IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.99 OF 2022

AVADHOOT S/O RAMBHAU KHADKE
VERSUS
THE STATE OF MAHARASHTRA

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Mr. G. K. Naik – Thigle, Advocate for applicant.
Mr. V. M. Kagne, APP for the respondent – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 23.02.2022
Pronounced on : 06.05.2022

ORDER :-

. The applicant is apprehending his arrest in connection with Crime No.09 of 2021 registered with Cyber Police Station, Dist. Aurangabad for the offences punishable under Section 420 read with Section 34 of Indian Penal Code, under Section 4, 5 of Maharashtra Prohibition Act, under Section 7(3), 9(1) of Lottery Regulation Act and under Section 66(D) of Information Technology Act.

2. Heard learned Advocate Mr. G. K. Naik Thigle for the applicant and learned APP Mr. V. M. Kagne for the respondent – State.

3. Learned Advocate appearing for the applicant vehemently submitted that the applicant has nothing to do with the crime in

question. The applicant was proprietor of one Datta Agency, which was the registered firm with requisite license for the stockiest of one Rajshri Lottery and Golden Lottery from 2003-2004 to 2019-2020. That business was carried out in Aurangabad as well as Jalna district. The record and necessary compliance of the said business as well as the taxes, those were required to be paid, have been complied with. According to the applicant, he has been falsely involved in 2014-2015 in a case in respect of betting in Indian Premiere League Cricket Tournament and that case is still pending, however, the applicant was forced to stop the business of Rajshri Lottery from 07.03.2020 and Golden Lottery from 28.02.2020 respectively. In fact, the applicant had given a publication in the daily newspaper to the effect of closure of his business on 04.09.2020. In spite of closure of the business, now the applicant has been tried to be roped in fresh crime. In fact, the applicant was elected member of Zilla Parishad since 2002. He got successfully elected three times by defeating the rival candidate Bhimrao Nivrutti Dongre in the year 2002, 2007 and 2017. Therefore, due to the political rivalry, he has been falsely implicated. The applicant had remained present before the Investigating Officer in view of notice under Section 41-A of the Code of Criminal Procedure. Certain persons who are stated to be involved in this crime have also been released on anticipatory bail by the learned Sessions Judge, however, the application filed by the present applicant came to be rejected. The applicant was not present admittedly, when the raid was conducted by the police. On the basis of some documents, it is now tried to be tagged that the applicant is also involved in the present crime. Custodial interrogation of the applicant is not required for the purpose of investigation. He is ready to co-operate with the investigation.

4. Per contra, the learned APP has strongly opposed the application and submitted that the investigation has been extensively done. When raid was conducted, it was found that there was online gaming that was carried out and it is in lakhs of rupees. Certain registers have been later on seized, which show that there is huge exchange of amounts between the company, which was in the name of present applicant Datta Agencies with the company in which those persons either for gaming or for depositing the amount for gaming, were found. The two registers show that amount of Rs.20,00,000/-, 25,00,000/- and 30,00,000/- have been exchanged. No doubt, present applicant had remained present before the Investigating Officer in view of notice under Section 41-A of the Code of Criminal Procedure and also as a part of condition that was imposed when he was granted ad-interim relief by the learned Additional Sessions Judge. Cash amount of Rs.16,73,480/- and other

articles worth Rs.32,62,260/- have been seized from the present applicant. The accused persons, who were carrying out online gaming, have duped the Government by defrauding under the guise of licence. In fact, the licence is for some other purpose and it could not have been used in such a way for gaming. The custodial interrogation is still necessary.

5. At the outset, it will not be out of place to mention here that after learned Additional Sessions Judge had granted interim protection to the applicant, he has produced certain documents. He produced 14 registers out of which two have been seized. According to the Investigating Officer, further investigation is also required to be carried out, he issued notice under Section 41-A of the Code of Criminal Procedure and accordingly, the applicant remained present. By that time, the interim protection granted to the applicant was in favour of the applicant. The applicant was formally arrested by the Investigating Officer and was released on bail. Now, it is required to be seen as to whether further custody of the applicant is necessary for the purpose of investigation. The say of the Investigating Officer also further states that the applicant was interrogated. Certain registers were also seized from his possession. Further, it is stated that amount of Rs.16,73,480/- was seized from the accused, so also property worth Rs.32,62,260/- was also seized. As

regards Section 420 of Indian Penal Code is concerned, the applicant was not present when the raid was conducted. His name appears only in the two registers. Under such circumstance, whether he had any kind of conspiracy or common intention with the co-accused is a question. With such huge amount he could not have allowed his men to monitor the gaming activities. When he had remained present in pursuant to notice under Section 41-A of Indian Penal Code, he would then be available whenever would be called for the purpose of investigation. The parameters of ***Arnesh Kumar Vs. State of Bihar, [(2014) 8 SCC 273]*** appears to have been followed and, therefore, when the applicant was formally arrested and then released on bail would show that he would cooperate further in the investigation and arrest is not the only option available to the Investigating Officer and, therefore, the interim protection granted earlier by this Court vide order dated 25.01.2022 deserves to be confirmed. Hence, the following order :-

ORDER

I) The application stands allowed.

II) The interim protection granted earlier to the applicant vide order dated 25.01.2022 stands confirmed and made absolute. In other words, in the event of arrest of applicant – Avadhoot s/o

Rambhau Khadke in connection with Crime No.09 of 2021 registered with Cyber Police Station, Dist. Aurangabad for the offences punishable under Sections 420 read with Section 34 of Indian Penal Code, under Sections 4, 5 of Maharashtra Prohibition Act, under Section 7(3), 9(1) of Lottery Regulation Act and under Section 66(D) of Information Technology Act, he be released on P. R. Bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- each, if not already released.

III) He shall attend the concerned Police Station on every Monday and Thursday between 10.00 a.m. to 2.00 p.m. till filing of charge-sheet and cooperate with the investigation.

IV) He shall not tamper with the evidence of the prosecution in any manner.

V) He shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI, J.]

scm