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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ BAIL APPLN. 2428/2024, CRL.M.A.20454/2024

AJIT ABRAHAM ALEXANDER .....Petitioner

Through: Mr. Tanveer Ahmed Mir, Mohd. Shahrukh Ali, Ms. Anushka Khaitan and Mr. Avineesh Jha, Advocates.

versus

THE STATE GOVT. OF NCT DELHI .....Respondent

Through: Mr. Amit Ahlawat, APP for the State with SI Atul Yadav, SHO/Inspector Kuldeep Singh, PS Cyber SED.
Mr. Vijay Aggarwal, Mr. Mukul Malik, Mr. Rachit Bansal and Mr. Kshitiz Garg, Advocates for complainant.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

<u>O R D E R</u>

% **16.07.2024**

1. A Bail Application under Section 438 Cr.P.C has been filed on behalf of the petitioner seeking Anticipatory Bail in respect of FIR No.42/2024 dated 24.05.2024 registered at Cyber Police Station, South-East under Section 406/411 IPC and Section 43 of IT Act, 2000.

2. It is submitted that the petitioner/accused Ajit Abraham Alexander a highly educated Global professional, was employed as Chief Growth Officer by M/s BLS/the Complainant Company vide Appointment Letter dated 10.07.2021 and he started working in the concerned Department of the Complainant's Company. The petitioner in order to enable and facilitate

himself to work from home, emailed relevant documents pertaining to the Project that the petitioner was working on, using his office ID to his personal ID which he could access from his residence. It is submitted that this practice was followed not just by the petitioner but by other employees also working in the Complainant's Company.

3. On 23.12.2023, the petitioner received an offer letter from M/s Atlys to join as its Head Business to Government. Due to the petitioner's ongoing commitments with M/s BLS, he did not accept the offer of M/s Atlys immediately, and joined the Company as a Consultant and was duly remunerated for the same. It is submitted that the petitioner was not involved in any manner in any of the Projects/Tenders wherein M/s BLS competed with M/s Atlys. The petitioner tendered his resignation to M/s BLS on 09.05.2024 by sending an email and thereafter, took necessary steps to get onboard as a full time employee of M/s Atlys.

4. Thereafter, the petitioner came to know that M/s BLS, the complainant filed a Complaint against him on 13.05.2024 on the grounds that the petitioner had shared confidential price-sensitive information with M/s Atlys by mailing certain work documents from his Office ID to his personal ID and that the petitioner had forged authorization in order to gain access to classified information.

5. On 15.05.2024, the petitioner was called upon by the Police of Police Station Badarpur to participate in the Preliminary Enquiry and was also asked to bring his laptop and sim card belonging to the complainant Company. On 16.05.2024, the petitioner participated in the preliminary inquiry and handed over the official Laptop and sim card to the Police. Despite fully cooperating with the preliminary enquiry, FIR No.42/2024 was

registered by the PS Cyber Police Station, South East on 24.05.2024.

6. On the apprehension of arrest by the Police, the petitioner filed an application for grant of Aniticipatory Bail before learned ASJ (FTC), South-East District, Saket Courts. Vide Interim Order dated 07.06.2024 the learned ASJ (FTC) directed the petitioner to join the investigations as per the instructions of the I.O and the Police was also directed not to take coercive action against the petitioner.

7. On 10.07.2024 the learned District & Sessions Judge (South-East), Saket Courts dismissed the application seeking anticipatory bail by the petitioner. The petitioner has thus, filed the present application for grant of Anticipatory bail.

8. **Learned counsel for the petitioner** has submitted that the only allegations made against the petitioner are of theft of Company data, but even the prima facie allegations are not sustainable. Essentially, the allegations of the prosecution are that the petitioner is not joining investigations and has failed to hand over his Laptop, however, he had joined the investigation on 16.05.2024 and handed over his Laptop, Sim card and Mobile Phone. He was thereafter, served with a Notice under Section 91 Cr.P.C on 12.06.2024 to which he gave his detailed reply in writing giving information about all the queries that were put to him. He also surrendered his Laptop and the Mobile Phone to Inspector Kuldeep Singh in the presence of SI Manjoor Alam who seized it vide Memo dated 19.06.2024.

9. The only claim of the prosecution is that they need the Laptop and the Mobile Phone to ascertain whether any Data was indeed transferred. However, the Laptop has already been handed over and there is nothing

more to be handed over by the petitioner. It is further argued that according to the prosecution it is a case of data theft, which was essentially effected by the petitioner through the emails. All the details of the emails of the petitioner have already been given in writing and the passwords have also been disclosed for the I.O to conduct a thorough investigations. Furthermore, there are no prima facie case of 406 and 409 of IPC is made out against the petitioner.

10. Realizing that they have no case against the petitioner, the complainant has made specious allegations of fake hotel bills of 2022 having been submitted by the petitioner while the petitioner was in the employment of the Company. It is stated that there is no custodial interrogation of the petitioner required. The Laptops and the Mobile Phone and the requisite data has already been made available to the I.O. The petitioner has, therefore sought Anticipatory Bail.

