

MHNG030118572023



SCC.No. 7251/2023
State Vs. Abhijeet

Order below Exh.14
(Passed on 22nd February, 2024)

Present application is filed by accused No.3 namely Kirit Dhanaji Jadhav under Section 457 of the Code of Criminal Procedure for interim custody of seized cash of Rs.13,28,400/- in crime No. 495/2022, registered with Lakadganj Police Station, Nagpur for the offence punishable u/s 4 & 5 of the Maharashtra Prevention of Gambling Act, 1887.

(2) It is contended that, the applicant is one of the Director of Goldwin Healthcare Pvt. Ltd. having it's register office at 201, second floor, Bhakti Park, Mulund (West) Mumbai. M/s B.S. Enterprises is a sister concern and lottery division of Goldwin Healthcare Pvt. Ltd, having it's branch office at C-02, Ashapura Sadan, Wardhman Nagar, Central Avenue Road, Nagpur. The applicant/accused is doing business of selling paper lottery in Maharashtra. The applicant is one of the collecting agent of cash amount which is collected for selling paper lottery in Vidarbha Region. The applicant had collected total amount of Rs.13,28,400/- from various places in Vidarbha Region in Maharashtra and the same was kept in the office of M/s B.S.Enterprises. However, the police on suspicion of on-line cricket betting had conducted raid at the office of M/s B.S. Enterprises and seized cash amount of Rs.13,28,400/-. The particulars of denomination of amount is more particularly stated in the application. The above mentioned amount belongs to the applicant and same is not involved in the cricket betting. Hence, the applicant has prayed for interim custody of seized cash of Rs.13,28,400/-. He further stated that he is ready to comply with conditions which will be imposed by the Court.

(3) The applicant relied upon the judgment of Hon'ble Apex Court in case of *Sunderbhai Ambalal Desai Vs. State of Gujrat, AIR 2003, SC 638* .

(4) Applicant has filed various documents along with list Exh.17 such as copy of Form No. DIR-12, photocopy of intimation report, photocopy of bank statement from 01-10-2023 to 31-10-2023 and photocopy of Aadhaar Card of the applicant/accused.

(5) Investigating officer has filed his reply at Exh. 15. He submitted that the accused Nos. 1 and 2 were found while betting on cricket at the time of incident. During interrogation they told that they were taking I.D. from accused No.3 for the said cricket betting. The above mentioned cash was seized from the office of the applicant/accused No.3 from the spot of incidence. At that time the accused/applicant did not give any satisfactory explanation regarding the seized amount. Hence, the investigating officer has prayed to pass appropriate order.

(6) The Ld APP has submitted say that the applicant has annexed documents with this application contending that the seized amount is outcome of valid transactions of his valid lottery business. The said documents are required to be verified. The charge-sheet reveals prima-facie evidence regarding seized cash. The bank statements are on record. He prayed to pass suitable order considering the say of Investigating Officer.

(7) Heard Ld advocate for the applicant. He vehemently argued that the seized amount in the crime was lawfully collected by the applicant/accused during the course of lawful business of selling paper lottery. The said amount was not collected for cricket betting. In support of his contention the Ld advocate for the applicant has filed copy of statement of account of B.S. Enterprises lottery division unit of Goldwin Healthcare Pvt.Ltd. (Account No. 0173102000013475) for the period of 01-10-2023 to 31-10-2023. The Ld

advocate for the applicant submitted that the applicant is ready to give indemnity bond or solvent surety or bank guarantee, if directed by this Court.

(8) It is necessary to mention here that the applicant Vishal Jagdish Thakkar had filed an application u/s 457 of Code of Criminal Procedure vide MCA No. 1812/2023 seeking interim custody of seized cash of Rs.13,28,400/- in the above mentioned crime. Applicant Vishal had filed said application in the capacity of proprietor of M/s All in One marketing, Mulund West Mumbai. The MCA No. 1812/2023 was rejected vide order dt. 27-06-2023. The applicant has not stated particulars of above mentioned application in this application.

(9) It is the case of applicant that the amount of Rs.13,28,400/- seized from the office of applicant/accused No.3 was the amount collected from selling paper lottery. As per prosecution, the amount was seized in the above mentioned crime for the offence punishable u/s 4 & 5 of the Maharashtra Prevention of Gambling Act, 1887. The accused were found while betting on the cricket and the amount was seized from the spot of incidence.

(10) The documents filed by the applicant i.e. Form No. DIR-12 seems to be printout of application form, and intimation receipt is photocopy of Form G. The applicant has not filed any authenticate document showing that he is Director of Goldwin Healthcare Pvt. Ltd. Furthermore, the photocopy of bank account stated above is for the duration from 01-10-2023 to 31-10-2023. However, the date of incidence is 01-08-2022. The applicant has not filed any bank statements of relevant period or documents which would show that the seized amount is outcome of valid lottery business. Therefore, at this juncture, it is difficult to come to the conclusion that as to whether the amount seized is involved in the crime or it was collected lawfully during the business by the applicant. It is the part of evidence as to whether the amount seized was collected from selling paper lottery or from on-line cricket betting. This issue can be decided only after trial of the case. Having considered the above discussion, I am not inclined to give interim custody of the seized amount of

Rs.13,28,400/- to the applicant/accused No.3. Hence, the application is liable to be rejected.

ORDER

Application Exh.14 is rejected.

Nandurbar,
Date : 22-02-2024.

(Nilesh B. Patil)
Judicial Magistrate First Class,
Court No.3, Nagpur

Certificate

I affirm that the contents of this P.D.F. File of order are same word to word as per original order.

Name of Stenographer : Mrs.Rashmi A.Deshkar