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

CRIMINAL APPLICATION (ABA) NO.511 OF 2024
(Mr. Suraj s/o Madhukar Sawarkar Vs. State of Maharashtra)
AND
CRIMINAL APPLICATION (ABA) NO.518 OF 2024
(Dr. Nilesh s/o Nareshrao Raut Vs. State of Maharashtra)
AND
CRIMINAL APPLICATION (ABA) NO.529 OF 2024
(Surendra Madhukar Sawarkar Vs. State of Maharashtra and anr.)

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

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Mr. H.D. Dangre, Advocate for the applicant in ABA No.511/2024
Mr. A.A. Naik, Sr. Advocate a/b Mr. P.R. Agrawal, Advocate for the applicant in ABA No.518/2024
Mr. A.A. Dhawas, Advocate for the applicant in ABA No.529/2024.
Mr. D.V. Chauhan, Public Prosecutor (Sr. Advocate) a/b Mr. S.V. Narale, APP for the State.
Mr. D.R. Galande, Advocate for Intervenors.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- OCTOBER 15, 2024.

By this application, the applicants are seeking 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 applicants are apprehending arrest at the hands of police as the crime is registered on the basis of a report lodged by Vikram Laxman Bajaj alleging that through

one Harish Gande, got acquaintance with the applicant in Criminal Application (ABA) No.511/2024 on 20.6.2022. From the applicant - Suraj Sawarkar, he received a detailed information regarding investment in “OnLine Forex Trading” and the applicant 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 lacs, 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 the applicant Suraj Sawarkar, he paid Rs.11,500/- for “OnLine Forex Trading” on 24.6.2022. The applicant 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 (who are the applicants here). 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 the applicant - Suraj Sawarkar including the other applicants.

3. Mr. A.A. Naik, learned Senior Counsel, Mr.H.D. Dangre, learned Counsel and Mr. A.A. Dhawas, learned Counsel for the applicants, submitted that one of the applicant i.e. Dr. Nilesh Raut is a BAMS Doctor and was practising. In the month of March 2020, due to Covid Pandemic, his practice was badly affected, and therefore, he along with his wife 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 his wife became Members. Likewise, wife of the informant has also signed Brand Ambassador Agreement.

4. Learned Counsel for the applicants – Suraj Sawarkar and Surendra Sawarkar also submitted that they are the subscribers in the said chain and they have also added some members to get the benefits.

5. It is further submitted that for a considerable time, the applicant and his wife and the other applicants have received benefits of the investment. Subsequently, they could not receive the same. One of the applicant – Nilesh Raut 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 and his wife are not arraigned as an accused. The other applicants i.e. Suraj and Surendra also not added as an accused.

6. Learned Senior Counsel further submitted that regarding the 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 applicants are one of aspirants in the said Chain Marketing, they are made an accused. Learned Counsel for the applicants further submitted that the applicants are the part of the said chain. As far as the applicant Suraj Sawarkar is concerned he is also the part of the said chain and considering the role played by them and considering the fact that the ED has not made them an accused in the offence which was registered at Kolkata and the investigation papers also reveals that they are the investors only. Thus, considering all these aspects they be protected by granting anticipatory bail.

7. Learned Counsel for the applicant – Suraj Sawarkar also invited my attention towards the WhatsApp chat and submitted that from the said WhatsApp chat it reveals that the amount which was forwarded by the Phonepe

is towards the renewal and not to the personal benefit of the present applicants.

8. *Per contra*, Mr. D.V. Chauhan, learned Public Prosecutor (Sr. Counsel) for the State, strongly opposed the application on ground that during investigation it revealed that the applicants 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%. He submitted that the object of the partnership firm entered into by the applicant – Nilesh Raut 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, etc. He submitted that as far as the applicant – Suraj is concerned who has added the several members by inducing them and on his inducement the several investors have invested the amount in the said chain and subsequently he was benefited by the said investment. On the basis of the said investment the applicants are also declared as 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 several investors are invested the amount and the applicants are benefited for the same. Thus, considering the *prima facie* case against the applicants, their custodial interrogation is required. In view of that, the applications

deserve to be rejected.

