2024:BHC-NAG:11905

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

CRIMINAL APPLICATION (BA) NO.523 OF 2024

Shrikant s/o Lakshmanrao Zibad
Vs.
State of Maharashtra, Through Police Station Officer, Yashodhara Nagar, Nagpur

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

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Mr. Nihalsing Rathod, Counsel for the applicant.
Mr. N. B. Jawade, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 18 /10/2024

1. Heard.

2. The applicant has preferred this bail application under Section 439 of the Code of Criminal Procedure read with Section 21(4) of the MCOC Act 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 04.06.2021 since then he is behind bar.

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 for the applicant submitted that as far as the present applicant is concerned, who is the employee of the said Nished Wasnik and he was serving as a Manager with him. There is no allegation against him that either he induced the investors or conducted the seminars to induce the investors to make an investment. The statement of the witnesses shows that he has accepted the amount on the say of Savita Gedam. It is further submitted that the allegation regarding the inducement are against Rajendra Khobragade and his daughter Sakshi Khobragade. Sakshi Khobragade is

recently surrendered before the investigating agency and co-accused Rajendra Khobragade is already released on bail. It is further alleged that the wife of Nished Wasnik who alleged to be a Managing Director namely Pragati Wasnik is also released on bail. Considering that the present applicant has not actively participated in the inducement and as far as the various statements recorded by the 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, who is already released on bail. On all above these grounds, it is submitted that as there is no commonality between the co-accused and the present applicant and therefore, the application of the provisions of the MCOC Act itself is doubtful and therefore, rigour under Section 21(4) of the MCOC Act will not attract.

5. On the other hand, learned APP vehemently submitted that the applicant was arrested and during the investigation, it revealed that he has issued a pecuniary gain against this transaction. It is further submitted that the statements of the witnesses shows he is the member of organized crime syndicate and in pursuance of the common object of the said syndicate, he has received the pecuniary gain and therefore, rigour Section 21(4) of the MCOC Act will attract. As far as the

allegations against the present applicant are concerned, which are not only to the extent of receiving the pecuniary gain, but it is to the extent that being a member of organized crime syndicate, his involvement is in the economic offence. In view of that the application deservers to the 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. There is no dispute as to the fact that he has received some amount in his account, but in what circumstances he has received the said amount is to be taken into consideration. He has received the amount in his account as he has accepted the money on the say of one Savita Gedam as the investors are invested the amount. After going through the entire charge-sheet it reveals that he has accepted the amount as a Manager / Cashier of the

said Nished Wasnik. As far as the inducement is concerned, there is no allegation against him that he has induced any of the investors to invest the amount. Thus, considering the nature of the material there no *prima facie* material found to show that the applicant is the member of an organized crime syndicate. As far as the rigour 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 under 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 to show that he was member of organized crime syndicate and his involvement is in the offence committed for the pecuniary gains. In the facts and circumstances, further incarceration of the present applicant is not required. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(i) The application is allowed.

(ii) The applicant **Shrikant s/o Lakshmanrao Zibad** shall be released on bail in connection with Crime No.288/2021 registered with Police Station, Yashodhara Nagar, Nagpur, 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 1^{st} and 15^{th} of every month in between 9.00 am. to 1.00 p.m. till conclusion of the trial.

(iv) The applicant shall not leave the jurisdiction of the Nagpur District Court without seeking permission of the District Court.

(v) 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.

7. In view of the report of the trial Court, the applicant shall not be instrumental to delay the trial.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate