

MHNG090023112023



(1)

SCC No. 1233/2023
State V/s Ashfak & Others

ORDER BELOW EXH.NO.52

This is an application under Section 451 of the CrPC filed by the applicant. It is submitted that the applicant is the owner and possessor of the seized property described in paragraph 1 of this application.

02. The property was seized by the Saoner Police Station in Crime No. 289 of 2023 registered under Sections 4 and 5 of the Gambling Act, read with Section 109 of the IPC. The applicant is a computer mechanic who operates a repair business from his premise. The applicant alleges that the police registered a false report against them and seized the property, causing undue hardship. The property is currently in the custody of the Saoner Police Station and is at risk of damage due to dust. The applicant assures the court that if the property is released, it will be maintained and produced as and when directed. Therefore, the applicant prays for the release of the seized property.

03. The learned Additional Public Prosecutor strongly opposed the application. It was argued that releasing the property would compromise the prosecution's evidence. Given the nature of the crime, online gambling, the seized property is considered crucial evidence. Therefore, the learned APP prayed for the rejection of the application.

04. After hearing both sides and perusing the record, it is evident that the accused is alleged to have used the seized property for online gambling. The applicant claims to be a computer mechanic but has failed to provide any documentary proof of their qualifications or expertise in computer repair.

05. Furthermore, the receipts submitted by the applicant, dated July 15, 2023, and January 10, 2023, are questionable. The first two receipts lack the shop owner's seal, while the remaining two lack both the signature and seal.

06. The vague descriptions of the electronic instruments, such as "Lenovo monitor" without further details, raise concerns about the authenticity of the receipts.

07. In *Lenovo India (P) Ltd. Vs. The State of Maharashtra*¹ the Hon'ble High Court itself pleased to observed that when the property has any evidential value, it is to be kept intact and to ensure its production during course of evidence for the purpose of marking as a material object.

08. In light of the above, the seized electronic instruments are crucial to proving the charges against the accused. The data stored on these devices is vital to the prosecution's case. Therefore, the application is devoid of merit, and the following order is passed:

(3)

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ORDER

The application is rejected.

Place : Saoner

Date : 02/08/2024

(Santosh R. Bharad)

Judicial Magistrate First Class, Saoner

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CERTIFICATE

“I affirm that the contents of this P. D. F. File of order is word to word as per original Evidence.”

Name of Stenographer: S. A. Misal