

Sayali Upasani

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

ANTICIPATORY BAIL APPLICATION NO. 1329 OF 2022

SAYALI
DEEPAK
UPASANI

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1. Rohit Singh 2. Dilip Singh 3. Imtiaz Nanjee
4. Linette Dsouza 5. Azeem Kanjiani
6. Hemant Chheda 7. Milind Narkhede and
8. Neeraj Rajwade

...Applicants

Versus

The State of Maharashtra and Others

...

Respondents

Mr. Ashok Mundargi, Senior Counsel with Ms. Priyanka Chavan with Mr. Robin Fernandes, Mr. Zaheer Memon, Ms. Lillyan Thangkhiew and Ms. Nikita Jadhav i/b Vesta Legal, for Applicant Nos. 1 to 7.

Mr. Parvez Memon with Mr. Zulfiquar Memon, Mr. Munir Merchant, Mr. Chirag Naik, Mr. Mahesh Ahire, Ms. Noopur Mathrawala and Mr. Prasanna Kumar i/b MZM Legal LLP, for Applicant No. 8.

Mr. Amit Desai, Senior Counsel with Mr. Pranav Bedheka, Mr. Prashant Pawar, Gopalkrishna Shenoy, Abhay Jadeja, Varun Satiya, Arun Unnikrishnan and Vanshika Shroff i/b Jadeja Satiya, for Respondent No. 2.

Smt. A. A. Takalkar, APP for State/Respondent.

Mr. Mangesh Majgor, PI, (W) Region Cyber Crime Police Station, Present.

CORAM :- N. J. JAMADAR, J.
RESERVED ON :- 21st DECEMBER, 2023.
PRONOUNCED ON :- 9th FEBRUARY, 2024.

ORDER:-

1) This application is preferred for pre-arrest bail in connection with CR No. 34 of 2021, registered with Cyber Cell Police Station, BKC, Mumbai, for the offences punishable under Sections 120-B, 408, 420 and 201 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code") and Sections 43, 66, 72 and 75 of the Information Technology Act, 2000 ("I.T. Act, 2000").

2) The applicants are former employees of M/s. K.M Dastur Reinsurance Brokers Pvt. Ltd. (KMD), of which Dayanand Madhukar Pate, the informant is the Chief Manger. The applicants resigned from the Company during the period 27th May, 2020 to 30th May, 2020. Since the applicants resigned from KMD abruptly after spending significant time, without ascribing any particular reason, suspicion arose. KMD thus entrusted Deloitte Toche Tohmastu India LLP (Deloitte) to carry out analysis of the electronic equipments and hardware used by these employees and their trail of correspondence by the respective employees, through the designated e-mail ID. The analysis revealed the commission of the offences of breach of trust, cheating and data theft in pursuance of a criminal conspiracy.

3) The gravamen of indictment against the applicants is that before the applicants tendered their resignation, the applicants had clandestinely stolen sensitive, confidential and most important information/data of KMD. Later on, after surreptitiously transferring the data owned by KMD, the applicants joined M/s. Deinon Risk Services Pvt. Ltd. (Deinon India), a consultancy firm providing risk assessment services.

4) To appreciate the allegations, it is necessary to have a historical perspective. KMD is an entity primarily owned and controlled by Mr. Eric Dastur. KMD has been engaged in the business of insurance and reinsurance brokerage since the year 1991. M/s. K.M Dastur Insurance Brokers Pvt. LLC, now M/s. Deinon Insurance Brokers LLC (Deinon Dubai) is also engaged in similar business. Mahmood Khairaz, (one of the co-accused, who was arrested in the instant crime), held 49% shareholding in Deinon Dubai and managed its day-to-day operations. It appears that KMD and Deinon Dubai worked in close co-operation. It seems in or around 2019, disputes arose between Eric Dastur of KMD and Mahmood Khairaz of Deinon Dubai. Another entity M/s Deinon Risk Services Pvt. Ltd., (Deinon India) came to be incorporated on 8th April, 2020. Mahmood Khairaz, the co-

accused holds 80% shareholding and Azeem Kanjiani, the applicant No. 5 holds 20% shareholding in Deinon India.

