

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 1207 OF 2024

Ajay Madhukar Gaikwad	..Applicant
Versus	
The State of Maharashtra	..Respondent

Mr. Jayant Bardeskar for Applicant.
Ms. Mahalakshmi Ganapathy 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. Jayant Bardeskar, learned counsel for the applicant and Ms. Ganapathy, 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 the present applicant 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.6 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. Bardeskar, learned counsel appearing for the Applicant submitted that, the applicant himself believed in the

scheme, as can be seen from the panchanama dated 02.09.2023 which shows that the applicant also had purchased GDCC coins. The investigating agency has not attached the applicant's property, though, he was in police custody and had co-operated with the investigation. At the highest, the allegations are that, he introduced the investors to other accused and induced them to invest in that scheme.

6. Learned APP Ms. Mahalakshmi Ganapathy opposed these submissions. She submitted that, if the applicant is released on bail, there was a possibility that, he would dispose of the property. She submitted that the applicant has purchased the properties in the name of his friends and distant relatives and not in his own name. Therefore, it is difficult to trace those properties. She relied on the statements recorded, ever after filing of the charge-sheet, in the month of April 2024 and June 2024. She relied on the statement of one Phad which shows that the applicant had purchased one flat in her name. This witness had also invested in the GDCC coins. There was a statement of another witness who has stated that the applicant Ajay Gaikwad

had purchased four cars, but he had purchased them in the name of some other persons. The investigation has revealed that the statements of the witnesses Ranjit Kudalkar and Omkar Sawant show that the applicant had purchased those vehicles in their name, though, the payment was made by the applicant himself. Learned APP, therefore, submitted that the applicant had utilized the money of the investors for purchasing the properties in the name of other persons. She submitted that, though, the applicant is claiming that he had invested in GDCC coins, however, there is nothing to show that he had used his own money to purchase those coins.

7. I have considered these submissions. The applicant is already in custody since 31.08.2023. The charge-sheet is already filed. Therefore, at this stage, the investigating agency cannot seek his police custody for further interrogation in respect of the properties which he might have taken in the name of other witnesses. For that purpose, the investigating agency will have to investigate independently. The apprehension that, after coming out on bail, the applicant may influence the witnesses, can be taken

care of by imposing certain conditions. The investigating agency has sufficient powers to safeguard 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

(1) Notwithstanding anything contained in any other law for the time being in force-

(i) where upon complaints received from the depositors or otherwise, the Government is satisfied that any Financial Establishment has failed,-

(a) to return the deposit after maturity or on demand by the depositor; or

(b) to pay interest or other assured benefit; or

(c) to provide the service promised against such deposit; or

(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 complaint 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 than the value that is required for repayment to the depositors of such Financial Establishment.”

8. 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.

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.”

9. 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.

10. Further investigation as submitted by the learned APP, is still going on and, therefore, it is not clear as to when the Trial will even start. The maximum punishment under the MPID Act is for six years; out of which, the applicant is in custody for almost 11 months. His continued detention as an under-trial prisoner is not going to serve any purpose. The interest of the investors can be secured by imposing suitable conditions.

11. Hence, the following order :

ORDER

- (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.)