



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

CRIMINAL APPLICATION (BA) NO. 115 OF 2024

Anant @ Sontu S/o. Navratan Jain

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

Shri Sunil Mahonar, Senior Advocate a/w. Shri Gaurav S. Gour &
Shri Yashowardhan N. Sambre, Advocate for applicant.
Ms. Shamshi Haider, APP for non-applicant/State.
Shri S. P. Bhandarkar a/w. Shri A. C. Khadse, Advocate for assist to
prosecution.

CORAM :- M. W. CHANDWANI, J.

DATED :- 15.03.2024

Heard.

2. The applicant is seeking regular 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, 201 and 120B of the Indian Penal Code (IPC) r/w. Section 66D of the Information Technology Act, 2000 (for short, "IT Act").

3. The prosecution's allegation are that the applicant enticed the complainant for betting in online gaming. On payment of ₹8.50 lakhs by the complainant, the applicant gave the link of Diamondexch.com and User ID and Password along with points of worth ₹8.50 lakhs. 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 from time to time paid the amount to the tune of ₹77 crores by cash as well as by bank transfer to the persons suggested by the applicant. The complainant could get back the winning amount of ₹19,13,38,000/-. The complainant realized that he has been cheated by the applicant by manipulating gaming App. Whenever he used to win, technical error would crop up and he was not getting points even after being shown that he had won. Therefore, on the complaint of the complainant, the aforesaid offences came to be registered against the applicant. The applicant was arrested on 16.10.2023. The charge-sheet came to be filed against the applicant and other two absconding accused in December-2023.

4. Shri S. V. Manohar, learned Senior Counsel appearing on behalf of the applicant submits that the betting Apps are not illegal and there is no willful inducement of the complainant by the applicant. The allegations of manipulation in the online gaming App are against another person, who operates the online betting App. The applicant is neither owner of the betting App nor manages the online betting App. The charge-sheet has already been filed and nowhere in the charge-sheet there is material to suggest that the betting App was manipulated.

5. Next, the learned Senior Counsel would submit that the case of the prosecution is mostly based on the allegation of manipulation/glitches in the gaming App which is in the form of electronic record and is a document within the meaning of the IT Act. According to him, it is a settled law that if the case depends on documentary evidence, generally the bail should be granted to the accused. To buttress his submission, he seeks to rely on the decisions of the Supreme Court in the cases of *Teesta Atul Setalvad Vs. State of Gujrat [2023 SCC Online SC 860]* and *Chitranjan Sharma Vs. State of Uttar Pradesh [AIRONLINE 2023 SC 984]*, wherein the bail was granted on the ground that the cases were dependent on documentary evidence, which was already with the prosecuting agency. He further submitted that just because the other co-accused are absconding, the applicant cannot be blamed for that and on that ground, the bail could not be rejected. He seeks to place reliance on the decision of the Supreme Court in the case of *Munshi Sah Vs. State of Bihar [Criminal Appeal No. 3198-3199/2023, decided on 13.10.2023]*, wherein the Supreme Court has observed that the question of grant of bail to the co-accused cannot depend on surrender of another co-accused, who is described as main accused in the crime.

6. Lastly, the learned Senior Counsel would submit that the investigation is already completed and the charge-sheet is filed. The applicant is in incarceration

for more than four months and most of the offences attracted in the crime are punishable for seven years. Even the applicant can be put on terms while granting bail and the applicant undertakes to abide by all the conditions including the condition that he will not indulge in similar offences, if he is released on bail.

7. *Per contra*, Ms. Shamshi Haider, learned APP for non-applicant/State assisted by Shri S. P. Bhandarkar, learned counsel assisting the prosecution vehemently submitted that the applicant is a facilitator of the site named Diamondexch.com and other online gaming Apps like Lotus, Teen Patti etc. and used to provide the online link after taking money from the victims including the complainant. The applicant used to deal and has hired various bank accounts, from where he used to transact with the victims. The applicant has enticed the complainant to play online games, where the complainant lost an amount to the tune of ₹58 crores. There are various victims in the crime, who lost their amounts in online gaming which is to the tune of crores of rupees. It is also submitted on behalf of the learned APP that the online gaming site was manipulated so that whenever the players used to win, a technical error used to occur.

