

(2022) 06 BOM CK 0086

In the Bombay High Court

Case No : Criminal Application Bail No.292, 293 Of 2022-F

Ankur Khanna And Others

APPELLANT

Vs

Assistant Director, Directorate Of Enforcement

RESPONDENT

Date of Decision : 22-06-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 408, 420
Goa Daman And Diu Public Gambling Act, 1976 — Section 3, 4
Information Technology Act, 2000 — Section 66D
Prevention Of Money Laundering Act, 2002 — Section 2(1)(u), 3, 4, 50, 50(2), 50(3)
Code Of Criminal Procedure, 1973 — Section 439

Citation : (2022) 06 BOM CK 0086

Hon'ble Judges : Sandeep K. Shinde, J

Bench : Single Bench

Advocate : Atmaram N. S. Nadkarni, Dattaprasad Lawande, Pradosh Dangui, Naveen Kumar, Santosh Rebello, Gauravvardhan Nadkarni, Jay Mathew, Akshaya Joglekar, Amir Jamadar, Pravin Faldessai, Purushottam Karpe

Final Decision : Dismissed

Judgement

Sandeep K. Shinde, J

1. The applicants are seeking their enlargement on bail having been arrested by the respondents in connection with an Enforcement Case Information Report bearing No. ECIR/PJZO/03/22 dated 28.1.2022.

2. Heard Mr. Atmaram Nadkarni, learned Senior Counsel along with Mr. D. Lawande, Advocate and Shri P. Faldessai, learned Assistant Solicitor General with Mr. P. Karpe, Special Public Prosecutor for the respondent.

3. Briefly stated prosecution case is as under:-

Goa Police registered an FIR bearing No. 10/2022 dated 22.1.2022 under Section 420, 408, 120-B read with Section 34 of Indian Penal Code ad Section 3 and 4 of Goa Daman and Diu Public Gambling Act 1976 and Section 66 D of the

Information Technology Act, 2000 and arrested three accused namely Shashank Siddharth, Rajnish Kumar and Anup Palod. The prosecution alleged that the above named accused persons were found to be involved in serious criminal activities by using electronic devices such as laptop, mobile etc and without permission of online gaming from competent authorities, not only involved in illegal gaming activities and siphoning huge money through secret networks and thereby caused loss the exchequer of the Government. On the basis of the material and facts aforesaid crime an Enforcement Case Information Report (ECIR) bearing no.ECIR/PJZO/03/2022 was recorded on 28.1.2022 by Panaji Zonal office under the provision of Prevention of Money Laundering Act, (PMLA)2002 against the aforesaid individuals and others, as the aforesaid FIR contained schedule offence i.e Section 420 and 120-B of the IPC.

4. The statements of the accused persons in the said FIR was recorded in February 2022 after they were released from jail. While aforesaid statements, accused persons submitted that they were involved in online poker games on Apps like PP Poker; etc as a player or as an agent on behalf of various club managers namely Ramesh Rao Thotapalli(Club name: Resurge) resident of Goa; Mr. Vikram Verma (Club name Pokerfishes) resident of Mumbai, Viraj Patil resident of Mumbai, Mr. Nikhil Jain (club name Prive) resident of Delhi, Mr. Gunjan Modi(club name Mfactor) resident of Calcutta and their subsequent union head namely Mr. Ankur alias Rahul Khanna and Hardeep Singh, the applicants herein, both residents of Calcutta.

5. In the course of the investigation statement of Ramesh Thotapalli who used to run clubs namely "Resurge" under the union of applicants was recorded under Section 50 of PMLA and subsequently, his mobile phone and laptop were impounded vide order dated 17.2.2022. The data that was extracted from the impounded mobile phone and laptop revealed that applicants were operating unions namely Checkraise, Mini India, Russian Poker on PP Poker online gaming App.

6. Under each union, it was found that around 25 to 30 clubs were being operated by different individuals including Ramesh Thotapalli. Through these clubs, individual players were invited through Whatapp chat for placing illegal bets through various poker gaming Apps. The investigation revealed that bettings were placed through these Apps involving various stakes and that commissions were generated at the rate of 5% by the said club on each table running in the said clubs. The settlement of commission and the betting amount was done namely through hawala operator in cash through crypto currency with each individual player and union head by their respective club managers. That on the basis of the reliable information certain records documents related to hawala transaction, various clubs, crypto wallets and proceeds of crime secreted in the residential premises of the applicants. The competent authority conducted searches on 6.4.2022 on the residential premises of the applicants and other club managers/ hawala agents. During the search, incriminating documents/

digital devices pertaining to agents, their contact details, hawala transaction crypto wallets were found from that premises and same were seized.

