

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

**ANTICIPATORY BAIL APPLICATION NO. 806 OF 2021
WITH
ANTICIPATORY BAIL APPLICATION NO. 807 OF 2021
ANTICIPATORY BAIL APPLICATION NO. 823 OF 2021
ANTICIPATORY BAIL APPLICATION NO. 824 OF 2021**

Shankar s/o. Paraji Lunge,
Age 50 years, Occ. Labour
R/o. Anandi Swami Galli, Gauri Mohalla,
Old Jalna. .. Applicant

versus

The State of Maharashtra .. Respondent

Mr. R.V. Gore, Advocate for the applicant.
Mr. S.B. Narwade, APP for the respondent.

CORAM : V.G. BISHT, J.

**DATE OF RESERVING ORDER : 10th August.2021.
DATE OF PRONOUNCING ORDER : 25th August, 2021.**

PER COURT:

1] These are applications under Section 438 of Cr.P.C. preferred by the same applicant seeking grant of pre-arrest bail in connection with Crime Nos.312/2021, 313/2021, 314/2021 and 315/2021 registered with Kadim Jalna Police Station, Tq. and Dist. Jalna for the offences punishable under Sections 12(A) of the Maharashtra Prevention of Gambling Act, 1887 (hereinafter “the Gambling Act” for brevity) and under Sections 3, 4(h), 7(1), 4(c) of the Lotteries (Regulation) Act, 1998 (hereinafter “the Lotteries Act”, for sake of brevity).

2] Police Constable Rameshwar Trymbak Raut, who, at the relevant time was posted at Police Station, Kadim Jalna, on 28.6.2021 received information from informant that a person, by taking monies from the public at a public place, is indulging in gambling by name – Kalyan Matka. Accordingly, he and other staff members raided the place and found accused Pandurang Vishnu Padol playing gaming by name Kalyan Matka and was also found giving chits to the public having numbers in respect of the said gaming. When enquired, the said accused revealed that he is indulging in Kalyan Matka at the instance of Shankar Paraji Lunge, i.e. present applicant. Accordingly, offence came to be registered against both of them.

3] Mr. Gore, learned counsel for the applicant, vehemently submitted that perusal of the FIR would make it very much clear that Sections 3, 4(c) and (h) of the Lotteries Act cannot be made applicable to the case in hand. According to learned counsel, at the most, Section 12 of the Gambling Act may be attracted, which is a bailable offence. Moreover, according to learned counsel, as everything has already been seized on the spot, custody of the applicant is not necessary.

4] Mr. Narwade, learned APP, on the other hand, invited my attention to the definition of “lottery” as given in the Lotteries Act, 1998 and would submit that since a printed booklet was seized on the spot, it cannot be said that provisions of the Lotteries Act are not applicable. Also, investigation is in progress and at this stage, it would be wrong to say that only the provisions of Gambling Act are applicable and not that of Lotteries Act. For all these reasons and considering the fact that total 26 offences have been registered against the applicant, the present application needs to be rejected out-rightly, argued learned APP.

5] Section 3 of the Gambling Act defines the term “gaming”, which includes wagering or betting except wagering or betting upon (a horse-race or dog race) but does not include a lottery (emphasis supplied). Section 12 of the Gambling Act empowers a Police Officer to arrest without warrant and any person so arrested shall, on conviction, maybe punished both with fine, which may extend to Rs. 300/- and with imprisonment which may extend to 3 months. Essentially, the offence under Section 12 is bailable.

6] Section 4 of the Lotteries Act, 1998 lays down the conditions subject to which lotteries may be organized. Section 4(c) provides that the State Government shall sell the tickets either itself or through distributors or selling agents. Section 4(h) provides that no lottery shall have more than one draw in a week.

7] Section 7 of the Lotteries Act, 1998 deals with penalty. Sub-section (3) of Section 7 reads as under :-

“7(1) xxxx

(2) xxxx

“(3) If any person acts as an agent or promoter or trader in any lottery organized, conducted or promoted in contravention of the provisions of this Act or sells, distributes or purchases the ticket of such lottery, he shall be punishable with rigorous imprisonment for a term which may extend to two years or with fine or with both.”

8] The learned APP, during the course of arguments, has submitted that the applicant is not appointed as a selling agent of lottery

and it is not even his case within the meaning of section 4(c) of the Lotteries Act. The learned APP may be reminded here at once, that the applicant has also been slapped with section 4(h) which prohibits more than one draw of lottery in a week. Simply it means any agent so authorized by State Government shall not have a lottery draw more than once in a week. Here, it is not the case of the prosecution that though the applicant was an agent duly appointed by the State Government, yet he has breached section 4(h) of the Lotteries Act. Also, no material is produced on record to show that earlier also the applicant had indulged in such kind of activity in contravention of the provisions of the Lotteries Act.

9] Prima facie, I have my own doubts and reservations, having regard to the material on record about the attraction and applicability of sections 3, 4(c)(h), and 7(h) of the Lotteries Act.

10] Coming to the Gambling Act, I have already pointed out that it excludes lottery. A bare reading of FIR would make it abundantly clear that the applicant allegedly was found playing Kalyan Matka with the help of matka chits. It is not a specific case that he was selling lottery tickets. At the most, a case is made out under the provisions of Section 12 of the Gambling Act, which is bailable in nature.

11] Thus, for the sake of argument, if the charges levelled against the applicant are read in proper perspective, then allegations would either constitute an offence under the Gambling Act or Lotteries Act. They both cannot go hand in hand. Interestingly, the applicant is asked to face charges under both the Acts, which legally may not be permissible and sustainable.

12] Be that as it may, the fact remains that there is nothing to be recovered from the applicant. Therefore, his custodial interrogation is not necessary.

13] For all the aforesaid reasons, I am inclined to allow the applications. Hence the following order.

: O R D E R :

[I] In the event of arrest of the applicant in connection with Crime Nos. 312/2021, 313/2021, 314/2021 and 315/2021 registered with Kadim Jalna Police Station, Tq. and Dist. Jalna for the offences punishable under Sections 12(A) of the Maharashtra Prevention of Gambling Act, 1887 and Sections 3, 4(h), 7(1), 4(c) of the Lotteries (Regulation) Act, 1998, the applicant be enlarged on bail on his furnishing PR Bond in the sum of Rs. 20,000/-, with one or two sureties in the like amount.

[II] The applicant shall attend the concerned police station as and when called and he shall desist himself from indulging in similar acts.

14] The applications stand disposed of in aforesaid terms.

[VG. BISHT]
JUDGE.

grt/-