IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1502 OF 2020

Rahul Arun Bongale ….Applicant.

Vs.

The State Of Maharashtra ….Respondent.

Mr. Satyavrat Joshi for the Applicant.
Mr. S.S. Hulke, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.
DATE : 28th JUNE, 2021.
(Through Video Conferencing)

P.C.:-

This is a successive Application for bail, under Section 439 of the Code of Criminal Procedure, in C.R. No.36 of 2019 registered with Rajarampuri Police Station, Kolhapur for the offence under Sections 406, 420, 201, 120-B of the Indian Penal Code (for short, *'the IPC'*)and under Section 66-D of Information Technology Act (for short, *'the I.T. Act'*) and under Section 3 of The Maharashtra Protection Of Interest Of Depositors (In Financial Establishments), Act, 1999 (for short, *'the MPID Act'*).

2 The earlier Bail Application No.733 of 2020 preferred by the Applicant was disposed off, as withdrawn by an Order dated 23rd June, 2020, in view of the fact that, during the pendency of the said Application, the police had completed investigation and submitted charge-sheet.

In view of the change in circumstance, the Applicant was permitted to withdraw the said Application with liberty to file a fresh Application for bail before the Trial Court. The record indicates that, in pursuance of the said liberty, the Applicant had filed Application for bail before the Trial Court, which came to be rejected by an Order dated 7th July, 2020.

3 In view of the above, I have heard Mr. Joshi, learned Advocate appearing for the Applicant and Mr. Hulke, learned APP for the State. Perused entire charge-sheet.

4 Applicant is the Accused No.-5 as per the charge-sheet.

The prosecution case in brief is that, the Accused Nos.1 and 2 were the Directors of a Variabletech Private Limited and other 3 Accused including Applicant, were its agents. That, all the Accused persons in connivance with each other, lured witnesses (investors) to do online investment vide bitcoin, in their company with assurance that, the witnesses (investors) would get 10% returns per month on the said investment. After the witnesses (investors) invested with the said company, the accused in connivance with each other, converted the said bitcoin into a product by name Gain-Bitcoin and transferred the said amount in it. The Accused persons thus, committed an act of cheating and caused wrongful loss to the witnesses to the tune of Rs.31,11,432/-.

During the course of investigation, the Applicant came to be arrested on 17th February, 2020. After completion of investigation, police have submitted charge-sheet. As noted earlier, the Application for Bail preferred by the Applicant has been rejected by the Trial Court by its Order dated 7th July, 2020.

5 Mr. Joshi, learned Advocate appearing for the Applicant submitted that, the co-accused namely Mahesh M. Shaha, (A. No.-4) has been released on bail by the Trial Court by its Order dated 13th March, 2018. He submitted that, the said co-accused Mahesh Shaha was also an agent of the said company along with the Applicant. That, both the Accused persons are similarly situated and the principle of parity will be applicable to the Applicant. He submitted that, the Applicant has deep roots in the society and will be available for trial. He further submitted that, there are no antecedents at the discredit of the Applicant. He, therefore prayed that, the Applicant may be released on bail.

6 Mr. Hulke, learned APP with his usual fairness stated that, parity with co-accused Mahesh M. Shaha is applicable to the Applicant in the present case. He submitted that, it is a matter of fact that, the Accused Nos.1 and 2, are the principal accused and are the Directors of the said company. He submitted that, necessary Orders in the interest of justice, may be passed.

7 Perusal of charge-sheet would indicate that, it is the accused Nos.1 and 2, who are the Directors of the said Variabletech Private Limited.

That, it was their idea and enterprise to transfer bitcoin investment of the witnesses (investors) into Gain-Bitcoin. That, the Applicant was an agent, employed with the said company by Accused Nos.1 and 2. It *prima facie* appears that, the Applicant was not a beneficiary of the amount defalcated by the principal Accused Nos.1 and 2.

Perusal of record would further indicate that, the role assigned to the Applicant is similar to that of co-accused Mahesh Shaha and therefore, the principle of parity is squarely applicable to the Applicant. The Applicant is ordinary resident of Pune and after his release from jail, will make himself available for Trial.

8 In view thereof, the Applicant can be released on bail.

Hence the following Order-

a) Applicant be released on Bail in C.R. No.36 of 2019 registered with Rajarampuri Police Station, Kolhapur, on his furnishing PR bond of Rs.25,000/- with one or two local sureties in the like amount.

b) After his actual release from Jail, the Applicant shall attend Rajarampuri Police Station, Kolhapur, on every first Monday of the month between 11.00 a.m. and 1.00 p.m. and mark his presence.

c) Applicant shall attend all the dates before the Trial Court, unless precluded on medical grounds.

d) Applicant shall not tamper with the evidence and/or pressurize the prosecution witnesses.

e) Application is allowed in the aforesaid terms.

f) The parties to act on the basis of an authenticated copy of this Order.

(A.S. GADKARI, J.)