Company because of the erratic temperament of the said Chairman who wanted the petitioner to re-join his Company even thereafter and on the petitioner's having expressed his unwillingness to do so, he (Chairman) has got him falsely implicated in this case. Secondly, he has contended that the I.T. Act provides for an exhaustive mechanism to deal with the offences introduced/defined therein and Section 81 of this Act provides for the overriding effect of the provisions thereof over any other law for the time being in force and hence, the offence under Section 408 IPC cannot be invoked

against the petitioner. His third contention is that the offence under Section 72-A of the I.T. Act is punishable with imprisonment for a period which may extend to three years or fine or with both and in view of Section 77-B of the said Act, the above-said offence is bailable and even otherwise, nothing is to be recovered from the petitioner so as to require his custodial interrogation. Lastly, he has contended that the judgments rendered by the Apex Court in **Ramandeep Singh @ Ramandeep Singh Aulakh Versus State of Punjab, Petition for Special Leave to Appeal (Crl.) No.3207 of 2021 (arising out of CRM-M No.38917 of 2020), decided on 19.04.2021** and **Jagjeet Singh Versus The State of Punjab, Petition for Special Leave to Appeal (Crl.) No.3583 of 2021 (arising out of CRM-M No.38917 of 2020), decided on 18.05.2021** which are likely to be relied upon by learned Senior counsel for the Company, are covered under the concept of ‘*per-incuriam*’ and would, therefore, not be applicable to the instant case and in these circumstances, the petitioner deserves the relief as prayed for in the present petition. To buttress his contentions, he has placed reliance upon **Sharat Babu Digumarti Versus Govt. of NCT Delhi 2017 (1) RCR (Criminal) 196 (SC)**, **Gagan Harsh Sharma and other Versus State of Maharashtra and other 2019 (3) Crimes 618 (Bombay) (DB)**, **Order dated 26.07.2022 passed by the Co-ordinate Bench in CRM-M No.32090 of 2022 in the case titled as “Niranjan Nivaruttinath Bhalivade Versus State of Punjab”**, **Gurbaksh Singh Sibbia Versus State of Punjab (1980) 2 SCC 565**, **Arnesh Kumar Versus State of Bihar (2014) 8 SCC 273**, **Central Board of Dawoodi Bohra Community Versus State of Maharashtra 2005**

(2) SCC 673 and Nirmaljit Kaur Versus State of M.P. 2004 (7) SCC 558.

7. Per contra, learned State counsel and learned Senior counsel for the complainant-Company have argued that due to certain acts and omissions on the part of the petitioner, the Company decided to terminate his services but in view of his request to the effect that the said decision would adversely affect his future career prospects, he was allowed to tender his resignation which was accepted and the said FIR was got registered only after the afore-referred confession was made by his above-named co-accused and the statements were given by both the said officials of the Company who had been allured by the petitioner to join his afore-referred subsequent employer-Company. They have further argued that though the offence under Section 72-A of the I.T. Act is punishable with the imprisonment up to three years or fine or with both and though Section 77-B of the said Act provides for such offences to be bailable but however, the offence under Section 408 IPC is punishable with imprisonment up to seven years and is a non-bailable one and lastly, they have argued that the judgments rendered by the Hon'ble Supreme Court in Ramandeep Singh @ Ramandeep Singh Aulakh (supra) and Jagjeet Singh (supra) do not fall under the concept of 'per-incuriam' and are, rather, fully applicable to the present case and it being so, this petition be dismissed.

8. As regards the first contention regarding the petitioner having tendered the resignation and said Chairman having got him (petitioner) falsely implicated in this case for not accepting his offer to re-join the Company, it is worth-while to mention here that Annexure C-2 is the copy

of the *e-mail* dated 07.04.2021 sent by Sarika Thagiria, Lead Retention of the Company, to the petitioner highlighting therein that after a continuous discussion of four months with him on his non-performance, non-transparency and value issues of mis-information and omission and the Company having invested huge capex on his false commitment and assurance, he (petitioner) would be no longer employed with the Trident Company. These contents prima-facie speak volumes of the circumstances under which the petitioner had left the Company. Further, as regards the offer as claimed to have been made by the said Chairman to the petitioner to re-join the Company, a bare perusal of Annexure P-5 reveals that the said '*Whatsapp* chat' pertains to the period prior to 13.09.2021, i.e the date when the above-named co-accused of the petitioner is alleged to have made the afore-said confessional statement qua his own as well as the petitioner's involvement in the crime. Even otherwise, the veracity of these facts can and shall be looked into and ascertained by the trial Court at the appropriate stage after appreciating and evaluating the evidence that would be led on the record during the trial proceedings and the same cannot be determined at this stage while deciding the instant bail petition.

