

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.9955 of 2022

ORDER:

Heard Sri Mallikarjun, learned counsel who argued on behalf of Sri Venkat Reddy Donthi Reddy, learned counsel on record for petitioner, as well as the learned Additional Public Prosecutor who is representing the respondent.

2. With a request to enlarge him on bail, the petitioner who is arrayed as accused No.16 in Crime No.1352 of 2022 of Cyber Crime Police Station, Hyderabad, is before this Court.

3. The matrix of the case, as could be perceived through the material brought on record, is that accused Nos.1 and 2 created fake web sites regarding investment and gaming. As per the directions of accused No.1, who is a Chinese national, accused Nos.2 to 4 opened a company in the name and style "Xindai Betench Network Technologies Private Limited" and subsequently, opened current accounts. By playing fraud, they got transferred the amounts received through fraud to other accounts through payment gateways. After the amounts were credited to the accounts of accused Nos.6 to 9,

those accused collected dollars through exchange and they handed over the dollars to accused Nos.5 to 10, who in turn send those dollars to China and Dubai through hawala market. For the purpose of withdrawal and transfer of amounts, accused Nos.12 to 14 opened current accounts, on the instructions of accused No.15, on commission basis. By using those accounts, the accused made transactions worth more than Rs.15 crores within a span of one week.

4. Making his submission, learned counsel for the petitioner contends that the petitioner is in judicial custody since 41 days and there are no allegations that are directed against him. Learned counsel also states that even if it is taken that the allegations are true, all the offence are bailable in nature and therefore, the petitioner ought to have enlarged on bail. Learned counsel also states that as per Section 80 of the Information Technology Act, 2000, the Inspector of Police is the competent authority to effect arrest, but the arrest of the petitioner was made by the Sub-Inspector of Police, which itself is illegal. By making the afore-mentioned submissions, learned counsel seeks to enlarge the petitioner on bail. Learned counsel also brought to the notice of this Court that

accused Nos.3, 5, 7, 10, 12 to 14 were already enlarged on bail.

5. Learned Additional Public Prosecutor admitting the fact that accused Nos.3, 5, 7, 10, 12 to 14 were enlarged on bail by the competent Court, however, contended that the petitioner failed to co-operate with the investigating agency. But, learned Additional Public Prosecutor failed to state in what way the petitioner has refused to co-operate with the investigating agency.

6. It is not in dispute that the petitioner is in judicial custody since 41 days. It is brought to the notice of this Court that the petitioner was kept in police custody for six days. Learned Additional Public Prosecutor states that the confessional statement of the petitioner was also recorded. It is neither the case of the investigating agency nor the submission of the learned Additional Public Prosecutor that being in judicial custody, the petitioner at any time interfered with the process of investigation, or tampered with any evidence, or threatened or dissuaded any of the witnesses from giving their statements. Further, it is clear that the prime accused were already enlarged on bail. This Court is of

the view that only because the petitioner is a foreign national, he shall not be kept in judicial custody where such custody is no longer required. Therefore, this Court considers it desirable to honour the request of the petitioner, however conditionally.

7. In the result, the criminal petition is allowed with the following conditions:

(i) The petitioner/accused No.16 shall be enlarged on bail on his executing a personal bond for Rs.2,00,000/- (Rupees Two lakhs only) with two sureties for the like sum each to the satisfaction of the Court concerned. The sureties are directed to submit their two latest passport size photographs at the time of furnishing solvency. One such photograph is ordered to be pasted in the Surety Register against the name of the surety. The other photograph shall be kept in the case record concerned.

(ii) The petitioner/accused No.16 is directed to surrender his passport in case it is not seized by now.

(iii) The petitioner/accused No.16 is directed not to leave Hyderabad city till the conclusion of investigation and filing of final report. In case,

the petitioner intends to leave Hyderabad city, he shall obtain prior permission from the competent Court.

(iv) The petitioner/accused No.16 shall report before the Station House Officer, Cyber Crime Police Station every Monday between 10.30 a.m. and 12 p.m. till filing of the final report;

(v) The petitioner/accused No.16 should not involve in any unlawful activity.

(vi) The petitioner/accused No.16 should afford all assistance for the proper investigation of the case.

(vii) The petitioner/accused No.16 should not cause the evidence of the offence disappear.

(viii) The petitioner/accused No.16 should not tamper with the evidence in any manner.

(ix) The petitioner/accused No.16 should not by way of inducement, threat or promise, dissuade any person who is acquainted with the facts of the case, from disclosing such facts to the Court or to the Police Officer.

(x) The petitioner/accused No.16 should ensure his presence whenever required by the Court or Police.

(xi) The petitioner/accused No.16 shall not leave India without previous permission of the court concerned.

(xii) The petitioner/accused No.16 shall file an affidavit before the court concerned disclosing the following particulars:-

- (1) Contact number
- (2) Mail address
- (3) Residential particulars.

In case, there is any change in the aforementioned details, the petitioner shall intimate the court concerned by giving a fresh affidavit duly mentioning the change. He shall continue to do so till filing of the final report.

Any deviation of the above conditions would entitle the respondent to take appropriate steps for cancellation of the bail granted.

Dr. CHILLAKUR SUMALATHA, J

21.11.2022
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