

Hemant Vishwas Surryavanshi vs Senior Inspector Of Police, Cyber Crime ... on 16 September, 2019

Author: Sarang V. Kotwal

Bench: Sarang V. Kotwal

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 731 OF 2019

Hemant Vishwasrao Suryavanshi Applicant

Versus

The State of Maharashtra Respondent

Mr. Satyavrat Joshi a/w. Mr. Sunil Kamble, for Applicant.
Mr. Ajay Patil, APP for the State/Respondent.

CORAM :SARANG V. KOTWAL, J.
DATE :16th SEPTEMBER, 2019

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 181 of 2018 registered with Nigadi Police Station, Pune, which is investigated by the Cyber Crime Cell, Economic Offences Wing, Pune. The offence is registered U/s.406, 409, 420, 120B, 109 and 201 of the Indian Penal Code and U/s.3 and 4 of The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short 'MPID Act') and U/s.66D of The Information Technology Act, 2008. The applicant

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is arrested on 16/03/2018 in this connection and since then he is in custody. The charge-sheet is already filed and the investigation is over.

2. The FIR is lodged on 15/03/2018 by one Bhimsen Agarwal. He has stated in his FIR that, through his friend Hemant Chavan and the applicant, who was Hemant Chavan's friend, he came to know about Bit Coin Currency. They represented to him that if he invested in Bit Coins, he would get good returns. The informant was told that if the Bit Coins were given to a company known as Gain Bit Coins Company, the said company was offering return of 10% per month per Bit Coin and if other members were brought by the investor to make investment, such investor would get 8% more commission and if the customers were brought on two sides of the binary chain, he would get 5% more commission. The informant has stated that, on the basis of such representation made by his friend Hemant Chavan, applicant, Kaka Rawade and one Rupesh Singh, he opened an account with Zeb Pay company and purchased 8.0585 Bit Coins on 29/04/2016. Eight Bit coins were transferred to Gain Bit Coin Company by the informant.

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Similar transactions were entered into subsequently by the

informant and in all he had transferred 93.5 Bit coins to Gain Bit Coin company. Initially, he was getting his returns in Bit coins, but afterwards the company stopped giving returns. The first informant made further inquiries and went to Dubai to meet a Director Amit Bhardwaj of the said company. He also met another Director Ajay Bhardwaj. Both of them informed that Bit coins transferred to them were sold and they could not be returned; instead, the informant would be given similar crypto currency known as MCAP. On such representation, the first informant opened another account for receiving MCAP currency. Subsequently, he came to know that said Crypto currency was not having much value and he realized that he had lost his money. It is mentioned in the FIR that the informant had lost almost Rs. 1 crore in the scheme. He had invested in 93.5 Bit Coins, but he had lost his amount. On this basis, the FIR was lodged against the applicant, Hemant Chavan, Kaka Rawade and Rupesh Singh. The applicant was arrested and the charge-sheet is filed. In the charge-sheet, the allegations against the present applicant are that, prior

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to lodging of this FIR, he was involved in another fraudulent scheme. The applicant, according to Investigating Agency, was well versed with such fraudulent schemes and had knowingly taken part in the present scheme, which is the subject matter of this investigation. He along with others had conducted various

seminars and had induced various investors to invest in the said scheme.

3. Heard Shri. Satyavrat Joshi, learned counsel for the applicant and Shri. Ajay Patil, learned APP for the State.

4. Mr. Machhindra Pandit, P.I., Cyber Police Station, Shivaji Nagar, Pune, has filed his affidavit in reply opposing this application.

5. Shri. Joshi submitted that there is nothing to show that the applicant was aware of the fraudulent intention of the main accused Amit Bhardwaj and Ajay Bhardwaj. He submitted that the allegations against the applicant show that he was instrumental in informing the prospective investors about the said scheme. He submitted that he himself genuinely believed in the scheme and, therefore, if the main accused had committed any fraud, he was

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not concerned with them. There is nothing to show that he was acting at the behest or in connivance with the main accused Amit Bhardwaj and Ajay Bhardwaj. He further submitted that Amit Bhardwaj is granted bail by the Hon'ble Supreme Court. He also relied on the order passed by this court in Bail Application No.1211 of 2019 dated 21/08/2019, whereby, the applicant was granted bail in connection with C.R. No. 28 of 2018 registered at Dattawadi Police station, on similar allegations.

6. Learned APP opposed this application and relied on the averments made in the affidavit in reply, which are in turn based on the investigation papers. It is mentioned in the affidavit that at behest of the present applicant, the investors had invested Rs.1,43,46,516/-. The Bit Coins valued at Rs.2,17,981/- were recovered from the applicant. The applicant's bank account shows Zero balance. The charge-sheet shows that there were eight victims, including the first informant, who have given statements against the applicant for inducing them to invest in the scheme. It is further alleged that 280 transactions were made through two block chains addresses belonging to the applicant, however, this

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particular allegation is not supported by any document. It is further alleged that the applicant received 1220.022 Bit coins, however, the forensic analysis shows final balance as zero Bit coins, therefore, investigating agency has not traced those 1220.022 Bit coins.

7. I have considered these submissions and in particular, I have perused the statements of the investors like Ramesh Parmar. This witness has also stated that the applicant had explained to him about the operation of Gain Bit Coin Company and that the investors were assured of 10% Bit coins per month on each Bit coin. This witness, on such representation, had invested about Rs.9,72,802/-. Thus, his allegations are similar

to those made by the first informant. The other witnesses have stated that the applicant and other accused had conducted seminars explaining the concept of Bit coins, Block chain, Bit coin mining and operation of such scheme. Thus, there is no doubt at this stage that the applicant had explained the operation of the scheme to various investors. Whether that would amount to dishonest inducement, would be the matter for trial. The

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important factor in this matter is that, in spite of thorough investigation, the investigating agency has not been able to trace any particular amount to the present applicant and no amount was recovered from him. Moreover, in the entire charge-sheet there is nothing to show that the applicant had conspired with the main accused Amit Bhardwaj and Ajay Bhardwaj, though, allegations are made that he had conducted seminars and had brought investors in the scheme. The main accused Amit Bhardwaj is already granted bail by the Hon'ble Supreme Court under certain conditions. He is directed to deposit certain amount. The applicant himself was granted bail in connection with the another offence registered at Dattawadi Police station which is referred to, herein-above. The applicant is already in custody since 16/03/2018. The allegations against him are in respect of commission of offence punishable U/s.409, 420 and 406 of the IPC. At this stage, it is

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difficult to see as to how Section 409 is attracted. The applicant
had not acted as an Agent of any of the investors. The other
offence is U/s.3 of the MPID Act. Therefore, leaving aside Section
409 of IPC from consideration, for the time being, the maximum

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punishment provided is that of 7 years U/s.420 of the IPC. The
applicant is already in custody for more than one and half years.
The investigation is over. The investigating agency may pursue
their remedy U/s.4 of the MPID Act. In this view of the matter, no
purpose will be served by keeping the applicant in custody, in this
situation. Therefore, I am inclined to grant bail to the applicant. .

8. Hence, the following order :

ORDER

(i) In connection with C.R. No. 181 of 2018 registered with Nigadi Police Station, Pune, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two sureties in the like amount.

(ii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

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