5) The first informant alleges the applicants were working with KMD since years. The applicant – Azeem Kanjiani was working since November, 2004. Co-accused – Mahmood Khairaz was working in the Analytics Department of KMD. Mahmood Khairaz tendered resignation in the month of February, 2020. The applicants including Azeem Kanjiani, who was working as a Senior Vice President (Head of the Aviation Department), tendered resignation during the period 27th May, 2020 to 30th May, 2020. Post resignation, they joined Deinon India.

6) The crux of the allegations against the applicants is that KMD has its business spread across a variety of sectors such as aviation, marine energy, oil, gas etc., wherein companies engaged in businesses in such sectors employ KMD as a broker. Sensitive and confidential information of all such companies i.e. the customers of KMD, has been stored with KMD. During the course of its business operations KMD retains information of its customers as regards their business, risk information, terms and conditions of contract, insurance premium etc. During the employment with KMD, the applicants were provided with

Laptops, Hard Drives, Pen Drives etc., which contained such sensitive and confidential information.

7) The analysis conducted by Deloitte revealed that the applicants and the other co-accused had conspired dishonestly and fraudulently to cause wrongful loss to KMD by transferring/preserving sensitive and confidential data and joined Denion India, a competing entity formed by accused No. 5- Azeem Kanjiani and Mahmood Khairaz, and thereby used such information to generate the business for Denion India. Thus 4TB data has allegedly been transferred and stolen away.

8) Apprehending arrest, the applicants had preferred an application for pre-arrest bail before the Court of Session. As the learned Additional Sessions Judge declined to exercise discretion in favour of the applicants, they have preferred these application. Vide order dated 13th May, 2022, this Court granted interim relief to the applicants, which has thereafter been extended from time to time. By a further order dated 6th September, 2022, having noted that investigation was complete and charge-sheet had been lodged, this Court directed the Investigating Officer to file an affidavit to apprise the Court as to why the arrest and custodial interrogation of the applicants was warranted.

- 9) The Investigating Officer has filed an affidavit.
- 10) Affidavits-in-rejoinder have been filed by the applicants.
- 11) It seems the Investigating Officer has carried out further investigation and has filed a supplementary charge-sheet on 16th June, 2022. The charge-sheets run into more than 40,000 pages.
- 12) In the context of the aforesaid nature of the accusation and the material on record, I have heard Mr. Mundargi, the learned Senior Advocate for the applicant Nos. 1 to 7, Mr. Parvez Memon, the learned Advocate for the applicant No.8, Smt. Takalkar, the learned APP for State and Mr. Amit Desai, the learned Senior Advocate for the respondent No.-2- first informant, at length.
- 13) The learned Counsel, in the context of the voluminous material on record, took the Court through the relevant part of the record which bears upon the entitlement for pre-arrest bail. The learned Counsel have also tendered their written notes to elaborate their submissions canvassed across the bar.
- 14) Mr. Mundargi, the learned Senior Counsel for the applicant Nos. 1 to 7 submitted that the applicants are being hounded up for having tendered resignations and joined another entity which happens to deal in a similar business. The applicants have duly complied with the notices under Section 41-A of the Code of

Criminal Procedure, 1973, and rendered requisite co-operation during the course of investigation. The equipments which the company had given to the applicants were surrendered. In addition, the Investigating Officer has seized the equipments and material which appeared to be necessary to facilitate investigation and for the purpose of trial. The entire record is with the investigating agency. The very fact that charge-sheets running into 40,000 odd pages have been filed indicates that the investigation is complete for all intent and purpose. Therefore, at this stage, there is no propriety in arresting the applicants, and, hence, the order of interim bail be made absolute.

