IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [ABA] No.598 of 2023

Anant @ Sontu Navratan Jain
vs.
State of Maharashtra, through its PSO, Cyber P.S. Sadar, Nagpur

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Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	*Court's or Judge's Orders*

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Mr. D.V. Chauhan with Mr. Gourav Gour, Advocates for the Applicant.
Mr. S.M. Ghodeshwar, A.P.P. for the Non-Applicant/State.
Mr. S.P. Bhandarkar, Advocate for assisting the Prosecution.

CORAM : M.W. CHANDWANI, J.
DATE : 26th SEPTEMBER, 2023.

The applicant is seeking anticipatory bail in connection with Crime No.67/2023, registered with Cyber Police Station, Sadar, Nagpur for the offence punishable under Sections 386, 420, 468, 471 and 120-B of the Indian Penal Code read with Section 66D of the Information Technology Act, 2000.

02] Heard Mr. Chauhan, learned Counsel appearing for the applicant as well as Mr. Ghodeshwar, learned A.P.P. for the State, who is assisted by learned Counsel Mr. Bhandarkar.

03] The allegations, as per the First Information Report, are that the applicant is well acquainted with the complainant. In the year 2021, the applicant insisted the complainant for betting in online gaming and informed him that there exists lot of new Gaming Apps from which lot of money can be earned. On pursued by the applicant, the complainant gave cash amount of Rs.8.50 lakhs to a person sent by the applicant. Thereafter, the applicant sent a link of ***Diamondexch.com*** and also sent User ID and Password to the complainant. Accordingly, the complainant started betting by playing online game on the link suggested by the applicant. On losing in the said betting, at the instance of the applicant, the complainant transferred Rs.9,66,86,000/- during the period from 18/11/2021 to 13/07/2023 to the bank accounts suggested by the applicant. He also handed over cash amount of Rs.67,88,68,300/- to the persons sent by the applicant. Whereas, the complainant could get return back winning amount of Rs.19,13,38,000/-. The complainant realized that he has been cheated. Whenever he used to win, technical error would crop up and he was not getting points even after being shown that he had won. Thus, there are allegations of manipulation in the betting site suggested by the applicant. Therefore, on the complaint of the complainant, the aforesaid offences came to be registered against the applicant.

04] Learned Counsel Mr. Chauhan appearing on behalf of the applicant would submit that the applicant did not suggest any online gaming App to the complainant. Even, it is presumed that the applicant suggested for playing online game on a particular site, it will not be an offence at all. The complainant is major and if he takes a decision to play online game and loses money, the applicant cannot be held responsible for the same. According to him, from the contents of the F.I.R., no offence, whatsoever, has been made out against the applicant. Online gaming is not regulated by any of the Act and even suggesting anybody for playing online game is not an offence as of now. He submits that there are various online games available on the websites, which can be played by anybody. Even, they are promoted by the Film Actors. The image of the applicant has been tarnished by the prosecution by reporting one sided story in the daily newspaper.

05] The learned Counsel for the applicant vehemently submitted that the complainant claims that he has lost more than Rs.56.00 crores, whereas no explanation has been given by the complainant that whether he was having cash amount to the tune of Rs.56.00 crores. He could not satisfy the decree passed against him by the Debt Recovery Tribunal, Nagpur and claims to have unaccounted cash amount of Rs. 56.00 crores, which he lost in gaming App. The prosecution story is not believable. Therefore, there is a doubt on the genuineness of the complaint lodged by the complainant regarding involvement of such huge amount. He submits that as per the decision of the Apex Court in the case of *Sitaram Satlingappa Mhetre vs. State of Maharashtra – (2011) 1 SCC 694,* if the complaint is doubtful, then the anticipatory bail is to be granted.

06] Learned Counsel Mr. Chauhan submitted that just because, the applicant visited Dubai and sworn an affidavit from Dubai to the present application for anticipatory bail, it will not dis-entitle him from exercising rights of citizen of this country. According to him, his travelling plan was already fixed prior to lodging the F.I.R. Therefore, he cannot be termed as fugitive. Rather, according to him, after grant of protection, the applicant attended the Police Station as per the directions of this Court and co-operated in the investigation. Co-operation in the investigation does not mean that the applicant shall make confessional statements. He has right to silence as per Article 20(3) of the Constitution of India. He submitted that the case in hand is fit for grant of anticipatory bail. The applicant is ready to abide any condition if imposed in the bail order.

