



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH)
KOHIMA BENCH**

Case No. : W.P.(Crl.)/6/2023

BHUPESH ARORA
S/O GULSHAN KUMAR, R/O G-5, 35/36, NEAR HAPPY HOME
SCHOOL, DELHI-110085

VERSUS

THE STATE OF NAGALAND AND 5 ORS
KOHIMA NAGALAND
2:THE DIRECTOR
ENFORCEMENT DIRECTORATE
GOVT. OF INDIA
PRAVARTAN BHAWAN
DR. APJ ABDUL KALAM ROAD DELHI-110011

3:THE DEPUTY DIRECTOR
ENFORCEMENT DIRECTORATE
DIMAPUR SUB ZONAL OFFICE
GOVT. OF INDIA
WOEKING FROM HOUSE NO. 20
RAJGARH ROAD
BYE LANE NO. 1
CHANDMARI
GUWAHATI-781003

4:SRI. BISWA KUMAR JHA

LD ADVOACTE
UNIT NO. 352
VARDHMAN PREMIUM MALL
DEEPALI ENCLAVE
PITAMPURA
DELHI NORTH WEST
DELHI-110034

5:MS. ESTHER K. AYE

W/O KHEKIYE AYE

R/O VALLEY VIEW
NAGARJAN

DIMAPUR
NAGALAND

6:MS. LIMASENLA LONGKUMER

THROUGH MS. ESTHER K. AYE

R/O VALLEY VIEW
NAGARJAN

DIMAPUR
NAGALAN

Advocate for the Petitioner : D DAS SR. ADV.

Advocate for the Respondent : P.P, NAGALAND

**BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG**

ORDER

Date : 25-07-2024

Heard Mr. Anindya Malhota and Mr. Amit Singh, learned counsels for the petitioner. I have also heard Mr. K. Angami, learned PP for the State of Nagaland, and Mr. R. K. D. Choudhury, learned DSGI for the respondent nos. 2 and 3.

2. The petitioner filed this application under Article 226 of the Constitution of India read with Section 482 of the Cr.P.C, 1973 for

quashing of the proceedings in Kohima Cyber Crime P.S Case no. 03/2021 under section 120(B)/420 IPC, 1860 read with section 66D of the IT Act.

3. The learned counsel for the petitioner submits that an FIR was lodged against "HPZ Token" and others for duping thousands of people throughout India in crores of rupees on the pretext of doubling their investment by the app HPZ Coin. Based on the above FIR, a case was registered being Kohima Cyber Crime PS Case No. 03/2021 dated 08.10.2021 U/S 420/120(B) of IPC R/W section 66 (D) of the IT Act and investigated into.

4. He further submits that the allegation in the said FIR is against the HPZ Token and M/s Lilian Techno Cab Pvt.Ltd and stated that the petitioner is nowhere connected with the said HPZ Token or the M/s. Lilian Techno Cab Pvt.Ltd; and as such, he is not named accused in the FIR. However, based on the above FIR, the investigation has been carried by the Directorate of Enforcement in connection with Enforcement Case Information Report (ECIR) No. GWZO-II/09/2022 dated 12.04.2022 arising out of Kohima Cyber Crime PS case no. 03/2021.

5. The learned counsel for the petitioner further submits that although the said FIR was lodged and registered way back in 18.10.2021; but so far, no any notice has been issued to him by the I.O of the case in connection with Kohima Cyber Crime PS case no. 03/2021 which shows that there is no case against him.

