

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

ANTICIPATORY BAIL APPLICATION NO. 2613 OF 2018

Ritesh Mahindra Dhumal

... Applicant

v/s.

The State of Maharashtra and anr.

.... Respondents

Mr. Chaitanya A. Malgaonkar a/w. Khushali Pandalia

i/b. Mr. Dharmesh Shah for the Applicant.

Mr. Shrikant Yadav, APP for the State.

Mr. Anoop Patil a/w. Mr. Shashank Shubham for Respondent No.2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 21st MARCH, 2023.

P. C. :-

. This is an Application under section 438 of Cr.PC. filed by the aforesaid Applicant apprehending his arrest in M.E.C.R.No.01/2018 registered with Bangur Nagar Police Station, Mumbai for offences punishable under sections 379, 381, 409, 420, 120-B r/w. 34 of the Indian Penal Code and sections 66, 66B, 72 and 72A of the Information Technology Act, 2000.

2. Heard learned counsel for the Applicant, learned APP for the State and learned counsel for the Respondent No.2/Complainant. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by Mr. Amit Devsingh Rajput, the Manager Legal – Tech Mahindra Business Services Ltd. It is the case of the prosecution that the Applicant herein was an employee of Tech Mahindra Business Services Ltd. It is alleged that in January, 2015, Vodafone Fraud Team received information from Herald Sun Reporter claiming that they were approached by a private investigator offering to sell Vodafone's customer information at a cheaper rate as he had access to Vodafone Australia and Optus Mobile Australia along with three U.K. and Saudi Telecom Company. It is alleged that the Applicant who was the employee of Tech Mahindra had accessed the data and that he had dishonestly and fraudulently sold the data to the accused no.3 who in turn had sold to accused no.1. It is on the basis of this information and allegation, the FIR came to be lodged.

4. Learned counsel for the Applicant has relied upon the decision of Division Bench of this Hon'ble Court in ***Gagan Harsh Sharma and anr. v/s. The State of Maharashtra and anr. in Criminal Writ Petition No.4361 of 2018*** wherein it is held that the Act of accessing or securing access to computer/computer system or computer network or computer

resources by any person without permission of the owner or any person who is in charge of the computer, computer system, computer network or downloading of any such data or information from computer in a similar manner falls within the purview of Section 43 of the Information Technology Act, 2000. When such Act is done dishonestly and fraudulently it would attract the punishment under Section 66 of the Information Technology Act, such Act being held to be an offence. It is held that the said offences are similar to those under section 420 of the Indian Penal Code. Similarly, ingredient of offence under section 379 and 408 of the Indian Penal Code are covered by section 43 of the Information Technology Act. It is held that ingredients of sections 420, 408, 379 of the Indian Penal Code are covered by section 66 of the Information Technology Act, 2000 and prosecuting the Petitioners under both Indian Penal Code and Information Technology Act would be a brazen violation of protection against double jeopardy.

5. Learned counsel for the Applicant therefore contends that the provisions which would be attracted in this case, are the ones under Information Technology Act. The maximum punishment for the offence under this Act is imprisonment for three years and are bailable. The Applicant is on interim bail since the year 2018. He has reported

to the Investigating Officer and has co-operated with the investigation. Mobile phone of the Applicant has been recovered and seized by the Investigating Officer. Learned APP further states that the investigation is completed in all respects and charge sheet will be filed within two weeks.

6. Considering the above facts and circumstances and particularly the nature of the accusations, in my considered view, this would not be a case to justify custodial interrogation. Hence, the Application is allowed on the following terms and conditions :-

(a) In the event of arrest of the Applicant in M.E.C.R.No.01/2018 registered with Bangur Nagar Police Station, Mumbai, he shall be released on bail on furnishing bail bonds in the sum of Rs.25,000/- with one or two sureties in the like amount ;

(b) The Applicant shall report to the Investigating Officer as and when required by the Investigating Officer ;

(c) The Applicant shall not interfere with the complainant and the other witnesses and shall not tamper with the

evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case in any manner ;

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

7. The Application stands disposed of.

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JAYANI

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(SMT. ANUJA PRABHUDESSAI, J.)