2024:BHC-NAG:9922

THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO.757 OF 2024

Dr.Priti w/o Nilesh Raut
..vs..
State of Mah., thr.PSO PS Nandanwan, Nagpur, Taluka and District Nagpur and anr

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

Shri Akshay A.Naik, Senior Counsel assisted by Shri P.R.Agrawal, Adv. for the Applicant.
Shri D.V.Chauhan, Public Prosecutor assisted by Shri U.R.Phasate, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 29/08/2024
PRONOUNCED ON : 04/09/2024

1. By this application, the applicant seeks regular bail in connection with Crime No.94/2024 registered with the non-applicant/police station for offences punishable under Sections 420, 406, 418, and 120-B read with 34 of the Indian Penal Code and under Section 66(d) of the Information Technology Act, 2008 together with Section 3 of the Maharashtra Protection of Interest of Depositors (Financial Establishment) Act, 1999.

2. The applicant is arrested on 12.7.2024 and since then she is in jail.

3. The crime is registered on the basis of a report lodged by Vikram Laxman Bajaj (the informant) alleging that through one Harish Gande, he got acquaintance with co-accused Suraj Sawarkar on 20.6.2022. From co-accused Suraj Sawarkar, he received a detailed information regarding investment in “OnLine Forex Trading” and co-accused Suraj Sawarkar also disclosed that he works in “IX Global Company” which provides education to “OnLine Forex Trading Shares Market” and “Crypto Market” which is American based company which gives 5-15% profit every month for the said services. The company charges Rs.11,500/- per month from investors (if investment is less than Rs.4.00 lacks, subscription fee is Rs.9,800/- per month and the investment is more than Rs.4.00 lacs, fee is Rs.11,500/-) which can be directly deposited in account of “IX Global”. Believing words of co-accused Suraj Sawarkar, he paid Rs.11,500/- for “OnLine Forex Trading” on 24.6.2022. Co-accused Suraj Sawarkar added him on WhatsApp Group. There were 456 participants. Everyday meeting was to be held at 9:00 pm and co-accused Viraj Patil, Suraj Sawarkar, and Dr.Nilesh Raut were holding the said meeting. The informant deposited Rs.5.00 lacs in

account No.120001318772 in the name of "P.R.Traders", Canara Bank, Kolkata Branch. In the month of July-August 2022, he received benefits around 8%. On 5.9.2022, he sent a request for withdrawal of amount Rs.60,000/-, which was accepted and, thereafter, he withdrew Rs.2.00 lacs. Thus, he received amount Rs.2,60,000/- against the said investment. Subsequently, he as well as his wife and other relatives also invested amounts. However, he has not received any benefits and, therefore, he lodged the report. On the basis of the said report, the police registered the crime against co-accused Suraj Sawarkar including the applicant.

4. Learned Senior Counsel Shri Akshay A.Naik for the applicant, submitted that the applicant is a qualified BAMS Doctor and was practising. In the month of March 2020, due Covid Pandemic, her practice was badly affected and, therefore, she along with her husband was searching an alternate source of income and they came across a concept of "Forex Trading". The "Forex Trading" is also known as "Foreign Exchange Trading or Currency Trading" which involves buying and selling currencies on the Foreign Exchange Market with an aim of making a profit. It is one of

the largest and the most liquid financial markets globally where currencies are traded 24 hours a day, five days a week. The "Forex Trading" allows individuals, institutions, and corporations to speculate on fluctuation in exchange rates between different currencies. The traders can get profit from both rising and falling currency prices. Since the husband of the applicant was searching a platform dealing with "Forex Trading", he came to know about company known as "IX Global". After visiting Website of the "IX Global", he came to know that "IX Global" is an education platform. As per information published on the Website, one Joseph Martinez has launched the said company in the year 2020 which offers information and education about financial market through various OnLine Programmers. As per the said investment scheme, individual subscriber can refer and recommend other persons to become subscribers of the said "IX Global" and such referred subscribers can again go on referring and recommending other persons to become subscribers. Thus, such type of marketing is well known in the market as "Pyramid/Chain/Network Marketing". On the basis of the prescribed rank achieved through such networking, particular Member subscriber would be benefited by bonus/rewards from the said “IX Global” on the basis of number of subscribers added. Thus, in order to join “IX Global”, aspirants need to purchase a subscription plan and become a brand ambassador of the company. In the same manner, the applicant and her husband became Members. Likewise, wife of the informant has also signed Brand Ambassador Agreement.