11. Learned counsel for petitioner has relied upon the judgment of *Thomas Klaus Eschner vs. The State of Maharashtra and Anr.* Anticipatory Bail Appl.No.3270 of 2023 decided by High Court of Judicator at Bombay decided on 01.07.2024 to argue that in the similar facts of data theft by an employee, it was observed by the Bombay High Court that the implication of the petitioner for the offence punishable under Section 408 IPC appeared contestable as the applicant cannot be said to be entrusted with data since he had parted ways with the Company much prior to the date when the dispute arose between the members of the family owning the Company. In a situation of this nature, whether there were elements of deceit coupled with injury so as to constitute an offence of cheating under Section 420 qua the petitioner also appears debatable.

12. The learned counsel for the petitioner aside from various other judgments had also relied upon the judgment of *Sushila Aggarwal and Ors. Vs. State (NCT) of Delhi and Anr*. (2020)5 SCC 1 , wherein a reference was made to the judgment of *Gurbaksh Singh Sibbia vs. State of Punjab* (1980) 2 SCC 565, wherein the Apex Court had observed that when a person complains of apprehension of arrest and approaches the Courts, the application should be based on concrete facts and not vague and general allegations relatable to one or other specific offence. The Application seeking Anticipatory Bail should contain essential facts relating to the offence and why the applicant reasonably apprehends arrest as well his side of the story. It was also observed that even while considering limited interim anticipatory bail application, it is advisable for the Court depending upon the seriousness of the threat (of arrest), to issue Notice to the Public Prosecutor and obtain facts. Further, an order of Anticipatory bail does not in any manner restrict or limit the right or the duties of the police to investigate into the charges against a person, who seeks and is granted pre-arrest bail.

13. **Learned Prosecutor on behalf of the State** has argued that there is recovery of laptop and other material to be effected from the petitioner, in order to establish the data theft. The petitioner has not been cooperative during investigations and has been evasive in his endeavours. There are serious allegations of forgery, data theft and of breach of trust and of unauthorized access to the date of the Company for which custodial interrogation is imperative and the petitioner cannot be granted Anticipatory Bail.

14. **Learned counsel for the Complainant has vehemently argued** that

there are serious allegations of breach of the trust punishable under Section 406 and 409 IPC. The petitioner while being in the employment of the complainant Company has taken the appointment in another Company namely M/s Atlys surreptitiously without disclosing this fact to the complainant Company. There was serious data in regard to Tenders to which the petitioner had an access and has been transferred from office ID to personal ID and has been probably disclosed to the subsequent employer leading to serious financial loss to the complainant Company. There were malafides on the part of the petitioner that he has worked under a scheme of things, is evident from the fact that once he had taken up a job with another Company, there was no reason for him to not disclose this fact for three months to the complainant Company. The only inference that can be drawn is that he had a mala fide intent to transfer the data which is the *"life line"* of the complainant Company, to the subsequent employer and thereby cause loss to the complainant Company.

15. It is also vehemently argued that the petitioner was getting Rs.7 lakhs per annum in this Company but has joined the subsequent Company on a substantial increase of salary of Rs.17 lakhs per annum which is more than the double of his earlier salary. The very fact that he has joined on double the salary, can only lead to the inference that he has suddenly become of immense use to his subsequent employer and that can be only because of all the data of the complainant Company which has been stolen, has been made available to the subsequent Company.

16. Learned counsel for the Complainant has relied upon the Judgment of *Ramandeep Singh @ Ramandeep Singh Aulakh & Anr. Vs. State of Punjab* Crl. Misc.29553 and 30630 of 2020 decided on 17.03.2021 wherein it was

observed that "*where cyber crime is involved and the complainant accuses its former manager of stealing its software data a and a case is registered under I.T Act, anticipatory bail ought not be allowed*". Reliance has also been placed on State (NCT of Delhi) vs. Sanjay (2014) 9 SCC 772, wherein the Apex Court observed that "*In contravention of terms and conditions of lease by dishonestly removing the property of the State, out of the State's possession without the consent, constitute an offence of theft*".

17. Learned counsel for the complainant has vehemently submitted that the judgment of *Thomas Klaus Eschner* (Supra) relied upon by the petitioner is totally misplaced in so much as in the said case the dispute had arisen about transfer of data after the accused had left the job, while in the present case the data theft has happened when the petitioner was in the active employment of the complainant Company.

18. **Submissions heard**.

19. In today's era of digital world, where all the data of a Compnay is essentially stored digitally, its theft by its employees has become extremely easy because of its ease of access and transferability. Here are serious allegations made against the complainant that while he was in the employment of the Complainant Company and had access to the entire Company data, had surreptitiously transferred it with the sole objective of transferring it to his subsequent employer and thereby caused huge loss to the Complainant Company. Prima facie it is also evident that he has gained unlawfully in getting the next employment on more than double the salary without showing his expertise which entailed such a huge jump.

20. Prima facie, as has been argued on behalf of the State these circumstances lead to the inference of there being a huge data transfer of the

Complainant Company to the prospective employer. Furthermore, it is stated that the detailed further enquiry is required to establish how the Tender information which is of extreme value to the Complainant Company, has been passed on to the other Company is much to the detriment of the Complainant Company.

21. Considering the amorphous nature of the investigations which required specialized techniques of investigation and considering the surrounding circumstances, as discussed above, it is not a fit case for grant of Anticipatory Bail.

22. The application is hereby dismissed.

NEENA BANSAL KRISHNA, J

JULY 16, 2024
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