

ORISSA HIGH COURT: CUTTACK

BLAPL No. 6128 of 2022

(Application under Section 439 of Cr.P.C.)

AFR Ram Shriram Pathade Petitioner

-Versus-

State of Odisha Opp. Party

Advocate(s) appeared in these cases:-

For Petitioner : Mr. D. Panda, Advocate

For Opp. Party : Mr. S.K. Mishra,
Addl. Standing Counsel

CORAM

JUSTICE SASHIKANTA MISHRA

ORDER

30th September, 2022

SASHIKANTA MISHRA, J.

The petitioner is in custody since 24.05.2022 in connection with C.T. No. 2402 of 2022 corresponding to EOW, Bhubaneswar P.S. Case No.09 of 2022 pending in the Court of learned S.D.J.M., Bhubaneswar for the alleged commission of offence under Sections 294/

506/507/420/467/468/385/120-B IPC read with Section 66D of the Information Technology Act, 2000.

2. An FIR was lodged by Sasmita Sahoo, Deputy Superintendent of Police, Economic Offences Wing (EOW), CID, CB, Bhubaneswar on 21.04.2022 alleging that in the enquiry entrusted to her on allegation of Bikash Kumar Sahu, Monali Porel and Sandeep Nayak, it came to light that all three had downloaded a loan App named 'KOKO' from the Google Play Store. All of them had submitted KYC documents like, photographs and Aadhar card. Initially some amount was credited through UPI transaction to their bank accounts. Shortly thereafter, they were asked to pay an increased amount with interest. When they failed to pay the same, their contact list was hacked and filthy and derogative comments were sent to all contacts in their mobile phone contact list. Further, the recovery agents associated with the App also harassed them and made threatening calls on WhatsApp. The above is more or less the common case of all the three victims named above.

On verification, it was found that calls were

placed from Bihar by a set of loan recovery agents. It was further ascertained that the petitioner along with one Sudhir Shriram Pathade and their company, Mahagram Payments Private Limited (in short “Mahagram”) had acted with deliberate design to cheat persons who download such Apps with the intention to deceive several such victims. Their modus operandi was to provide small loans through loan Apps like ‘KOKO’ and ‘JOJO’ and subsequently demand the principal amount along with high interest within a short span of time. Neither the company nor the App is registered with the RBI as an NBFC(Non-Banking Financial Company). Another company, namely, Navcarry Tech Private Limited appearing in the loan App after being downloaded was found to be non-existent. Thus, the petitioner and his associates along with the company illegally collected huge amounts of money to the tune of crores of rupees from multiple persons.

3. Heard Mr. D. Panda, learned counsel for the petitioner and Mr. S.K. Mishra, learned Addl. Standing Counsel for the State.

4. Mr. D. Panda, learned counsel for the petitioner has forcefully argued that the implication of the petitioner is the result of incorrect understanding of the I.O./complainant regarding the method of the transactions in question. Elaborating his argument, Mr. Panda submits that the petitioner is the Managing Director of M/s. Mahagram Payments Private Limited, which is a fintech/payment service provider on behalf of M/s. Cashfree Payments India Private Limited (in short 'Cashfree'). The loan amount was disbursed by unscrupulous merchants subverting the legitimate dues of the virtual accounts available to software platforms provided by YES Bank and Cashfree. The procedure adopted is, the API software enables instantaneous disbursement of funds electronically to multiple accounts simultaneously. The said facility is not available in the traditional banking system. Cashfree has allotted a virtual account to Mahagram. The said virtual account mimics all the functions of a real account but has no physical existence. When a merchant onboarded by Mahagram for using API software wants to disburse funds to its payees,

it first remits the disbursal amount to its own virtual account. The funds transferred to the merchant's virtual account are available for use after a time gap which is usually 30 minutes due to technical constraints. This is where Mahagram comes into the picture by temporarily transferring funds from its current account to the virtual account. Thereafter, the merchant can immediately transfer the same to its own virtual account and disburse it to its payees. After 30 minutes, the funds deposited by the merchant are automatically credited to Mahagram's virtual accounts. For the above services, Mahagram collects a commission from Cashfree. Moreover, it is not technically possible for Mahagram to know the purpose for which the money is transferred, which is known only to the merchant. Therefore, according to Mr. Panda if any fraudulent transaction is made by the merchant, Mahagram has no role whatsoever to play therein. As regards non-registration as NBFC, Mr. Panda would argue that the company being an intermediary as defined under Section 2(w) of the Information Technology Act, 2000, is exempted from registration as per Section 79 of the said

Act. The entire case of prosecution against the petitioner is based on conjectures and surmises and an erroneous perception of the nature of transactions.

