

19.09.2023
ML. 157
Court No. 29
Suvayan
(Allowed)

C.R.M. (A) 3764 of 2023

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed in connection with **Hare Street** Police Station Case No. **241/22** dated **23.08.2022** under Sections **406/409/417/418/420/467/468/471/188** of the IPC read with Sections **3/4** of WBGPC Act and Sections **7(3)/9** of the Lotteries (Regulation) Act, 1998.

And

In the matter of: **Atul Bokriya & Ors.**

....petitioners.

Mr. Sourav Chatterjee
Mr. Md. Zeeshan Uddin
Ms. Amrin Khatun
Mr. Rishav Jain

...for the petitioners.

Mr. Saswata Gopal Mukherji, PP
Mr. Sudip Ghosh
Mr. Saryati Dutta
Mr. Bitasok Banerjee

...for the State.

Mr. Ayan Bhattacharya
Mr. Md. Abdur Rakib

...for the de facto complainant.

1. Heard learned Counsel for both the parties.
2. The informant is stated to be a regular lottery ticket purchaser. He lodged the FIR against these petitioners alleging that they are the persons running the racket of selling fake lottery tickets.
3. Learned Public Prosecutor also takes us through the statement of one Jamir Ali who is a lottery ticket seller and who had sold a lottery ticket to one Mukesh. He has stated that the said Mukesh came to him and demanded the prize of the lottery which was found to be fake and he has stated that these petitioners are the persons behind the fake lottery tickets. Another statement is of Sajal Sen who is stockist and distributor of Deer Lottery tickets. He also has stated that a racket of fake lottery tickets is running and the present

petitioners are behind such racket.

4. There is no denying of facts that State of Mizoram has also opined that the lottery tickets claimed to be issued by the State of Mizoram and sold in West Bengal are also found to be fake on verification.
5. Though the FIR has been lodged since August, 2022 and more than one year has been elapsed in the meantime, the statement of the aforesaid two witnesses are banked upon by the prosecution for custodial interrogation of the present petitioners.
6. An obvious question which we may ask to ourselves is how the aforesaid witnesses who were dealing regularly with lottery tickets could know about the involvement of the present petitioners till police interrogated them. They also do not disclose the source from where they came to know the names of the present petitioners. The present petitioners being the residents of New Delhi, both the aforesaid witnesses would not have come in contact with them and there is also no assertion by both the aforesaid witnesses that they have also come in contact with any of the agent, servant or employee of the petitioners.
7. Be that as it may, the entire transaction is based on documentary evidence and we allow custodial interrogation of a particular accused when there are sufficient justification in the hands of the prosecution to demand that. In the present case, unfortunately, we do not find any such justification for custodial interrogation of the petitioners as no *prima facie* link of the petitioners with the alleged fake racket has been

established at least *prima facie* as yet.

8. Regard being had to such facts and submissions, factum of permanent residence of the petitioners, nature of allegation and substantial progress in investigation, it is directed that each of the petitioner shall be released on bail by the Arresting Officer in the event of their arrest in the aforesaid P.S. case on such terms and conditions as deemed just and proper in the facts and circumstances of the case including the condition that:

- i) The petitioners are directed to appear before the I.O. as and when required for the purpose of investigation and they shall co-operate wholeheartedly subject to provision of Section 20 (3) of the Constitution of India.

9. The concerned Arresting Officer is hereby directed to act upon the server copy of this order.

10. Within 21 days from today each of the petitioner shall appear before the I.O. alongwith a server copy/certified copy of this order. If server copy is supplied, learned I.O. shall act upon that.

11. Accordingly, the prayer for the anticipatory bail is allowed.

12. The application being **CRM (A) 3764 of 2023** is disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)

