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## **CASE COMMENT: PIYUSH SUBHASHBHAI RANIPA V. THE STATE OF MAHARASHTRA**

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### **Brief Introduction**

Citation - MANU/MH/0593/2021, 2021(4) Bom CR(Cri)509

Appellant- Piyush Subhashbhai Ranipa

Respondent- The State of Maharashtra

Counsel –

- for Appellant – Mandar Soman
- For Respondent- Ajay Patil
- Amicus Curiae- Aniket Nikam

Date of Judgement- 26.02.2021

Court – The High Court of Bombay

Relevant Legal Provisions –

- Copyright Act, 1957- Section 63
- Trademarks Act, 1999- Section 103
- Code of Criminal Procedure- Section 2(a)

Issue Dealt - whether offences under the Trademarks Act, 1999 and the Copyright Act, 1957, are bailable offences or not and whether the words "may extend to three years" in the Trade

Marks Act and the Copyright Act have the same legal significance as the words "three years and upwards" in the Code of Criminal Procedure is the central question that has to be answered.

Judgement- No relief of anticipatory bail can be granted - Application dismissed.”

## Introduction

The present deals with the serious issue of whether bail can be granted to the accused against whom contentions are made for copyright and trademark infringement. The punishment under ‘Section 63 of the Copyright Act, 1957<sup>1</sup>’ and ‘Section 103 of the Trademarks Act, 1999<sup>2</sup>’ for infringement of Copyright & Trademarks and punishment include “*imprisonment for a term which shall not be less than six months but may extend to three years*”. ‘Section 2(a) of CrPC’, 1973<sup>3</sup>, defined ‘Bailable Offences’ as “*an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and “non-bailable offence” means any other offence*”. In other words, bailable offences are offences under which bail can be claimed as the right of the accused and under non-bailable offences, it is the court’s discretion whether to grant bail or not, or it's not the right.

### CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS

Offence	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
If punishable with death, imprisonment for life, or imprisonment for more than 7 years.	Cognizable	Non-bailable	Court of Session.
If punishable with imprisonment for 3 years and upwards but not more than 7 years.	Cognizable	Non-bailable	Magistrate of the first class.
If punishable with imprisonment for less than 3 years or with fine only.	Non-cognizable	Bailable	Any Magistrate.

<sup>1</sup> ‘Copyright Act, 1957’, No. 14 of 1957, § 63 (India).

<sup>2</sup> Trademarks Act, 1999, No. 47 of 1999, § 103 (India).

<sup>3</sup> Code of Criminal Procedure, 1973, No. 2 of 1974, § 2(a) (India).

The list of bailable offences is provided under Part II of Schedule I of the CrPC, 1973, other than under the Indian Penal Code, 1860. As mentioned in Part II of Schedule I, offences that are punishable with less than three years of imprisonment or only with a fine are bailable and non-cognizable.’

The main aim of this case comment is to analyse the case and the reasoning behind the judgement given by the Bombay High Court in determining the judgement. In the current case, the appellant is accused of infringement of Intellectual property and applied to the Bombay High Court for anticipatory Bail, which was denied. The decision was based on the interpretation of the Copyright Act and Trademarks Act with the Criminal Code of Procedure.

### **Brief Facts**

A company, “Jain Irrigation System”, received complaints alleging that inferior products were being sold under its brand by the appellant company, Tera Flow Pipes. The zonal manager of the company found the products, the fake goods, on a truck with a fake Certificate of Manufacturing License and the label "Jain HDPE" on it. The company filed an FIR against the Accused or the appellant Piyush Subhashbhai Ranipa, Tera Flow Pipes CEO, under ‘Sections 418, 465, 482, 483, 485, 486, 488 read with Section 34 of the Indian Penal Code, Section 103 of the Trade Marks Act and Section 63 of the Copyright Act for infringing their registered trademark’ “Jain HDPE”. Following this, the appellant filed for anticipatory bail.

