

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**ANTICIPATORY BAIL APPLICATION NO.326 OF 2016
WITH
CRIMINAL APPLICATION NO.360 OF 2016**

Suresh Thimiri s/o. T.K. Thimiri ... Applicant
vs.
The State of Maharashtra ... Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.327 OF 2016
WITH
CRIMINAL APPLICATION NO.361 OF 2016**

Michael Joseph Ferreira ... Applicant
vs.
The State of Maharashtra ... Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.328 OF 2016
WITH
CRIMINAL APPLICATION NO.362 OF 2016**

Shinivas Rao Vanka
s/o. Pattabhi Rama Rao Vanka ... Applicant
vs.
The State of Maharashtra ... Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.329 OF 2016
WITH
CRIMINAL APPLICATION NO.363 OF 2016**

Magaral Veeravalli Balaji
s/o. Magaral Vearavalli Chellapillai ... Applicant
vs.
The State of Maharashtra ... Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.330 OF 2016
WITH
CRIMINAL APPLICATION NO.364 OF 2016**

Malchholm Nozer Desai ... Applicant

vs.

The State of Maharashtra ... Respondent

Mr. Amit Desai, Senior Advocate a/w. Mr. Gopal Shenoy for the Applicants in ABA. Nos. 326 and 328 of 2016.

Mr. Ashok Mundargi, Senior Advocate for the Applicant in ABA. No. 329 of 2016.

Mr. Girish Kulkarni, for the Applicant in ABA. No. 330 of 2016.

(All the counsel for the applicants are instructed by Mrs. S.J. Patil a/w. Mr. Vikramsingh Parmar, Mr. Kedar Patil, Mr. Santosh Kore and Ms. Trupti Bharadi).

Mr. Pradeep Gharat, Special PP a/w. Mrs. P.P. Shinde, for State.

Mrs. Sharmila Kaushik, APP for the State in A.B.A. 328 of 2016.

Mr. G.S. Anand, the complainant/party-in-person present.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 6th MAY, 2016

PC.:

. The applications are moved for pre arrest bail as the applicants/accused are facing charges for the offences punishable under Sections 120(B) and 420 of the Indian Penal Code and under Sections 3, 5 and 6 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and Section 3 of Maharashtra Protection of Interest of Depositors (In Financial Establishments Act) in C.R. No.

316 of 2013 registered with Oshiwara police station, Mumbai. The offence is registered at the instance of one Gurupreetsingh Anand on 16th August, 2013.

2. It is the case of the prosecution that in the year 2000 one Vijay Ishwaran and Joseph, the founders of “QI Group” formed a company under the name and style “*Gold Quest International Private Limited*”. The applicants/ accused also joined the said group in 2006. *Gold Quest International Private Limited* used to sale gold plated coins. In the year 2000 the rate of gold was Rs. 5,000/- per 10 gms., however, they used to sale the gold plated coins for Rs. 30,000/- though the gold was less than 10 gms. Thereafter, the purchaser of the gold coin becomes a member of the group. He was required to make more persons as the member of the *Gold Quest International Private Limited*. On the basis of the number of members which he brings, he was placed to get the commission. So he was supposed to bring minimum two persons and the hierarchy had pyramid structure. So one member treated at the right side and second member was treated on the left side. The volume of the said business after enrollment of new member increases when 1000 units are credited to

the account of the old member which are treated equivalent to the commission of Rs. 11,500/-.

3. It is the case prosecution that in the year 2003 a fraud was detected and the offence was registered at Chennai against the said *Gold Quest International Private Limited company*. So the owners of the said company repaid everything to the members to whom they have promised to pay and the offence was compounded. Hence, the first information report was quashed. However, the company continued the illegal activities by forming another company by different name i.e. "QuestNet Enterprise (P) Limited". They started one "Pallava Resorts Private Limited" and also launched various products especially the products by name Biodisk, Chi Pendent, Watches, Gold Coins. These products were sold from minimum Rs. 30/- to Rs. 7 lacs. The false representation was made by the company that the said product Biodisk cures diseases. Biodisk is to be kept in the water and due to molecular effect, the quality of the water is changed and if that water is consumed, it will give good result and cures the diseases including like cancer.

