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

CRIMINAL APPLICATION (ABA) NO.718 OF 2023
(Dr. Garima Gourav Bagga Vs. State of Maharashtra)

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

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Mr. S.V. Manohar, Senior Advocate a/b Mr. A. Naik, Advocate for the applicant.
Mr. V.A. Thakare, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : NOVEMBER 30, 2023.
PRONOUNCED ON : DECEMBER 11, 2023

Heard.

2. By preferring this application, the applicant is seeking anticipatory bail in connection with Crime No.816 of 2023 registered with police station Gittikhadan, Nagpur for the offences punishable under Sections 409 and 420 read with Section 120-B of the Indian Penal Code.

3. The accusation against the present applicant as per the First Information Report are that the co-accused Anant @ Sontu Navratan Jain is well acquainted with the informant. In the year 2021, the co-accused insisted the informant for betting in online gaming and also informed that there are several new gaming applications from which lot of money can be earned. The complainant handed over the cash amount of Rs.8,50,000/- to the person sent by the co-accused Anant Jain. Thereafter said Anant Jain sent a link of diamondexc.com and also sent User ID and Password to

the informant. Accordingly, the informant started betting by playing online game on the link sent by the co-accused. On losing in the said betting, at the instance of the co-accused, the complainant transferred Rs.9,66,86,000 during the period from 18th November, 2021 to 13th July, 2023 to the bank account suggested by the co-accused. He also handed over cash amount of Rs.67,88,68,300/- to the person sent by the co-accused whereas the complainant could get return back an amount of Rs.19,13,38,000/-. On receipt of such amount, the complainant realised that he has been duped. Thus, as per the allegations in the First Information Report, whenever the complainant 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 online betting site suggested by the co-accused. As far as the present applicant is concerned, it is alleged that the co-accused Anant Jain has *inter alia* defrauded several investors as well as several users of the applications by manipulating the application and kept some cash and jewellery in the lockers.

4. During investigation of the aforesaid crime, a confidential intimation letter was issued by the Crime Detection Branch to the Gondia Branch of the Axis Bank on 23rd July, 2023 by which the bank was directed to freeze the accounts of the co-accused Anant Jain and his family members. The family members of the co-accused Anant Jain are also arrayed as accused in the said crime.

This fact was came to the knowledge of co-accused Anant Jain, he enlisted the services of accused No.2 Ankesh Khandelwal who was serving as a Manager of the Gondia Branch of the Axis Bank. In order to safeguard his valuables which included substantial cash and jewellery stored in such locker, as per the allegations co-accused Anant Jain and Manager of the Axis Bank Ankesh Khandelwal hatched a conspiracy to shift the valuables kept in locker maintained by the co-accused Anant Jain and his family. The present applicant and her husband then transferred the said articles to another person Dinesh Kothari at the behest of co-accused Anant Jain. Initially, Dinesh Kothari was not named in the FIR subsequently, he was also arrayed as an accused.

5. As per the allegations, present applicant who is serving as an Assistant Professor of Department of Obstetrics and Gynaecology assisted the co-accused in transferring all the articles lying in his locker. Investigating agency has collected CCTV footage of the bank showing presence of the present applicant in the bank at the relevant time. She had carried the bags which shows active involvement of the present applicant in commission of the offence as she is also beneficiary. During the house search of the present applicant, some gold biscuits are also seized. The gold biscuits are similar to that which are seized from the house of the co-accused. On the basis of these allegations, the crime is registered against the present applicant.

6. Learned Senior Counsel Shri Manohar for the applicant submitted that the present applicant/accused is the Assistant Professor in the department of Obstetrics and Gynaecology. Her husband is already arrested and she is having daughter of 5 years. She is the victim of the circumstances. Section 409 is not attracted against the present applicant. He further submitted that considering the allegations made against her, her direct involvement is not revealed. Now, investigation is practically completed. Her physical custody is not at all required as the articles are already recovered by the Investigating Agency. Her role in the conspiracy is also not made, therefore, she deserves to be granted bail in the event of her arrest.

7. On the other hand, learned Additional Public Prosecutor vehemently submitted that the involvement of the present applicant reveals after the arrest of co-accused Anant Jain. During his house search and some of the premises, huge cash and gold and silver worth Crores of rupees came to be seized and concern Investigating Officer taking into consideration the serious allegations and involvement of the huge amount issued a letter to the Manager of Axis Bank by letter dated 23rd July, 2023 to freeze the locker standing in the name of Jain and his family members. However, Axis Bank Manager leaked the said information and informed the co-accused Anant Jain about seizure of the accounts. Co-accused Anant Jain and the Bank Manager in furtherance of the conspiracy, present applicant and her husband opened a new joint

locker and got transferred all the articles lying in the locker of co-accused Anant Jain and his family members. The Investigating Agency collected the CCTV footage from the bank showing presence of the present applicant in the bank at the relevant time. The presence of the present applicant was revealed inside the bank with bags and she carried the bags which shows active involvement in the commission of the crime. During the house search also the gold biscuits similar to the gold biscuits which are seized from the house of the accused are seized. The custodial interrogation of the present applicant is required considering the huge monetary transactions are taken place and several persons are duped who are involved in a betting from the link sent by the co-accused Anant Jain. The allegations against the present applicant are serious in nature and the offence committed by the applicant is economic offence. In view of that, bail application deserves to be rejected.

