

Tripura High Court

Miss Anchal @ Rinki vs The State Of Tripura on 4 May, 2022

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HIGH COURT OF TRIPURA
AGARTALA

B.A. No. 12 of 2022

Miss Anchal @ Rinki

----- Petitioner(s)

Versus

The State of Tripura

----- Respondent(s)

For Petitioner(s) : Mr. S. Lodh, Adv.
Mr. Chinmoy Debnath, Adv.
For Respondent(s) : Mr. R. Datta, P.P.
Mr. S. Ghosh, Addl. P.P.

B_E_F_O_R_E
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY
ORDER

04/05/2022 This is an application under section 439 of the Code of Criminal Procedure, 1973 (Cr.P.C hereinafter) for granting bail to accused namely, Miss Anchal @ Rinki who has been undergoing detention since her arrest on 28.02.2022 in East Agartala PS case No.2020 EAG 136 registered under sections 420,120B,406, 409 IPC and sections 3,4,5 and 6 of the Prize Chits and Money Circulations Schemes (Banning) Act, 1978 and sections 3 and 4 read with section 2(c) and 2(d) of the Tripura Protection of Interests of Depositors (In Financial Establishment) Act, 2000.

[2] The factual context of the case is as under:

Sri Titas Kumar Saha, Son of Sri Manmatha Saha of Saha Para, Bankumari, Agartala lodged a written FIR with the officer in charge of B.A No. 12 of 2022 Page - 2 of 12 East Agartala police station on 19.10.2020 alleging, inter alia, that from internet he came to be acquainted with "SF11" propagated to be an online sports fantasy game called "SF11" and as per terms and conditions of the same he registered his name in the website of the company namely MYSF Technologies Pvt. Ltd. The accused petitioner was one of the Directors of that company along with Samudhra Sing Kumawat whose DIN PAN Nos. were 0852559 and 08706467. After registering his name in the website of the company viz. Url.www.sportsfantasy11.com, the informant bought a package of Rs.11,000/- for playing the online fantasy game. The company of the accused also shared with the informant the details of his investment and benefits to be earned by him. According to the informant, among the various benefits provided by the company, the investors were entitled to retention points income after deduction of TDS. He, therefore, kept investing money with the

company of the accused. He received returns as per his entitlement till 05.09.2020. Thereafter, the company suddenly stopped depositing his retention point income/referral income into his user account from 08.09.2020. He took up the matter with the company of the accused. Accordingly, company organized a virtual meeting with him. The present accused petitioner and other Director of the company Samudhra Sing Kumawat were also present in the virtual meeting who assured the first informant that company would pay back his dues to him. The representatives of the company also visited Agartala and organized a conference at the banquet hall of Hotel Sonar Bangal at Natun Nagar. The first informant B.A No. 12 of 2022 Page - 3 of 12 was assured that he would be paid the benefits as per terms and conditions announced by the company in their website. Despite such assurance, nothing was paid to the first informant against the huge investment made by him. It has been alleged by the informant that having been dishonestly induced by the said company, he invested a total sum of Rs.2,50,000/- and received return of only Rs.75,000/-. No benefit was given to him for the rest of the amount invested by him. Thus, he felt cheated by the company.

[3] Based on the said FIR, East Agartala PS case No. 2020 EAG 136 under section 420 IPC was registered and the investigation of the case was taken up by police.

[4] The present accused petitioner was arrested by police during investigation of the case and after she was produced before the jurisdictional Magistrate at Agarala she was remanded to custody after rejecting her bail application. Thereafter several bail applications of the accused were rejected by the Special Court. Lastly, on 02.04.2022, the learned Special Judge rejected her bail application observing as under:

".....The I.O. has sent the upto date C.D. with reference to the previous order.

Perused the Case record and the C.D.

It is found from the record that the investigation of the case is in progress for the last 1 ½ years. C.D. reveals that the I.O. in course of investigation collected evidence which are prima facie incriminating against the accused.

