



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

ANTICIPATORY BAIL APPLICATION NO. 791 OF 2018

Rupesh Kumar Singh

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Vivek Babar i/b. Mr. Ranjit Singh for Applicant.
Mr. Ajay Patil, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 08th FEBRUARY, 2021

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.181 of 2018 registered with Nigadi Police Station, Pune. It was subsequently investigated by Cyber Crime Cell, E.O.W. The offence is registered under sections 406, 409, 420, 120B, 109 and 201 of the Indian Penal Code (for short 'IPC'), under sections 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short 'MPID Act') and under section 66D of the Information Technology



Act, 2008.

2. The First Information Report (for short 'F.I.R.') is lodged on 15/03/2018 by one Bhimsen Agarwal. He has stated that, he came to know about 'Bitcoins' from his friends Hemant Chavan, Hemant Suryavanshi and Kaka Rawade. They told him that, if he invested in the Bitcoins, the company gave returns @ 10%p.m. and if the informant got other customers, he would get 8% commission and for next customer in the chain, he would get 5% commission. According to the first informant, on the representation made by the present applicant and aforementioned his three friends, the informant invested in Bitcoins. Those accused told him to open a Zeb Pay electronic wallet. An account was opened there and Bit Coins were transferred to that account. The informant's case is that, he had transferred Bitcoins from time to time worth about Rs.1 crore. Initially, the informant was getting returns as told by the present applicant, but since December, 2016 he stopped getting returns. The informant met a Director of the company Amit Bharadwaj in Dubai. He, however, told the informant that it was difficult to return Bitcoins because they had



already sold those but the informant could get another Crypto currency by name M-Cap and for that he had to open a new wallet known as 'Coin Bank'. The informant tried to sell that Crypto currency M-cap but he was not getting returns. He realised that he was cheated and, therefore, this F.I.R. was lodged. The investigation was carried out, most of the accused were arrested and subsequently released on bail. At present the investigation under section 173(8) of Cr.p.c. is going on.

3. Heard Mr. Vivek Babar, learned counsel for the applicant and Shri. Ajay Patil, learned APP for the State.

4. This application is pending since 2018. The applicant was protected by an interim order dated 21/08/2019. It was submitted on his behalf that he himself had invested in that scheme and, therefore, there could not be any dishonest intention on his part. On 16/09/2019 submissions were made that the applicant's health condition was not good, therefore, interim order was extended vide order dated 16/09/2019. In that order, directions were issued to the applicant to attend the concerned police station from 03/10/2019 to 17/10/2019 and he was



directed to co-operate with the investigation. However, he did not attend the police station and did not co-operate with the investigation. Vide order dated 17/01/2020 the applicant was again directed to attend Cyber police station, Pune on 27/01/2020, 28/01/2020 and 29/01/2020. Interim relief was continued but even then he did not attend the police station

5. Subsequent to this order, the applicant had filed an affidavit dated 11/02/2020 and some medical papers were annexed to that affidavit. On 11/01/2021 this court had directed the I.O. to verify the claim of the applicant that he was suffering from Blood Cancer and that he was unable to attend the police station. The I.O. was also directed to state whether they still wanted to arrest the applicant if his health condition was not good. Pursuant to this order, the learned APP has filed an affidavit of Shri. Machhindra Pandit, P I., Cyber police station, Pune.

6. As far as health condition of the applicant is concerned, the investigating agency submitted papers given by the applicant for verification by HOD Medicine, Sassoon Hospital, Pune. The HOD reported that his health condition cannot be



ascertained unless he was examined physically. The affidavit mentions that the Forensic Audit Report conducted during the investigation showed that the applicant had active role in this offence. The total loss suffered by the various victims amounted to Rs.1,25,32,691/-. The investigating agency submitted that the applicant's custody was necessary to search and seize Crypto currency which belonged to him, to trace the trail of crypto currency which was transferred by the accused to another crypto wallet and to seize the amount of fraud.

7. Learned counsel for the applicant could not really justify as to why the applicant was not co-operating with the investigation. Sufficient leniency was shown and opportunity was given to the applicant to show his bonafides. However, unfortunately, there is absolutely no co-operation from him. In this view of the matter, the applicant cannot be granted protection of order passed under section 438 of Cr.p.c. The affidavit filed by the investigating agency thus make out a case for his custodial interrogation. However, the investigating agency has also made a reasonable statement in paragraph 10 of their affidavit. Paragraph

10 of the affidavit reads thus:-

“10. If it is proved by the applicant accused that his health condition is not good then I do not intend to arrest the applicant accused subject to his cooperation in investigation on following points -

- i) If the applicant accused is ready to share all the credential of crypto wallet and relevant information.
- ii) If the applicant accused is ready to deposit Rs.1,25,32,691.00 (Liability of the applicant accused) to the Hon'ble Court.
- iii) If the applicant accused is ready to submit his property details, bank account, mail credentials.
- iv) If the applicant accused is ready to submit his passport to the Hon'ble court.”

8. The present application cannot be kept pending endlessly, particularly, in view of total non-cooperation shown by the applicant. Therefore, I am not inclined to grant such protection to him. The investigation agency has fairly made a statement that if he co-operates with the investigation, then they may not arrest



him, if his health condition was not good. That is left to the discretion of the investigating agency. Beyond that no further leniency can be shown to the present applicant.

9. The application is rejected.

(SARANG V. KOTWAL, J.)