

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

**ANTICIPATORY BAIL APPLICATION NO.1731 OF 2021
WITH
ANTICIPATORY BAIL APPLICATION NO.1740 OF 2021**

Vinod Uttam Patil & Another Applicants

Vs.

The State of Maharashtra Respondent

Mr. Abhay Anturkar i/by Harshwardhan Suryawanshi for Applicants.
Mrs. Rutuja Ambekar, APP for State of Maharashtra.

**Coram : NITIN W. SAMBRE, J.
Date : 21ST OCTOBER, 2021**

P.C.:

1. The applicants are seeking pre-arrest bail in Crime Nos. 513 and 514 of 2020, registered with Byculla Police Station, for the offence punishable under Sections 420, 294(A) read with 34 of the Indian Penal Code, Sections 7(3) and 9(1) of the Lotteries (Regulation) Act, Sections 4(A) and 5 of Maharashtra Prohibition of Gambling Act and Section 66(D) of the Information Technology Act, 2000.

2. The applicants are Directors of Surabhi Broking and Trading Company.

3. On 25th October, 2020, a complaint was lodged alleging conducting of online lottery business at Kailash Rice and Auction Trading Centre, on the pretext of selling rice, resulting into registration of crime.

4. As such, a trap was organised by handing over currency note in the denomination of Rs.200/- to dummy customer.

5. In the presence of panchas, said dummy customer by handing over said currency note of Rs.200/- gambled for Rs.124/- with the assistance of person present at the counter, who issued four slips and returned Rs.74/-.

6. The said online business was operated by one Rishikesh an agent/franchisee of the applicant.

7. As per the prosecution case, the software developed by the applicants accepts number between 1 to 9 and display lucky number out of the same after every 15 minutes. The said number between 1 to 9 are accepted is in the form of lucky number with booking amount of Rs.100/- or Rs.10/- and in return Rs.900/- or Rs.100/- are respectively paid to the lucky number winner.

8. In the aforesaid background, the submissions of learned counsel appearing for the applicant are, the applicant is in online trading business of commodity i.e. rice. He would claim that he is falsely implicated in the crime as the person to whom the software developed by the applicant was permitted to be used on hire, mis-use by carrying out lottery business. He would try to explain the business conducting model to show that the applicants are not involved in the offence alleged.

9. The contentions are, the terms on which the license to use the software was permitted specifically empower to deal in the

business of rice and that being so, e-commerce platform of the applicant was misused by the agent, hence, the applicant had no criminal intention to commit the offence. So as to substantiate the contention, my attention is invited to the license issued under Food Safety Act, the conditions of license, on which the said e-commerce platform was permitted to be used by the agent so also the G.S.T. number.

10. While countering aforesaid submissions, learned APP informs that under the garb of alleged online trading business of rice, the applicants in fact were operating online lottery business without any lawful authority. He would claim that though the rice is claimed to be trading item on e-commerce platform developed by the applicants, however same e-platform has primarily facilitated the concerned persons to use it for lottery business. According to him, prima facie involvement of the applicant is apparent in the offence in question.

11. Considered submissions.

12. The fact about the development of e-commerce online platform by the applicants and for growth of business appointed various agents / brokers, is not disputed. What is claimed is trading of rice on e-commerce platform was with the help of agent and that being so, false implication is alleged.

13. This Court has called the applicant to produce an agreement of agency so as to appreciate the conditions thereby permitting use of e-commerce platform for limited purpose i.e. rice trading, which the applicant has failed to.

14. Rather it is claimed by the prosecution that the software is developed by the applicant in such a manner so as to primarily facilitate online lottery business. The raid carried out with the assistance of dummy customer has demonstrated prima facie involvement of the applicant in non-bailable offence of operation of illegal online lottery business.

15. The applicant though claimed that the online lottery business and gambling are too different things and cannot go together, however, in my opinion, once the learned APP claims that the applicant shall be proceeded under the provisions of the Lotteries (Regulation) Act, 1998, a case against the applicants is considered under the said provisions.

16. Admittedly, the applicant is not holding any license or permission to operate online lottery business under the provisions of Lottery Regulation Act.

17. The applicants have failed to demonstrate from the record as to their established business of trading in rice by producing supportive evidence. Rather the online platform of the applicants is primarily meant for online lottery business as could be inferred from the investigation carried out till date. That being so, no case for grant of bail is made out. The applications as such fails, stand dismissed.