

Thomas Klaus Eschner vs State Of Maharashtra on 1 July, 2024

Author: N. J. Jamadar

Bench: N. J. Jamadar

2024:BHC-AS:25677

ABA-3270-2023@.DOC

Sant

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 3270 OF 2023
WITH
INTERIM APPLICATION NO. 4516 OF 2023

Thomas Klaus Eschner ...Applicant
Versus
The State of Maharashtra and anr. ...Respondents

Mr. Abad Ponda, a/w Chandansingh Shekhawat, Ameya
Gorhe, Tanmay Gire, i/b Parinam Law Asso., for the
Applicant.

Mr. A. A. Naik, APP for the State/Respondent No.1.

Mr. Abhay Nevagi, a/w Ankit Kulkarni, i/b Abhay Nevagi &
Asso., for the first informant/Respondent No.2.

CORAM: N. J. JAMADAR, J.
Reserved On: 24th June, 2024
Pronounced On: 1st JULY, 2024

ORDER:

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1. This is an application for pre-arrest bail in connection with CR No.494 of 2019, registered with Paud Police Station, Pune Rural, for the offences punishable under Sections 407 and 420 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code") and Sections 43 and 66 of the Information Technology Act, 2000.

2. On 11th December, 2023, this Court was persuaded to grant interim bail to the applicant as it was then submitted ABA-3270-2023@.DOC on behalf of the applicant that the co-accused were granted pre-arrest bail by an order dated 30th December, 2021.

3. The first informant has filed an intervention application being IA/4516/2023 resisting the prayer for pre-arrest bail. An affidavit-in-reply has also been filed.

4. I have heard Mr. Ponda, the learned Senior Advocate for the applicant, Mr. Naik, the learned APP for the State and Mr. Nevagi, the learned Counsel for the first informant, at some length.

5. The indictment against the applicant and the co-accused can be stated in brief as under:

(a) Artur Schade Steel Products India Pvt. Ltd., Pirangut, ("Schade Steel"), is a German company. The said company is engaged in the business of manufacturing and supplying steel spare parts required for construction equipments and cranes. It commenced its operation in India in the year 2010. Artur Schade GMBH and M/s. Klaus Union India Pvt. Ltd. ("M/s. Klaus") were holding 50% share capital of the said company. The applicant was associated with M/s.

Klaus. The applicant and Mr. Sorn Schade were the Directors of the said Schade Steel. Manojkumar Mohite (A1) was ABA-3270-2023@.DOC appointed as a Managing Director of the said company on 1 st October, 2014.

6. In the year 2016, M/s. Klaus sold its 50% shareholding in Schade Steel to Artur Schade Beteiligungs GMBH. A dispute arose between Sorn Schade (A2) and his father Mr. Artur Schade. On 23rd September, 2017 Mr. Artur Schade was appointed as a Director of Schade Steel. In the month of January, 2018, Sorn Schade (A2) resigned from the directorship of Schade Steel. Thereupon Sorn's brother Sven Schade came to be appointed as a Director.

7. Mr. Sven Schade started to manage the affairs of Schade Steel. In the year 2019, it is alleged that, Sven Schade suspected foul play by Manojkumar Mohite (A1). Inquiries revealed that Manojkumar Mohite (A1) had 7.5% share in Schutte Meyer Technoforge Pvt. Ltd., Rajkot ("Schutte Meyer, Rajkot"), a rival company. Another German company ES Holdings GMBH had a 50% shareholding in Schutte Meyer, Rajkot. It further transpired that the applicant and Mr. Sorn were the Directors of ES Holdings. The Directors of Advance Technoforge, the principal forging material supplier of Schade Steel, were also stated to have holdings in Schutte Meyer, Rajkot.

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8. On 10th June, 2019 Manojkumar Mohite (A1) was confronted by Mr. Sven. The latter made a farce of lodging a false report with Paud Police Station about the alleged wrongful disclosure that Manoj Mohite (A1) had 7.5% share holdings in Schutte Meyer, Rajkot. The said report was later withdrawn. Thus on 18th June, 2019, Manojkumar Mohite (A1) was removed from Schade Steel. Thereafter, Schade Steel took back the laptop, HP light Book 840 4G Vodafone sim card and a Mercedes car from Manojkumar Mohite (A1).

9. Upon inspection of the laptop, it transpired that Manojkumar Mohite (A1) had forwarded confidential information pertaining to Schade Steel, like customer data, orders placed by customers,

rate card and organizational information, to the applicant and co-accused Sorn Schade (A2), Nilesh Patel (A4), Anand Deshpande (A5) and Victor Blanck. Enquiries revealed that the said information was shared with a dishonest intention to cause wrongful loss to Schade Steel and wrongful gain to Schutte Meyer, Rajkot and thereby the Schade Steel was defrauded to the tune of Rs.5 Crore. Hence, Mr. Sachin Patil, Head of IT, HR, Schade Steel lodged report on 30th November, 2019.

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10. Mr. Ponda, the learned Senior Advocate for the applicant, submitted that the applicant had no connection with Schade Steel when the alleged data theft occurred. Even if the prosecution case is taken at par, the offences punishable under Sections 408 and 420 of the Penal code cannot be said to have been prima facie made out qua the applicant. At best, the prosecution case is that the applicant is one of the recipients of the e-mails forwarded by Manojkumar Mohite (A1). There is no material to indicate that the applicant had dishonestly used the said information allegedly shared by Manojkumar Mohite (A1) and caused wrongful loss to Schade Steel or wrongful gain to Schutte Meyer, Rajkot. The latter Company had not carried out any business with the clients or customers of Schade Steel. It was urged that the role attributed to Mr. Anand Deshpande (A5) and Mr. Nilesh Patel (A4), who had been granted pre- arrest bail, cannot be said to be materially distinct from that of the applicant. Therefore, at this length of time, the custodial interrogation of the applicant is not warranted.

11. Mr. Ponda further submitted that in the backdrop of the nature of the allegations at best an offence punishable under Section 66 of the Information Technology Act can be said to ABA-3270-2023@.DOC have been made out. In that event, the prosecution of the applicant for the offences punishable under Sections 408 and 420 of the Penal Code cannot be sustained. Mr. Ponda made an endeavour to urge that though a Full Bench this Court in the case of Awadeshkumar Parasnath Pathak vs. The State of Maharashtra and another¹ and connected matters, has not approved the decision of a Division Bench of this Court in the case of Gagan Harsh Sharma Vs. State of Maharashtra and ors.², yet, the controversy would be covered by the decision of the Supreme Court in the case of Ram Nath vs. State of Uttar Pradesh and others³, wherein the Supreme Court has held that the overriding effect given by the Special Act would prevail over general penal provisions contained in the Penal Code and thus by virtue of Section 89 of the Food Safety and Standards Act, 2006, Section 59 of the said Act will override the provisions of Sections 272 and 273 of the Penal Code and, therefore, there would not be any question of simultaneous prosecution under both the statutes. On this touchstone, according to Mr. Ponda, the prosecution of the accused for the offences punishable under Sections 408 and 420 of the Penal Code cannot be sustained.

¹ Cri.Application No.2562/2019, dtd.26.2020. ² (2019) Cri.L.J. 1398.

³ (2024) 2 SCR 743 2024 INSC 138.

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12. Mr. Naik, the learned APP, resisted the prayer for pre- arrest bail. It was submitted that the applicant is a German national. The applicant has not co-operated during the course of investigation, in as much as the applicant did not appear before the investigating officer beyond the two days on which he was directed to appear before the investigating officer by this Court. Electronic devices are yet to be recovered.

13. Mr. Nevagi, the learned Counsel for the first informant, supplemented the submissions of the learned APP. It was urged that the laptop, which was used by the applicant while committing the offences in question is yet to be recovered. Taking the Court through the reasons which weighed with the learned Additional Sessions Judge in rejecting the prayer for pre-arrest bail, Mr. Nevagi would urge that effective investigation will not be possible until the applicant is subjected to interrogation. Therefore, the applicant does not deserve to be enlarged on bail.

