



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

CRIMINAL APPLICATION (BA) NO.692 OF 2023

Gajanan s/o Bholenath Mungune

Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Yashodhara
Nagar, Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. D. V. Chauhan, Advocate for applicant.
Ms. Deepa Charlewar, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 18/12/2023

1. Heard.
2. The applicant has preferred this bail application under Section 439 of the Code of Criminal Procedure in connection with Crime No.288/2021 registered with Police Station, Yashodhara Nagar, District Nagpur for the offence punishable under Sections 420, 409, 406, 120-B and 212 of the Indian Penal Code and Sections 3 and 4 of the Maharashtra Protection of Depositors (In Financial Establishments) Act (MPID) and Section 3, 25 of the Arms Act, Section 66(d) of the Information Technology Act, Sections 58B, 5a of the Reserve Bank of India Act and Sections 3(i)(ii), 3(2), 3(4), 4 of the Maharashtra Control of Organized Crime Act. The applicant is arrested on 19.02.2022 since then he is in jail.

3. The crime is registered on the basis of report lodged by one Nilesh Mohadikar on an allegation that the another co-accused Nished Wasnik created a fake company by way of website namely 'Ithar Trade Asia' and induced the general public at large that they would get handsome return of the invested amount of their investment within 100 days. The company has floated several schemes and induced the customers to invest in their company. It is further alleged that he has conducted several seminars in five star hotels and provided information to the investors about various schemes of Crypto Currency called 'Eathereum'. Thus, he has accepted the amounts from various investors and the investors have not received any return and the co-accused Nished Wasnik could not return the amount in time and thus duped the general public at large.

4. Learned Counsel Mr. Chauhan for the applicant submitted that as far as the present applicant is concerned, who is the only employee of the said Nished Wasnik. There is no allegation against him that either he induced the investors or conducted the seminars to induce the investors to make an investment. He further submitted that the allegations regarding the inducement are against Rajendra Khobragade and his daughter Sakshi Khobragade. Sakshi Khobragade is absconded and Rajendra Khobragade is already released on bail. He further submitted that the wife of Nished Wasnik who alleged to be a Managing Director namely Pragati Wasnik

is also released on bail. Considering that he has not actively participated in the inducement. He submitted that as far as the various statements recorded by investigating agency, if taken into consideration it only points out that the present applicant was the employee of the said Nished Wasnik and no further role is attributed to him. The similar role is attributed to the Pragati Wasnik. In fact, it is alleged that she was also involved in conducting the seminars but she is released on bail. The case of the present applicant is on a better footing, even the confessional statement of the main accused Nished Wasnik also states that present applicant was serving as a Cashier in his company and accepting the amount. Thus, the statement of the various witnesses and confessional statement of the co-accused Nished Wasnik also attribute the role to the present applicant only to the extent that he was serving with him and was accepting the money. Considering the said allegation, the further incarceration of the present is not required as for a considerable period he is behind bar. The provisions of MCOC are not attracted against the present applicant, in view of that, he be released on bail.

5. On the other hand, learned APP argues that the applicant was arrested and during the house search panchnama the articles worth of Rs.83,91,210/- are seized. This property he has gained from the illegal activity and thus, his involvement in the alleged crime is

revealed. In view of that, application deserves to be rejected.

6. After perusal of the entire charge-sheet and after hearing the learned Counsel for the applicant and learned APP for the State it reveals that during investigation, the Investigating Officer has recorded the statements of various witnesses. The learned Counsel for the applicant has referred the various statements which shows that present applicant was serving as a Cashier with co-accused Nished Wasnik who is the Proprietor and owner of the said company. After going through the various statements, it reveals that except the said allegation nothing is on record to show that the present applicant either induce the investors or played any other active role in inducing the investors to invest the amount. Even the confessional statement placed on record by learned APP of the co-accused Nished Wasnik shows that present applicant was his employee and working with him as a Cashier. He also stated that present applicant was only accepting the amount from the investors. Thus, there is no material in the charge-sheet to show that the applicant participated in any seminars and played any active role or made any promise to the investors for handsome returns. The co-accused Pragati Wasnik who is the Managing Director and as per the statement she was also present in some seminar, is released on bail by this Court. The case of the present applicant is on a better footing, as none of the

statements show that he either conducted the seminars or induced the investors to invest the amount. Thus, considering the nature of the material there is no *prima facie* material found against the present applicant to show his involvement in the alleged offence. As far as the rigors under Section 21(4) of the MCOC Act is concerned, satisfaction is to be recorded by this Court to the effect that the applicant is not guilty for the offence, but the said satisfaction should be *prima facie* in nature. Considering the entire statements on record, there is *prima facie* satisfaction that the material found against the present applicant is not sufficient to show his involvement attracting the offence MCOC Act. At the most, the offence made out against the present applicant is that he was working with the co-accused Nished Wasnik who was involved in running the fake currency and accepting the amount from the investors. Thus, there is no *prima facie* material found against the present applicant. In the facts and circumstances, I am of the opinion that further incarceration of the present applicant is not required and considering the investigation is completed and charge-sheet has been filed, I am of the view that, the prayer of the present applicant deserves to be considered. Accordingly, I proceed to pass following order.

ORDER

- (i) The application is allowed.

(ii) The applicant **Gajanan s/o Bholenath Mungune** be released on bail in connection with Crime No.288/2021 registered with Police Station, Yashodhara Nagar, District Nagpur for the offence punishable under Sections 420, 409, 406, 120-B and 212 of the Indian Penal Code and Sections 3 and 4 of the Maharashtra Protection of Depositors (In Financial Establishments) Act (MPID) and Section 3, 25 of the Arms Act, Section 66(d) of the Information Technology Act, Sections 58B, 5a of the Reserve Bank of India Act and Sections 3(i)(ii), 3(2), 3(4), 4 of the Maharashtra Control of Organized Crime Act, on executing PR bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the concerned Police Station on first day of every month in between 9.00 am. to 1.00 p.m. till conclusion of the trial.

(iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any of the witnesses who are acquainted with the facts of the present case.

(URMILA JOSHI-PHALKE, J.)