5. Learned Senior Counsel for the applicant further submitted that for considerable time, the applicant and her husband had received benefits of the investment. Subsequently, they could not receive the same. The husband of the applicant came to know that an action was taken by the Enforcement Directorate (ED) against Directors of the company at Kolkata and, therefore, he also filed a complaint with police authority at Wardha on 5.4.2024. The ED registered the offence against persons defrauding the public under the guise of making investment in “Forest Trading” by using platform/website of the “TP Global IX” wherein the applicant or her husband are not arraigned as an accused. Learned Senior Couse submitted that regarding transactions by Directors, the crime is already registered vide Crime No.290/2022 under provisions of Prevention of

Money Laundering Act, 2002 with Hare Street Police Station, Kolkata. As the action is already taken, there cannot be second First Information Report. He submitted that there is no allegation as to inducement or luring by the applicant to other investors. Merely because the applicant is one of aspirants in the said Chain Marketing, she is made an accused. Learned Senior Counsel submitted that the applicant has a small daughter to take care of. The other co-accused including Suraj Sawarkar are protected by this court by granting them *ad interim* protection. Insofar as further incarceration of the applicant is concerned, the same is not required. In view of that, the applicant be released on bail.

6. *Per contra*, learned Public Prosecutor Shri D.V.Chauhan for the State, strongly opposed the application on ground that during investigation it revealed that the applicant along with her husband had entered into a partnership firm and incorporated a partnership firm under name and style as “M/s.Oasis Business Consultants” with profit and share of losses of 50-50%. The object of the partnership firm was to carry out business of Management Consultants, Advisory, Concept Marketing, Direct Marketing,

Multi Level Marketing, Network Marketing, Multi Link Gift Schemes, and to provide high quality services to clients and consumers either directly or through Network Members, Consultants, Bona Fide Commission Agents, and Franchise in India and abroad. On the basis of the said registered partnership firm, the applicant opened a bank account in HDFC Bank. The applicant is a Brand Ambassador of "IX Global" which is an education platform that is designed to educate people about financial marketing through various OnLine Programmers. The Bank Account Statements reveal that the applicant received subscription fees of Rs.11,200/- and Rs.8,915/- from Dilip Turkar, Abhinav Ambekar, and Ashish Tarate. The applicant used to transfer such subscription fees to "IX Global" and the "IX Global" used to induct such persons as its Members. Statements of witnesses show that the applicant lured many investors for the investment. Thus, *prima facie* case is made out against the applicant. The investigation is still going on. Considering a *prima facie* case is made out against the applicant, the application be rejected.

7. After hearing both sides and perusing investigation papers, it reveals that Crime No.290/2022 was

registered against Directors of the “IX Global” namely Shailesh Kumar Pandey, Rohit Kumar Pandey, Arvind Pandey, Prasanjit Das, Tushar Patel, Manish Kumar Patel, Kaushal Kumar Sah, Aman Thakur, Pankaj Kumar Tiwary, Rahul Kumar Akela, Rakesh Kumar Singh, Viraj Patil, and Joseph Martinez. The summary of chargesheet shows that during course of investigation, it transpired that the accused persons entered into criminal conspiracy and in pursuance of that, they opened fictitious bank account in Canara Bank by forged documents and by using those documents, they made fictitious transactions for the purpose of cheating. During investigation, it revealed that co-accused Joseph Martinez, CEO, “IX Global” and Viraj Patil, the Distributor of the “IX Global” were misguiding the crowd and cheating by obtaining money of earning huge returns by “Forex Trading” using the platform of “TP Global FX”.

