

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1213 OF 2023

SURESH HARIBHAU KULKARNI

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. S. B. Deshpande, Senior
Advocate a/w Mr. Swapnil Joshi & Ms. Priya Khandagale
i/by Mr. J. P. Legal Associates

APP for Respondents: Mr. G. O. Watamwar
Advocate for informant: Mr. N. S. Ghanekar

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CORAM : R.M. JOSHI, J

DATE : SEPTEMBER 21, 2023

PER COURT :

1. Applicant apprehends arrest in connection with with C.R. No. 620/2017 registered with MIDC Waluj Police Station, Dist. Aurangabad for the offences punishable under Sections 408 and 34 of the Indian Penal Code and Sections 66(B), 66(D), 66(E), 72 and 72(A) of the Information Technology Act.

2. Informant is the Officer of Garware Polyester Company Ltd. It is alleged by him that some secret information was received prior to 20 days to 01.02.2017 from the Director of the Company that some persons from Suncontrol Department had taken away the confidential

information such as Hard Disk, Documents, Maps, photographs of machines etc and that they are likely to sell the said information and due to which there is every chance of sustaining financial loss. In this regard, internal inquiry was conducted and report was submitted wherein present Applicant and co-accused were held responsible for the said theft. It is alleged that both accused persons at the time of their superannuation have not returned the articles/information which was with them during the course of their employment. In this regard, details are mentioned in the FIR about information retained by them.

3. Learned Senior Counsel for the Applicants submits that co-accused after coming back to India was arrested and trial conducted against him in RCC No. 2348/2019 has culminated into his acquittal. He further argued that there is absolutely no evidence on record to show that any of the information/articles i.e., hard disk etc, were ever entrusted to the present Applicant and hence, question misuse of the same and committing breach of trust does not arise. By drawing attention of

the Court to the order of acquittal passed by learned Magistrate during trial of accused no. 1, it is submitted that specific findings are recorded to the effect that prosecution has failed to prove that the accused no. 1 with the absconding accused in furtherance of their common intention had equipments i.e., drawing machines process, drawing programs loaded in extendable hard disk in his possession at the time of retirement and did not submit the same and dishonestly used the same for his own benefit. Attention of Court is also drawn to the evidence on record before the trial Court wherein it is admitted by the witness no. 1 stating that there is no evidence to show that both accused have used patent/information of the company. It is also pointed out that none of the witness has any personal knowledge about the information being entrusted/handed over to the Applicant. Therefore, this is a fit case for grant of anticipatory bail.

4. Learned APP and learned Counsel for the informant opposed the said contentions mainly relying upon the FIR wherein it is stated that the said

information was with accused persons and they have misused it. Learned Counsel for the informant has placed on record the certificate dated 22.12.2022 issued by Specialty Chemicals Technology Department to the effect that the patented information of the company has been used by its competitor. It is his contention that present Applicant is the person who has shared the information to the rival company.

5. This is the stage where Court is required to see as to whether *prima facie* offence is made out against Applicant and that his custodial interrogation is necessary. Undisputedly, FIR is of year 2017. Trial against accused no. 1 is complete with his acquittal. The said evidence recorded before the trial Court as well as the findings recorded therein cannot be ignored by this Court. At the outset, in order to accept the allegations against present Applicant, there has to be some material to show that at any point of time entrustment of information, disk, articles etc was in fact done. From the evidence recorded before the trial Court there is absolutely nothing on record to indicate any such entrustment. In absence thereof, there is no

question of recovery of the articles by the present Applicant.

6. Apart from this, admissions given by the witness clearly shows that there is no use of patented information atleast up to 01.02.2022. This Court, therefore, is not impressed with the submissions made by learned Counsel for the informant that later on it was found that the present Applicant had shared the said information with rival company. Pertinently, no action has been initiated even on basis of such report till date. This shows that *prima facie* there is no substance in the said allegations.

7. Having regard to the nature of offence, evidence led before trial Court, time lapsed between and acquittal of the accused on the basis of evidence of record and since nothing is to be recovered at instance of Applicant, it is a fit case wherein liberty of the Applicant deserves to be protected. Applicant has clean record. He is not likely to abscond. Hence, the order:

O R D E R

(i) In the event of arrest of the Applicant in

connection with with C.R. No. 620/2017 registered with MIDC Waluj Police Station, Dist. Aurangabad for the offences punishable under Sections 408 and 34 of the Indian Penal Code and Sections 66(B), 66(D), 66(E), 72 and 72(A) of the Information Technology Act, he shall be released on bail on furnishing PR bond of Rs. 15,000 (Rupees Fifteen Thousand Only) with one surety in the like amount.

- (ii) He shall attend the concerned police station as and when required.
- (iii) He shall not contact the witnesses directly or indirectly.
- (iv) He shall not interfere with the evidence in any manner whatsoever.
- (v) He is further directed to cooperate the investigating agency for further investigation.

(R.M. JOSHI, J.)

Malani