IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2154 OF 2018
ALONGWITH
CRIMINAL APPLICATION NO.783 OF 2019

Nikunj Virendrakumar Jain .... Applicant

versus

The State of Maharashtra .... Respondent

…....

- Mr. Subodh Desai a/w. Vaibhav Bhure a/w. Anuja Thunjhunwala a/w. Nidhi Ahir I/b. M. Mulla Associates , Advocates for Applicant.
- Mr. Ajay Patil, APP for the State/Respondent.
- Mr. Ameya Dange, Advocate for first informant.
- Mr. Machhindra Pandit, PI, Cyber Police Station, Pune City present.

CORAM : SARANG V. KOTWAL, J.
DATE : 24th JULY, 2019 and
29th JULY, 2019

P.C. :

1. The applicant is seeking his release on bail in connection with C.R. No.28/2018 registered at Dattawadi Police Station, Pune City, under sections 406, 420 r/w. 34 of IPC. Subsequently, sections 3 and 4 of Maharashtra Protection of

Interests of Depositors (in Financial Establishments) Act, 1999 (MPID Act) are added alongwith section 66(D) of the Information Technology Act, 2000.

2. The FIR in this case is lodged by one Nisha Raisoni. She has stated that she came in contact with one Akash Sancheti. He informed her that he was owning a company by name 'Cloud Miners' and he was into the business of trading and mining of Bitcoins. He represented to her that his company was an Associate Company of 'Gain Bitcoin' company which was run by one Amit Bharadwaj. He further represented that the informant could purchase Bitcoins through his company. She could use those Bitcoins for mining and thereby she could get more Bitcoins. He represented that for every Bitcoin, after 18 months, she could get 1.8 Bitcoins. The informant was convinced that if she invested in this business, she would earn good profit. Accordingly, she invested Rs.1 Lakh on 12/8/2017 by transferring that amount in the account of Hemlata Sancheti, the mother of Akash Sancheti. Similarly, she invested more amount from time to time. It is her

case that Akash Sancheti alongwith his business partner Smt. Kajal Shingvi also made similar representation. In all, she had invested Rs.13 Lakhs in that scheme of purchasing Bitcoins. Every time when the money was invested, Akash Sancheti used to give her username and password. When the informant opened her account using her username and password, she found that Akash Sancheti had invested only 1/5th of the amount given by her. When she demanded back her Bitcoins, he refused to return the Bitcoins, instead he offered to give other crypto currency by name MCAP. He did not inform her about the value of that currency. The first informant was convinced that she was cheated and therefore, she lodged her FIR.

3. The applicant was arrested on 21/4/2018 in this connection. Since then, he is in custody. The investigation in this case is over and the chargesheet is already filed on 13/3/2018. The investigation was conducted further and even supplementary chargesheets were filed.

4. It is mentioned in the chargesheet that the accused Amit Bharadwaj and Vivek Bharadwaj had formed a company by name Variable Tech PTE at Singapore. They represented that they had a website by name gainbitcoin.com and through that website registration of the investors was made. The block chain was developed by giving block chain ID. The investors were told that their Bitcoins would be transferred in their account with those ID's. Investors were told that they would get 10% Bitcoins on every Bitcoin over a period of 18 months. It is further alleged in the chargesheet that instead of giving the investors their promised returns of Bitcoins, accused offered to give other Crypto currency by name MCAP and the investors were almost forced to take that Crypto currency. The investors were told that in lieu of one Bitcoin they would get 465 MCAP currency. However, the value of that Crypto currency was negligible and the investors were cheated. They lost their money invested in that scheme.

5. In the chargesheet, it is mentioned that the present applicant Nikunj Jain was Director of M/s. Darwin Labs Pvt. Ltd.

This company was providing technical support to Gain Bitcoin website. It is also mentioned in the chargesheet that this applicant and others had developed a Coin Bank, Wallet, GB 21 website and MCAP Crypto currency which was used by the main accused Amit Bharadwaj who had cheated the investors.

6. Ld. APP has filed a common affidavit in different anticipatory bail applications of different accused. It is mentioned in the affidavit that the total amount involved in this crime is to the extent of Rs.5,64,66,576/-.

7. Heard Mr. Subodh Desai, Ld. Counsel for the applicant, Mr. Ajay Patil, Ld. APP for the State of Maharashtra as well as Mr. Ameya Dange, Ld. Counsel for the Intervener / first informant.

8. Shri. Desai submitted that the applicant was arrested on 21/4/2018 and since then he is in custody. The applicant had resigned from the post of Director of Darwin Lab Pvt. Ltd. On 9/8/2016. He submitted that the Darwin Lab Pvt. Ltd. had not

developed the main software but had only provided drivers for running the software for Amit Bharadwaj's company. He submitted that Crypto currency was launched in April 2017 by which time he was not a Director but was only a shareholder of M/s. Darwin Lab Pvt. Ltd. He further submitted that Amit Bharadwaj is already on bail in connection with the present offence.

9. He further submitted that he had not induced any of the investors to make investment in the scheme and therefore, he cannot be held liable for any of the offences alleged against him.

10. As against these submissions, Mr. Ajay Patil as well as Mr. Ameya Dange, Ld. Counsel for the Intervener submitted that the applicant had not severed his connection with M/s. Darwin Lab Pvt. Ltd. and he was very much involved in development of the software. He pointed out that huge fee of Rs.1 Crore was paid to M/s. Satoshi Studios Incubator-1 Pvt. Ltd. The present applicant was in control of the said company and he was controlling the company alongwith others and therefore, it cannot be said that he

did not have any connection with this offence. The Crypto currency could not have been developed without his active participation.

11. The affidavit filed by the Ld. APP shows that 132.2417 Bitcoins valued at more than Rs.4 Crores are encashed. The concerned MPID Court is yet to decide about payment of that amount. Ld. APP submits that the steps to attach the property under section 4 of the MPID Act are yet to be taken. However, the process is started by the investigating agency. The applicant's bank account holding Rs.80 Lakhs is freezed by the investigating agency.

12. Mr. Desai, Ld. Counsel for the applicant has tendered an undertaking before this Court signed by the Advocate for the applicant as well as wife of the applicant wherein it is mentioned that the applicant undertook to give his no objection to release Rs.25 Lakhs from the amount of Rs.80 Lakhs freezed by the investigating agency for distribution to respective investors on the condition that the same should be brought back to the Hon'ble

MPID Court or to be paid to the applicant in the event of his acquittal or discharge in relation to this offence. Ld. APP is given a copy of this undertaking. In addition to this, Ld. Counsel for the applicant has tendered an affidavit of the wife of the applicant which contains similar averments.

13. The applicant is in custody since 21/4/2018. Though section 409 of IPC is punishable with life imprisonment, that section is not applicable in the present case against the present applicant. The remaining sections applied in this case are sections 406 and 420 of IPC as well as section 3 of the MPID Act. The maximum punishment therefore is seven years. The applicant is in custody for more than one and half year. The trial is likely to take a very long time to reach its conclusion. The applicant's company is alleged to have received One Crore Rupees. A reasonable share out of this amount is secured, because of the undertaking and affidavit of his wife given on his behalf. In addition to this, by way of abundant precaution, the applicant shall file similar affidavit in the Trial Court as a precondition for his release on bail giving his no objection to release Rs.25 Lakhs from the amount of

Rs.80 Lakhs freezed by the investigating agency for distribution to respective investors. The applicant is a highly educated person as he is a graduate from I.I.T. Delhi. The applicant has no criminal background or antecedents except for the allegations of dealing in Bitcoins. The main accused Amit Bharadwaj and Vivek Bharadwaj are already on bail in this offence. They have much more serious role alleged against them. In this view of the matter, accepting the undertaking given in the Court, I am inclined to grant bail to the present applicant. It is made clear that the amount of Rs.25 Lakhs which is lying in his account and which is part of the total amount which is freezed by the Investigating Agency can be distributed to the investors proportionately by the MPID Court. It is needless to add that such distribution of money would be on certain conditions and on the investors giving undertaking to the MPID Court that they would bring back the money to the Court in the eventuality of the acquittal or discharge of the applicant. The MPID Court shall order return of such money to the applicant if he is discharged or acquitted in the case. It is clarified that this order is passed without prejudice to the rights of investigating agency to take other steps in accordance with law. Hence, the following order.

ORDER

(i) The Applicant shall file an affidavit before the MPID Court at Pune giving his No Objection for releasing Rs.25 Lakhs from the amount of Rs.80 Lakhs freezed by the investigating agency for distribution to the respective investors.

(ii) On the Applicant filing such affidavit in the MPID Court, Pune, the Applicant is directed to be released on bail in connection with C.R. No.28/2018 registered at Dattawadi Police Station, Pune City, on his executing P.R. Bond of Rs.1,00,000/- (Rupees One Lakh Only) with one or two sureties in like amount.

(iii) The applicant shall not commit any offence similar to the offence of which he is accused.

(iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade such person from disclosing such facts to the Court or to any police officer or tamper with the evidence.

(v) The applicant shall join further investigation as and when required by the Investigating Officer or by the Enforcement Directorate.

(vi) The applicant will deposit his passport with the MPID Court within a period of two weeks from today if it is not deposited with the investigating agency, already.

(vii) The applicant shall not in any manner use any digital wallet in his name or in any of his associates's name or do any trading in mining to misappropriate Bitcoin in any manner whatsoever.

(viii) The applicant shall report to the concerned Police Station as and when called.

(ix) The Criminal Application No.783/19 is also disposed of.

(SARANG V. KOTWAL, J.)