The case was registered on 19.10.2020 and from the date till the month of February, 2022, the Investigating Agency failed to arrest any of the FIR named accused.

The present accused was arrested from Amritsar Airport and there are prima facie facts in the record indicating B.A No. 12 of 2022 Page - 4 of 12 that the accused was about to abscond from the Country and the I.O. based on information managed to detain her at the Airport.

The case is under investigation and there are prima facie evidence to indicate that the accused along with other FIR named accused persons have committed a criminal offence. At the same time based on prima facie incriminating materials it cannot be held that the dispute is civil in nature.

The accused is an woman and has a daughter and Section 437 of Cr.P.C. draws an exception that bail may be considered on the ground that the accused is an woman.

However, in the case in hand, the accused is a resident of outside State and considering the aforesaid facts, this Court is of the view that the accused will abscond if released on bail and it will be difficult to procure her attendance.

Having considered the aforesaid facts, I am not inclined to grant bail to the accused at this stage and accordingly, the bail prayer is rejected and the accused is remanded to J.C. till 16.04.2022.

Return the C.D. to the I.O. through Learned P.P along with a copy of this order.

The I.O. is directed to expedite investigation and submit report in final form at the earliest.

Inform I.O. accordingly.

Fix 16.04.2022 for production of accused and report of I.O. in final form."

[5] Heard Mr. S. Lodh, learned counsel appearing along with Mr. Chinmoy Debnath, learned counsel for the petitioner. Heard Mr. R. Datta, learned P.P appearing along with Mr. S. Ghosh, learned Addl. P.P for the State respondent.

[6] It is contended by Mr. Lodh, learned counsel of the petitioner that the accused is being unnecessarily harassed by the prosecution. Counsel contends that "SF11" is a mere online sports fantasy depending on users' exercise of skill based on the knowledge, judgment and B.A No. 12 of 2022 Page - 5 of 12 attention of the player. Winning or losing in the game will depend on the skill of the participant. Counsel contends that the accused did not compel the informant to participate in the fantasy game. He voluntarily participated in the online game after paying online membership fee. Therefore, the allegations made by the informant against the accused have no substance at all. Mr. Lodh, learned counsel has contended that "SF11" has no difference with the sports fantasy called "Dream 11". It is submitted by Mr. Lodh, learned counsel that at various points of time petitions were filed in different High Courts challenging the validity of "Dream 11" online sports fantasy. Counsel contends that in a petition filed in the Bombay High Court, petitioner sought for directions to initiate criminal prosecution against the company operating "Dream11" sports fantasy and the Bombay High Court in the case of Gurdeep Singh Sachar vs. Union of India reported in 2019 (2) ABR (Cri) 467 held that the petition was wholly untenable, misconceived and without any merit. It was held by the Bombay High Court that success in Dream 11's fantasy sports depends upon user's exercise of skill based on superior knowledge, judgment and attention, and the result thereof is not dependent on the winning or losing of a particular team in the real world game on any particular day. It is undoubtedly a game of skill and not a game of chance.

[7] Counsel has also relied on the decision of Chandresh Sankhla vs. State of Rajasthan reported in AIROnline 2020 Raj 39 wherein the Rajasthan High Court also dwelt on the issue as to whether online sports fantasy called "Dream 11" amounts to gambling. In the public B.A No. 12 of 2022 Page

- 6 of 12 interest litigation filed in the Rajasthan High Court, the petitioner alleged that public in general were being cheated in the name of "Dream 11" and people were playing such game without proper knowledge of law. The petitioner sought for direction for prohibiting the game and action against the perpetrators of the game. Relying on the decisions of various High Courts and that of the Bombay High Court in the case of Gurdeep Singh Sachar (Supra) the Rajasthan High Court dismissed the petition. The Rajasthan High Court also discussed the decision of Punjab and Haryana High Court in the case of Varun Gumber vs. Union Territory of Chandigarh & Ors. reported in 2017 Cri.LJ 3827 where the Punjab and Haryana High Court held that "Dream 11" does not involve commission of the offence of gambling and betting. The same was also challenged in the Hon'ble Supreme Court by filing a special leave petition which was dismissed by the Apex Court. [8] Counsel submits that also there is no element of betting/gambling in "SF 11". It is contended by Mr. Lodh, learned counsel that since there is no difference between these two online sports fantasy called "Dream 11" and "SF11", allegation against the petitioners does not survive.

