IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 3374 OF 2024

Nitten Laxmanrao Chavan ...Applicant

Versus

The State of Maharashtra ...Respondent

AND

ANTICIPATORY BAIL APPLICATION NO. 3381 OF 2024

Sarfaraj Ahmed Ulfatali Shaikh ...Applicant

Versus

The State of Maharashtra ...Respondent

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- Mr. Siddharth N. Sutaria i/b Suyash N. Khose, for Applicant in ABA/3374/2024.
- Mr. Nitin Gaware Patil a/w Mr. Vikrant Kadam and Mr. Yogesh Aher i/b Mr. Narayan Rokade, for the Applicant in ABA/3381/2024.
- Mr. Mayur S. Sonavane, APP for Respondent.
- Mr. Omkar Nevgi, for Intervenor / First Informant.
- Mr. Nitin Gite, PI, Mahalunge MIDC Police Station, present.

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CORAM : MANISH PITALE, J.
DATE : 13th DECEMBER, 2024.

P. C. :

1. Heard learned counsel for the applicants, the learned APP for respondent – State and the learned counsel having instructions to appear on behalf of the first informant, who proposes to file an intervention application in the present case.

2. Considering the technical nature of the allegations made in the present case, the learned counsel for the first informant submitted that time

may be granted to place on record documents, to explain the details of the *modus operandi* undertaken by the applicants herein, to cause substantial loss to the informant – Company. But, the learned counsel for the applicants submitted that if in the meanwhile if the applicants are arrested, the application would be rendered infructuous and on that ground the learned counsel for the applicants pressed for interim relief.

3. The applicants are apprehending arrest in connection with First Information Report No.0765 of 2024, dated 08th November, 2024, registered at Police Station Mahalunge MIDC, District Pimpri-Chinchwad, for offences under Sections 316(4), 61(2) of the Bharatiya Nyaya Sanhita, 2023 (BNS) and Sections 66, 66(B) and 72A of Information Technology Act, 2000.

4. The informant in the present case is the manager of a private company and the allegations against the named accused persons is that one of them, being an ex-employee i.e. the applicant in Anticipatory Bail Application No.3381 of 2024 Sarfaraj Ahmed Ulfatali Shaikh, in connivance with the some unknown employees of the said company, stole confidential information pertaining to vendors / suppliers of the company. It is claimed that upon stealing such confidential information, the accused persons assisted such suppliers to raise amended invoices pertaining to supply made to the company even for periods upto 3 years in the past. By raising such amended invoices

and payments being made by the company, financial loss was suffered. It is further stated that by indulging in such illegal activity, the proprietorship of the said applicant is taking 30% amount towards consultancy /commission from such suppliers, thereby showing the complicity and criminality of the accused persons.

5. The learned counsel for the applicant in Anticipatory Bail Application No.3381 of 2024, submitted that the Sessions Court had initially granted interim relief on 19th November, 2024, in favour of the said applicant, but eventually his application was dismissed on 28th November, 2024. It is the case of the applicant that during the pendency of the application and the operation of the interim order, the said applicant had reached out to the Investigating Officer by an e-mail showing willingness to cooperate with the investigation, to produce all necessary documents and with an undertaking to submit his laptop, so as to assist in the investigation. It is submitted that instead of calling for such documents and the laptop, the anticipatory bail application was opposed and eventually it was dismissed by the aforesaid order. The record also shows that the anticipatory bail application of the applicant in Anticipatory Bail Application No.3374 of 2024 Nitten Laxmanrao Chavan, was also dismissed on 28th November, 2024.

6. The learned counsel for the applicants submit that in the present

case, serious offence under Section 316(4) of the BNS, cannot be invoked as against the applicants, for the reason that they are not employees of the informant – company. It is submitted that in the present case, the information available on the portal called M-Setu of the company itself was utilized when services of the applicants were engaged by the suppliers, in order to assist them in calculating and raising amended invoices for supplies made to the company. It is submitted that the allegation of stealing confidential information in connivance with some unknown officials of the private company is farfetched and this is obvious from the fact that the company itself paid the suppliers as per amended invoices raised by them. The charging of consultancy fees from the suppliers in these circumstances cannot be said to be giving rise to any criminality or illegality on the part of the applicants.

7. Apart from this, the learned counsel appearing for the applicant in Anticipatory Bail Application No.3381 of 2024, submitted that the applicants were ill-treated by the police during the course of preliminary enquiry conducted with respect to the grievance raised by the said company. In this connection, attention of this Court was invited to a specific letter / complaint sent by the said applicant to the Commissioner of Police, Pimpri-Chinchwad, for the highhanded manner in which the Deputy Commissioner of Police (DCP) and the Investigating Officer had harassed and ill-treated the applicants, including physically beating up one of the applicants. In this

connection, Criminal Writ Petition (Stamp) No.21987 of 2024 was filed, which is pending. The learned counsel for the applicant invited attention of this Court to order dated 24th October, 2024, passed by the Division Bench of this Court, recording the statement made by the Additional Public Prosecutor for the respondent – State that Commissioner of Police, Pimpri-Chinchwad had initiated enquiry into the allegations levelled by the applicants against the DCP and the Investigating Officer. It is submitted that thereafter, the subject FIR dated 08th November, 2024, came to be registered and therefore, it can be said to be malicious.

8. It was submitted that both the applicants are ready to cooperate with the investigation, including producing documents, laptops etc., and therefore, this Court may consider granting interim relief, even if the intervenor is to be granted time to place documents on record.

9. The learned APP, on the other hand, submitted that the allegations made in the statement of the informant, leading to registration of the FIR, sufficiently make out the ingredients of the offences. It was submitted that since the investigation is still at a nascent stage, this Court may not grant protection to the applicants, as effective investigation would be hampered.

10. The learned counsel appearing for the first informant submitted

that if sufficient time is granted, documents can be placed on record to indicate as to the manner in which the applicant had connived with unknown employees of the company to steal confidential information / data, thereby indicating ingredients of the offences registered in the present case.

11. Having heard the learned counsel for the parties, this Court is of the opinion that if time is to be granted to the State and the first informant to place on record affidavits/documents, the question of interim relief has to be considered, for the reason that in the absence of interim relief and mere pendency of the applications, the applicants may be arrested thereby rendering applications infructuous.

12. Having heard the rival submissions and upon perusal of the documents brought to the notice of this Court, this Court is inclined to grant interim relief to the applicants, for the following reasons:

(i) The offence under Section 316(4) of the BNS pertains to criminal breach of trust committed by a clerk, servant or a person employed as a clerk or servant, who commits criminal breach of trust. In the present case, even as per the statement of the informant, the applicants herein are neither clerk nor servant and they are certainly not employed with the informant-company. Thus, on face of it, the basic ingredients of the offence under Section 316(4) of the BNS, do not exist as against the applicants. The fact that the applicant in Anticipatory Bail Application No.3381 of 2024 was a former employee cannot be a ground to invoke Section 316(4) of the BNS.

(ii) In this context, the Sessions Court had held against the applicants primarily on the ground that the allegation is that they have connived with unknown employees of the informant – company to steal confidential information / data, thereby showing that they can be said to be conspirators in the context of the offence under Section 316(4) of BNS. On a specific query put to the learned APP as regards the information that has become available through investigation with regard to "unknown employees" of the informant – company, this Court is informed that till date no such employee of the company has been identified, who allegedly connived with the applicants.

(iii) The documents presently brought to the notice of this Court, including screen shots of information accessible to suppliers on M-Setu portal of the private company, *prima facie* give an impression that insofar as such suppliers are concerned, once they log in into the said portal, they have access to all the information with regard to the supplies made by them to the aforesaid company, from the very beginning of their relationship with the company. If that be so, the applicants utilizing such information with the consent of such suppliers for assisting them to raise amended invoices does not indicate any angle of confidential information being stolen by the applicants.

(iv) It is not even the case of the informant – company that although payments on the basis of such amended invoices were not payable, some unknown employees of the informant – company connived with the applicants to disburse such payments illegally to the suppliers.

(v) The order of the Division Bench dated 24th November, 2024, in the backdrop of a specific complaint dated 14th October, 2024, submitted by the applicants before the Commissioner of Police, Pimpri-Chinchwad, does give an impression to this Court that it was after the applicants started pursuing specific grievances against the DCP and the Investigating Officer, that the FIR dated 08th November, 2024, came to be registered. Till such a complaint was made which, in a sense, led to the order dated 24th October, 2024, passed by the Division Bench of this Court, the FIR was not even registered. This is a factor required to be taken into consideration.

(vi) The e-mail date 23rd October, 2024, sent by the applicant in Anticipatory Bail Application No.3381 of 2024, to the Investigating Officer clearly shows that he had offered to cooperate with the investigation, to remain present with all documents, including invoices in the office of the DCP also to submit his laptop and other electronic devices for investigation. This indicates that the applicants are ready to cooperate with the investigation.

13. In view of the aforesaid reasons, there shall be interim order in the following terms:

(A) Till the next date, in the event the applicant – Nitten Laxmanrao Chavan in Anticipatory Bail Application No.3374 of 2024 and applicant – Sarfaraj Ahmed Ulfatali Shaikh in Anticipatory Bail Application No.3381 of 2024, are arrested in connection with FIR No.0765 of 2024, dated 08th November, 2024, registered at Police Station Mahalunge MIDC, District Pimpri-Chinchwad, they shall be released on bail on furnishing PR Bonds of ₹ 25,000/- each with one or two sureties each in the like amount, to the satisfaction of the Trial Court.

(B) The applicants shall remain present before the Investigating Officer on 16th December, 2024, between 10:00 a.m. and 12:00 noon and thereafter as and when required by the Investigating Officer.

(C) The applicants shall co-operate with the investigation.

(D) The applicants shall not influence the informant, witness or any person concerned with the case and they shall not tamper with the evidence.

14. Needless to say, violation of any of the aforesaid conditions may result in this order being cancelled.

15. List for further consideration on **20th January, 2025, "High on Board."**

(MANISH PITALE, J.)