7. Thereafter summons were issued to the applicants for their appearance on 7.4.2022 and their statements under Section 50(2) and (3) of PMLA were recorded, in which they inter alia stated that they were operating clubs and unions on PP Poker App and were generating commission at the rate of 5 to 10 %. Further, they stated that settlement of bets and winning amount and commission generated on PP Poker App between players, club managers is done through Hawala transaction and Crypto currencies. Further bank account details in name of the applicants and various shell companies formed by the applicant were obtained and examined. Bank statements of the shell companies revealed that the money has been laundered from the bank accounts of these companies which are shell companies and does not have business in their name, although the immovable properties were purchased in Goa and investments in Gym in Mumbai Showroom in DFL Galleria Mall in Kolkata, Avani Showroom, in Kolkata etc.

8. Thus it is the respondent's case, that the proceeds generated and/or possessed by the applicants from betting activities have been laundered by them for purchasing properties. The statement of the applicant accused recorded reveals that the applicant Ankur had laundered the proceeds of the crime generated in cash through various bank accounts of his firms by way of loans etc and purchased various properties in Calcutta and Goa in the name of companies. The tax returns of the applicant reveal that they don't have enough source of income for investing huge money for the purchase of properties in their name or in the name of their companies.

9. Additionally, the data extracted from the mobile device of the applicants deluge that they had given huge amounts in cash for the purchase of properties. The evidence gathered from the digital devices indicate that the accused Ankur Khanna used to settle account with his club manager players in crypto currencies.

10. The applicants were arrested on 6.4.2022.

11. Bail applications moved by the applicants were rejected by the learned Sessions Judge North Goa Panaji on 25.4.2022. Thus, these applications are preferred under Section 439 of the CR.P.C for their enlargement on bail.

12. Mr. Nadkarni, learned Senior Counsel for the applicant would urge, that the applicants who have been alleged to have committed offence under Section 3 and 4 of PLMA is punishable for maximum seven years and therefore, there is no impediment in granting bail. Mr. Nadkarni argued that the magnitude of the offence is not to be determined on the basis of the amount involved but it is to be determined on the basis of the length of punishment prescribed for the offence. In support of his contention Mr. Nadkarni relied on the bail order in Ankit Agarwal Vs Directorate of Enforcement, application no. 3619 of 2021 dated 26.10.2021, wherein this court has granted pre-arrest bail to the petitioner in

view of the fact that the offence under Section 3 of the PLMA is punishable upto 7 years of punishment. Mr. Nadkarni nextly submitted that in crime No.10/22, prosecution has invoked Section 420 of the IPC and also under Section 66-D of the Information Technology Act i.e. under Special law and General law for one offence of "cheating". That since special Act enacted in form of Information and Technology Act contains a special mechanism to deal with the offences falling within the purview of the Information and Technology Act then the invocation and application of the provisions of the IPC being applicable to the same set of facts was totally uncalled for. Reliance was placed on the judgment in the case of Gagan Harsh Sharma Vs. State of Maharashtra, 2019 Cri. L. J. 1398. Thus argued that where there are two provisions on the same issue, once specific and other general the specific provision ought to be applied in exclusion of general one. Mr. Nadarni, therefore, submitted that it is clear that only special law shall apply for the offences and not the general law and hence the offences of the IPC cannot be attracted to the present matter. Submission is offence under Section 66-D of the Information Technology Act is not schedule offence.

13. Mr. Nadkanri nextly submitted that even otherwise, no offence of cheating can be said to be made out against the applicants inasmuch as no complaint has been filed against the applicants by the players of PP Poker App and no such allegation has been made against the applicants for inducement.

14. Mr. Nadkarni further submitted that learned Special Public Prosecutor himself dropped the charges under the schedule offences and without existence of the schedule offence there can be no proceedings under PMLA. He relied on the judgment in the case of Upendra Rai Vs Directorate of Enforcement in SLP(Crl.) 2598/2020, wherein it was held that the offence of money laundering is predicated on existence of proceeds of crime which in turn is connected with any property that is derived from any criminal activities related to schedule offence. Thus Mr. Nadkarni submitted that existence of the schedule offence is the foundation of any possible allegation of commission of the offence of money laundering. It is therefore argued that once the accused is not charged for the commission of the schedule offences then the money generated out of the alleged act shall not be tainted and would not be "proceeds of a crime."

15. In the nutshell, it is argument of Mr. Nadkarni that since the allegations do not constitute the offence of cheating against the applicants and further the offences under the Goa Daman and Diu Public Gambling Act, 1976 not being the schedule offences the commission allegedly received by the applicants from online gaming cannot be stated to be "proceeds of crime", as contemplated under Section 2(1)(u) of the Prevention of Money Laundering Act, 2002. Mr. Nadkarni would also urge that there is no legal bar to play poker and without there being a specific complaint with regard to the applicants resorting to gambling or other illegal activity in the name of poker the respondents could not have registered the offences under the Gambling Act. In support of this submission Mr. Nadkarni relied on the judgment of the Calcutta High Court in the

case of Indian Poker Association Vs State of West Bengal, 2019 SCC online Cal 3435. It is submitted even otherwise the applicants have firm roots in the society and thus their presence for the trial can be secured by imposing suitable conditions. On these grounds, Mr. Nadkarni seeks applicants enlargement on bail.

