IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 328 OF 2024

Amod Vasantrao Mhetar ..Applicant
Versus
The State of Maharashtra ..Respondent

Mr. Niteen Pradhan a/w. Shubhada Khot i/b. Vikram V. Tare-Patil for Applicant.
Mr. Avinash A. Naik, APP for State/Respondent.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 02 JULY 2024

P.C. :-

1. The Applicant is seeking his release on bail in connection with C.R.No.304 of 2023 registered at Ichalkaranji police station, Kolhapur, on 30.08.2023, under sections 420, 406, 409, 506 and 120-B, r/w. 34 of the Indian Penal Code and U/s.3 and 4 of The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short 'MPID Act'). The investigation is over and the charge-sheet is filed.

2. Heard Mr. Niteen Pradhan, learned counsel for the

applicant and Mr. Avinash Naik, learned APP for the State.

3. The prosecution case is reflected in the Column 17 of the charge-sheet which records brief facts of the case. The F.I.R. is lodged by one Pandharinath Mahajan. The co-accused Chetan Mohire, Pranali Mohire and Pragati Solankure met him in his office. They told the informant Pandharinath Mahajan that, those accused were marketing Global Digital Cluster Coins (GDCC). It was a crypto currency. If he invested in that crypto currency, he would get good returns; even to the extent that, he could get double the amount in one year. He was told that, at that point of time, the value of one coin was Rs.3300/- and when it was to be launched, it would reach upto Rs.1 lakh. It was to be launched on 25.12.2022. All of them told him that, in future, crypto currency would reach greater heights in the world and that its value would be much higher than the other currency. These accused even accepted the responsibility for his investments. He was asked to attend a seminar at Ichalkaranji in October 2021. When the informant attended that seminar, apart from these accused, one Irfan Sayyad and another co-accused Ajay Gaikwad were present.

The informant was told that, many such seminars were conducted at Goa, Aurangabad, Jalna etc. It is his case that, at their constant inducement, the informant invested Rs.24,70,905/-. The accused Chetan Mohire sent a website link to the informant for registration. The informant and his friends invested Rs.12,60,000/- in GDCC. When that crypto currency was launched on 25.12.2022, its price was shown as Rs.1200/-, but the informant and other investors were not able to withdraw their investment. The accused told them that, they would get their money back in January 2023. But since the money was lost, the F.I.R. was lodged for loss of around Rs.37 lakhs. The investigation was carried out. The investigation revealed that, there were other investors and the amount of investment revealed during the investigation was more than Rs.12 crores. There was one more offence registered at Jalna police station vide the C.R.No.28 of 2023 on the similar allegations. In that offence, the invested amount was more than Rs.20 crores. The present applicant is the accused No.13 in the present offence. The investigation revealed that GDCC was originated on Ethereum Blockchain since 2016. The main accused

Irfan Sayyad had created eight websites. Some of them were for investment, some of them were for storing the coins and some of them were for de-centralising exchange. Some of them were for providing information. Out of those websites, the main website gdccbussiness.com was deleted by the accused Irfan in September 2022. The investors were investing their money using that website. But since the website was deleted, it was difficult to find out exactly how many investors had invested in that scheme.

4. On 25.12.2022, it was told that GDCC were being transferred from the coin wallet to chain-wise exchange, but the coins could not be transferred. No investors could transfer their coins. The price of the coin fell down to 20 dollars within 6 to 7 hours. Within two weeks the chain-wise exchange was closed and it was listed on other exchanges for the price of 1 dollar. Thus, the investors lost their money. The allegations are that the accused gained profit in that and purchased the properties for themselves.

This, in short, is the prosecution story.

5. Shri. Pradhan, learned counsel appearing for the

Applicant submitted that, he was arrested on 15.09.2023. The charge-sheet is already filed. He was also one of the accused in the offence at Jalna, but in that offence, he was granted bail U/s.167(2) of the Cr.p.c. The applicant's properties are already attached. He had co-operated with the investigation. He does not have any other property than which is already attached. He had a flat at Baner road, Pune, two cars and bank accounts in his own name and in the name of his wife. All these properties are already attached by the investigating agency. He submitted that, around Rs.2 crores were invested by the applicant himself. His continued detention as as undertrial accused is not warranted.

6. Shri. Naik, learned APP opposed these submissions. He relied on the affidavit filed by the investigating officer in this case opposing these submissions. It is mentioned in the affidavit in reply that the applicant was involved in the crime and was a member of the core group of GDCC coin sales. He had actively participated and introduced the scheme to the witnesses Prakash Mhetar and others. There was a reference to other witnesses namely Mihir Nigavekar and Nagarjun Tanaje. Their statements

show his involvement. According to the learned APP, though the applicant was arrested and interrogated, he deliberately did not provide any useful information about the crime. The accused were offering packages like foreign trips, luxury cars to attract the investors. The applicant had purchased movable and immovable properties worth crores of rupees from the proceeds of the crime. He further submitted that, thorough investigation is still to be conducted and it will not be possible if the applicant is released on bail. The applicant did not have any other business than GDCC coins and there was turnover of lakhs of rupees in his bank account. The Government of India has not given any permission for starting those GDCC coins and yet the investors were induced in investing in that scheme. For that purpose, seminars were arranged and huge amount was accepted from the investors. The amounts were misappropriated.

