

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (ABA) NO.620/2023

Abhishek s/o Vinodsingh Thakur and anr

..VS..

**State of Mah., thr.Police Station Officer, Ramnagar Police Station,
Chandrapur, Tahsil and District Chandrapur**

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Shri R.L.Khapre, Senior Counsel assisted by Shri G.S.Kidambi,
Advocate for Applicants.

Shri Kartik Shukul, Counsel for the Complainant.

Shri V.A.Thakare, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 16/01/2024

PRONOUNCED ON : 22/01/2024

1. By this application under Section 438 of the Code of Criminal Procedure, applicants seek anticipatory bail in connection with Crime No.0937/2023 registered with the non-applicant/police station for offences punishable under Sections 420, 406, and 409 read with 34 of the Indian Penal Code.

2. The applicants are partners of partnership firm viz. "Wild Connectivity Solutions (WCS). The Tadoba-Andhari Tiger Reserve Conservation Foundation (the TATR) entered into an agreement with the WCS for Online bookings of "Jungle Safari" on 10.12.2021. As per allegations levelled by the Divisional Forest Officer of the TATR by lodging a complaint, the aforesaid agreement was for Online bookings for tourists to visit the Tadoba Forest. The applicants contravened terms and

conditions and have not deposited amount and duped the Government Forest Department by not paying amount Rs.12,15,50,831/-. It is further alleged that applicants, who are partners, had accepted the money Online for tourists for “Jungle Safari Bookings”, but they did not pay it to the Forest Department as per the agreement. Moreover, they have used the name of TATR for bookings and for their personal business. Though the Forest Department asked them to furnish Online bookings’ data and other details, they have not provided the said information and also not provided statement of monthly bookings account to the Forest Department and, therefore, the Forest Department had cancelled the agreement with applicants and directed them not to accept any safari bookings. The applicants have siphoned the public amount and thereby committed the offence. On the basis of the said report, the police registered the crime.

3. Learned Senior Counsel Shri R.L.Khapre for applicants, submitted that the dispute between applicants and the Forest Department is of a civil nature. All transactions operated from www.mytadoba.org and <https://booking.mytadoba.org> are exclusive URLs for booking of “Tadoba Safari” and there was no scope for manipulations being it is under direct supervision of TATR. Razorpay and

Instamojo are payment gateways for several businesses including business carried by the WCS as well as the TATR bookings. The said accounts are operated by applicants. Amounts received by the WCS as well as other firms are routed through ICICI Bank Accounts. The applicants and the TATR entered into an agreement and applicants have never contravened terms and conditions of the agreement. All charges including entry fees, gypsy charges, guide charges, processing fees, and any other charges are already paid to the foundation after 10 days of commencement of visitors' entries as per terms of the said agreement. He further submitted that as the dispute arose as to the payment, applicants approached the District Court for appointment of an arbitrator as there is a clause in the "Service Level Agreement" that for settling any dispute, controversy or claims between the parties, the field director TATR would, as far as practicable, endeavour to expeditiously settle all disputes and for this purpose may take such legal opinion, as he may deem fit. It is further settled that any dispute, that would not be settled by the field director of the TATR, in accordance with foregoing clauses, shall be first referred to the Chief Wildlife Warden (CWLW) before arbitration process is resorted to and the CWLW shall decide it. Such decision shall be amenable to challenge in arbitration proceedings. It is further agreed that any dispute arising out of

this agreement, if not resolved, would be referred to arbitration in accordance with provisions of the Arbitration and Conciliation Act, 1996. He submitted that as the District Court initially has not passed any orders restraining officials of the TATR from cancelling the agreement, applicants approached this court by preferring an appeal bearing Arbitration Appeal No.30/2023 and this court directed the District Court, Chandrapur to decide the application. Accordingly, the District Court disposed of the application by allowing it partly and restrained the TATR from cancelling the agreement, till commencement of arbitration proceedings. Thus, though the TATR was restrained from cancelling the agreement, the FIR was lodged and the agreement was cancelled. The dispute between the TATR and applicants is completely of civil nature. Custodial interrogation of applicants is not at all required. By considering the same, applicants were released on *ad interim* anticipatory bail which deserves to be confirmed.