### **Issue Raised**

- i. Classification of Offences - Is Section 63 of the Copyright Act and Section 103 of the Trade Marks Act, 1999, bailable or non-bailable?<sup>4</sup>
- ii. Interpretation of Sections – ‘Whether the offence in which a sentence of imprisonment up to three years can be imposed falls within the third category of Part II of Schedule I of Cr.P.C. or within the second category of that Part.’<sup>5</sup>
- iii. Anticipatory Bail Eligibility - Whether the Applicant is liable to get the anticipatory

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<sup>4</sup> 2021(4) Bom CR (Cri) 509

<sup>5</sup> MANU/MH/0593/2021

bail?’<sup>6</sup>

### Precedents' Cases Relied Upon

- In *Ramrao Marotrao Budruk v. The State of Maharashtra*<sup>7</sup>, the Bombay High Court determined that offenses where the punishment "may extend to three years" are classified as non-bailable. The court emphasised that this classification hinges on the maximum penalty outlined in the law rather than the potential for a lesser sentence to be imposed. This principle was upheld in *State of Maharashtra v. Shri Suresh Ganpatrao Kenjale*<sup>8</sup>, where it was reiterated that any offence punishable by three years or more must be treated as non-bailable according to CrPC standards.
- Further reinforcing this stance, '*Mahesh Shivram Puthran v. The Commissioner of Police, Thane*'<sup>9</sup>, reiterated that offences with a maximum punishment of three years fall into the non-bailable category. The court's analysis highlighted that regardless of whether a lesser sentence might be appropriate, the possibility of a three-year term necessitates a non-bailable classification.
- In '*Nathu Ram S/o Purna Ram v. The State of Rajasthan*'<sup>10</sup>, this position was similarly affirmed, confirming that offences punishable with imprisonment up to three years are also non-bailable. This aligns with the broader interpretation adopted by various High Courts regarding offences under statutes other than the Indian Penal Code (IPC), such as those governed by specific acts like the Copyright Act and the Trade Marks Act.
- The case of '*Anant s/o. Tukaram Teke & Ors. Vs. The State of Maharashtra*' further exemplifies this trend, wherein the court's decision reflects a consistent judicial approach towards classifying offenses based on their maximum punishment thresholds. Collectively, these cases underscore a judicial consensus that emphasises strict adherence to statutory definitions when determining bail eligibility.

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<sup>6</sup> MANU/MH/0593/2021

<sup>7</sup> MANU/MH/0161/1994

<sup>8</sup> 1995(2)MHLJ65

<sup>9</sup> 2011 SCC OnLine Bom 389

<sup>10</sup> '*Criminal Miscellaneous (Petition) No. 5128 of 2019, order dated April 7, 2020*'.

## **Judgment**

The Bombay High Court dismissed the application for anticipatory bail, holding that offences under Section 63 of the Copyright Act, 1957 and Section 103 of the Trade Marks Act, 1999 are non-bailable. The Court observed that:

1. Interpretation of "may extend to three years": The phrase "may extend to three years" in both the Copyright Act and Trade Marks Act was interpreted to mean that the offence can attract a punishment of up to three years, classifying it as a non-bailable offence.

2. Cognizable and Non-bailable Offences: The Court held that offences under the Copyright Act and Trade Marks Act, being punishable by imprisonment that may extend up to three years, hence are non-bailable and cognizable offences.

3. No Anticipatory Bail: Given the non-bailable nature of the offence and the severity of the allegations against the appellant, the Court refused to grant anticipatory bail. The Court emphasised the need for custodial interrogation, particularly in light of the evidence against the appellant, which indicated active involvement in the manufacture and sale of counterfeit goods.

## **Analysis**

The decision in *Piyush Subhashbhai Ranipa vs The State of Maharashtra* provides an important precedent for intellectual property infringement cases. By 'classifying offences under the Copyright Act and Trade Marks Act as non-bailable', the Bombay High Court has reinforced the seriousness with which intellectual property violations are treated under Indian law. The ruling reflects the judiciary's commitment to upholding the rights of IP holders and deterring willful infringement through strict legal measures. The decision of the court was primarily based on a few arguments, which are the interpretation of 'may extend to three years' and 'Cognizable nature of Intellectual property offences.'

