

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

**ANTICIPATORY BAIL APPLICATION NO.829 OF 2023
WITH APPLN/1988/2023 IN ABA/829/2023**

**ASHISH NANDKISHOR SHAHANE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA**

Mr. Mohd. Aseem Mohd. Abdul Kaleem, Advocate for the applicants
Mr. V. S. Badakh, APP for the respondent/State
Mr. M. R. Wagh, Advocate for Asst. to PP.

CORAM : R. M. JOSHI, J.
RESERVED ON : 19/06/2023
PRONOUNCED ON : 21/06/2023

ORDER :-

1. Applicants apprehend arrest in connection with CR No. 84/2023 registered with Vedant Nagar Police Station, Dist. Aurangabad for the offence punishable under Section 420, 408 read with Section 34 of the Indian Penal Code and Section 66 of Information Technology Act.
2. It is contention of the informant that he is director of Medworld Solutions Private Limited which is company engaged in providing services to the hospital and insurance company for cashless admission of the patient in the hospital. It is alleged that the present applicants by committing theft of data of the company have prepared similar website and by using the confidential information clients of

Medworld Solutions Private Limited are approached and thereby loss is being caused to the company. It is further stated that on 02/11/2022 the applicants were terminated from service and along with other articles of applicant No.1 pen drive belonging to company was found wherein the entire details of 7 years balance sheet, username, password etc. were stored. On these amongst other allegations crime came to be registered against applicants.

3. At the outset learned counsel for the applicants states there is delay in lodging FIR. It is contended that except vague allegations against the applicants in the FIR there is no material on record to show to connect applicants with crime. It is submitted that merely because the present applicant Nos. 1 and 3 have formed a company and they are into same business it cannot be said that they have committed any offence. As far as applicant No.2 Ansari Saifullah it is submitted that this applicant is not director of the Bizprime Solutions Private Limited and has no concern with it. He further submits that there is no inducement given by the applicants in order to deceive the informant company in any manner whatsoever and therefore the offence punishable under Section 420 of the IPC does not apply. By referring the letter of appointment it is submitted that as per the said letter the services of the applicants were not to be continued after the period of three months

of probation and therefore for want of relationship of employer and employees, the offence punishable under Section 408 of IPC of breach of trust does not get attracted. He also sought to argue that offence punishable under Section 66 of the Information Technology Act has no application to the present case for further reason that in view of Section 43 of the said Act the alleged victim has a right to seek compensation. According to him it is not a case wherein custodial interrogation of the applicants could be necessary.

4. Learned APP as well as learned counsel for the informant submitted that during the course of employment the applicants have formed a company and that by using the data and confidential information about clients, the clients of the informant company were approached. It is submitted that without confidential information services cannot be offered at less rate than informant. It is further claimed that there is evidence to connect the applicant No.1 with pen drive seized at his instance. To support the said contention reference is made to the panchnama recorded for seizure said pen drive in which the confidential information of the company recorded as well as the personal information of the applicant No.1 is found therein. It is further submitted that applicants were not authorized to get access to the entire data of the company however data of 7 years was found stored in

the said pen drive. According to them it is fit case wherein the custodial interrogation of the applicants is necessary in order to ascertain the manner in which the data was stolen and the devices used for the said purpose.

5. No doubt merely because the applicants have formed a company or that applicants are competitors would not lead to attract provisions of criminal law. Perusal of the record shows that on 02/11/2022 applicants were in the employment of Medworld Solutions Private Limited. Perusal of the appointment letter does not show that after period of three months probation their services were to be terminated automatically but the relevant clause only indicates that they were not to be confirmed in the service except order in writing. It is thus clear that when the applicants were in the service of the said company they formed another company and also started its business. There is no dispute about the fact that some of the clients of informant are bagged by applicants. As far as applicant No.2 is concerned though the record of register of company does not show him as director however perusal of the brochure of the said company indicates that his name and telephone number is provided for the purpose of contact by the clients. Thus, applicant No.2 is not alien to the said business and company.

6. As far as the allegations of the breach of trust as contemplated by Section 408 of IPC is concerned, the applicants were in the employment of the said company and it was expected by the company that they will maintain the confidentiality. Acceptance of letter of appointment with such condition is clearly an inducement by them to informant to share the data of the company to them. *Prima facie* there is material on record that the clients of Bizprime Solutions Private Limited are being solicited by the company formed by the present applicants. Thus, clearly loss has been caused to the said company which attract not only provision of Section 408 but 420 IPC also.

7. With regard to the offence punishable under Section 66 of Information Technology Act is concerned Section 43 of the said Act shows that downloading or copying of data is an offence. No doubt the said provision also refers for the payment of damages to the victim however that does not mean the act of theft of data cannot be subjected to criminal proceeding. Perusal of the record indicates that pen drive of applicant No.1 is seized which contains data of informant including 7 years record, balance-sheet, the confidential password etc. In view of *prima facie* material evidence on record it cannot said that the involvement of the present applicants in this crime is not seen.

8. The question arises as to whether the custodial interrogation of the applicants would be necessary for the purpose of further investigation. In this regard it is pertinent to note that the nature of offence involves the use of technology and devices for copying the data from its source. It would be therefore necessary that the custody of the applicants is essential for the purpose of ascertaining the devices used for this purpose and recovery thereof. Considering the *prima facie* involvement of the applicants in the crime and as the custodial interrogation of the applicants is necessary, no case is made out for anticipatory bail. Hence application is dismissed. Pending applications, if any, stand disposed of.

(R. M. JOSHI, J.)

ssp