8. It is further submitted that though the charge-sheet has been filed but, the investigation is still going on with regard to manipulation/glitches in the

online gaming App. It is contended that the Server of Diamondexch.com site is situated in United State of America (USA) therefore, the Investigating Agency could not access the said Server to find out the exact glitches. Various foreign mobile numbers have been used and various bank accounts were hired by the applicant for commission of this crime. Huge quantity of gold and silver as well as cash have been recovered from the house of the applicant during house search. The brother of the applicant, who is co-accused and another accused (so called 'RR') are actively involved in the crime along with whom the applicant used to indulge in this crime, are absconding. The two other offences are also registered against the applicant. It is submitted that in an economic offence, it is settled law that the Court should go slow in granting bail to the accused.

9. To buttress her submission, the learned APP seeks to rely on the decision of the Supreme Court in the case of ***Nimmagadda Prasad Vs. Central Bureau of Investigation [(2013) 7 SCC 466]***, wherein in para no. 24, the Supreme Court has held as under:-

"24. 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 interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words "reasonable grounds for believing" instead of "the evidence"

which means the Court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

10. The sum and substance of the arguments made by the learned APP for the State is that the accused should not be enlarged on bail since the investigation is still going in and there are chances that the applicant may again get involved in similar offences of online betting game.

11. Having heard the learned Senior Counsel for the applicant, the learned APP for the State and learned counsel assisting the prosecution and having gone through the material produced by the prosecution particularly, in the form of short notes, prepared by the Investigating Officer, it transpires that the applicant was a facilitator of online betting game. The applicant, after payment of the amount by the complainant, by cash or through various hired bank accounts, used to provide User ID and password along with points equivalent to the amount paid for playing online game on Diamondexch.com and other similar Apps. The prosecution has alleged manipulation in Diamondexch.com gaming site. As per complainant, whenever he used to win the game, a technical error used to erupt. Therefore, according to him, there is

manipulation in the Diamondexch.com site, whereby the end result will be that the players will not win.

12. As per the submission of the learned APP that till date, the investigation with regard to manipulation in Diamondexch.com could not be done since the Server of the said site is situated in USA. Thus, as per submissions, there is no material in the charge-sheet except bare statement of the complainant that there is manipulation in Diamondexch.com gaming site, whereby the applicant cheated the complainant and other customers by manipulating the Diamondexch.com.

13. The charge-sheet has already been filed. The applicant is in jail since 16.10.2023 i.e. almost more than four months. All offences, except Section 386 of the IPC, are punishable with imprisonment upto seven years. So far as, the allegations regarding extortion are concerned, it is alleged that when the complainant made a phone call to the applicant, the complainant was threatened for life thereby, the complainant paid the amount due to him on account of the online game. All the offence are triable by the Magistrate. The conclusion of trial will take considerable time and till then, further incarceration at pre-trial stage would be unnecessary.

14. So far as other two offences registered against the applicant are concerned, those were registered when he was in jail and those offences arise out of the present crime.

15. So far as apprehension of the learned APP that the applicant may flee away or may leave India is concerned, I think the applicant can be put on terms.

16. Just because of the fact that the other accused are absconding, the bail cannot be rejected on this sole ground. In the case of ***Nimmagadda Prasad*** (supra) relied by the learned APP, it has been observed that the Court dealing with bail has to see whether the prosecution will be able to *prima facie* prove that there is evidence in support of charge. Considering submission that as on this date no substantial material in the charge-sheet regarding manipulation of gaming Apps is present; nature of allegation regarding extortion; factum of filing of charge-sheet; period of incarceration, a case is made out for grant of bail on imposing stringent conditions. Hence, I proceed to pass the following order:-

i) The applicant- Anant @ Sontu S/o. Navratan Jain shall be released on bail on executing a PR bond of ₹50,000/- (Rs. Fifty Thousand) with one solvent surety in the like amount in connection with Crime No. 67/2023 registered with Cyber Police Station, Sadar, Nagpur for the offence punishable under Sections 386, 420, 468, 471, 201 and 120B of the Indian Penal Code (IPC) r/w. Section 66D of the Information Technology Act, 2000.

ii) The applicant shall not leave the country without taking prior permission from the Trial Court.

The applicant shall surrender his Passport with the Investigating Agency, if not already surrendered.

iii) The applicant shall not indulge himself in a similar type of offence.

iv) The applicant shall attend the concerned Police Station once in every 15 days i.e. on 1st and 15th day of every month between 10.00 am to 12 noon, until further order.

v) Needless to mention that in case of breach of any of the conditions imposed on the applicant or if the liberty is misused, the prosecution is free to apply for cancellation of bail.

vi) The application is allowed in the above terms.

(M. W. CHANDWANI, J.)