4. It is the case of the prosecution that the applicant/accused Suresh Thimiri was appointed as Indian head and C.E.O. of QuestNet Enterprise (P) Limited and the applicants/accused Michael Ferreira and Malchholm Desai had joined the said company in the year 2006 and actively participated in the expansion of this company. In 2008 the offences were registered at Chennai, Andhra Pradesh and Karnataka but the said company continued its activities of chit-fund and money laundering till 2012. They stopped the business of QuestNet Enterprise (P) Limited company but formed a new company by name Q Net. Under this brand of Q Net, three companies i.e. Vanmala Hotels, Travels and Tourism Services Private Ltd, Transview Enterprises India Private Limited and Vihaan Direct Selling (I) Pvt. Ltd. started its business since April, 2012. In the said company, the applicant/accused Malchholm Desai was holding 20% shares and the applicant/accused Michael Ferreira was holding 80% shares. Other two applicants /accused Magaral Balaji and Shinivas Vanka were appointed as Directors of the *Vihaan Direct Selling (I) Pvt. Ltd.* Under the said Vihaan company, they continued the activities of selling the same products of Biodisk, Gold coins, Chi Pendants etc. They established one Pallava Resorts Private Limited and Vanmala Hotels,

Travels and Tourism Services Private Ltd. The applicant/accused Suresh Thimiri was the C.E.O. since 2010 and became Director of Transview Enterprises India Private Limited. The holiday packages were issued by the said company. However, all these holiday packages were not given but only few were provided. Many persons also became members could not get a business as promised by the company. Therefore they felt deception. Thereafter the police registered offence on 16th August, 2013 against the present applicants/accused. At that time, it was found that nearly 90000 members were cheated at the hands of applicants/accused and they suffered wrongful loss of amount of Rs. 425 Crores and as such money laundering was of Rs. 425 Crores. However, till today during the investigation, it was found that number of members who are deceived are around 5 lacs and misappropriation and money laundering was about more than of Rs. 1000 Crores. Hence, this complaint.

5. **Mr. Amit Desai, Mr. Ashok Mundargi, the learned Senior Counsel and Mr. Girish Kulkarni, the learned counsel for the applicants** have submitted that the applicants/accused are innocent.

They have neither cheated anybody nor committed any offence. It is submitted that the complainant is a motivated person who has lodged a false complaint against the applicants/accused due to business rivalry. They submitted that the applicants/accused are in the business of direct marketing which is legally permissible in all over the world. Vihaan Direct Selling (I) Pvt. Ltd. company has total 50 products and they are categorized sales known for nutrition and herbal products, the tourism holiday, wellness products etc. Mr. Amit Desai, the learned Senior Counsel, further has submitted that the applicants/accused neither promoted any investment nor collected deposits in any scheme. They are selling products and the buyers get the commission. He described the policy of the company as “*if you sell more, you earn more*”. It is not a fly-by-night operation of money laundering but the applicants/accused are in the business with the large number of Individual Representatives who have earned lot of money. However, their statements are not recorded by the police. He submitted that police are selective in the investigation. He relied on the terms and conditions of the contract/policy which every member has to sign with the company after he gets Independent Representative number and the membership. He submitted that the

company has also refund policy and the persons who did not receive the service or are not satisfied with the service, they can approach the company. The company has refunded nearly 95-100 Crores.

6. In support of his contention, the **learned senior counsel** has relied on the judgment of **Gold Quest International Private Limited vs. State of Tamil Nadu and Others, (2014) 15 Supreme Court Cases, 235** where the company has filed Petition for quashing the first information report and wherein a compromise/settlement between the parties has taken place and the Supreme Court quashed the first information report and allowed the Appeal. He further relied on the judgment of **State of West Bengal and Othres vs. Swapan Kumar Guha and Others, 1982 Supreme Court Cases (Cri) 283**. So also in the case of **State of West Bengal and Others vs. Sanchaita Investments and Others, 1982 Supreme Court Cases (Cri) 283**. The judgment of **Sanchaita Investments** is on Sections 3 and 4 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978. He further relied on para 6 of the said ruling. He submitted that the offence under Prize Chits and Money Circulation Schemes (Banning) Act, 1978 is bailable. On the point of necessity of arrest, he relied on

Siddharam Satlingappa Mhetre vs. State of Maharashtra and Others, (2011) 1 Supreme Court Cases 694 and Jogindarsingh vs. U.P and Others, 1994(4) SCC 260. The learned senior counsel Mr. Amit Desai has submitted that in any case arrest is not required and arrest is not justified especially when the punishment is less than 7 years. In order to substantiate his submissions, he relied on Arnesh Kumar vs. State of Bihar and Another, (2014) 8 Supreme Court Case, 273. He also relied on Amway India Enterprises vs. Union of India, 2007 SCC OnLine AP 494.