[9] Counsel further submits that petitioner has left a minor daughter at home and there is none to look after her. It is submitted by the counsel that bail cannot be denied to her on the ground that she belongs to a different state and there are possibilities of her fleeing from the trial. In this regard counsel has relied on the decision of the Delhi High Court in Lambert Kroger vs. Enforcement Directorate B.A No. 12 of 2022 Page - 7 of 12 reported in 2000 SCC Online Del 208 where Delhi High Court granted bail to a foreign national having viewed that there is no law which authorizes or permits discrimination between a foreign national and Indian national in the matter of granting bail if the facts and circumstances of the case permit grant of bail. Counsel has argued that relying on the decision of Lambert Kroger (Supra), this High Court also granted bail to a foreign national by order dated 14.09.2018 passed in BA 79 of 2018. Counsel submits that if a foreign national can be granted bail, there is no hurdle in granting bail to the present accused petitioner who lives in a different state in the country. It is further contended by learned counsel that her passport has already been seized by the respondent and therefore there is no chance of her leaving the country. According to Mr. Lodh, learned counsel, charges which have been brought against the accused under the Tripura Protection of Interests of Depositors (In Financial Establishment) Act, 2000 are not tenable. The investment allegedly made by the informant cannot be termed as "deposit" and the establishment operating the game cannot be termed as a "financial establishment" within the definitions provided under the said act. Counsel has also argued that the charges brought against her under the Prize Chits and Money Circulations Schemes (Banning) Act, 1978 do not also apply to her since the alleged game called "SF11" does not fall within the definitions of either "money circulation scheme" or "prize cheat" provided under the said act. Counsel contends that the charges under sections 406 or 409 IPC do not also survive against the accused petitioner because the B.A No. 12 of 2022 Page - 8 of 12 gravamen of both the charges is the entrustment of the property. It is no case of the informant that he entrusted property to the accused and the accused misappropriated and converted it to her own use and committed criminal breach of trust. Counsel has further contended that except the offence of section 409 IPC, no charge has been brought against the accused entailing imprisonment extending to 10 years. Accused has already suffered detention for 58 days. Since the charge under section 409 IPC is not sustainable against her, Court may also consider to grant her default bail since there is no likelihood of filing the charge sheet within the next two days. Counsel, therefore, urges the Court to enlarge the accused on bail on any condition whatsoever. [10] Mr. R.

Datta, learned P.P submits that the charges brought against the accused are very serious which calls for a deeper investigation and release of the accused on bail at this pre mature stage of investigation is sure to frustrate the investigation of the case. Learned P.P submits that the contention of the petitioners' counsel regarding entitlement of the petitioner to default bail has no merit at all because she has been booked under the charge of section 409 IPC punishment of which may extend to imprisonment for a term of 10 years. Having referred to paragraph 27 of the judgment of the Apex Court in Rakesh Kumar Paul vs. State of Assam reported in (2017) 15 SCC 67, Mr. Datta, learned P.P has contended that in view of the law laid down by the Apex Court in the said judgment, detention of the accused beyond 60 days would not be violative of section 167(2) Cr.P.C. Learned P.P further contends that accused is charged with the B.A No. 12 of 2022 Page - 9 of 12 commission of an economic offence which have serious repercussions. Relying on the decision of the Apex Court in Nimmagadda Prasad vs. Central Bureau of Investigation reported in (2013) 7 SCC 466, learned P.P submits that the Apex Court in the said judgment has viewed that economic offences constitute a class apart which need to be visited with a different approach in the matter of bail and held as follows:

"25. Economic offence constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

[11] Mr. Datta, learned P.P contends that during the investigation of the case, police has collected the bank details of the accused and that of her company and also collected the statements of their accounts which have revealed that the accused individually and her company have accumulated crores of money by cheating the people in the guise of online sports fantasy. Counsel argues that her involvement in such a serious kind of economic offence should be viewed seriously and the investigating agency should be given a free hand to complete the investigation without any kind of interference. [12] Mr. R. Datta, learned P.P vehemently argues that in the case of the present nature, investigating agency must be given sufficient freedom in the process of investigation because the charges brought against the accused involve a serious nature of economic offence. The B.A No. 12 of 2022 Page - 10 of 12 investigating agency needs time and opportunity to carry out a deeper investigation across the country since a prima facie case has been made out against the accused in support of the charges against her. Learned P.P contends that despite issuing several notices under section 41A Cr.P.C, the attendance of the accused could not be procured by the investigating agency. Learned P.P submits that the information collected so far by the investigating agency has revealed that accused is wanted in another case on similar charges in which charge sheet has been submitted against her. It is also contended by the prosecution counsel that she is holding 50% share of the accused company having considerable influence on the affairs of the company and if she is released on bail at this stage, she is likely to temper with the evidence of the case spoiling the whole investigation. Moreover, the other accused who have avoided notice under section 41A Cr.P.C are yet to be brought to book. In these circumstances, learned P.P urges the Court for cancellation of the bail application of the petitioner. [13] Perused the record including the voluminous case diary. Considered the submissions made by the counsel representing the parties.

[14] The statement of the witnesses who have been examined by the investigating officer has revealed that in the guise of online sports fantasy, the company in which the accused was admittedly a Director actually induced the depositors to invest money by promising higher periodical return. It is alleged that they misappropriated the investors' B.A No. 12 of 2022 Page - 11 of 12 money and converted the same to the own use of the Directors of the company including the accused petitioner. The investigating agency has collected the bank statements of the accounts of the accused company as well as that of the personal account of the accused petitioner which prima facie establishes the charge against the accused that she has converted huge amount of money invested by the depositors to her personal account. Other than the first informant, many other people seem to have invested huge amount of money with the company. The investigating officer has recorded the statements of some of those depositors which demonstrate that lakhs of rupees were invested by them with the company of the accused in expectation of higher returns whose money has been misappropriated by the said company of the accused.

[15] It is true that release of the accused at this stage is likely to impair the course of investigation particularly because she is one of the key shareholders of the accused company and if released on bail, she is very likely to temper with the evidence and influence the witnesses of this case. Moreover, the investigating officer is trying to book the other persons who are involved in the commission of the offence and collect more evidence to establish the charges against them. Prima facie, it appears to this Court that the accused petitioner used to collect money from depositors alluring them with higher returns in the name of online sports fantasy. In the given facts and circumstances of the case, plea of the petitioner that it was an online sports fantasy like "Dream 11" does not gain ground.

B.A No. 12 of 2022 Page - 12 of 12 [16] Taking note of the seriousness of the offence and huge magnitude of the case, the nature of evidence collected in support of the charges against the accused, the severity of the punishment which the conviction will entail, the conduct of the accused who avoided several notices issued under section 41A Cr.P.C, the reasonable possibility of securing her presence at the trial, reasonable apprehension of the evidence and the witnesses being tempered with, the interest of the depositors and the larger interest of public, this Court is of the view that the accused petitioner does not deserve bail at this stage. Consequently, her bail application stands rejected. [17] In terms of the above, the case is disposed of. Pending application(s), if any, shall also stand disposed of.

Return the case diary to Mr. R. Datta, learned P.P.

JUDGE Rudradeep B.A No. 12 of 2022