15) Mr. Mundargi submitted that, in any event, as the applicants have been arraigned for the offences punishable under Sections 66, 72 and 75 of the I.T. Act, 2000, they cannot be prosecuted for the offences punishable under the Penal Code, 1860. All the offences under I.T Act, 2000 with which the applicants have been charged are bailable. Since recourse to the offences under Sections 120-B, 408, 420 and 201 of the Penal Code, 1860 is impermissible, the applicants deserve the relief of pre-arrest bail.

16) Strong reliance was placed on the decision of the Supreme Court in the case of **Sharat Babu Digumarti Vs. Government**

(NCT of Delhi)¹ and a Division Bench Judgment of this Court in the case of **Gagan Harsh Sharma and Others Vs. State of Maharashtra Through Sr. Police Inspector and Others**². Even otherwise, according to Mr. Mundargi, none of the offences under the Penal Code, 1860 entail punishment of more than seven years. Thus, the applicants deserve the exercise of discretion.

17) Mr. Parvez Memon, the learned Counsel for the applicant No. 8 – Neeraj Rajawade submitted that the applicant had resigned from KMD on 28th February, 2020 much before the rest of the 10 employees, resigned from KMD. Thus the allegation that the applicant was privy to the alleged conspiracy pursuant to which the employees of KMD resigned during 27th May, 2020 to 30th May, 2020 cannot be attributed to the applicant.

18) Mr. Menon further submitted that initially the investigating agency had proposed to cite the applicant as a witness. However, when the applicant declined to give his statement under Section 164 of the Code, 1973, the applicant malafide came to be implicated as an accused, on 25th May, 2020. Mr. Menon submitted that the endeavour of KMD has been to give a colour of criminal prosecution to a civil dispute between Eric Dastur and

1 2017 2 SCC 18

2 2018 SCC Online Bom 17705

Mahmood Khairaz and the applicant has been made to suffer collateral damage in the fight between Eric Dastur and Mahmood Khairaz, the co-accused.

19) Smt. Takalkar, the learned APP, countered the submissions on behalf of the applicants. An endeavour was made to draw home the point that the custodial interrogation of the applicants is still indispensable for an effective investigation and prosecution. Smt. Takalkar submitted that since the applicants have been arraigned for an offence punishable under Section 120-B of the Penal Code, 1860, which is a distinct offence than the offences punishable under I.T Act, 2000, the alleged bar for prosecution for the offences punishable under the Penal Code does not apply. It was submitted with a degree of vehemence that the devices by which the data has been surreptitiously stolen away are yet to be recovered from the applicants. Moreover, the applicants have not co-operated with the Investigating Officer.

20) Attention of the Court was invited to the averments in paragraph No. 13 of the affidavit of the Investigating Officer spelling out the reasons for which the custodial interrogation of the applicants is warranted and the role attributed to each of the applicants.

21) Mr. Amit Desai, the learned Senior Advocate for the respondent No. 2- the first informant strenuously submitted that the magnitude of the offences is required to be kept in view. The allegations are that 4 Terabyte (TB) data has been secretly stolen. The theft of the data is required to be seen in the context of the speed with which the applicants and the co-accused resigned from KMD and joined Deinon India. In fact, the groundwork was started when the applicant No.8 resigned from KMD in the month of February, 2020. Mr. Desai submitted that the material on record indicates that while Azeem Kanjiani was still in employment with KMD, efforts were made to start Deinon India.

22) Mr. Desai would urge that it is well recognized that the custodial interrogation is qualitatively different. In the case at hand, according to Mr. Desai, there has been an effort to cover up the criminal acts. All the accused have given evasive and tutored replies when they were summoned, while armed with the protective order. The applicants and the co-accused have been hampering and tampering with the evidence. In the circumstances, the applicants cannot be heard to urge that the applicants deserve the relief of pre-arrest bail as charge-sheets have been lodged. To lend support to these submissions, Mr. Desai placed reliance on a number of judgments.