8. Perusal of investigation papers shows that the “IX Global” flouted Scheme that if individual subscriber, on payment of subscription fees, invests amount and purchases Subscription Plan, the said individual subscriber becomes a Member and on becoming the Member, if he adds or recommends other persons and said other persons

pays subscription fees, he gets bonus or commission. Thus, it is a Chain Marketing. The applicant appears to be a Member of the said Chain Marketing under co-accused Viraj Patil along with her husband. During the investigation, various statements of witnesses were recorded including statement of the applicant from which it reveals that the applicant was also attending the meeting along with other Members and she has added some Members. It further reveals from statement of one Mithun Jiwandhar Katole that on 7.9.2022 The Reserve Bank of India released an alert list and it was disclosed that restrictions are imposed on the "TP Global FX" and withdrawals from investment with the "TP Global" are closed on which the husband of the applicant along with co-accused Suraj Sawarkar visited the office of the "TP Global" and disclosed to investors that amounts invested are secured, but as the account is frozen, they are not getting amounts. Thus, as far as the applicant is concerned, statements disclose that she has also added some of investors working under her in the Chain Marketing. As far as the account statement is concerned, the applicant admitted that she received benefits on adding Members. Thus, from investigation papers it reveals that the applicant is one of Members in the Chain Marketing. As regards inducing or luring, the same is to the extent that the applicant has added some Members in the Chain Marketing. The adjudicating authority under the PML Act passed an order and accounts of the company are frozen. Insofar as involvement of the applicant in action taken by the ED is concerned, she is not named.

9. Learned counsel for the applicant placed reliance on the decision of the Honourable Apex Court in the case of **Anuj Chaudhary vs. State of Uttar Pradesh and another, reported in (2013)6 SCC 384** wherein issue regarding two First Information Reports are dealt with and it has been held that there cannot be two First Information Reports for the same offence.

10. He further placed reliance on the decision of the Honourable Apex Court in Criminal Appeal No.3114 of 2024 (**Delhi Race Club (1940) Ltd. & ors vs. State of Uttar Pradesh and anr**) decided on 23.8.2024 wherein it has been held that every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent

misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been further held that there is distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed and, therefore, it is intention which is the gist of the offence.

11. It is vehemently submitted that the the applicant is involved in an economic offence. Perusal of investigation papers shows that the applicant is one of Members in the Chain Marketing wherein she as well as other investors invested amounts. As far as her role is concerned, the same is to the extent of adding some investors as Members and

getting benefits in the nature of bonus or commission on investing amount by them.

12. The above said aspect is considered by the Honourable Apex Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation and anr, reported in 2022 LiveLaw (SC) 577** wherein it is held that question for consideration is whether economic offence should be treated as a class of its own or otherwise. The Honourable Apex Court further referred the decisions in the cases of **P.Chidambaram vs. Directorate of Enforcement reported in (2020)13 SCC 791** and **Sanjay Chandra vs. Central Bureau of Investigation, reported in (2012)1 SCC 40** and held that grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial. It has been further observed that We are conscious of the fact that the

accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and released the accused on bail.

13. The Honourable Apex Court by considering the nature of the economic offence observed that an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another and, therefore, it is not advisable on the part of the court to categorize all the offences into one group and deny bail on that basis.

14. After applying the tripod or triple test, in view of the decision in the case of **P.Chidambaram** *supra*, the applicant is not at a flight risk even if allegations are in a grave economic offence and, therefore, the prayer for grant of bail deserves to be allowed. As such, following order is passed:

ORDER

1. The Criminal Application is **allowed**.

2. Applicant - Dr.Priti w/o Nilesh Raut, in connection with Crime No.94/2024 registered with the non-applicant/police station for offences punishable under Sections 420, 406, 418, and 120-B read with 34 of the Indian Penal Code and under Section 66(d) of the Information Technology Act, 2008 together with Section 3 of the Maharashtra Protection of Interest of Depositors (Financial Establishment) Act, 1999, be released on bail on her executing a P.R.Bond in the sum of Rs.1.00 lac with one solvent surety of the like amount.

3. She shall attend the police station once a week between 10:00 am and 1:00 pm and shall cooperate with the investigating agency.

4. She shall not directly or indirectly make any inducement and threat or promise to any witnesses acquainted with facts of the case.

5. She shall surrender her passport, if any, before the investigating agency.

6. She shall not leave the jurisdiction of the Nagpur/Wardha City without prior permission of the District Court,

Nagpur/Wardha.

Application stands **disposed of**.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!