

Order passed below Exh.No.1

1. This is an application filed by applicant to return muddmal property under section 451 of Criminal Procedure Code (in short 'Cr.P.C'.)

2. It is contended by the applicant that, he is registered owner of Sai Video Game Shop at Osmanabad. He has been permitted to run video game shop by the Collector, Osmanabad. It is contended by the applicant that, police had conducted raid on his shop is illegal. It is also contended that, he had kept collection of petrol pump amount in said Sai Video Game Shop, Osmanabad. The said amount was worth of Rs.14,100/-. The said amount of Rs.14,100/- is seized by police which was kept in video game shop.

3. It is also contended that, if seized amount is not handed over to the applicant, he would loss the said amount. No purpose will be served by keeping such amount unused in police station. It is also contended that, investigation is over and trial will take its own course. Therefore, he requested to release the seized property on *supurtnama*.

4. The investigation officer and Ld. APP have strongly resisted this application by filing say. It is contended that, amount is seized by police while conduction raid in Sai Video Game Shop Osmanabad. Sai Video Game Shop was running illegal. Police has conducted raid and seized amount from the possession of applicant who was playing. Hence, they have registered offence against the applicant for

offence punishable u/c 4 & 5 of Prevention of Gambling Act. It is also contended that, seized amount is best evidence of the prosecution. There is direct nexus between seized amount and offence. There is no any evidence to show that, seized amount is owned by owner of petrol pump. It is also contended that, there is likelihood to commit same type of offence once being released amount on *supurtnama*. It is also contended that, it will again indulge in such type of activity, if amount is released. It is also contended that applicant has not produced documents in respect of his ownership. Lastly, they requested to reject the application.

5. Perused the application, say and documents on record. Heard Ld. advocate for both sides. It is submitted by Ld. advocate for the applicant that, he is ready to abide all terms and conditions imposed by the Court. Therefore custody of Seized amount is required him for daily purpose. Hence, he requested to allow the application. On the other hand Ld. APP for State submitted that, the applicant has not produced registered documents in respect of his ownership over seized amount.

6. The applicant alleged to have playing gambling in Sai Video Game Center, Osmanabad. Alleged amount is seized from the possession of applicant while conducted gambling raid by the police. The police accordingly has registered the offence punishable under section 4 & 5 of Prevention of Gambling Act and Cr.no. 288/2022 against the accused/applicant. He is accused person in said crime. It is admitted fact that, muddemal property is cash amount. On 30/09/22 police had conducted gambling raid on the Sai Video Game Shop. They have prepared seizure panchanama on the spot

and they have seized cash amount of Rs.14,100/- from the possession of Sujit Dayanand Bhosale who is accused in said crime. It has been clearly mentioned that, cash amount of Rs.1,51,162/- along with other muddmal property was seized by police. It is alleged that, accused were found to be playing video game on money.

7. Ld. Advocate for applicant relied on citation *Gujarat High Court, Ayubkhan Pahan Vs. State of Gujarat*. I have gone through the above stated citation. In above stated citation amount was withdrawn from the bank before raid to use in his business of labour contract. In present case there is no any document to show that, cash amount was belong to petrol pump as narrated by applicant. Therefore, the facts and circumstances are different. Hence, with due respect present citation is not applicable to present case.

8. Ld. APP for State relied on Bombay High Court at Nagpur Bench, *Chandu Chaitram Aswani Vs. State of Maharashtra*. Where in it was held that, when there is a nexus between cash amount and offence of gambling cash amount can not be returned to applicant merely because cash amount would fetch interest. I have gone through the above citation it is perfectly applicable to the facts and circumstances in the present case. Prima facie it would reveal that, there is some nexus between this cash amount and the offence of gambling. Moreover in present crime charge-sheet has not been submitted by police. It means investigation is in progress. Therefore, muddmal property is necessary for identification during trial. Having regard to the nature of offence and its entire scenario in my opinion the seized property may be required for the purpose of identification. Hence, I pass following order:-

ORDER

Application is rejected.

Sd/-

Date : 19.11.2022.

(D.B. Sathe)
Judicial Magistrate First Class,
Court No. 3, Osmanabad