16. Mr. P. Faldessai, learned Assistant Solicitor General opposed the application. He has taken me through the reply filed by the respondents.

17. Provisions of Sections 3 and 4 of the Act of 2002, evidently show that "whosoever", to be prosecuted for the offence of money laundering, need not necessarily be charged of commission of schedule offence. The expression "whosoever", makes the offence of money laundering under Section 3 of the Act of 2002, independent offence. This offence is stated to have been committed, if any person directly or indirectly attempts to indulge and knowingly assist or knowingly a party or is actually involved in any process or connected with proceeds of crime and projecting it as untainted property. Thus combined reading of Section 3 with the definition of "proceeds of crime", indicates, not only actual involvement in any process connected with the proceeds of crime but even causing assistance in process or activity connected with the proceeds of crime(POC) and further concealment of POC, use or possession and projecting or claiming it as untainted property would attract the offence of money laundering. The investigation in the case at hand, reveals that the commission, allegedly received by the applicants generated in activity of online gaming in respect of which offence has been registered under Section 420, 408 and 120-B of the IPC being POC, has been projected by them as untainted property in connivance with co-accused. The evidence that, of floating shell companies and laundering the proceeds of the crime generated in cash, through various bank accounts of such companies by showing loans and further purchasing the properties in Calcutta and Goa was enough to show applicants complicity in the crime. Further more, the tax returns of the accused were found falling short of value of investments in the properties. In consideration of which, applicants contentions that since no offence against the applicants has been made out under Section 420 and/or 120-B of the IPC, either for want of evidence or otherwise, applicants complicity in the offence; of laundering proceeds of crime, was unlikely and difficult to believe, requires more consideration and is rejected.

18. Although the applicants have denied the allegations of forming shell companies through which the applicants have allegedly laundered the proceeds of crime, nevertheless, the applicants have not explained the source of income of the companies and or the investments in the properties that was exceeding Rs.One crore. The response filed by the respondents contains specific allegations in paragraphs 10 and 11, as regards applicants' role and complicity in online betting, in connivance with co-accused in projecting the proceeds of crime untainted. Formation of shell companies; infusing cash generated from unlawful activities in books of accounts of shell companies and purchasing the properties, although the tax returns were falling short of value of investments cumulatively

show the applicants' involvement in the crime of money laundering. These specific allegations have not been explained either by filing rejoinder or otherwise, so as to disbelieve it. For all these reasons submissions of Mr. Nadkarni, learned Senior Counsel for the applicants, that applicants having not been chargesheeted for the commission of the schedule offences under Section 420 and 120-B of the IPC, the money generated from the alleged acts would not constitute "proceeds of crime", stands rejected. Rather to, invoke Section 3 of the Act 2002 requirement is not that person should be charged for the commission of the schedule offences, but his involvement actual or otherwise in any process of activity connected(emphasis supplied) with proceeds of crime which includes, its possession, acquisition or use and projecting or claiming, it as untainted property. Therefore, though a person is unconnected with activity of generating proceeds of crime, even then, possession, acquisition or use of proceeds of crime and further projecting it as untainted property would constitute the offence of money laundering. With this understanding submission of Mr. Nadkarni, that there is no bar to play Poker and it is a game of skill, distinct from game of chance on the preponderance, and therefore to be regarded as, the business activity requires no consideration. Next submission, that invocation of Section 420 of IPC with Section 66 -D of the Information Technology Act, was totally uncalled in view of the judgment in the case of Gagan Harsh Sharma (supra) does not further the applicants' case. Even otherwise Section 66 D of the Information Technology Act i.e. offence of, "cheating by personation by using computer resource" and ingredients of Section 420 of the IPC i.e. "cheating and dishonestly inducing delivery of the property" are distinct. Yet submission of Mr. Nadkarni that the offence being punishable upto seven years, there is no impediment in granting bail is concerned, it may be stated that offence of money laundering is indeed an economic offence, which has been held "grave" in nature in the case of P. Chidambaram Vs Directorate of Enforcement in Criminal Appeal no. 1831 of 2019. Therefore, I am not inclined to release the applicant on this ground. Even otherwise, the applicants were arrested on 7.4.2022 and investigation in progress. Having regard to the facts of the case, in my view, there are reasonable grounds to believe applicants complicity in offence of money laundering. Resultantly, the applications are rejected.