8. Having heard learned Senior Counsel Shri Manohar for the applicant and learned Additional Public Prosecutor for the State. Perused the investigation papers. From the recitals of the First Information Report shows that the co-accused who invited the complainant to invest the amount for betting by sending a link and obtained huge amount. It further reveals from the recitals of the FIR that co-accused Anant Jain by inducing the complainant obtained the money and duped him as well as several other persons. The anticipatory bail application of the

co-accused is already rejected. As far as the role of the present applicant is concerned, it reveals from the investigating papers that the Investigating Agency has informed the co-accused Ankesh Khandelwal, Bank Manager of Axis Bank to freeze the locker of the accused No.1 Anant Jain. Said secret information was leaked by the said Bank Manager and by hatching conspiracy, they have decided to shift the cash amount and the gold articles which are kept in the locker opened in the name of co-accused Anant Jain and his relatives. To shift the said articles, present applicant and her husband assisted by opening a new joint locker in their name and got transferred all the articles lying in the locker. The CCTV footage panchanama drawn by the Investigating Officer shows that as per the Bank entry No.0815-S20230801074500_E20230801233059 on 01/08/2023 at about 9:53:12 present applicant and her husband entered in the bank. They went in the Cabin of the Manager Ankesh Khandelwal. The further entries of the same day shows that at 9:55:25 there was a communication between the present applicant, her husband and the Bank Manager, at about 11:17:20 they left the bank. The entry dated 14/08/2023 vide Entry No.0815_S20230814 074501_E20230814233059 at about 15:08:08 present applicant and her husband entered in the bank. The CCTV footage further shows that the husband of the present applicant was holding one hand bag and present applicant was also holding one bag and one ladies hand bag. At about 15:16:40 they both entered in the locker room and about 15:24:00 they came out from the locker room holding bags in their hands.

9. The investigation papers further shows that during investigation the house search of the present applicant was carried out wherein the gold biscuits are seized from the house which are similar to the gold biscuits which are seized from the house of the co-accused. The statements of the various witnesses are recorded including the statements of the bank employees namely Abhishek Dinendra Sonwane and Natasha Pawansingh Chavhan and others which also discloses the presence of the present applicant and her husband in the bank. The statement further discloses that the joint locker was opened by the applicant and her husband. Thus, there is a *prima facie* material which reveals from the investigation papers to show that the present applicant has not only opened the locker and shifted the articles and cash amount from the locker of the co-accused in her locker but also handed over some articles to Dinesh Kothari. Some gold biscuits are also seized from the house of the present applicant. Admittedly, present applicant is an educated lady and aware about the consequences of her act. Her presence in the bank, opening a joint locker, obtaining the keys of the locker of the co-accused and transferring the articles and cash amount shows her active involvement in the alleged crime.

10. Admittedly, at the stage of granting bail, an elaborate examination of the material which is collected during the investigation and detailed reasons touching the merits of the case, which may prejudice accused should be avoided, but there is a need to indicate the reasons why the bail is not granted.

11. *Prima facie* on the basis of allegations levelled against the present applicant which shows that the applicant is the person who has actively participated in transferring the huge cash amount and the gold articles of the co-accused in her locker and also played an active role in handing over said articles to other co-accused Dinesh Kothari.

12. It is well settled position of law that jurisdiction to grant bail has to be exercised having regard to the facts and circumstances of cases. The factors to be taken into consideration are; 1) the nature of accusations and severity of the punishment; 2) reasonable apprehension of tampering with witnesses; 3) reasonable possibility of securing presence of accused, and 4) character, behaviour and standard of accused.

Each case has to be considered on its own merits.

13. In the present case, considering the nature of the crime, huge amount as well as other assets are involved. The present applicant by assisting the co-

accused interrupted the investigation wherein large amount of cash is involved. The Honourable Apex Court, while dealing with offence, involving conspiracy to commit economic offences of huge magnitude, in the case of ***Y.S.Jagan Mohan Reddy vs. CBI, [(2013)7 SCC 439]*** laid down following parameters:

> i) economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country, and
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> ii) while granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/State and other similar considerations.

14. The Honourable Apex Court, in the case of ***State of Gujarat vs. Mohan Lal Jitamalji Porwal, [(1987)2 SCC 364]*** held as follows:

> *"5. ....The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest....."*

15. Considering the role of the applicant in the crime, having involved enormous and huge amount, the conspiracy between the accused involving officials of the bank and the investigation revealing the manner in which the complainant and other person are induced for betting and are duped, the role of the applicant is clearly exposed.

16. In the background of the accusations and its gravity, the applicant is not entitled for being released on anticipatory bail in the event of her arrest, and therefore, the application deserves to be rejected and the same is rejected.

17. The observations made above are *prima facie* in nature, on the basis of material collected during the course of the investigation, and shall not be taken as findings recorded relating to the alleged offence.

18. The application stands disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*