23) Particular emphasis was laid on the judgments of the Supreme Court in the cases of Central Bureau of Investigation V/s. Rathin Dandapat and Ors.³, Sumitha Pradeep V/s. Arun Kumar C.K. and Anr.⁴, State rep. By the C.B.I. V/s. Anil Sharma⁵ Sudhir V/s. State of Maharashtra and Anr.⁶, Maruti Nivrutti Navale V/s. State of Maharashtra and Anr.⁷, Supreme Bhiwandi Wada Manor Infrastructure Pvt. Ltd. V/s. State of Maharashtra and Anr.⁸.

24) Mr. Desai joined the issue of non-applicability of the provisions contained in the Penal Code, 1860 to the acts in question on the count that they are covered by the Special Act i.e. I.T Act, 2000 by canvassing a submission that the issue cannot be said to have been concluded yet. A strenuous effort was made by Mr. Desai to persuade the Court to hold that despite a Division Bench Judgment of this Court in the case of **Gagan Sharma** (supra), without violating the doctrine of stare decisis and the norms of judicial propriety, this Court can hold that the offences

3 (2016) 1 SCC 507

4 2022 SCC Online SC 1529

5 (1997) 7 SCC 187

6 (2016) 1 SCC 146

7 (2012) 9 SCC 235

8 (2021) 8 SCC 753

punishable under the Penal Code, 1860 can be tried de hors the offences punishable under IT Act, 2000.

25) It was submitted that the decision of the Division Bench in the case of **Gagan Sharma** (supra) strictly speaking does not constitute a ratio decidendi. **Gagan Sharma** (supra) only took into account ingredients of Section 43 (j) read with Explanation (v) of I.T Act, 2000. **Gagan Sharma** (supra) did not advert to the fact that electronic data is distinct from a computer resource. The ingredients of the offences punishable under the Penal Code, with which the applicants have been charged, are different from the ingredients of the offences punishable under I.T Act. Therefore, the principles enunciated in the case of **Gagan Sharma** (supra) may not apply to the facts of the case.

26) Reliance was, *inter alia*, placed on the judgment of the Supreme Court in the case of **State of Arunachal Pradesh V/s. Ramchandra Rabidas @ Ratan Rabidas and Anr.**⁹ an order passed by the learned Single Judge of this Court in the case of **Sameer Subhash Vhora V/s. The State of Maharashtra**¹⁰, the order passed by the Punjab and Haryana High Court in the case of **Ramandeep Singh V/s. State of Punjab**¹¹ and an order passed

9 (2019) 10 SCC 75

10 ABA 690 of 2019 dt 21 June 2019

11 Cri. M.A.Nos.29553 and 30630 of 2020 dated 17 March 2021.

by the Karnataka High Court in the case of **Navin Kumar R @ Naveen and Anr. V/s. State of Karnataka and Anr.**¹²

27) Mr. Desai also made an endeavour to urge that the decision in the case of **Gagan Sharma** (supra) does not preclude this Court from taking a different view of the matter as the adherence to the rule of precedent results in manifest injustice. To this end, reliance was placed on a Full Bench judgment of the Andhra Pradesh High Court in the case of **The Commissioner of Income Tax, Andhra Pradesh, Hyderabad V/s. B. R. Constructions, Hyderabad.**¹³ wherein it was postulated as under :

“A single Judge or Benches of High Court cannot differ from the earlier judgments of co-ordinate jurisdiction merely because they hold a different view on the question of law for the reason that certainty and uniformity in the administration of justice is of paramount importance. But if the earlier judgment is erroneous or adherence to rule of precedents results in manifest injustice, differing from earlier judgment will be permissible.”

28) An endeavour was made by Mr. Desai to urge that there are justifiable grounds to deviate from enunciation of law in the case of **Ganga Shrama** (supra).

29) In the wake of aforesaid submission, to begin with the ground of impermissibility of prosecution for the offences punishable under Sections 408, 420, and 201 read with Section

12 Cr. Petition No.3173 of 2023 dated 12 July 2023

13 1993(1) APLJ 63 (HC)

34 of the Penal Code when the applicants are facing prosecution for the offences punishable under Section 43, 66, 72, and 75 of the Information Technology Act, 2000, deserves to be briefly dealt with.