7. The learned senior counsel has submitted that since the case of Joginder Kumar vs. State of U.P And Others, (1994) 4 Supreme Court Case, 260 to the case of Arnesh Kumar (supra), the law on the point of arrest has changed as the police officer must be satisfied about necessity and jurisdiction of such arrest on the basis of investigation. He submitted that there should not be violation of human rights. He relied on Gurbaksh Singh Sibbia and Others vs. State of Punjab, (1980) 2 Supreme Court Cases, 565 and Siddharam Mhetre (supra), wherein the principle of arrest in the cases of anticipatory bail is explained. He further placed reliance on

the case of **Bhadresh Bipinbhai Sheth vs. State of Gujrat, 2015 SCC OnLine 771**. It was the case under Section 438 of Code of Criminal Procedure wherein the Hon'ble Supreme Court has laid down the principles of grant of anticipatory bail.

8. **Mr. Pradeep Gharat, the learned special prosecutor** submitted that Chi Pendent and Biodisk were sent to Bhabha Atomic Research Center for radio activity test which was conducted on 20th February, 2015 wherein it was reported that no radio activity was detected. He further submitted that the company was not selling actually any product but everything is shown on Internet and on social website. The police have recorded the statements of three persons who have stated that the seminars were conducted for the persons who were interested in getting degree of M.B.A. They have stated that as per the representation made before them, they paid the amounts as they were promised E-course of M.B.A. which was affiliated to some Swiss University. They were informed that as and when payment is made, you will get identity and one “Independent Representative” (I.R.) number and a link will be provided with a password so that they could have access to the site. However,

irrespective of their efforts they could not get access and could not complete the degree and thus they were cheated. He submitted that Vanmala Hotels, Travels and Tourism Services Private Ltd. and Pallava Resorts Private Limited have created a Website and travel packages. The commission was not paid on the products though the new members were introduced. The registered office of Vanmala Hotels, Travels and Tourism Services Private Limited company is a call center. He further submitted that in December, 2014 the Ministry of Corporate Affairs sealed their office at Chennai and declared *Gold Quest International Private Limited* and QuestNet Enterprise (P) Limited as the fraud companies. Thus money is collected on-line and though the Independent Representative number is given, actual money was not available for withdrawal. Said money was laundered outside India. The police in the investigation have come across 73 bank accounts of Q Net Limited and total laundering of Rupees is around 135 Crores.

9. The learned **special prosecutor** further submitted that in the year 2014 the complaint was filed against Q Net Limited and QuestNet Enterprise (P) Limited companies of Q1 Group as they have

cheated many persons. He submitted that Q1 Group is from Malaysia and through the said group these activities are carried out under different name and style. There are multiple bank accounts, there is *mens rea* to cheat the people and thus, the companies i.e. Transview Enterprises India Pvt. Ltd. and Vanmala Hotels, Travels and Tourism Services Pvt. Ltd. and Vihaan Direct Selling (I) Pvt. Ltd. cheated many persons and that is continued till today. There is money- trail which is disclosing money level circulation scheme. In support of his contentions, he relied on the following authorities:

- 1) State of Gujrat vs. Mohanlal Jitamalji porwal and Another, 1987 AIR 1321.
- 2) Narayanan Rajagopalan vs. The State of Maharashtra, in Cri. A.B.A. No. 1416 of 2013 dated 2nd April, 2014.
- 3) Ashok Bahirwani vs. The State of Maharashtra, in Cri. A.B.A. No. 1083 of 2012 dated 19th March, 2013.
- 4) Amway India Enterprises vs. Union of India, 2007 (4) ALT 808.
- 5) Y.S. Jagan Mohan Reddy vs. C.B.I., in Cri. Appeal No. 730 of 2013, S.C. dated 9th May, 2013.
- 6) Kasturchand Ramlal Badjate vs. The State of Maharashtra, (1981) 83 BOMLR 8.
- 7) Central Bureau of Investigation vs. Anil Sharma, S.C., Cri. Appeal dated 3rd September, 1997.

