BDP-SPS-TAC

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2646 OF 2022

Mr. Divyesh Dhansukhlal Darji …. Applicant.
V/s
The State of Maharashtra …. Respondent.

Dr. Uday P. Warunjikar for the Applicant.
Mr. P.N. Dabholkar, APP for the Respondent/State.
Mr. Sahil Mahajan for the Intervener.

CORAM: NITIN W. SAMBRE, J.

DATE: SEPTEMBER 26, 2022

P.C.:-

1] This Application is under Section 438 of the Criminal Procedure Code for grant of pre-arrest bail in Crime No.33 of 2022 registered with Pune City Cyber Police for the offence punishable under Sections 419, 420, read with Section 34 of the Indian Penal Code and under Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors Act, 1999 i.e. MPID Act.

2] The case of the prosecution is as under:-

3] Complainant, a lawyer by profession, initially attended Seminar held by the Applicant at Pune sometime in the month of February, 2016. Complainant got impressed by the presentation given by the Applicant on the issue of multiplicity of the invested amount, initially invested Rs 10 lakhs in 33.60 Bitcoin and remaining 20.60 Bitcoin remained in possession of the Applicant. Subsequent thereto in Coince, Bitclubgolbal lending, Applicant invested substantial amount such as 18 Bitcoin, 21.57 Bitcoins from Bank of India and Rs 5 lakhs America Dollars with Bitconnect lending. Subsequent thereto Applicant promised to complainant about fast growth of money in various ponzy schmes and made him to deposit Rs 5 lakhs in Bitconnect, 3 Bitcoin in ATCC Crypto currency, 54 Bitcoin of Dekado Coin, 25 Bitcoin and 56.92 Bitcoin in ATCC Crypto currency. Aforesaid investment was made by the complainant through the account of the Applicant by depositing the said amount.

4] Complainant/Applicant noticed that of the investment made by him for which financial Bank Accounts were linked to separate E-wallet which was created and password was also provided by creating ID and registration, certain Accounts have stopped its operation, such as Dekado Account, Bitconnect, Billion Coin, Trade on Bit. Applicant is allegedly representative of Bitcoin and Dekado coin. Hence, offences under Section 419 i.e. cheating by personation, Section 420 cheating with inducement to deliver property or security, Section 201 destroying evidence and 34 of the IPC i.e. common intention came to be registered.

5] Dr. Warunjikar, learned Counsel appearing for the Applicant would urge that complainant has consciously invested in Bitcoin based on consultancy provided by the Applicant. According to him, investments are always at market risks and Applicant never promised any particular returns. According to him, complainant was initially benefited and such benefits are reinvested by the complainant. He would urge that incorrect investment by the complainant, if has caused any financial loss to him, similarly is also the position of the Applicant. According to him, Applicant is no way connected with the offence in question. In addition, he would draw support from certain judgments delivered by the High Court of Gujarat at Ahmedabad, Additional City Civil and Sessions Judge, Bangalore, thereby directing pre-arrest or post-arrest release of the Applicant in similarly alleged offences. As such, Dr. Warunjikar would urge that since the necessary ingredients of the offences alleged are not made out, Applicant deserves to be protected in the event of his arrest as the Applicant is verymuch available for the investigation.

6] While countering aforesaid submissions, Ms. Dabholkar, learned APP assisted by Mr. Mahajan, Counsel for the Complainant, would urge that trail of the amount invested by the complainant would demonstrate that Applicant is a direct beneficiary of the amount which he had provoked or instigated to invest. According to learned APP, *modus operandi* of the Applicant is to give initially substantial high returns on the investment made, induce parties like the complainant to invest more and more amount and then suddenly stop operation of the company in which investments are made, thereby embezzling the amount so invested to his personal benefit. So as to substantiate the claim, my attention is invited to the trail of the amount which is received by the Applicant in his Account.

7] I have appreciated rival submissions.

8] Complainant initially invested Rs 10 lakhs on 29/02/2016 in one coin Bit Club Global and 20.60 Bitcoin remained with the Applicant. Subsequent thereto on 12/04/2016, complainant sent Rs 5 lakhs from Bank of India for purchase of 21.57 Bitcoin. On 16/11/2016, complainant was made to invest in Bitconnect lending an amount of 13.46 Bitcoin and in Rosenef 11.54

Bitcoin. Subsequent thereto, Applicant has given his E-Wallet address to the complainant who transferred substantial amount which are around 7.30, 3, 54, 25 Bitcoin for alleged investments. It appears that from the investments of the complainant, Bitcoins which were purchased were induced to be invested in Bitconnect, Crypto which perhaps were prompted by the Applicant and his near and dears. Such facts have been suppressed by the Applicant from the complainant. Apart from above, 18.079 Bitcoins were given to the Applicant for investment in Bitconnect lending for which neither acknowledgment nor any details of E-wallet are provided. The aforesaid transaction on the part of the Applicant has not only established his complicity in serious economic offence of cheating by personation but also satisfies very requirement of Section 420 of the Indian Penal Code

9] There is prima facie involvement of the Applicant based on his aforesaid complicity in a serious economic offence.

10] In that view of the matter, no case for grant of pre-arrest bail is made out. Application as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)