30) In the case of **Gagan Sharma** (supra) the Division Bench of this Court held that if a special enactment like the Information Technology Act, 2000, contains a special mechanism to deal with the offences falling within the purview of the Information Technology Act, 2000, namely Sections 43 and 66, then the invocation and application of the provisions contained in Sections 379, 420 and 408 of the Penal Code in the same set of facts is totally uncalled for. It was observed that the ingredients of the offences punishable under Sections 420, 408 and 379 of the Penal Code are covered by Section 66 of the Information Technology Act, 2000 and prosecuting the petitioners under both, the Penal Code and Information Technology Act would be a brazen violation of protection against double jeopardy.

31) It would be contextually relevant to note that in the case of ***Ramchandra Rabidas*** (supra) the Supreme Court considered the justifiability of the direction by the Gauhati High Court that road traffic offences shall be dealt with only under the provisions of Motor Vehicles Act, 1988 and that in cases of road traffic or motor

vehicle offences, prosecution under the provisions of the Penal Code is without sanction of law, and recourse to the provisions of the Penal Code would be unsustainable in law.

32) Disagreeing with the aforesaid directions of the Gauhati High Court, the Supreme Court, after referring to the provisions contained in Section 26 of the General Clauses Act, 1897, which envisages the consequences where an act or omission constitutes an offence under two or more enactments, held that it is well settled that an act or omission can constitute an offence under Penal Code and, at the same time, be an offence under any other law. The finding of the High Court that the prosecution of offenders under two statutes i.e. the MV Act and Penal Code, is unsustainable and contrary to law, was, therefore, set aside. In the said case, the Supreme Court referred to its decisions in the cases of *T. S. Baliah vs. T. S. Rangachari*¹⁴ and *State of Maharashtra vs. Sayyed Hassan*¹⁵. It was thereafter enunciated that if a prosecution, if otherwise maintainable, would lie both under Penal Code and MV Act, since both the statutes operate with full vigour, in their own independent spheres, even assuming that some of the provisions of the MV Act and Penal

14 (1969) 3 SCR 65.

15 (2019) 18 SCC 145.

Code are overlapping, it cannot be said that the offences under both the statutes are incompatible.

33) The decision of the Supreme Court in the case of **State of Uttar Pradesh V/s. Aman Mittal and Anr.**¹⁶ arose in the context of the prosecution under the provisions of the Legal Metrology Act, 2009 and Penal Code, in the same set of facts. The Supreme Court referred to its decision in the case of **Sharat Babu Digumarti (supra)** and the decision of the Division Bench in the case of **Gagan Sharma** (supra) and thereafter observed:

“25. That the Bombay High Court in *Gagan Harsh Sharma* has found that even a dishonest and fraudulent act falls within the scope of Section 66 of the IT Act. We are not called upon in the present appeals to examine whether an accused can be tried for an offence under IPC in view of Section 66 of the IT Act. Such question can be raised and decided in appropriate case.”

34) The aforesaid observations of the Supreme Court indicate that the Supreme Court considered it appropriate not to pronounce on the aspect of correctness of the decision in **Gagan Sharma** (surpa) and left the said question to be raised and decided in an appropriate case.

35) Beyond the aforesaid consideration, I do not deem it appropriate to delve more on the correctness of the view in the case of **Gagan Sharma** (supra). I find it difficult to accede to the

invitation of Mr. Desai to delve into the correctness of the view in the case of **Gagan Sharma** (supra). The legal position is absolutely clear. A learned Single Judge cannot differ from a decision of a Division Bench except when that decision or judgment relied upon in that decision is overruled by a Full Bench or the Supreme Court or the law laid down by the Full Bench or the Supreme Court is inconsistent with the decision of the Division Bench.

