IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO. 1342 OF 2023.

Kiran Bharatrao Kharat,
Age 47 years, Occ. Business,
R/o. Jalna, Tq. Ghansavangi,
Dist. Jalna. .. APPLICANT.

VERSUS

The State of Maharashtra .. RESPONDENT.

Mr. R.N. Dhorde, Senior Counsel h/f. Mr. Vikram R. Dhorde,
Mr. K.S. .Patil, APP for respondent

CORAM : S.G. CHAPALGAONKAR, J.
DATE : 22ND AUGUST, 2023

ORDER :-

The applicant seeks bail in connection with Crime No. 28 of 2023 registered with Jalna Taluka Police Station, for the offenes punishable under Sections 420, 120-B,504, 506 r/w. 34 of IPC and Section 3 of the MPID Act.

2. One Rishikesh Kale lodged report to the Jalna Taluka Police Station, alleging that the accused Kiran Kharat and his wife – Deepti, induced him to invest in Global Digital Crypto Currency (GDCC for sake of brevity) and assured better financial returns. It is further alleged that the accused represented that they are having control and management of GDCC, which has been launched since December 2022. The informant invested huge amount through GDCC Coin App. However, he suffered huge loss. On the basis of aforesaid complaint, Crime No. 28 of 2023 came to be registered with Jalna Taluka Police Station for the offence punishable under Sections 420, 120-B,504, 506 r/w. 34 of IPC and

Section 3 of the MPID Act.

3. The applicant has been arrested in pursuance of the aforesaid crime on 6.5.2023. He was remanded to Police Custody up to 18.5.2023 and at presently he is in Magisterial Custody. On completion of investigation, the charge sheet has been filed against other accused. The applicant was shown as absconding.

4. Mr. Dhorde, learned Senior counsel appearing for the applicant vehemently submits that the applicant has acted as an agent for investment in Crypto Currency which is subject to market fluctuations. If the complainant and other have suffered loss because of the market fluctuations, the applicant cannot be held responsible. He would submit that the applicant had no intention to cause wrongful loss to the investors or cheat them. It was purely a business transaction. He would further urge that the applicant himself had invested about Rs.50 Lakhs in crypto currency i.e. GDCC COIN. He would further submit that the applicant is neither a promoter nor a banker. Therefore, Section 409 of IPC has no application in the facts of the case. Mr. Dhorde would submit that the applicant has not utilized the money received from the complainant or other investors who are similarly situated like complainant. The amount is not utilized for own benefit by the applicant. He would further urge that the provisions of the MPID Act would not apply in such cases. The investigation in the offence is complete. The charge sheet has been filed. The property of the applicant has been seized during the course of investigation. There is no likelihood of absconding. The applicant has a family of 3 children and wife. He would place reliance on order dated 14th September, 2022 in ***Criminal Application (BA) No. 1039 of 2022 passed at Nagpur Bench in the matter of Santosh s/o. Ambada Lande vs. State of Maharashtra***, so also, order of

the Supreme Court in the matter of ***Ganesh Shivkumar Sagar Vs. State of Gujarat reported in 2023 SCC On Line SC 903*** and the order passed by the Kerala High Court in the matter of ***Shahin T. and others Vs. State of Kerala, reported in 2022 SCC On Line Ker. 1348.***

5. Per contra, Mr. K.S. Patil, learned APP as well as Mr. A.B Ghule Patil, learned advocate appearing for the informant vehemently opposes the prayers. Mr. Patil would submit that large number of persons have invested huge amount based on false promises given by the applicant. Initially, the applicant lured them with lucrative returns on the investment and duped such investors. Accused have trapped innocent investors and defrauded them with false promises. Huge amount has been involved in the scam.

6. Having considered the submissions advanced by the learned advocates appearing for the parties, it is apparent that the applicant had assured good returns on investment in GDCC. The investments are made by large number of persons on such assurances. Initially, lucrative returns were made available on such investments. However, subsequently, huge losses are suffered. As pointed out by learned Senior Advocate, the applicant himself has invested about Rs. 50 Lakhs in GDCC during the year 2021-22. Record shows that the amount received from investors is made part of the investment in crypto currency. It has not been pointed out that the applicant/accused has diverted the funds for his own benefits. The property owned by the accused persons is already frozen by the investigating agency, the valuation of which is more than the investments by victims of the crime.

7. Two vehicles owned by the applicant are also seized during the course of investigation. Apparently, the applicant has invested his

own funds in the Crypto Currency. It can not be disputed that the Crypto Currency has emerged as a new avenue for investment. Usually good returns are received on such investment as experienced in the past. However, such investment is always subject to market risks. The value of crypto currency may sky high or some times it grounds to zero level. Any prudent investor will invest in Crypto Currency knowing that it is a speculative investment.

8. Prima facie, the record reveals that the applicant has acted as an agent and lured the investors to invest in crypto currency and to take chance of good returns. Although huge amount is invested thorugh the applicant, the investors have taken their chance of high risk gamble where they could lose all the invested money.

9. As stated above, the property owned by the accused persons have been seized having valuation more than investment made by the victims. The charge sheet filed. Investigation is over. As such, there is no impediment in releasing the applicant on bail subject to certain conditions. Hence, the following order :-

10. : O R D E R :

[i] The application is allowed.

[ii] The applicant be released on bail in connection with crime No. 28 of 2023, registered at Police Station, Jalna Taluka, for the offene punishable under Sections 420, 120-B,504, 506 r/w. 34 of IPC and Section 3 of the MPID Act, on his furnishing P.R. Bond in the sum of Rs. 1,00,000/- (rupees one lakh only) with one solvent surety in the like amount.

[iii] The applicant shall not directly or indirectly or through any inducement, threat or promise, influence any person acquainted with the

facts of the case and also not tamper with the evidence,

[iv] The applicant shall not leave the State of Maharashtra without written intimation to the Court.

[v] He shall surrender his passport with Police Station, Jalna Taluka.

[vi] The applicant shall attend the police station as and when his presence is required.

[vii] The application is accordingly disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-