9. Heard learned Counsel for the investors also who invited my attention towards the WhatsApp chat as well as the statements of Phonepe and submitted that the applicant Suraj is benefited by these amounts which are transferred by the investors to his account. Thus, he has received the pecuniary gain by the said investment. He further submitted that now there are other crimes are registered against the co-accused. The co-accused Viraj Patil who is also the Director of the "IX Global" has now changed the name of his company and now they are inducing the other people to invest the amount. He submitted that though said Viraj Patil is behind bar he was produced before the Sessions Court and the ED has taken his custody for the investigation purpose. Similarly, the custody of the present applicants is also required for the investigation purpose.

10. After hearing both the sides and on perusal of the investigation papers it reveals that crime No.290/2022 was registered against the Directors of "IX Global" and "TP Global" and 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 charge-sheet shows that during course of investigation, it transpired that the above 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".

11. 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 the other co-accused Dr. Priti Nilesh Raut. During the investigation, various statements of witnesses were recorded including statement of the applicant from which it reveals that the applicant – Nilesh Raut and his wife as well as the applicants – Suraj and Surendra were also attending the meeting along with other members and they have added some members. It further reveals from statement of one of the witness namely 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 one of the applicant i.e. Nilesh Raut and

the applicant 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 applicants are concerned, statements disclosed that they are also one of member and some of the investors working under them in the Chain Marketing. As far as the account statements are concerned, the applicants admitted that they have received benefits as well as some of the investors even the informant has also received returns for some days. Thus, from investigation papers it reveals that the applicants are also the members in the Chain Marketing. As regards inducing or luring, the same is to the extent that the applicants have 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 applicants are concerned is not revealed in action taken by the ED as they are not named.

12. It is submitted by the learned Counsel for the investors that the applicants are involved in the economic offence, and therefore, their custodial interrogation is required as the stake of the involvement of the amount is huge one. On perusal of the investigation papers shows that the applicants are one of the members in the chain marketing wherein they have also invested the amount and added some members. Thus, as far as their role is concerned, the same is to the extent of adding some investors by inducing them for the investment and getting benefits in the nature of bonus or

commission on investing amount by them.

13. Thus, considering the role attributable to the present applicants, admittedly, they are only the part of the said chain and it is not that they are either Directors or any office bearers of the "IX Global" and "TP Global" or any sister concerned company of the same. The Directors of the said company are already arrested and they are behind bar. Thus, considering the role attributed to the present applicants admittedly, their custodial interrogation is not required as they have already cooperated with the investigating agency after they are protected by granting ad-interim protection. Thus, considering the fact that their custodial interrogation is not required and the role attributed to them, they have made out a case to grant them an anticipatory bail. In view of that, all the applications are deserve to be allowed. Accordingly, I proceed to pass the following order :

(i) The Criminal Applications are **allowed**.

(ii) In the event of the arrest, the applicants - Mr. Suraj s/o Madhukar Sawarkar, Dr. Nilesh s/o Nareshrao Raut and Surendra Madhukar Sawarkar, 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 anticipatory bail on executing a P.R.Bond in the sum of Rs.1.00 lakh each with one solvent surety each, in the like amount.

(iii) The applicants shall attend the concerned police station once in a week i.e. on every Monday between 10:00 AM and 1:00 PM and shall cooperate with the investigating agency.

(iv) The applicants shall not directly or indirectly make any inducement and threat or promise to any witnesses acquainted with facts of the case.

(v) The applicants shall surrender their passport, if any, before the investigating agency.

(vi) The applicants shall not leave the jurisdiction of the Nagpur/Wardha City without prior permission of the District Court, Nagpur/Wardha.

14. The applications stand **disposed of**.

(URMILA JOSHI-PHALKE, J.)

**Divya*