



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

CRIMINAL APPLICATION (ABA) NO. 200 OF 2024

Pradip Haribhau Khade and another V/s State of Maharashtra

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

Court's or Judge's Order

Mr. J.B. Gandhi, counsel for the applicants.
Mrs. Ritu Sharma, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 08/05/2024.

1. Apprehending the arrest at the hands of the Police, in connection with Crime No. 470/2023 registered with Police Station Civil Lines, Akola, District Akola for the offence punishable under Sections 406, 420 read with Section 34 of the Indian Penal Code, 1860, the applicants approached to this Court for grant of pre-arrest bail.

2. Learned counsel for the applicants submitted that the crime was registered on the basis of report lodged by Dr. Kishor Shridharrao Dhone, wherein it is alleged that he is a medical practitioner and the present applicants and the other co-accused by visiting the medical shop which is situated near his clinic, he got acquaintance with them, and they induced him to invest the amount in one scheme. They have also arranged one seminar on 13/02/2022, he has attended the said seminar. It was induced that, if they invest the amount through the Smart Phone, they would get additional interest

and the additional amount. Therefore, he has invested the amount as well as other prosecution witnesses have also invested the amount. Initially, they have received some benefit but subsequently, no benefit was received by them and therefore, he approached to the police, on the basis of same, the police have registered the crime against the present applicants.

3. Learned counsel for the applicants submitted that as far as the present applicants are concerned, the involvement is absolutely false. It is the case of the investment in PLC Ultima which is a Software, which is to be downloaded and the person who invest the amount through the said scheme, he get some benefit for some period. Thus, the value of the said crypto currency is downward and equivalent to zero and therefore, it is the responsibility of the investors against the said investment. The applicants are not responsible for the said investment.

4. Learned APP strongly opposed the said application on the ground that not only the informant but various investors are duped by inducing them to invest the amount to Crypto Currency. The mobile phone of the present applicant is to be seized. Though notice is issued to him, he has not cooperated with the investigating agency and therefore, custodial interrogation is required.

5. Having heard learned counsel for the applicant and learned APP for the State, perused the recitals of the FIR. I

have also perused the general terms and conditions of the PLC Ultima, which read as under :

8(D) No guarantees / modification, restriction of services of PLC Ultima / transfer to third parties

(1) Your access to the website and the services of PLC Ultima is at your risk.

(2) PLC Ultima is authorized to modify the website and services offered by PLC Ultima free of charge without prior announcement or liability.

(3) PLC Ultima reserves the right to limit the use of services including the ability of contacting other members, through the website if PLC Ultima is of the opinion that such violate contractual or legal obligations or the services are otherwise abused.

(4) PLC Ultima does not guarantee that within the scope of the competent jurisdiction under your national law it is legal for you to use the services of PLC Ultima or to advertise such or to participate in any activities of PLC Ultima; that access to the PLC Ultima website is at any time faultless and interference-free, timely, or secure and that defects are rectified.

(5) PLC Ultima reserves the right to transfer, assign, sublicense or pledge, in whole or in part, its business, individual assets hereof or individual rights and obligations under this User Agreement to third parties without prior notice, provided that the third party also complies with applicable contract and other laws.

6. On perusal of the recitals of the FIR, the allegation against the present applicants to the extent that they have induced and on their inducement, the complainant and other investors have invested the amount, on the ground that they can get the benefit 7 times, if they invest the money. Thus, it

reveals that the investors have invested the amount, considering the fact that they can get profit. At the most, the only role attributed to the present applicants is of inducement.

7. Though learned APP submitted that the custodial interrogation of the present applicants is required. The investigating officer has issued the notice to the applicant under Section 41(A). On perusal of the Section 41(A), it reveals that, the notice under Section 41(A) is to be issued when the police officer, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41 shall issue a notice directing the person against whom reasonable complaint has been made credible information has been received or reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

8. Thus issuance of notice by the Investigating Officer under Section 41(A) itself sufficient to show that custodial interrogation of the present applicant is not required and therefore, the notice under Section 41(A) is issued. As far as the compliance of Section 41 under Chapter V of the Code deals with the arrest of persons is concerned, the Hon'ble Apex Court in the case of ***Satender Kumar Antil Versus Central Bureau Of Investigation & Anr. reported in 2022 LiveLaw (SC) 577*** wherein it is held that Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offense, an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a

person has committed a cognizable offense, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offense, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offense, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured.

9. This provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the reasons for arrest in writing. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offense alleged is more than seven years, among other reasons. The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offense

10. In view of the above, the guidelines issued by the Hon'ble Apex Court in the case of ***Satender Kumar Antil***

(supra) here no notice issued by the Investigating Officer to the present applicant enumerating the grounds for the arrest. Even the notice issued under Section 41-A, the Investigating Officer has not assigned the reason why arrest is not required, but considering the notice is issued under Section 41-A itself is sufficiently to show that custodial interrogation of the present applicant is not required and therefore, investigating officer has issued a notice under Section 41-A. Considering the same, and considering the fact that there is no compliance under section 41-A, the application of the applicants for grant of anticipatory bail deserves to be allowed. Accordingly, I proceed to pass following order.

ORDER

- a] In the event of their arrest, in connection with Crime No. 470/2023 registered with Police Station Civil Lines, Akola, District Akola for the offence punishable under Sections 406, 420 read with Section 34 of the Indian Penal Code, 1860, the applicants- **Pradip Haribhau Khade, Akshay Pradip Khade** shall be released on anticipatory bail on executing P.R. Bond of Rs. 25,000/- each with one solvent surety in the like amount.
- b] The applicants shall attend the concerned Police Station once in a week on Sunday between 10.00 a.m. to 01.00 p.m. and shall cooperate with the investigating agency.

- c] The applicants shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

The application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]