IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3519 OF 2023

Sahil Zahid Khan .... Applicant
Versus
The State of Maharashtra .... Respondent
…..
WITH
INTERIM APPLICATION NO.4597 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.3519 OF 2023

Mr. Ashish Deep Verma, Advocate i/b. Mujahid Ansari for the Applicant.
Ms. Mahalakshmi Ganapathy, APP for the Respondent-State.
Mr. Aabad Ponda, Senior Advocate i/b. Jugal Kanani for the Intervenor.

CORAM : SARANG V. KOTWAL, J.

DATE : 24th APRIL, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.473/2023 registered at Matunga Police Station, Mumbai on 7.11.2023 under Sections 420, 465, 467, 468, 471, 120-B of IPC, under Section 12(a) of the

Maharashtra Prevention of Gambling Act, 1887 and under Sections 66D and 66F of the Information Technology Act.

2. Heard Mr. Ashish Deep Verma, learned counsel for the Applicant, Ms. Mahalakshmi Ganapathy, learned APP for the Respondent-State and Mr. Aabad Ponda, learned Senior counsel for the Intervenor.

3. The FIR is lodged by one Prakash Bankar, who was a social worker. He had filed an application before the Metropolitan Magistrate, Kurla and prayed for investigation under Section 156(3) of Cr.P.C. Vide the order dated 6.11.2023, the learned Metropolitan Magistrate, 30th Court, Kurla directed the investigation under Section 156(3) of Cr.P.C. by passing order in C.C. No.3043/Misc./2023. Pursuant to that order, C.R. No.473/2022 was registered at Matunga police station, Mumbai. The FIR mentions the names of many accused. The present Applicant is one of them.

4. The gist of the FIR is as follows :-

According to the informant, he has reasonable knowledge of operating electronic devices like computer, mobile phone etc. and of doing online transactions. Through various social-networking sites, he came to know about a Website www.khiladi.com (Khiladi Book), which was designed for online betting / gambling on Cricket, Football, Tennis, Casino, Tin Patti etc.. It was advertised by some persons. The FIR goes on to mention how the Website was providing continuous online customer support and offered deposits and withdrawals only through their Website. It is further mentioned in the FIR that it is not only this Website, but there were many other Websites which provided online betting services through the Web Portals. The FIR mentions the names of the other portals. According to the informant, the accused named in the FIR, are the major owners of those portals which had inter-connected platforms. The Applicant is one of them. According to the first informant, the said Khiladi Book had several other subsidiary companies / sub-divisions which operated under different names and had different online Websites/Portals. The *modus operandi* was to locate and identify other players involved in similar activities who were running their own Websites and their own gambling business. The accused then used to approach those individual players and offered to partner with them. Thus, the network of those subsidiaries and subdivisions operating under one umbrella widened. That was done to avoid any interference, stoppage or obstruction from the Government Authorities. Therefore, even if some of those subsidiaries were shut-down, still the online gaming activity would not get affected. The major reason for attracting more players to these activities was because they allowed their players to withdraw the betting amount on the same day. It is alleged that the collection of money, creation of user ID, distribution of user ID and distribution of money was done through Panel / Branch owners. All gambling games were designed in such a way that the accused, including the panel owners would never lose. The customers, despite the initial profit, ended-up losing their hard earned money. There is no KYC compliance in those Websites to verify the age of the players. The money collected by the individual branches was transferred to branch heads. The panel owners created user profile of players known as *punters* who were induced to deposit money into certain designated bank accounts. Most of those bank accounts were held in the name of fictitious persons. The monthly profits are huge. It is alleged that the proceeds were invested in properties, hotels and various other business in India and abroad and the accused have caused a loss of estimated Rs.15000 Crores to the Government of India in the form of taxes by operating such illegal online betting/gambling without paying any taxes.

These are the allegations which are being investigated by the investigating agency. The Applicant had approached the Court of Session for his anticipatory bail. It was rejected. The investigating agency had filed its say during those proceedings.

5. In the present Application as well, the learned APP has filed affidavit-in-reply affirmed by the Investigating Officer attached to SIT/Anti-Extortion Cell, Crime Branch, Mumbai.

6. Learned counsel for the Applicant made the following submissions :

i. The Applicant is a celebrity. He has millions of followers. He is not the owner of any such APP.

ii. The Applicant had entered into an Influencer Engagement Agreement dated 21.2.2022 with M/s. Isports247, which was a sports management company. This was entered into for promotion of the brand "The Lion Book" during the term of that agreement.

iii. Learned counsel invited my attention to a copy of the agreement, which is annexed at Exhibit-C. Pursuant to that agreement, the Applicant had to post two posts per weekend on his Instagram account page and Facebook page as approved by the client / company for promotion of its brand i.e. The Lion Book during the term. In consideration of that, the company was to pay a sum of Rs.3 Lakhs per month exclusive of GST and subject to tax deduction at source. The agreement was to remain in force as of the effective date for a period of 24 months. It was mentioned in clause-16 that the arrangement contemplated in the agreement was on a principal-to-principal basis. Nothing in that agreement was to be construed to create any partnership or joint-venture or employee-employer relationship between the parties.

iv. Learned counsel relied on this particular clause to contend that the Applicant was merely fulfilling this contract by promoting the brand ‘The Lion Book’. He was not the owner of ‘The Lion Book’ App nor was he in partnership with Isports247 nor was he in partnership with the company that owned the App ‘The Lion Book’.

v. Learned counsel submitted that the Applicant has only promoted the said App as per the requirement of that agreement.

vi. The other allegations in the FIR are that the accused connected with those Apps had not paid taxes to the Government. That itself would indicate that the activities carried through those Apps were not illegal, otherwise there could not be allegations of evasion of taxes.

vii. Learned counsel submitted that the activities related to 'The Lion Book' App were in respect of the games involving skill. They were not the games of chance. Therefore, provisions of the Maharashtra Prevention of Gambling Act are not attracted. He claimed that in any case the Applicant has not received any amount from the said agency Isports247.

viii. Learned counsel submitted that the Applicant has returned to India. He has deposited his passport and he has fully cooperated with the investigation. In this background, the Applicant's custodial interrogation is not necessary.