8) Sudhir vs. The State of Maharashtra and Another, Cri. Appeal Nos. 1286-1287 of 2015 dated 1st October, 2015.

9) K.K. Baskaran vs. State of Tamil Nadu and Others, Cri. Appeal No. 2341 of 2011 dated 4th March, 2011.

10) Shrinivasa Enterprise and Others vs. Union of India, (1980) 4 SCC 507.

11) State of Maharashtra vs. Som Nath Thapa, 1996 AIR 1744.

10. The learned **Special prosecutor** submitted that the economic offenders ruin the economy of the State and the economic offences are committed with cool and deliberate manner regardless to the consequences on the community. He relied on the judgment of Mohanlal Jitamalji Porwal (supra). He further relied on the judgment of the Division Bench in the case of Transview Enterprise India Private Limited vs. The State of Maharashtra & Anr. of this Court passed on 12th February, 2014 in Criminal Application No. 844 of 2014 where the applicant in Transview Enterprises India (P) Ltd. has filed an application for defreezing the accounts which was refused by this Court. He also placed reliance on Amway India Enterprise vs. Union of India dated 19th July, 2007. (2007 SCC Online A.P. 494). He further relied on the judgment in the case of

Kuriachan Chacko and Others vs. State of Kerala, Supreme Court, in Cri. Appeal No. 1044 of 2008 passed on 10th July, 2008. This matter was against the order of discharge of the accused persons for the offences punishable under Sections 4 and 5 read with sections 2(e) and 3 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. He relied on the judgment of **Gautam Kundu vs. Manoj Kumar, in Cri. Appeal No. 1706 of 2015 arising out of SLP (Cri.) No. 6701 of 2015.** In the said case, the trial Court has rejected bail under Section 439 of Code of Criminal Procedure where the accused was prosecuted for the offence punishable under Section 3 of Prevention of Money Laundering Act, 2002. In the said case, the Court has referred Section 45 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and which has overriding effect on the general provisions of the Code of Criminal Procedure.

11. The **complainant** Gurupreetsingh Anand who was present in the Court wanted to address the Court and so in all fairness, the opportunity was given to him. He was heard. He has also filed the intervention application. He stated that QuestNet Enterprise (P) Limited carried out their business and after the prosecution of

QuestNet Enterprise (P) Limited, they introduced the business plan under the name and style Q Net Limited. He submitted that the company gives rosy picture of '*money back scheme*' to the public at large. However, once a person become a member, he is called as 'Independent Representative' (I.R.) and then he can get the commission. However, he does not earn money as promised. The applicants /accused and the other representatives are not accessible and finally the person lose his money. He submitted that the same persons are rotated from QuestNet Enterprise (P) Limited to Vanmala Hotels, Travels and Tourism Services Pvt. Ltd. and Vihaan Direct Selling (I) Pvt. Ltd. He submitted that the payments were promised and the partnership was as per the business plan. The compensation promised by the Q Net Limited was on weekly basis. He submitted that as Government found that there is a fraud of Crores of rupees, Government agency started to investigate the matter and through website qnet.net.com which was blocked by the order of the Magistrate Court. He submitted that nearly 15000 Independent Representative of Q Net Limited were transferred to Vihaan Direct Selling (I) Pvt. Ltd. company. The complainant relied on the business plan of QuestNet Enterprise (P) Limited. So also the Frequently Asked

Questions(FAQ) in the business of Vihaan Direct Selling (I) Pvt. Ltd. company. So also the genealogy report. He submitted that they are attracting people by giving false promises. Hence, there is cheating.

12. The **learned counsel** for the applicants/accused **in reply** submitted that the applicants/accused have fully cooperated the police and the details of financial transactions also supplied to the police. There is no case of money laundering. Only few crores have gone out of India. The learned senior counsel Mr. Desai has submitted that direct marketing is promoted by Government of India and Government has supported direct marketing i.e. how the applicants/accused are carrying out the business and all the activities are legal. The applicants/accused who are running company explained the facts to the public at large and the persons who became members. A contract is entered between them. The entire business is legal so that people can earn more money and quick money and it is not dependent on enrollment of members but on the sell. He relied on the judgment in the case of **Sanchaita Investments** (supra) under Prize Chits and Money Circulation Schemes (Banning) Act, 1978. He submitted that in this scheme, income is on the basis of sale of