4. *Per contra*, learned Additional Public Prosecutor Shri V.A.Thakare for the State submitted that during investigation, it reveals to the investigating agency that tourists used to book their "Safari" Online and deposit the amount. The applicants, who were under obligation in view of the agreement to deposit the amount, did not deposit the amount to the Forest

Department from time to time. The investigation is at preliminary stage and custody of applicants is required to recover data of Razorpay and Instamojo gateways to ascertain where the amount was siphoned. It further revealed that applicants have opened one Safari Bookings Account in the name of "Madhya Pradesh Safari" which is totally illegal. The custody of applicants is required to seize computers, related documents, registers, and mobiles to be sent to the Digital Forensic Audit. During investigation, it revealed that there are total 27 accounts in different banks maintained by applicants and amounts are transferred in the said bank accounts. The applicants have also not paid GST to the government and cancelled the GST Registrations without giving any information to the Forest Department. There are total 334 gypsy owners engaged in the Tadoba Tiger Project and 334 guides and their fees are not paid. The applicants have fake account in the name of TATR without obtaining any permission and the said accounts are opened in Uttar Pradesh. The investigating agency has received KYC of that account. During investigation, it further revealed that transactions of Rs.72 crores were made through the TATR Bookings on the account of ICICI, Pratapgadh Branch, Uttar Pradesh and out of Rs.72.00 crores, transactions of Rs.63.00 crores were done through Razorpay gateway and, therefore, the custody of applicants is required to find out a

detailed transaction entries from that gateway. He submitted that there is a *prima facie* case against applicants showing their connection with the alleged documents.

5. Learned counsel Shri Kartik Shukul for the complainant, also opposed the application and endorsed the same contentions and invited attention towards the agreement and submitted that there is completely contravention of terms and conditions of the agreement. The huge amount of the government is involved. He placed reliance on the decisions of the Honourable Apex Court in the cases of **P.Swaroopaa Rani vs. M.Hari Narayana alias Hari Babu, reported in (2008)5 SCC 765** and **Lalmuni Devi (Smt) vs. State of Bihar and ors, reported in (2001)2 SCC 17** and submitted that it is a settled law that facts may give rise to a civil claim and also amount to an offence. He further submitted that though various communications are issued to applicants asking them to comply by providing the data, applicants have not cooperated and, therefore, custodial interrogation of applicants is required. He submitted that as there was non-compliance of clause 7.3 by applicants, notice was issued as well as notice under Section 91 of the Code of Criminal Procedure was issued, but relevant data is not provided by applicants and, therefore, custodial interrogation is required. As such, the application deserves to

be rejected.

6. As per allegations in the report lodged by the Divisional Forest Officer, there was an agreement between the WCS and the TATR for Online bookings for tourists to visits the Tadoba Forest. The applicants, who are proprietors of WCS, a partnership firm, duped the Government Forest Department by not depositing amount of Rs.12,15,50,831/-. The further allegation shows that in view of the agreement, applicants were under obligation to pay the amount of the TATR, gypsy owners, and guide charges, but the applicants have siphoned the said amount by depositing the same in different bank accounts. The applicants have also opened accounts in the name of the TATR without seeking its permission and they have also opened one Safari Booking Account in the name of Madhya Pradesh Safari. During the investigation, it revealed that applicants have committed misappropriation of Rs.72.00 crores by way of the TATR bookings in the account of ICICI Bank, Pratapgadh Branch, Uttar Pradesh.

7. The entire issue resolves around the service agreement. As per the submission of learned Senior Counsel for applicants, it is only a breach of agreement and no criminal offence is made out against applicants. Wheres, as per

submission of learned Additional Public Prosecutor for the State and learned counsel for the complainant, there was an intention since inception and, therefore, applicants deleted the data which was entered in respect of bookings which is supported by the Forensic Audit. It is further submission of learned Senior Counsel for applicants that the dispute is subject to arbitration, but false report is filed against applicants.

8. The partnership firm of applicants entered into an agreement through applicants with the TATR. As per clauses of the said agreement, which are as follows:

Clause (iii):- from August 2013 the TATR entered into service agreement for providing portal services for online booking and reservation of tickets for Tiger Reserves and National Parks for the aforesaid purpose with a joint venture known as Maha Online Limited.

Clause (vi):- therefore by adopting Swiss Challenge Purchase System as per the purchase rules prescribed by the Government, the TATR invited competitive bids and with the approval of Chief Wildlife Warden, Maharashtra State, Nagpur selected WCS having been found suitable for the service and having quoted the lowest rate.

Clause (vii):- WCS has assisted TATR in developing an online portal entitled www.mytadoba.org/.gov and handed over the same to TATR for use as its Portal and the same is found meeting the expected level of efficiency.

Clause (viii):- TATR has therefore decided online Reservation System and CSC as well as maintaining and operating the above Portal exclusively through WCS.

Clause (ix):- the MOU by TATR with WCS will be effective till next five years and after that the concerned Executive Director will decide regarding further extension of MoU. The same shall be reviewed every year.

Clause 3.4:- to ensure that the services are provided uninterruptedly and that the TATR does not suffer any disrepute or financial loss due to improper or interrupted services.

Clause 4.6:- WCS will generate Monthly Analytical Report and forward the same to the Field Director, TATR.

Clause 5.2:- The WCS shall be entitled to charge the Processing Fees of Rs.65/- (Rupees Sixty Five Only) inclusive of

all taxes and service charges.