36) In the case at hand, this principle of judicial propriety applies with even greater force as **Gagan Sharma** (supra) is referred to a Larger Bench and the decision of the Larger Bench is awaited. Another principle which is equally well settled needs to be noted. Merely because a judgment is referred to a larger Bench, it does not lose its precedential authority. Moreover, having regard to the context in which the aforesaid question arises in the facts of this case, it may be unwarranted to delve deep into this aspect. This leads me to the merits of the claim for pre-arrest bail.

37) To start with, few facts deserve to be noted at the cost of repetition. First, the existence of a business relationship between KMD and Deinon Dubai is rather incontrovertible. Mahmood Khairaz, who managed the affairs of Deinon Dubai allegedly

looked after the data analytics department of KMD as well. The fact that disputes arose between Eric Dastur of KMD and Mahmood Khairaz of Deinon Dubai is prima facie borne out by notice dated 13th January, 2021, addressed by Deinon Dubai to Eric Dastur and others seeking payment of AED 60,789,624. On 1st October, 2021 a notice was addressed by Deinon Dubai to Mr. Colin A. T. Reen an associate of Eric Dastur invoking arbitration. On 13th January, 2022, a decree was passed by the Dubai Court of First Instance ordering ENSZ Consultancy Services (DMCC), an associate company of Eric Dastur, to pay an amount of USD 2,859,174.24 or its equivalent amount in AED and a Writ of Execution Notice and Notification of payment dated 17th April, 2022 addressed by Dubai Court of First Instance was followed by orders dated 2nd November, 2022 and 10th November, 2022 to auction certain properties of ENSZ.

38) Incontrovertibly, Deinon India was incorporated on 8th April, 2020 with Mahmood Khairaz having 80% shareholding and applicant No. 5- Azeem Kanjiani holding 20% shareholding. The applicant No. 8 resigned on 28th February, 2020 and joined Deinon India on 1st June, 2020. The rest of the applicants resigned during the period 27th May, 2020 to 30th May, 2020 and joined Deinon India sooner or later. The FIR came to be

lodged post forensic analysis by Deloitte on 15th June, 2021. As noted above, post completion of investigation, charge-sheet was lodged, followed by a supplementary charge-sheet. The applicants are on interim protection.

39) It is in this backdrop, by an order dated 6th September, 2022, this Court was persuaded to direct the Investigating Officer to justify the necessity of arrest and further custodial interrogation. Para No. 13 of the affidavit-in-reply contains the reasons for which the Investigating Officer seeks the custody of the applicant. It is, *inter alia*, contended that custodial interrogation is required to ascertain to whom the applicants transferred the data; the details of when and in what manner the theft and misappropriation was committed; the *modus operandi*/ technique used by the applicant for committing the said crime; to ascertain as to how the 6 GB data (which included the data of aviation department and also other departments) of the complainant company was found in the custody of Hemant Chheda, the applicant No. 6, who was working in Accounts Department and to also ascertain whether the applicants and other accused were still monitoring the business of any of the offices of the informant company, etc.

40) In the backdrop of the aforesaid facts and the grounds sought to be urged on behalf of the applicants, the genesis of the alleged offences deserves to be kept in view. As noted above, the genesis of the offences appears to be in commercial disputes which arose between entities representing and/or associated with Eric Dastur and Mahmood Khairaz. There is material to indicate that even prior to the lodging of the FIR, notices were exchanged between them and/or the entities represented by them. Mahmood Khairaz allegedly enticed away the employees of KMD. Out of them, applicant Azeem Kanjiani is stated to be the mastermind. The applicant Azeem Kanjiani along with co-accused Mahmood Khairaz had discussions with the Chief of PIIG London, a competitor of KMD, in the month of November, 2019 and, thereafter, Deinon India was registered in April, 2020. It is alleged the accused No.5 Azzem and Khairaz instructed the other accused to transfer the data containing sensitive information and induced them to resign from the company.