6. Mr. K. Angami, learned PP for the State of Nagaland submits

that if the petitioner is nowhere connected in the above Kohima Cyber Crime PS Case No. 03/2021 and if he is not involved in the case as he is not named in the FIR, the petitioner, then has no locus to file the present petition and seek for quashing of the said proceedings concerning some other persons. He prays for dismissal of the petition. In support of his submission learned PP cited the decision of the Hon'ble Supreme Court in ***Hukum Chand Garg &Anr Vs. The State of Uttar Pradesh &Ors*** in *Special Leave to Appeal (Crl) No. 762/2020* wherein it is observed that;

"...It is not in dispute that the petitioners have not been named as accused in the said crime. If the petitioners have not been named as accused in the said crime, the question of quashing of stated FIR or the case now under investigation by the Central Bureau of Investigation (CBI) arising from the said crime, does not arise as the petitioners will have no locus to seek such a relief. In other words, the petitioners not being named as accused in the said crime or the case now registered by the CBI on the basis of the said crime, cannot be permitted to ask for quashing of the proceedings concerning some other persons (accused)."

7. Mr. R. K. D. Choudhury, learned DSGI for the respondent nos. 2 and 3 submits that based on the complaint against "HPZ Token" and others disclosing that thousands of persons were duped by this entity on the pretext of investment for Bitcoin, the Kohima Cyber Crime PS case no. 03/2021 dated 08.10.2021 under section 420/120(B) of IPC read with section 66 (D) of the IT Act was registered. He further submits that the offence under section 420

and 120 (B) of IPC fall under paragraph 1, part "A" of the Schedule of Offences under the Prevention of Money Laundering Act, 2002(PMLA). Therefore, the matter was examined by the Directorate of Enforcement, Dimapur Sub-Zonal Office and since prima facie a case for money laundering, as defined under section 3 of the PMLA and punishable under section 4 of PMLA was made out, a case was recorded vide an Enforcement Case Information Report (ECIR) vide ECIR No.: GWZO-II/09/2022 dated 12.04.2022 and investigation was initiated under PMLA where it was found that an entity by named, the "Freebie Solutions Private Limited" has several transactions with another company "M/S Sark Enroll Systems Private Limited (SESPL)". "Freebie Solution Private Limited" is the entity enrolled by the petitioner Bhupesh Arora where he and his father, Gulshan Arora are the Directors and between the period from May, 2022 to November, 2022, the petitioner, Bhupesh Arora, using the API integration with Sark Enroll Systems Private Limited (SESPL) has made payment of Rs. 900 crores, which was the amount of unregistered online Gaming and Gambling and therefore, under the fact and circumstances of the case, it is too early to come into any conclusion that the petitioner is not involved in the case only because he is not named accused in the FIR, and it is also too early to interfere with the investigation of the case as the matter is still at the nascent stage of investigation.

8. At this, the learned counsel for the petitioner while relying upon the above referred decision of the Hon'ble Supreme Court in the case of ***Hukum Chand Garg & Anr Vs. The State of Uttar Pradesh & Ors (Supra)*** submits that, the observation made in the

above case squarely covers the present case of the petitioner. He further submits that in the instant case also, it is not disputed that the petitioner is not a named accused in the FIR. And in view of the decision in the above referred Supreme Court case in ***Hukum Chand Garg &Anr Vs. The State of Uttar Pradesh &Ors (Supra)***, the learned counsel for the petitioner prays that this petition may also be disposed of in the line of above referred case with liberty to the petitioner to take recourse to appropriate remedy, as and when the petitioner is named by the investigating Agency in connection with the Kohima Cyber Crime PS case no. 03/2021 which is now under investigation.

10. The CD as called for has been produced and I have perused the same. The investigation conducted so far, reveals that the petitioner is found involved in money transaction which is ultimately linked with the transaction in the present case. However, since the petitioner is not pressing for disposal of the case on merit and his limited prayer at this stage is to dispose of the matter with liberty to the petitioner to approach again as and when the petitioner is named by the investigating Agency in connection with the Kohima Cyber Crime PS case no. 03/2021, now under investigation, I am of the opinion that this petition at the instance of the petitioner can be disposed of.

11. Accordingly, in view of the above submissions made by the learned counsel for the petitioner and as agreed upon by the learned counsel for the respondents, however, without going into the merit of the case, this writ petition (Crl) is dismissed with liberty granted to the petitioner as prayed for.

12. With the above, this writ petition (Crl) stands disposed of.

Sd/-
JUDGE

Comparing Assistant