7. Learned APP Shri. Naik also relied on the statement of one Chirag Purohit who had developed the websites for the accused Irfan. Some amount was paid to him through the account of the applicant's company known as A. V. Enterprises. That

amount was Rs.1,10,000/-. It shows that the applicant was helping the main accused Irfan in hosting the websites.

8. Shri. Naik relied on the order of the Hon'ble Supreme Court in the case of ***Tarun Kumar V. Assistant Director Directorate of Enforcement***[1]***,*** in which, the Hon'ble Supreme Court referring to Section 45 of the Prevention of Money Laundering Act, had observed that in respect of the offences of cheating, fraud and misappropriation of funds in furtherance of criminal conspiracy, the plea of accused that the investigation was complete and the trial of cases will take long time would not be the main consideration if the accused was not able to prima facie prove that he was not guilty of alleged offence and was not likely to commit any other offence while on bail. The burden of proof lay on the accused for seeking bail U/s.45 of the PMLA. Learned APP relied on these observations to contend that, in the present case also, these observations would apply.

9. I have considered these submissions. There are statements of the witnesses showing as to how the accused

1 AIR Online 2023 SC 973

including the present applicant induced them into investing in GDCC coins.

10. The witness Prakash Mhetar has stated that the present applicant Amod Mhetar and the accused Vyankatesh Bhoi informed him about the GDCC coins and told him that he could earn more profit within a short time. At their instance, this witness and others invested more than Rs.1,49,00,000/-. During the seminars, Irfan was introduced as the Chief Promoter and the seminars were being attended by the applicant Amod, accused Vyanktesh and Ramesh Uttekar etc. The rest of the allegations are similar to the charge-sheet story.

11. Similar are the statements of Mihir Nigvekar and Kishor Mete.

12. From the investigation carried out so far, it is clear that the allegations against the applicant are that, he induced the investors into investing in GDCC. The investment was lost. From the investigation carried out and from the investigation papers, it is clear that the main offender in this case is the accused Irfan. The

other accused including the present applicant had aggressively marketed that scheme, had conducted the seminars and had induced the investors to invest in that scheme. In the process, investors had lost their money.

13. At this stage, it cannot be said that the applicant has not committed any offence. He had definitely earned the commission on such investments and had purchased the properties. The question is whether he was knowing the fraudulent nature of the scheme started by the main accused Irfan, or whether he also believed that the scheme was genuine. At this stage, involvement of the applicant is definitely shown to the extent of inducing the people to invest in the scheme. He has earned substantial money. For that purpose, the applicant is already in custody since 15.09.2023. The investigation is already over. The properties mentioned herein above belonging to the applicant are already attached. The investigating agency has all the powers under the MPID Act to secure the properties which are purchased through an offence under the MPID Act. Sections 4 and 7 of the MPID Act in that context are important. Sections 4 and 7 of the

MPID Act read thus:

> **"Section 4 - Attachment of properties on default of return of deposits**
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> (1) Notwithstanding anything contained in any other law for the time being in force-
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> (i) where upon complaints received from the depositors or otherwise, the Government is satisfied that any Financial Establishment has failed,-
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> (a) to return the deposit after maturity or on demand by the depositor; or
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> (b) to pay interest or other assured benefit; or
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> (c) to provide the service promised against such deposit; or
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> (ii) where the Government has reason to believe that any Financial Establishment is acting in the calculated manner detrimental to the interests of the depositors with an intention to defraud them; and if the Government is satisfied that such Financial Establishment is not likely to return the deposits or make payment of interest or other benefits assured or to provide the services against which the deposit is received, the Government may, in order to protect the interest or depositors of such Financial Establishment, after recording reasons in writing, issue an order by publishing it in the Official Gazette, attaching the money or the property believed to have been acquired by such Financial Establishment, either in its own name or in the name of any other person from out of deposits, collected by the Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property or the said Financial Establishment or the promoter, director, partner or

manager or member of the said Financial Establishment as the Government may think fit.

(2) On the publication of the order under Sub-section (1), all the properties and assets of the Financial Establishment and the persons mentioned therein shall forthwith vest in the Competent Authority appointed by the government, pending further orders from the Designated Court.

(3) The Collector of a District shall be competent to receive the complaints from his District under sub-section (1) and he shall forward the same together with his report to the Government at the earliest and shall send a copy of the compliant also to the concerned District Police Superintendent or Commissioner of Police, as the case may be, for investigation."

"Section 7 - Powers of Designated Court regarding attachment

(1) Upon receipt of an application under Section 5, the Designated Court shall issue to the Financial Establishment or to any other person whose property is attached and vested in the Competent Authority by the Government under section 4, a notice accompanied by the application and affidavits evidence, if any, calling upon the said establishment or the said person to show cause on the date to be specified in the notice, why the order of attachment should not be made absolute.