5. Mr. S.K. Mishra, learned Addl. Standing Counsel for the State has vehemently opposed the prayer for bail. It is submitted that three shell companies namely, Mudmate Technologies Pvt. Ltd., Yellow Tune Technologies Pvt. Ltd. and Techelite IT Development Pvt. Ltd. are the sub-merchants under Mahagram and it has been ascertained that the loan amounts have been credited to the victims from these companies. The said companies have dummy Directors, who are on the pay roll of a Chinese national, Liu Yi. It is further submitted that it is a huge scam involving multiple suspicious entities and so far only 1062 such entities/sub-merchants of Mahagram have been found out. The modus operandi adopted by Mahagram is to allow the boarding of its sub-merchants and maintaining the Pay-in/Pay-out accounts of the different shell companies with it thereby earning huge amounts from these illegal transactions in the guise of receiving commission. Because of such shady conduct in

the past, Cashfree had earlier blocked the account of Mahagram as a deterrent measure. It is further submitted that a look out circular has been issued against the above named Chinese national by the Bureau of Immigration, who is the mastermind of all such illegal digital loan Apps. It is only because Mahagram allowed the passing of money through the different shell companies that the alleged offences could be perpetrated. It is also submitted that three similar cases have been registered at Mumbai and New Delhi against Mahagram being Cyber P.S. New Delhi Case No. 21 of 2022 under Sections 419/420/468/471 IPC, Nalasopara P.S., Mumbai Case No. 47 of 2022 under Section 420 IPC read with Section 66C/66D of the IT Act and West Cyber P.S. Mumbai Case No. 20 of 2022 under Sections 419/420/467/384/120-B/201/509/500/34 of IPC read with Section 67/67A/66C/66D of IT Act. The petitioner was remanded in West Cyber P.S. Mumbai Case No. 20 of 2022. It is further submitted that since the petitioner is an affluent and influential person, if released on bail, he could tamper with the prosecution evidence. Since further investigation is in progress, the petitioner

should not be released on bail.

6. I have heard the rival submissions and have also considered the materials on record carefully. From the narration of the entire process in which the victim gets cheated and is pressurized to repay increased amounts by the recovery agents of the loan Apps, it is clear that several entities are involved. In so far as Cashfree is concerned, it is basically a payment gateway that can be utilized by any person/entity. But in so far as the role of Mahagram is concerned, it being under agreement with Cashfree for maintaining a virtual account, it becomes the responsibility of Mahagram to ensure that the money transacted through such account is for legal and valid purposes. As it appears, several other entities such as, Mudmate, Yellow Tune, IWT India etc. also act as sub-merchants by crediting amounts to the loanees. In fact in so far as the victims named in the FIR are concerned, it has been unearthed in investigation that while payment was made to them by Mudmate, the same was actually facilitated by Mahagram. It is informed by learned State Counsel that a huge amount, approximately to the tune of

Rs.370 crores has been frozen of different shell companies including Yellow Tune Technologies Pvt. Ltd. It is difficult to believe that in the process Mahagram would not have any inkling of what takes place after money is released from its virtual account. The sanctity of sub-merchants is under a cloud. Since the diligence expected from Mahagram so as to ensure that illegal transactions do not take place on its platform relating to loan Apps is found wanting, prima facie, a reasonable doubt arises as regards its actual intentions and role in the entire process. In transactions of such nature, it may not be possible on the part of the prosecution to come up with direct evidence showing the culpability of the petitioner but then all the circumstantial evidence collected by the prosecution during investigation are incriminating enough to strongly suggest its complicity in the alleged occurrence. Moreover, these transactions have a nationwide ramification due to which several persons are said to have been duped. Even if it is held that Mahagram had a limited role to play only because it utilizes its virtual account to transfer money to the sub-merchants for only 30 minutes whereupon the

same is refunded, it is not possible to single out Mahagram from the entire network on the supposition that it has no knowledge as to how the money remitted by it to the sub-merchants like Mudmate, Yellow Tune, Techelite etc. are dealt with. In short, in an operation of this nature, it will not do for Mahagram to simply wash its hands off on the plea of acting bonafide on receipt of commission and thereby claim innocence. In so far as the petitioner is concerned, he being the authorized signatory of Mahagram was responsible for day to day transactions made in the account.

7. A preliminary charge sheet has been submitted but investigation is kept open under Section 173(8) of Cr.P.C. having regard to the spread and magnitude of the illegal transactions. Several other angles need to be investigated. Having regard to the existence of a strong prima facie case as against the petitioner, his financial background as also his criminal antecedents involving similar offences, it would not be unreasonable to suppose that if released on bail, he would attempt to tamper with the prosecution evidence or influence the

witnesses.

8. This court is therefore, of the considered view that it would not be proper to release the petitioner on bail at this stage. The bail application is therefore, rejected.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 30th September, 2022/ A.K. Rana, P.A.