products. It is not compulsory for any person to become member and enroll in it. He submitted that earlier it was *Gold Quest International Private Limited* and if at all there is some fault or illegality found in the scheme, then the person can change the scheme as per the requirement of the law and it can be corrected and therefore a new scheme can be introduced. Therefore, there is difference between Q Net Limited and QuestNet Enterprise (P) Limited. There are no registration charges for becoming Independent Representative in Q Net Limited, which were compulsory in QuestNet Enterprise (P) Limited. The commission depends only on sale of goods. There is also a refund policy in the working of Q Net Limited. The applicants/accused are not sitting on anybody's money. In the case of QuestNet Enterprise (P) Limited, the Madras High Court initiated the prosecution against different persons than the applicants/accused. However, the order passed by the Madras High Court was subsequently set aside by the Hon'ble Supreme Court as the parties entered into a compromise. As per the requirement of Section 2(c) of M.P.I.D. Act, it is necessary to collect deposits. In the present case, no deposits are collected.

13. Before advertizing to the facts of the present case, it is useful to cull out and reproduce the ratio laid down by the Hon'ble Supreme Court in some important cases.

14. The question before the Hon'ble Supreme Court in the case of **Amway India** (supra) was whether the business activity being carried out by the Petitioner comes under the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and the other issue was about the legality of seizure and search carried out by the investigating agency at various places of Amway. The Writ Petitions were dismissed by the Supreme Court and it was held that the rights of seizure and search on various places are legal. The Hon'ble Supreme Court in the case of **Amway India** (supra) has discussed and analyzed money circulation scheme and where it is held as under:

“Money circulation scheme” means any scheme, by whatever name called, for the making of quick or easy money, or for the receipt of any money or valuable thing as the consideration for a promise to pay money, or any event or contingency relative or applicable to the enrollment of members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions.”

15. In the case of **Gautam Kundu** (supra), the Bench has referred the observation of the Supreme Court in the case of **Y.S. Jagan Mohan Reddy** (supra) wherein it is observed as under:

“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 country.”

16. In the case of **Kuriachan Chacko** (supra) said case the Hon'ble Supreme Court held as under:

“The scheme is so grossly unworkable that the persons who made representations to that effect and induced persons to part with money did entertain the contumacious intention. They knew fully well that unworkable false representations were being made. The obvious attempt, it can be presumed at this stage, was to induce persons by such false unworkable representations to part with money. Initially some subscribers can be kept satisfied to induce them and others similarly placed to join the long queue. But inevitably and inescapably later subscribers are bound to suffer unjust loss when they swallow the false and therefore the charge can be

framed under Section 420 read with 34 of Indian Penal Code at the said stage.”

17. This scheme is undoubtedly a multilevel marketing activity and a pyramid structure of such scheme is prepared so that the members are promised to get money on purchase and sale of products. The money circulation or multilevel marketing pyramid structure as described above is a cognizable offence under Prize Chits and Money Circulation Schemes (Banning) Act, 1978. A letter dated 1st January, 2015 issued by the Chief General Manager, R.B.I. is placed before me, wherein R.B.I. has cautioned the public against multilevel marketing activities as the people due to attractive offers are falling prey to the said schemes and finally they suffer losses. However, the offence under Prize Chits and Money Circulation Schemes (Banning) Act, 1978 is bailable.

18. In the case of **Shrinivasa Enterprise** (supra), the competency of the legislature to enact the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 was challenged. In the said case, the Hon'ble Supreme Court has observed that as under :

“In the matters of economics, sociology and other specialised subjects, Courts not embark upon views of half-lit infallibility and reject what economists or social scientists have, after detailed studies, commanded as the correct course of action. The final word is with the Court in constitutional matters but judges hesitate to 'rush in' where even specialists 'fear to threat', If experts fall out, Court, perforce, must guide itself and pronounce upon the matter from the constitutional angle, since the final verdict, where constitutional contraventions are complained of, belongs to the judicial arm.”

19. In the case of **Bhadresh Sheth** (supra) the charges for the offences punishable under Sections 506(2) and 376 of Indian Penal Code and the complaint was given in the year 2001 and after 17 years the Supreme Court tried the matter for cancellation of anticipatory bail. The Court referred the principles laid down in the cases of **Gurbaksh Singh Sibbia** and **Siddharam Satlingappa Mhetre** (supra) and set aside the order of the trial Court of cancellation of anticipatory bail. In sum and substance, while entertaining anticipatory bail application, the Court has to rely and refer the ratio laid down in the cases of old good law of **Gurbaksh Singh Sibbia** and

Siddharam Satlingappa Mhetre (supra). The present offence is falling under the category of economic offences and therefore it has of different complexion than the case of **Bhadresh Bipinbhai Sheth** (supra).

20. Perused the documents presented by both the sides. I have gone through the plan which is given by Qnet to every individual representative (IR). I have gone through the statements of many witnesses, who claimed that they have been cheated under the scheme launched by Qnet. I have also considered the conclusive report of (Serious Fraud Investigation Agency under the Company Act) S.F.I.O. Prima facie, there is material to hold that the business conducted by Qnet is covered under PCMC Act and also under Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. However, all these sections are bailable. Considering the manner in which the business is conducted, I have doubt whether offence under section 3 of the MPID Act, which is a non-bailable section, can be attracted or not?

21. Apart from these offences for which the applicants/accused are prosecuted, cheating is the only non-bailable offence under section 420 of the IPC. While hearing the case of the prosecution and the defence, my main query to both the parties and myself was whether offence of cheating is *prima facie* made out or not. In order to attract the offence of cheating, the ingredient of intention to cheat should be present in the mind of the accused. If *mens rea* is absent, then, even if other person or the complainant suffers losses in the business, then, it is not cheating. Then, it can be simply labelled as a financial business transaction which did not fetch positive returns. As per the submissions of the learned Senior Counsel and the other learned Counsel for the applicants/accused, it is true that the company has launched an e-marketing business to make money. As observed by the Supreme Court in the case of **Chacko (supra)** to earn more money is not an offence; to earn quick money or easy money is also not an offence. Therefore, if such project is launched, that itself cannot be an offence. There is no compulsion or force operated on the public to be a member of the business or participate in the business. Thus, the option was always open to the aggrieved persons to say no to the scheme. However, the things are

not as straight as they are perceived on the surface. Assuming that the scheme was launched with a noble object to give benefit to maximum people to make money quickly and easily by selling products of the company, however, after going through the material placed before me including the statements of the witnesses, I am of the view that in the mid-way, the intention of the applicants/accused, who are the Directors and shareholders of the company, became dubious. They had knowledge that more members are suffering financial losses and they are not satisfied with the products. The claim that the wellness products i.e., Biodisk and Chi Pendent are medicinal and spiritual products, is after all, a matter of faith. However, the applicants/accused have launched these wellness products with ulterior motive and with correct judgment of vulnerability of the people. The holiday packages which were sold or offered, without any choice left to the buyers. The entire business was Internet based and, therefore, the persons who are responsible i.e., the top brass i.e., the applicants/accused, were not approachable to the persons who were aggrieved. The nature of the business was knitted in the interest of the Directors and shareholders in such a manner that the persons who are at the lower level of the pyramid cannot get any access to put

up their grievances. The manner in which the persons were contacted, incentives offered, the workshops were conducted, are best examples of inducement.

22. Responding to the submissions of the prosecution that the IRs of lower level of pyramid are doing aggressive marketing and they are threatening and pestering people for selling the products and for becoming members, Mr.Desai argued that the applicants/accused cannot be vicariously liable. They have started the scheme with a noble object and they cannot be held responsible for some overreach or aggressive steps or illegality of some IR while marketing the company products. It is true that the doctrine of vicarious liability is unknown to the criminal law. However, apart from the behaviour of such pressurising tactics which are used by the IRs on the lower level of the pyramid, material is brought before me to show that many workshops and sessions are conducted regularly at various places by the company. Undoubtedly, all these workshops and sessions and training centres are run at the behest of the applicants/accused by the Directors and shareholders i.e., the applicants/accused and thus, they have control either directly or remotely, over the dishonest

inducement and aggressive marketing which is the modus operandi of this company.

23. To protect the fundamental right of every individual to practice any profession or to carry on any occupation, trade or business which is guaranteed under Article 19(g) of the Constitution of India is the duty of the Court. However, it is always qualified with reasonable restrictions. A particular business fetching profit to handful of individuals cannot be carried out at the cost of others who suffer losses due to deceitful inducement.

24. The statements of the witnesses reveal that the dishonest concealment of true facts and the real business of the company. The persons, who dominate and navigate the will of the others, have an advantage which they can turn to their account. In the present case, such advantage is gained undoubtedly by dishonestly and in deceitful manner. There are instances of dishonest concealment of facts i.e., genuine nature of the products and by the persons working for the company i.e., I.Rs and with intention to earn wrongful gain to them and the company and wrongful loss to others. The motto of the company 'sell more, earn more' appears very attractive and

innocuous. However, this motto is fully camouflaged. The company stands on a basic statement that people can be fooled. Thus, the true motto is 'sell more earn more' by fooling people.

25. The submissions of the learned Senior Counsel for the applicants-accused that selling the product at a very high price is not an offence, is true and cannot be controverted in the marketing business. It depends on the marketing capacity of an individual and so the level of his profit. However, in this marketing, the IRs are directed to give all the names and details of the relatives, phone numbers of their acquaintances, references and thereafter the persons in the higher level, who are given some positions, contact these acquaintances and references and the chain is multiplied. The persons who are gullible, are bound to be prey of such kind of persuasion which is coloured with inducement. In fact, it is a chain where a person is fooled and then he is trained to fool others to earn money. For that purpose, workshops are conducted where study and business material is provided with a jugglery of words, promises and dreams. Thus, the deceit and fraud is camouflaged under the name of e-marketing and business.

26. Mr.Desai, the learned Senior Counsel for the Applicants, has submitted that the law under section 438 of the Code of Criminal Procedure has developed and changed a lot till today. The Supreme Court has taken a very liberal view and a humanistic view on the point of arrest. He relied on **Joginder Singh Sibiya** and **Bhadresh Bipinbhai Sheth (supra)** and submitted that in the cases especially where the punishment is less than 7 years, the Supreme Court has disapproved arrest and, therefore, section 41A of the Code of Criminal Procedure is enacted.

27. It is true that the Legislature in order to avoid illegal arrest, rather to check the police-mania of arrest, has enacted section 41A of the Code of Criminal Procedure and the Supreme Court responding to the said legislation in **Arnesh Kumar (supra)**, has laid down guidelines directing the police how to give notice and the person should get opportunity to put up his explanation. In the present case, the offence is registered in the year 2013. The applicants/accused were granted interim pre-arrest bail by the learned Sessions Judge and thus, the applicants/accused have visited

the police station on a number of occasions and gave explanation to the police, which they wanted to. However, the police have opposed their applications for pre-arrest bail in the Sessions Court and the Sessions Court has denied the same. It shows that section 41A was in fact fully complied with. This shows that the police whatever explanation and information they received from the applicants/accused are not satisfied. I made searching queries to the learned Prosecutor in order to clear the doubt as to whether the police wanted to arrest the applicant-accused only out of vengeance or they have made it a prestige issue. However, after going through the record, which is placed before the Court and the submissions made by both the parties, I found that such element is absent. There may be misdirected over-enthusiasm on the part of the prosecution in sending Biodisk and Chi Pendent to BARC. However, I am of the view that they need to investigate properly and more effectively to find out the money trail and from where the products are manufactured, also to check the correct addresses, bank accounts, networking of the company, etc. Moreover, by this deceitful inducement, large number of people, may be approximately 2.5 lakh people, are trapped in this money-tree planting business and

everyday, as it is an ongoing activity, more people are accepting these attractive camouflaged offers.

28. It has very grave and serious impact on the economic status and mental health of the people on a large scale. On considering parameters of section 438 of the Code of Criminal Procedure, I am not inclined to protect the accused. It won't be out of place to mention that such circulation is required to be stopped. It is necessary for the prosecution to take injunctive steps against this business activity which is prima facie, illegal. Though by stopping this business, a large group of people may get financially affected, however, it will save larger groups of people from becoming prey of this activity.

29. In the result, the Anticipatory Bail Applications are rejected. Criminal Applications for interventions stand disposed of.

30. At this stage, learned Counsel appearing for the applicants/accused seeks continuation of earlier interim relief for a period of 10 weeks as the applicants/accused intend to challenge the

order before the honourable Supreme Court. Learned Prosecutor has opposed this oral prayer. However, the earlier interim relief is continued till 15th July, 2016.

(MRIDULA BHATKAR, J.)