7. Learned APP as well as learned Senior Counsel appearing for the first informant made the following submissions :

i. Learned APP basically relied on the averments made in the affidavit-in-reply as well as the averments in the 'say' filed before the Court of Session. Both of them emphasized that the Applicant was not merely promoting that brand, but, he was the owner of the APP 'The Lion Book'.

ii. Learned APP relied on the panchanama of the screenshot image of the Instagram account of the present Applicant wherein he has specifically mentioned the list of Apps in which he was a Partner. That list includes 'The Lion Book 247'. Subsequently the Applicant removed the name of 'The Lion Book 247' from this list.

iii. They submitted that innocent gullible people, including the young people, are lured into making payments in connection with the activities of those applications. Initially some returns are given but in the long run they end up losing huge amount which are their hard-earned money.

iv. There were 67 such Websites so far detected by the investigating agency and all these Websites are beyond the control of the Indian authorities.

v. Learned APP submitted that the address of Isports247 Company is found to be fictitious. The entire agreement is relied on deliberately to mislead the authorities to project as if the Applicant is merely a Brand Ambassador under that agreement but in fact he is the owner, as is mentioned in the list mentioned in his own Instagram account.

vi. Learned APP relied on the statement of one Ashu Gandhi, who was asked to make promotional video in respect of the said App. The amount was deposited in his account as his fees but the source of that payment was not revealed.

vii. She submitted the panchanama of the video posted on the Applicant’s Instagram page is important. A transcript of that video is annexed at Exhibit-D to the affidavit-in-reply. She submitted that some WhatsApp numbers are mentioned on this page in that video but there is no trace of those numbers. The SIM cards are not of genuine users.

viii. She submitted that the scope of the offence is quite large. It cannot be conducted without custodial interrogation of the Applicant. Though the Applicant has returned to India and has deposited the passport, he has not cooperated with the investigation at all. Both of them, therefore, prayed that this Application be rejected.

8. I have considered these submissions. The Applicant has annexed the photo-copies from the said App as to how it could be used. Those photographs are from page Nos.65 to 72 of this Application memo. There is mention that 24 x 7 help would be provided to their customers. There is one

line added that it was for persons above 18 years and that underage gambling was an offence. There were multiple payment methods and there was instant service of withdrawal and refilling with minimum to maximum amount. There was a mention that the customers could message on their WhatsApp number, then they could start depositing and withdrawing instantly and that they could earn from their skills. Page-72 mentions that they could connect to bookmakers of their choice and could get a transparent view of the real odds. All these terms specifically indicate that this is nothing but a gambling application.

9. The 'say' and the affidavit-in-reply mentions that the Applicant was the owner of the inter-connected betting platform and was a part of illegal betting syndicate. This is indicated by the Applicant's own mentioning on his Instagram page that he was the Partner of 'The Lion Book 247'. He was promoting that App.

10. The investigation has revealed that there were 67 betting Websites and importantly more than 2000 bogus SIM cards were used for chatting, depositing and withdrawal. More than 1700 fake bank accounts were used. The money transaction was through *Havala* and cryptocurrency. The accused had used Telegram channel, WhatsApp etc. and had induced many people including the young generation to trap them in their net.

11. The Applicant is one of those accused. He was the owner of one such betting and gaming portal. This material will indicate that this is not an offence under the Maharashtra Prevention of Gambling Act alone, but serious offences under IPC of cheating, forgery, misappropriation of huge amounts etc. are also made out. The transcript of the video shows four WhatsApp numbers. As submitted by learned APP there is no trace of those WhatsApp numbers or their SIM cards and as to where the money goes. The promotion shows that there was inducement on his part that the customers would get expensive gifts. It was mentioned that, those who did not

know how to play the games, they would be taught how to play the games on calling a particular number. Thus they were induced to play the games even when the players did not know how to play on those particular Apps. It was mentioned that those who were following the Lion Book account, they were winning cash. Out of them, the lucky draw would ensure expensive gifts for them.

12. In this connection, the statement of Ashu Gandhi is important. He was asked to make a promotional video with the help of one celebrity. He had completed that job. He was asked to make that promotional video for 'The Lion Book'. He has stated that in July, 2022, he received an International call and he was asked to make a promotional video for 'The Lion Book'. He was told that he would be paid his fees from the bank account in India. He was paid some amount through NEFT from the account of Prime IT Solutions. He was not paid his 10% commission. He was following it up. The telephone number from where he had received the call was not reachable. The account of Prime IT Solutions is freezed by the

Cyber Crime Cell in another offence. Thus, the entire operation is illegal. Huge amount is involved. Fictitious bank accounts are created. Different fake SIM cards are used in big numbers. The Applicant is directly connected with the said App 'The Lion Book247'.

13. In this view of the matter, considering the scale of the entire offence, the requirement of thorough investigation and the definite material against the present Applicant, his custodial interrogation is absolutely necessary. He cannot be protected under Section 438 of Cr.P.C. The Application is rejected. With rejection of the main Application, nothing survives in the Interim Application and the same is also disposed of.

(SARANG V. KOTWAL, J.)

Deshmane (PS)