Clause 5.3:- WCS shall credit, after ten days from the commencement of the entry of the respective visitors into TATR, the entry fee and all other charges to the bank accounts as under:

Entry Fee per visit to the bank Account of TATR;

Gypsy Charges per Gypsy to Gypsy owner's bank account; and

Guide's Charges per Guide to the Guides bank account;

Processing Fees per ticket to WCS bank account;

Clause 5.4:- WCS shall retain Rs.65/- (Rupees Sixty Five Only) per visitor as its Processing Fees of WCS.

9. Thus, in view of the agreement, the WCS is entitled to receive Rs.45/- and also under obligation to deposit the gypsy charges and guides charges in their respective accounts and remaining amount to TATR foundation bank account. WCS further was under obligation to credit the said amount of entry fees after ten days from commencement of the said entry.

10. As regards Management Element, it was agreed between parties that whenever service falls below identified

threshold limits, WCS will work with TATR to resolve service problems and report progress to TATR. A joint meeting between both the parties will be convened in the event of no improvement in the service, whereupon a comprehension Report documenting the result and resolutions of the problems shall be published and sent to the Chief Wildlife Warden Maharashtra State Nagpur. If the field Field Director, TATR, Chandrapur is finally dissatisfied with the services, the WCS will assist the TATR in selection of the other provider for running and maintaining the services. As per Clause (Ix) of the said agreement, the dispute is to be first referred to the Field Director TATR and if the Field Director could not settle the same, it is to be referred to CWLW and if it is not resorted then to the arbitration. It reveals from investigation papers that an audit was conducted by auditor on 16.8.2023 and it revealed to the auditor that the total amount received in the bank account of the TATR against Online booking from WCS as per the books of account of TATR for the period starting from September 2023 to 27.4.2023 is Rs.10,65,16,918/- and the same has been derived based on the ledger accounts and the corresponding entries in the bank statements. It further revealed that transactions wise information pertaining to the amounts received against Safari Bookings and other activities has been provided by payment facilitators Razorpay and Instamojo pay in excel sheet. These

sheets reflect a consolidated amount received and do not separately reflect various heads against which the amounts are collected. The auditor could not verify the amounts paid by the WCS to guide and gypsy owners and, therefore, preliminary analysis was carried by appointing KND and Associates for Digital Forensic Audit. During the Digital Forensic Audit, it was found out that data of total 83968 transactions looks deleted out of 1,71,584 transactions that took place between year 2020 to 2023. These are preliminary findings by auditors.

11. After receipt of observation by the auditor, communication was made on 27.2.2023 with WCS and applicants were called upon to deposit the amount lying with them in the State Bank of India and applicants were asked to comply the same within seven days. As there was no compliance, another communication was issued 20.3.2003 by referring the earlier communication informing despite of the communication issued, no reply has been received to the letters and no compliance of the instructions issued has been done as on date. It further informed that it is a serious violation of the terms and conditions of the agreement and the work order issued to the first applicants were instructed to stop booking activities of Tadoba activities of Tadoba-Andhari Reserve and also instructed to stop counter booking with immediate effect .

Again, there was communication on 3.5.2023 requesting to facilitate smooth transactions as the new vendor is selected for the purpose and also requested to share website, but it was also not complied with. As there was a contravention of Clause 7.3 of the agreement, notice was issued on 24.4.20023 which was also not replied and, therefore, by Email dated 16.8.2003, applicants were requested to make a payment of guides and gypsy owners, but it was also not complied by applicants.

12. Learned Senior Counsel for applicants submitted that considering allegations against applicants, at the most, there can be a breach of the agreement and no criminal offence is made out. It is a *mala fide* prosecution and the Executive Director has no authority to issue such letters. In fact, dispute requires to be resolved by referring the same to the arbitrator. It was applicants who approached the court for appointing an arbitrator. It is further submission that considering the nature of transactions, custodial interrogation of applicants is not required.

13. On going through the investigation papers, it revealed that services of the WCS are obtained for the Online booking for the "Safari". The tourists used to book their safaris Online by depositing the amount in the accounts of applicants

through Razorpay and Instamojo data on its payment gateways. In view of the agreement, applicants were under obligation to pay the charges of "Safari Bookings", gypsy charges, and guide charges by depositing the same in their respect accounts and applicants were entitled to retain only Rs.45/- per visitor and Rs.30/- to be transferred in the account of TATR as a processing fees and WCS was further under obligation to generate generate Monthly Analytical Report and forward the same to the Field Director, TATR. The investigation papers show that applicants have opened another one Safari Booking Account in the name of Madhya Pradesh Safari. The data regarding the entries which is entered by applicants of Razorpay and Instamojo payment gateways is lying with applicants. Though notice under Section 91 of the Code of Criminal Procedure is issued to applicants to produce relevant documents, it was neither replied nor the data was produced for verification and, therefore, the seizure of the electronic devices including computers and laptops of applicants is required. The investigation papers further show that total 27 accounts in different accounts are maintained by applicants and amounts are transferred to the various bank accounts and, therefore, the custodial interrogation of applicants to find out money transactions is required. Th applicants have not only siphoned the amounts collected against the bookings, but without