9. So far as the second contention regarding the provisions of the Indian Penal Code not being applicable to the case involving the offences specifically covered under the I.T. Act in view of Section 81 thereof, is concerned, the same is also not tenable because at the stage of adjudicating the present petition as moved by the petitioner for seeking the relief of pre-arrest bail, this Court is not supposed to go to the extent of determining as

to whether any of the offences, as alleged to have been committed by the petitioner in the instant case, are made out or not because concededly, the investigation in this case qua the petitioner, is still at the nascent stage and he is yet to join the same and to add to it, Section 72-A of the I.T Act itself begins with the saving phrase “Save as otherwise provided in this Act or any other law for the time being in force.....”. The observations made by the Apex Court in **Sharat Babu Digumarti (supra)** and the Division Bench of the Bombay High Court in **Gagan Harsh Sharma and other (supra)**, are of no avail to the petitioner because in **Sharat Babu Digumarti (supra)**, the appellant had laid challenge to the order passed qua the framing of the charge against him and in **Gagan Harsh Sharma and other (supra)**, the petitioners were seeking the quashing of the proceedings to the extent of the provisions of Indian Penal Code as invoked therein whereas by way of this petition, the petitioner has sought the relief of pre-arrest bail.

10. As regards the third contention qua the offence under Section 72-A of the I.T. Act being bailable in view of Section 77-B of this Act, the same, again, does not suffice at all to extend the relief as prayed for by the petitioner because besides Section 72-A of the I.T Act, the offence under Section 408 IPC, has also been invoked in the subject FIR which is a non-bailable one. Moreover, Hon’ble Supreme Court has recently dismissed the Special Leave Petitions titled as **Ramandeep Singh @ Ramandeep Singh Aulakh (supra)** and **Jagjeet Singh (supra)**, as preferred to assail the orders passed by this Court regarding the dismissal of the petitions moved by the petitioners therein for seeking the relief of anticipatory bail in the criminal

case registered under the provisions of the I.T Act as well as IPC. Then, the observations as made by the Co-ordinate Bench in **Niranjan Nivaruttinath Bhalivade (supra)**, also do not come to the rescue of the petitioner because the petitioner therein has simply been granted the interim relief only.

11. So far as the last contention regarding the judgments passed in **Ramandeep Singh @ Ramandeep Singh Aulakh (supra)** and **Jagjeet Singh (supra)** falling in the category of ‘per-incuriam’ ones is concerned, this Court need not delve into the discussion on this aspect because as pointed out earlier, the petitioners in both these cases had prayed for the relief of pre-arrest bail whereas in **Sharat Babu Digumarti (supra)**, the verdict has been rendered in the matter relating to the order on the framing of the charge. In these circumstances, the observations made by the Apex Court in **Central Board of Dawoodi Bohra Community (supra)** and **Nirmaljit Kaur (supra)**, would also be of no help to the petitioner to seek the relief in this case.

12. As regards the observations made by Hon’ble Supreme Court in **Gurbaksh Singh Sibbia (supra)**, it is necessary to point it out here that it has also been held therein that the powers of the High Court and the Sessions Court to grant or refuse bail were discretionary and the same were to be exercised in accordance with the circumstances of each case and in the present case, it has specifically been deposed in para No.12 of the status report that the custodial interrogation of the petitioner is required to recover the mobile phone and E-mail ID etc, pertaining to the period subsequent to his having left the job with the Company. Moreover, an affidavit of the said

informant has also been submitted wherein he has categorically deposed that after the termination of the services of the petitioner, the complainant-Company has suffered a total loss to the tune Rs.351.65 Crores and has lost a large number of its clients. In such circumstances, the possibility of the requirement of the custodial interrogation of the petitioner to recover the gadgets allegedly used by him for obtaining/siphoning-off the confidential information/data of the Company and to unearth the exact *modus-operandi* adopted by him and his said co-accused for the alleged commission of the offence, cannot be ruled out. The observations, as made in **Arnesh Kumar (supra)**, are also of no avail to the petitioner because at this stage, he has not been able to show the violation of any guidelines as issued by the Apex Court therein.

13. Keeping in view the above-discussed facts and circumstances as well as the gravity of the offence as alleged to have been committed by the petitioner, this Court is of the considered opinion that he (petitioner) does not deserve the relief of anticipatory bail.

14. Resultantly, the petition in hand stands dismissed.

15. However, it is clarified that nothing contained here-in-before shall be construed to be an expression of the opinion of this Court on the merits of the case.

August 23, 2022

Yag Dut

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes