

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Criminal Application (BA) No. 1164 of 2022

Mangal Mewalal Tiwari

Versus

State of Maharashtra, through Police Station Officer, Police Station
Panchpaoli, Dist. Nagpur

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri D.V.Chauhan, Advocate for the applicant.

Shri S.D.Sirpurkar, APP for the State / Non-applicant

CORAM : ANIL S. KILOR, J.

DATED : 7th DECEMBER, 2022.

1. Heard.

2. The applicant has approached to this Court by filing the present application under Section 439 of the Code of Criminal Procedure for grant of bail in connection with Crime No.276 of 2022 dated : 09.03.2022, registered with Police Station : Panchpaoli, Nagpur (City), for the offences punishable under Sections 406, 409, 420, 120B read with Section 34 of the Indian Penal Code, Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in

Financial Establishments) Act, 1999, Section 66(d) of the Information Technology (Amendment) Act, 2008 and Sections 4 and 5 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978.

3. Shri Chauhan, learned counsel for the applicant submits that investment made by the complainant was for purchase of crypto currency which is a speculative investment.

4. It is submitted that after the investment, a value of crypto currency came down and as the informant has not received returns as per alleged promise made to him, he lodged the complaint.

5. It is submitted that the applicant used to canvass the schemes of the company as a commission agent. It is submitted that the applicant has not received any amount involved in the alleged transaction.

6. It is submitted that the applicant is in jail from 09.03.2022. i.e. for more than six month and as the investigation is completed and charge sheet has been filed, he submits that further custody oand charge sheet has been filed, he submits that further custody of the applicant is not necessary.

7. It is pointed out that as per the FIR, the total amount involved in the present crime is Rs.82 lakhs. Whereas, an amount of Rs.72 lakhs has already

been frozen by the Investigating Agency. He therefore, submits that as the major amount has already been secured by the prosecution, further custody of the applicant is not necessary. Accordingly, he prays for grant of bail.

8. On the other hand, the learned APP strongly opposes the application and submits that though presently the amount involved in the present crime is Rs.82 lakhs but it may rise up to 3 to 4 crores. He submits that during the investigation, the material collected by the Investigating Officer shows the involvement of the applicant in the alleged offence.

9. Lastly, he argues that as one co-accused is absconding, this Court may not grant bail to the applicant. He further submits that the applicant has not produced any authority or license for collecting such amount from the investors. He further points out that no receipts were issued by the applicant to the investors on investment of amount by them. Accordingly, he prays for rejection of the present application.

10. In the backdrop of submissions of the learned counsel and the learned APP, I have perused the charge sheet and the application.

11. In the present case, at the behest of one Hitendra Tejram Akre, the present crime was registered

against the applicant and three other accused persons. It is alleged that in the year 2010, the informant got acquainted with the applicant and the co-accused. In the year 2019, the applicant and the co-accused Mangal Tiwari informed the complainant that they were agent of crypto currency and Forex trading company.

12. It is alleged that the applicant had given a promise to give handsome returns on investment and it is a profitable business, thereupon, the complainant invested the huge amount. It is stated that initially, the complainant paid interest. However, subsequently, it was informed that the value of the said investment starts going down and later on it was revealed that the said company was bogus. Accordingly, he lodged the complainant.

13. It is in a common knowledge of all that crypto currency may be a good investment if you are willing to accept it as a high risk gamble which could pay off, but also there is a strong chance, you could lose all of your money.

14. In this case, the applicant is in jail for more than six months and as far as the amount involved in this crime as per the FIR is concerned i.e. 82 lakhs, from the charge sheet it appears that amount of Rs.72 lakhs and odd has already been frozen by the Investigating

Agency. Thus, it can be said that the major part of total amount involved in this case has already been secured by the Investigating Agency.

15. In this case, the offences are registered under Sections 406, 409, 420, 120B read with Section 34 of the Indian Penal Code, Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, Section 66(d) of the Information Technology (Amendment) Act, 2008 and Sections 4 and 5 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978. There is a serious dispute of applicability of Sections 409 and 120B of the IPC, as raised by the applicant.

16. At this stage, considering the scope of this application for grant of bail, I do not want to make any comment as regards the applicability of Section 409 of the IPC, as it may cause prejudice to the trial.

17. As far as other offences are concerned, the maximum punishment would be seven years and considering the fact that the amount of Rs.72 lakhs and odd has already been secured by freezing the said amount and since the investigation is completed and the charge sheet has been filed, I am of the opinion that further custody of the applicant is not necessary. Accordingly, I pass following order:

- i) The application is allowed.
- ii) It is directed that the applicant shall be released on bail in Crime No.276 of 2022 dated : 09.03.2022, registered with Police Station : Panchpaoli, Nagpur (City), for the offences punishable under Sections 406, 409, 420, 120B read with Section 34 of the Indian Penal Code, Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, Section 66(d) of the Information Technology (Amendment) Act, 2008 and Sections 4 and 5 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978, on his furnishing P.R. Bond of Rs.25,000/- with a solvent surety in the like amount.
- iii) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence.
- iv) The applicant shall not leave the jurisdiction of the concerned police station without permission of the Court.
- v) The applicant shall attend the concerned police station as and when his presence is required.

The application is accordingly disposed of.

[ANIL S. KILOR, J.]

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