informing the TATR, cancelled the GST Account Number. The fake account in the name of TATR bookings without prior permission of the Forest Department was also opened in the State of Uttar Pradesh and the investigating agency received the KYC of the same. It further revealed during the investigation that total transactions are of Rs.72.00 crores against the TATR bookings on account of ICICI Bank, Pratapgadh Branch, Uttar Pradesh and out of that Rs.63.00 crores is through Razorpay gateway. Thus, huge amount is involved in the said transactions and applicants have not deposited the said amount in the TATR account and not made the payments of gypsy owners and guides etc.. The forensic audit preliminary shows that major data of transaction is deleted by applicants. Thus, intention of applicants can be gathered from these circumstances.

14. Learned counsel for the complainant has rightly place reliance on the observations of the Honourable Apex Court in the case of **Lalmuni Devi (Smt) vs. State of Bihar and ors** *supra* wherein it is observed that there could be no dispute to the proposition that if the complaint does not make out an offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not

mean that the criminal complaint cannot be maintained.

The above said view is expressed by the Honourable Apex Court in the case of **P.Swaroop Rani vs. M.Hari Narayana alias Hari Babu** *supra*.

Whereas, Learned Senior Counsel for applicants placed reliance on the decision of the Honourable Apex Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation and anr, reported in AIR 2022 SC 3386** wherein it is held that Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offense, an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a person has committed a cognizable offense, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offense, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offense, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or

promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured.

15. In the light of the above observations, if facts of the present case are taken into consideration, it reveals that not only there is an allegation of siphoning the amount but also there is an allegation of fabrication of the electronic record as the Forensic Audit Analysis shows that entries 83968 out of 171584 are deleted regarding transactions. The agency of applicants was engaged for online bookings. The bookings amounts are accepted by the firm of applicants. The said booking's amounts are not deposited with the TATR. Though several communications were made, there was no response from applicants. The entire data is lying with applicants and unless and until it is collected by the investigating officer, the exact amounts of transactions cannot be ascertained. The Economic Offences Wing also issued notice under Section 91 of the Code of Criminal Procedure to applicants requesting them to produce relevant documents and information. However, the said notice was also not replied. As per the prosecution, total transactions of Rs.72.00 crores were made of the TATR bookings

on the account of ICICI Bank and out of which transactions of Rs.63.00 crores were done through Razorpay and, therefore, the custodial interrogation of applicants is required to ascertain the details regarding the entries from that gateway. The entire data is lying with applicants and after sufficient opportunity being provided to them, they have not produced the same. Thus, it is apparent that there is no cooperation from applicants and applicants are claiming relief of anticipatory bail.

16. The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The discretion is to be used in weighing these interests in the facts and circumstances of each case. Though learned Senior Counsel for applicants submitted that dispute between the parties is subject to the arbitration, the intention of applicants can be gathered from circumstances and manner in which transactions were entered into by applicants and large money of government is siphoned.

17. It is well settled that jurisdiction to grant bail has to be exercised having regard to facts and circumstances of each case. The factors to be taken into consideration are; nature of accusations; reasonable apprehension of tampering with witnesses; reasonable possibility of securing presence of accused etc. and each has to be considered on its own merits.

18. In the present case, considering the nature of the crime, huge amount is involved.

19. The Honourable Apex Court, while dealing with offence, involving conspiracy to commit economic offences of huge magnitude, in the case of **Y.S.Jagan Mohan Reddy vs. CBI, reported in (2013)7 SCC 439** laid down following parameters:

i) economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs 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, and

ii) while granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/State and other similar considerations.

20. The Honourable Apex Court, in the case of **State of Gujarat vs. Mohan Lal Jitmalji Porwal, reported in (1987)2 SCC 364** held as follows:

“5.The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the

consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.....”

21. Considering the role of applicants in the crime having involved enormous and huge amount, siphoning of the amount and fabrication of digital data, and the investigation revealing the manner in which the forest department is duped and the government money is at stake, the role of the applicants is clearly exposed.

22. In the background of accusations and its gravity, applicants are not entitled for being released on bail in the event of their arrest and, therefore, the application deserves to be rejected and the same is **rejected**.

23. The observations made above are *prima facie* in nature, on the basis of material collected during the course of

the investigation, and shall not be taken as findings recorded relating to the alleged offence.

The application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!