07] *Per contra,* learned A.P.P. Mr. Ghodeshwar, assisted by learned Counsel Mr. Bhandarkar and the Investigating Officer, submits that the applicant has enticed the complainant to play online game, wherein he lost the amount to the tune of Rs.58.00 crores and some odd amount. Infact, doctored link has been sent by the applicant, wherein the complainant lost huge money. The site was manipulated, so that the player should not win and whenever he won the game, a technical error used to erupt. According to them, the applicant is one of the facilitators of ***Diamondexch.com*** and used to provide link after taking the amount. Various details are required to be collected from the applicant to reach the originator of ***Diamondexch.com.*** The amount collected by the applicant is being sent to the originators who are sitting aboard and controlling the online gambling. According to him to go to the roots of the case, custodial interrogation of the applicant is very much needed. It is also contended that various foreign mobile numbers have been used, so also various rented accounts are being used by the applicant in commission of this crime. According to them, there may be various victims with the hands of the applicant. Huge amount to the tune of Rs.16.00 crores and big quantity of gold and silver have been recovered from the house of the applicant during house search. There may be international connections, which are required to be ascertained. Though, the Laptop has been deposited by the applicant, the mobile of the applicant is required to be seized. The applicant had threatened the complainant and extorted amount of Rs.40.00 lakhs. Therefore, the bail application is objected.

08] Having heard the learned respective Counsel for both the parties and having gone through the case diary, it transpires that after paying the amount of Rs.8.50 lakhs, the applicant provided User ID and Password along with points worth Rs.8.50 lakhs for playing online games on ***Diamondexch.com.*** WhatsApp chats of the complainant with the applicant shows that in exchange of amount, the points were being credited to the complainant to play the online game. There is exchange of money between the applicant and the complainant in connection with the online betting. The amount has been transferred to various accounts suggested by the applicant and huge cash amount is also given by the complainant to the persons suggested by the applicant. Even some time amount is transferred by the applicant to the complainant on wining the betting. Thus in all, amount to the tune of Rs.77.00 crores have been transferred to the applicant. Providing user ID and password to play on the said website and exchange of money with the applicant on the points won or lost on that website itself *prima facie* shows that the applicant is involved and is having connection with the online gaming site ***Diamondexch.com.*** This appears to be new form of gambling. The applicant appears to be one of the facilitators to provide the User ID and Password along with the points on payment of money.

09] There are allegations of manipulation in the electronic record i.e. in ***Diamondexch.com,*** *a* gaming site. In WhatsApp chats, there is a reference of technical error in the website, when the applicant won. The material on record goes to show that the amount has been transferred to various hired accounts. The cash amount of Rs.16.00 crores and odd amount, 12 kgs. Gold and 294 kgs. Silver are seized in house search of the applicant. Even various foreign mobile phone numbers have been used by the applicant, where from the link and instructions for transferring the amount have been given. The police suspects the international connection in the gaming App. The details of alleged technical glitches in the site are to be unfolded. All above material aspects are required to be investigated by the Police.

10] The grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and, hence, the Court must be circumspect while exercising such power for grant of anticipatory bail. The Court has to keep in view that criminal offence is not just offence against an individual, rather, the larger societal interest is at stake. Therefore, delicate balance is required to be established between the individual and societal interest.

11] The arrest is a part and procedure of the investigation to secure not only the presence of the accused, but also served various other purposes. There may be circumstance in which the accused may provide information leading to discovery of the material fact, which enables the Investigating Agency to proceed without hindrance.
In a case like this, effective interrogation of a suspected person is of immense help to the prosecution in disinterring many useful information and material which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated.

12] In the case of ***State represent by C.B.I. vs. Anil Sharma*** reported in ***(1997) 7 SCC 187***, the Supreme Court in paragraph 6 has held as under:

> *6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is well ensconced with a favourable order u/s 438 of the Code. In a case like this, effective interrogation of suspected person is of tremendous advantage in*

> *disinterring many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The arguments that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible Police Officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders."*

13] Thus, considering the circumstances which are emerging from the case diary, I find force in the argument of the learned A.P.P. for the State that the applicant must have to be questioned in detail regarding various aspect of the crime and connections of the other accused persons involved in the crime. Considering the material against the applicant, for getting lead in the investigation, arrest may be inevitable part of the process of the investigation in this case. Therefore, in my opinion, no case is made out for grant of extraordinary relief, rather if the custody of the applicant is not taken by the Investigating Agency, the crime will remain undetected. Therefore, I am not inclined to allow the application. The applicant stands rejected.

14] At this stage, the learned Counsel for the applicant submits that the interim protection, which was granted to the applicant by order dated 5th September, 2023 be extended for a further period of two weeks, which is opposed by the learned A.P.P. appearing on behalf of the State. He submits that in the case of ***State of Uttar Pradesh vs. Moh. Afzal & Ors.,*** the Supreme Court has repeatedly deprecated the practice of rejecting the bail applications and passing orders that no coercive action should be taken. Since, I have already held that the custodial interrogation of the applicant is very much necessary for the progress in the investigation, I am not inclined to extend the order passed by this Court on 5th September, 2023.

JUDGE

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