The Court explored the meaning of the phrase "may extend to three years" in both the Copyright Act and the Trademarks Act. This phrase has been a subject of debate in previous legal cases as it relates to determining 'whether an offence is bailable or non-bailable'. The classification of offences into bailable or non-bailable categories is based on the potential punishment as outlined in Part II of Schedule I of the Criminal Procedure Code (CrPC).

Offences with a maximum punishment of fewer than three years are generally considered bailable and non-cognizable, while those with a punishment of three years or more are usually non-bailable. In the present case, the Court referenced earlier decisions, such as 'Ramrao Marotrao Budruk v. The State of Maharashtra'<sup>11</sup> and 'Mahesh Shivram Puthran v. The Commissioner of Police, Thane'<sup>12</sup>, which established that offences punishable by imprisonment "up to three years" should be classified as non-bailable. These precedents have guided the interpretation of the "may extend to three years" phrase. The 'Bombay High Court', in its ruling, affirmed that since the potential punishment for the offences in question could reach three years, they should be categorised as non-bailable offences.

The court ruled that offences under the Copyright and Trademarks Acts are serious crimes that warrant immediate police action. These offences can result in imprisonment of up to three years, making them punishable without a warrant. This decision underscores the importance of protecting intellectual property in India.

The court further emphasized the importance of considering criminal intent (*mens rea*) in intellectual property cases. The presence of counterfeit goods bearing a famous brand's trademark indicated a deliberate attempt to deceive consumers. This fraudulent act justified the need for custodial interrogation. The court's decision underscores the gravity of intellectual property violations, treating them as serious criminal offences that require severe penalties.

The court's decision to classify copyright and trademark infringements as non-bailable reinforces the importance of protecting intellectual property rights in India. While this sends a clear message about the severity of these offences, it may also be criticised for being disproportionately harsh, especially in cases of minor or unintentional infringements. The refusal to grant anticipatory bail in such cases could lead to greater criminalisation of IP violations, potentially stifling creativity and discouraging legitimate criticism that may involve incidental IP infringement.

Furthermore, the inconsistency across Indian High Courts regarding the ability to get bail under these offences further complicates the matter. For instance, the 'Andhra Pradesh High Court in Amarnath Vyas v. the State of A.P.' held that offences under Section 63 of the Copyright Act

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<sup>11</sup> 1994 SCC OnLine Bom 407

<sup>12</sup> 2011 SCC OnLine Bom 389

are bailable. Similarly, the Delhi High Court in *State Govt. of NCT of Delhi v. Naresh Kumar Garg* took a divergent view, classifying the offence as bailable'. These conflicting interpretations indicate that the issue remains unsettled, and the matter may eventually need to be decided by the Supreme Court for final clarity.

### **International Provisions**

The TRIPS Agreement does not explicitly stipulate criminal liability for intellectual property infringement except in cases of counterfeiting or piracy. While the U.S. Trademark Law primarily provides for civil actions, the Trademark Counterfeiting Act of 1984 and the U.S. Copyright Act impose criminal penalties for intentional trafficking in counterfeit goods and copyright infringement, respectively. Similarly, the UK, Australia, Belgium, Finland, and Russia have provisions for criminal liability for intellectual property infringement, with varying terms of imprisonment.

### **Conclusion**

The case of *Piyush Subhashbhai Ranipa v. The State of Maharashtra* addresses critical questions regarding the nature of offences under the Copyright Act, 1957, and the Trade Marks Act, 1999, particularly concerning their classification as bailable or non-bailable offences. The Bombay High Court's ruling on February 26, 2021, emphasised the interpretation of legal provisions that dictate the conditions under which anticipatory bail can be granted.

In its judgment, the court underscored the seriousness of intellectual property violations. It denied the application for anticipatory bail based on the non-bailable classification of the offences and pieces of evidence against the appellant. This ruling not only reinforces stringent measures against intellectual property infringement but also highlights a judicial commitment to protecting creators' rights in India. The decision has significant implications for future cases involving similar allegations, establishing a precedent for how courts may interpret the application of bail in intellectual property-related offences.

This case sets a clear framework for understanding the implications of copyright and trademark infringement under current legal standards. The ruling serves as a reminder of the necessity for robust legal protections for intellectual property holders and reflects ongoing challenges in balancing enforcement with fair legal processes.

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