

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

ANTICIPATORY BAIL APPLICATION NO. 2097 OF 2018

Amit Khemchandbhai Patel

... Applicant

Vs.

State of Maharashtra

... Respondent

...

Mr. Madhusudan D. Parekh for the applicant.

Mr. Arfan Sait, APP for the Respondent-State.

Mr. Sandipan Shinde, Crime Branch Unit I is present.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 10th OCTOBER, 2018.

P.C.

1. This is an application for anticipatory bail in connection with CR No. I-184 of 2018 registered with Vashi Police Station for the offence under Sections 420, 465, 468 read with 34 of Indian Penal Code and Section 4(A), 5 of Bombay Prevention of Gambling Act read with 25(A) of Indian Telegram Act, 1985.
2. The case of the prosecution is that on 12th May, 2018, police received an information that some persons are engaged in gambling on Live IPL Cricket Match at 'Hotel Four Point" Sector 30, Vashi. In pursuant to the information, the police raided room No. 1918 of "Hotel Four Point". Accused Rakesh Kondre alongwith five others were arrested and seized all articles such as mobile phone, simcards, laptop and cash. The case of the prosecution is

that the applicant is involved in the said crime. The accused have transferred simcards in the name of third party by submitting bogus documents which were to be used in the alleged crime.

3. The applicant preferred an application for anticipatory bail before the Sessions Court which was rejected on 8th June, 2018. Thereafter, another bail application was preferred before the same Court, which was also rejected.

4. Learned counsel for the applicant submitted that the applicant is not concerned with the crime. He is being falsely implicated in the crime. The offence under Section 420 of Indian Penal Code is not made out against the applicant. There is no evidence against the applicant to show his involvement. The prosecution is relying on the statement of the co-accused which is not corroborated by any other evidence. On the basis of the statement of the co-accused, applicant cannot be subjected to a custody. It is submitted that the accused who were arrested at the spot were granted bail and on completing investigation the chargesheet has been filed against them. It is submitted that first application for anticipatory bail preferred by the applicant before the Sessions Court was rejected prior to the filing of chargesheet against the co-accused and the second application was preferred in

persuant to the filing of chargesheet. Investigation is over which is evident from the chargesheet filed against the arrested accused. There is no cogent evidence to link the applicant with the said crime. All other articles, documents are in possession of the investigating machinery. The custodial interrogation of the applicant is not necessary. Statement of the co-accused cannot be used against the applicant. It is not the case of the prosecution that the applicant was found in indulging the gambling act. It is thus prayed that applicant be granted anticipatory bail.

5. Learned APP vehemently opposed the application. It is submitted that applicant is the main person and the arrested accused were acting at his instance. The applicant kept on changing his address. During the course of investigation, the arrested accused who were acting at the instance of the applicant had disclosed the involvement of the applicant. It is submitted the statement of the co-accused and other material collected during the course of investigation shows involvement of applicant in crime. He further submitted that call records shows complicity of the applicant with the co-accused. Even on the date of raid there was conversation between the applicant and the arrested accused. Learned APP relied upon the CDR record. It is also submitted that

print out taken during investigation refers the name of the parties involved in this crime and effective investigation can be carried out in that regard only by subjecting to the applicant custodial interrogation.

6. I have gone through the First Information Report as well as the order passed by the Court rejecting the application for anticipatory bail. Co-accused were arrested on 12th May, 2018. First Information Report was registered on 13th May, 2018. At the time of arrest of accused, they were found gambling in the hotel room. Several articles including laptop and twenty seven mobiles phone were recovered by the police. According to the prosecution, during the course of investigation the complicity of the applicant was disclosed by the co-accused. The accused were purportedly indulging in gambling activities. Print out from the computer and laptop were seized which is incriminating evidence and therefore thorough investigation is required to be conducted. According to the prosecution, the applicant is the main persons and the arrested accused were acting at his behest. It is also pointed out that there was conversation between the applicant and the arrested accused on the date of raid. Applicant had preferred two applications for anticipatory bail before the Sessions Court. First application was

rejected on 8th June, 2018 and the second application was rejected on 5th October, 2018. It would be pertinent to note that chargesheet was filed against the arrested accused after their custodial interrogation.

7. Taking into the factual aspect as stated above and investigation conducted by the police, no case for grant of anticipatory bail is made out. Application stands disposed off.

(PRAKASH D. NAIK, J.)

Sachidanand
Kuttan Nair

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by Sachidanand
Kuttan Nair
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2018.10.20
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