41) *Prima facie*, the incorporation of a new company Deinon India in April, 2020 and the resignation of the applicants, the then employees of KMD, within a couple of months thereafter and their joining Deinon India may not be a matter of co-incidence. However, it is the aspect of the criminality involved in the entire

exercise that is a matter for adjudication. Since it is alleged that the applicants had surrendered their devices while resigning from the company and those very devices were sent for analysis to Deloitte and subsequently also, during the course of investigation, further devices have been seized, and the investigating agency has collected voluminous material during the course of investigation, at this stage, the necessity of further custodial interrogation of the applicants is required to be appreciated.

42) Indisputably, Mahmood Khairaz was arrested and remanded to police custody. The stand of the co-accused Mahmood Khairaz as is evident from the affidavit-in-reply of the Investigating Officer is that the data recovered from Deinon India was with him because he was associated with KMD. However, Mahmood Khairaz could not provide necessary legal documents to substantiate the said claim. If viewed in the backdrop of the business relationship between the parties especially Eric Dastur and Mahmood Khairaz and the related entities and the nature of the business, the questions as to whether the KMD could lay exclusive right to hold the data, which allegedly found its way to Deinon India, would warrant adjudication. Whether the data was in the public domain, what was the source of the data which was

acquired by Deinon India and whether the acts attributed to the applicants were the causes of the alleged transfer of data to Deinon India and other entities, in my view, are all the matters for adjudication of the trial.

43) In the totality of circumstances, with the amount of material collected during the course of investigation and having filed charge-sheet and supplementary charge-sheet, at this stage, the custodial interrogation of the applicants does not seem warranted. The Court cannot lose sight of the fact that commercial disputes had resulted in business rivalry even before the lodging of the FIR.

44) The mere fact that the applicants resigned from the company and joined a business rival, in a situation of this nature, operates both ways. On the one hand, it constitutes a motive for the alleged offences, and, on the other hand, it furnishes a ground for false implication.

45) The fact that none of the offences under the Penal Code, 1860, for which the applicants have been arraigned, entails punishment exceeding seven years also assumes significance. Thus, in view of the pronouncement of the Supreme Court in the case of **Satender Kumar Antil vs Central Bureau Of**

Investigation¹⁷, the Court may be justified in exercising discretion to release the accused on bail.

46) Indisputably, the applicants have appeared before the Investigating Officer on multiple occasions. The allegations that they have not co-operated with the investigation cannot be taken at their face value. It is not a case where even after filing the charge-sheet and the supplementary charge-sheet, the investigating agency has professed to enter into further investigation and insisted upon the presence of the applicants to facilitate such further investigation. The liberty of the applicants cannot be jeopardised on an assertion that the applicants have not co-operated with the investigation.

47) In substance, in the case at hand, at this length of time, the custodial interrogation of the applicants does not seem warranted. All the applicants appear to have roots in society. In the context of the seizure of the devices and equipments and analysis thereof, at this stage, the possibility of tampering with evidence and fleeing away from justice also appears remote.

48) I am, therefore, impelled to exercise the discretion in favour of the applicants.

49) Hence, the following order:

: O R D E R :

- (i)** The application stands allowed.
- (ii)** In the event of arrest of the applicants, they be released on bail in CR No. 34 of 2021, registered with Cyber Cell Police Station, BKC, Mumbai, for the offences punishable under Sections 120-B, 408, 420 and 201 read with Section 34 of Indian Penal Code, 1860 and Sections 66, 72 and 75 of the Information Technology Act, 2000, on furnishing a P.R. Bond in the sum of Rs.50,000/-, each, with one or two sureties in the like amount.
- (iii)** The applicants shall attend Cyber Police Station, BKC, Mumbai, as and when directed, with at least three days prior intimation, during the period of six months from today,
- (iv)** The applicants shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.
- (v)** By way of abundant caution, it is clarified that the

observations made hereinabove are confined for the purpose of determination of entitlement for pre-arrest bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicants and the trial court shall not be influenced by any of observations made hereinabove.

- (vi) In view of disposal of the Bail Application, the Interim Application also stands disposed.

[N. J. JAMADAR, J.]