14. At the outset, it must be noted that in the facts of the case at hand, it would be unwarranted to delve into the question as to whether the decision of the Supreme Court in the case of Ram Nath (supra) affects the precedential value of ABA-3270-2023@.DOC the Full Bench judgment in the case of Avdeshkumar Pathak (supra). It is not the case that it was the applicant who had transferred any data from Schade Steel. The applicant is alleged to be one of the recipients of the data allegedly forwarded by Manojkumar Mohite (A1) dishonestly. It is in the backdrop of the aforesaid core allegation, the entitlement of the applicant for pre-arrest bail is required to be considered.

15. Mr. Nevagi made an endeavour to urge that the order granting bail to the co-accused does not advance the cause of the applicant as this Court had specifically observed that the allegations in the FIR were primarily against Manojkumar Mohite (A1). Sorn Schade (A2) and the applicant (A3). In contrast there were no allegations against Anand Deshpande (A5) and Nilesh Patel (A4), who were ordered to be released on bail. The learned Additional Sessions Judge also laid emphasise on the aforesaid observations to decline to exercise discretion in favour of the applicant.

16. In my considered view, it would not be appropriate to determine the entitlement of the applicant for pre-arrest bail on the basis of the aforesaid observations in the order dated 30th October, 2021. Instead, the role attributed to the applicant in the FIR deserves to be carefully examined.

ABA-3270-2023@.DOC Primarily the allegations of dishonestly transmitting the data of Schade Steel were made against Manojkumar Mohite (A1). Manojkumar Mohite (A1) had allegedly shared the said data with applicant, Sorn Schade (A2), Anand Deshpande (A5) and Nilesh Patel (A4). Prima facie, it would be difficult to draw a qualitative distinction between the role of the applicant and the co-accused, who have been granted pre-arrest bail, as all of them were allegedly recipients of the data dishonestly transmitted by Manojkumar Mohite (A1).

17. The genesis of the offences also deserves to be kept in view. The dispute amongst the members of the Schade family based in Germany is the genesis of the alleged offences. Allegations of data theft are required to be viewed through this prism.

18. Mr. Nevagi invited the attention of the Court to a purported Minutes of Meeting of the Joint Venture between the applicant and Sorn Schade (A2), wherein there is a reference to the proposed planned hostile take over of Schade Steel. It was urged that the applicant was privy to the conspiracy to take over Schade Steel and transmission of data with a view to cause wrongful loss to Schade Steel. The mere fact that the applicant joined hands with Sorn Schade ABA-3270-2023@.DOC after there was a dispute among the members of the Schade family, by itself, is not sufficient to draw an inference of criminality. Whether there was an attempt to take over Schade Steel by unlawful means and was there an element of criminality in the said endeavour, would be matters for adjudication.

19. Prima facie, the implication of the applicant for the offence punishable under section 408 appears contestable, as the applicant cannot be said to be entrusted with data since the applicant had parted ways with Schade Steel much before the dispute arose between the members of the Schade family. In a situation of this nature, whether there are elements of deceit coupled with injury so as to constitute an offence of cheating punishable under Section 420 of the Penal Code, qua the applicant also appears debatable. At any rate, the offences under Sections 408 and 420 entail punishment which may extend to seven years imprisonment.

20. In any event, having regard to the role attributed to the applicant, at this length of time, the custodial interrogation of the applicant does not seem warranted to facilitate effective investigation. Yet to take care of the submission of the learned APP that the applicant has not co-operated with the ABA-3270-2023@.DOC investigation, as expected, I deem it appropriate to direct that the applicant shall appear before the Investigating Officer on two consecutive days upon three weeks advance notice.

21. Hence the following order:

:ORDER:

- (i) Application stands allowed.
- (ii) Order of interim bail dated 11th December, 2023 is
made absolute on the terms and conditions
incorporated therein.

- (iii) In addition, the applicant shall appear before the

Investigating Officer on two consecutive days between 10.00 a.m. to 2.00 p.m. upon three weeks advance notice to be served by e-mail.

- (iv) The applicant shall furnish his e-mail and phone number to the Investigating Officer within a week from the date of this order.

(v) In view of disposal of ABA/3270/2023, IA/4516/2023 also stands disposed.

[N. J. JAMADAR, J.]