(2) The Designated Court shall also issue such notice, to all other persons represented to it as having or being likely to claim, any interest or title in the property of the Financial Establishment or the person to whom the notice is issued under Sub-section (1), calling upon all such persons to appear on the same date as that specified in the notice and

make objection if they so desire to the attachment of the property or any portion thereof, on the ground that they have interest in such property or portion thereof.

(3) Any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the Designated Court at any time before an order is passed under Sub-section (4) or (6).

(4) The Designated Court shall, if no cause is shown and no objections are made under Sub-section (3), on or before the specified date forthwith pass an order making the order of attachment absolute and issue such direction as may be necessary for realisation of the assets attached and for the equitable distribution among the depositors of the money realised from out of the property attached.

(5) If cause is shown or any objection is made as aforesaid, the Designated Court shall proceed to investigate the same and in so doing, as regards the examination of the parties and in all other respects, the Designated Court shall, subject to the provisions of this Act, follow summary procedure as contemplated under Order 37 of the Civil Procedure Code. 1908 (5 of 1908) and exercise all the powers of a Court in hearing a Suit under the said Code and any person making an objection shall be required to adduce evidence to show that on the date of attachment he had some interest in the property attached.

(6) After investigation under sub-section (5), the Designated Court shall pass an order either making the order of attachment passed under sub-section (1) of Section 4 absolute or varying it by realising a portion of the property from attachment or cancelling the order of attachment.

Provided that the Designated Court shall not release from attachment any interest, which it is satisfied that

> the Financial Establishment or the person referred to in sub-section (1) has in the property, unless it is also satisfied that there will remain under attachment an amount or property of value not less that the value that is required for repayment to the depositors of such Financial Establishment."

14. Learned APP could not point out that any such order was published in the Gazette attaching the applicant's property. The sections are quite wide and they give wide powers to the investigating agency to secure any such property.

15. The reliance on the Judgment in the case of ***Tarun Kumar (supra)*** will not be helpful to the learned APP, because, it is passed with reference to Section 45 of the PMLA. On the other hand, another Bench of the Hon'ble Supreme Court in ***Criminal Appeal No.2743 of 2024 in the case of Krishna Damani Versus State of West Bengal***; decided on 27.05.2024 has observed as to what should be the approach of the Court for consideration of bail in such cases. The order reads thus:

> " Leave granted.
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> Heard the learned senior counsel appearing for the parties.

A perusal of the counter affidavit filed by the respondent – State shows that investigation has been complete and a charge-sheet has been filed on 1st April, 2024 for the offences punishable under Sections 120B, 406, 403, 408, 409, 420 and 477A of the Indian Penal Code, 1860 (for short, "the IPC"). It is also mentioned that a supplementary charge-sheet will be filed as soon as a report of the experts of QDEB is received. It is stated that the supplementary charge-sheet will be on applicability of Section 467 of the IPC.

It is not in dispute that all the aforesaid offences are triable by the Court of the Magistrate. After the charge-sheet is filed, considering the nature of the offences, there is no reason to deny bail to the appellant. If there is any apprehension that the appellant may try to influence the prosecution witnesses, appropriate conditions can be always imposed while releasing the appellant on bail.

Accordingly, we direct that the appellant shall be produced before the Trial Court within a maximum period of one week from today. The Trial Court shall enlarge the appellant on bail on appropriate terms and conditions. The learned Public Prosecutor shall be heard before fixing the terms and conditions.

The Appeal is accordingly allowed."

16. In the present case, though, the offence under MPID Act is triable by the Special Judge under MPID Act, all the other offences under the I.P.C. are referred to by the Hon'ble Supreme Court in that order. Apart from those offences, the offence U/s.3 of the MPID Act which is triable by the MPID Judge, provides for the

maximum punishment of six years, which is one year lesser than the punishment provided under Section 420 of the IPC. In this view of the matter, the observations of the Hon'ble Supreme Court would apply in the present case. In this case also the charge-sheet is already filed. The properties of the applicant are already attached. Henceforth also the investigating agency can invoke their powers under the law to secure interest of the investors. However, detention of the applicant as an under trial prisoner is not warranted specially when, according to the learned APP, further investigation is still going on and it is not clear as to when the trial would even start. The interest of the investors can be secured by imposing suitable conditions.

17. Hence, the following order :

O R D E R

(i) In connection with C.R.No.304 of 2023 registered at Ichalkaranji police station, Kolhapur, the applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) with one or two sureties in the like amount.

(ii) The Applicant shall deposit his Passport, if any, with the investigating officer before being released, if he has not deposited it with any other police officer in any other connection.

(iii) The applicant shall attend the office of the E.O.W., Kolhapur, on every Tuesday between 11:00a.m. to 1:00p.m., for a period of one year from today.

(iv) The Applicant shall not tamper with the evidence and shall not contact any witnesses.

(v) The Applicant shall provide his address and contact numbers to the I.O. before being released on bail.

(vi) The Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)