

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 20023 of 2022**

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GANESH SHIVKUMAR SAGAR S/O SHIV KUMAR SAGAR
Versus
STATE OF GUJARAT

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Appearance:

MR KUNAL MALHOTRA FOR MS.AKSHITABA SOLANKI(6782) for the
Applicant(s) No. 1

MR JK SHAH, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE SAMIR J. DAVE

Date : 09/11/2022

ORAL ORDER

1. The present bail application is filed under Section 439 of the Code of Criminal Procedure by the applicant for regular bail in connection with an FIR being CR NO. I-11210015220075 of 2022 registered with DCB Police Station, Surat City for the offence punishable under Sections 406, 409 of the Indian Penal Code and Sections 3 and 4 of GPID Act and Sections 4, 5 and 6 of the Lottery Cheating and Money Circulation Scheme Act.

2. Heard learned advocate for the applicant as well as learned APP for the respondent-State.

3. Learned advocate for the applicant submits that the the applicant is a freelancer digital marketer for various

companies and has been working in network marketing for last 16 years. Applicant is a law-abiding person and has clear antecedents. That, the arrest of the applicant in the present case is in violation of section 41A Cr PC and hence is perverse and illegal as per law. That, as per the precedents laid down by the Hon'ble Supreme Court of India in catena of cases, no arrest of an offender shall be made for offences which are punishable up to 7 years of imprisonment or having maximum of 7 years of imprisonment unless investigating officer in his wisdom feels that the arrest is imperative and thereafter, he needs to take permission of concerned DCP before making an arrest. In any other case, where arrest is not required, IO is duty bound under the law to send a notice under section 41A Cr PC to accused and direct him to join the investigation. It is further submitted that offences under IPC, GPID and Lottery Cheating and Money Circulation Scheme Act as alleged in the present FIR attracts maximum imprisonment up to 7 years and henceforth arrest in present case is in clear violation of precedents laid down by the Supreme Court of India. Further, no notice under section 41A was served upon the applicant nor any notice was received by him in the present FIR and he was illegally detailed and arrested in the present case by the police. Because Complainant in the present FIR has not disclosed the

true and correct facts in his complaint filed before PS DCB Surat City. That, Bux Coin was launched by Bull Infotech Company, a company registered in London which is owned and run by co-accused Mohsin Jamil which is into business of Blockchain development and forex trading and applicant has nothing to do with the said company in any discharged. Hence no offence under section 406 IPC is said to have been committed by the applicant in the present FIR. That, the chief agent of www.bitsolives.com hired by co-accused Mohsin Jamil to promote Bux Coin was co-accused Prashant Bhrambhatt and applicant was not the agent of Bux Coin or Bitsolives. Furthermore, to attract section 409 IPC, it is necessary for the prosecution to prove that there was misappropriation of property as laid down under section 405 IPC. Since no offence is made out under section 405 IPC, section 409 IPC cannot be attracted in present FIR. Furthermore, since applicant is not the agent of Bitsolives or Bux Coin section 409 IPC is not applicable upon the present applicant.

4. It was further submitted by learned advocate for the applicant that no offence under GPID Act is made out against the applicant. That, nowhere is connected nor have anything to do with web portal [www. bitsolives.com](http://www.bitsolives.com) or with Bull Infotech Ltd. which launched the Bux Coin and is owned and controlled

by co-accused Mohsin Jamil. It is submitted that deposit if any was done in Bux Coin scheme of which neither applicant is neither director nor the promoter or is anyhow involved in conducting day to day affairs. Hence, it was requested by learned advocate for the applicant to allow present applicant by releasing the applicant on regular bail. In support of his arguments learned advocate for the applicant has relied upon on the following judgments:

1. Judgment passed by Hon'ble Supreme Court in in case of Arnesh Kumar v. State of Bihar and Anr. (Criminal Appeal No. 1277 of 2014)
2. Judgment passed by Hon'ble Supreme Court in in case of Munawar v. State of Madhya Pradesh and Ors (Writ Petition (Criminal) No. 62 of 2021)
3. Judgment passed by Hon'ble High Court of Judicature at Bombay in case of Hemant Vishwasrao Suryavanshi v. The State of Maharashtra.
4. Judgment passed by Hon'ble Supreme Court in in case of P. Chidambaram v. Directorate of Enforcement" (Criminal Appeal No. 1831 of 2019)
5. Judgment passed by Hon'ble Supreme Court in in case of Sanjay Chandra v. CBI (Criminal Appeal No. 2178 of 2011)

5. On the other side, learned APP for the respondent-State has strongly objected the submissions made by learned advocate for the applicant and submitted that the applicant is involved in the serious offence. Not only that, there is strong prima facie case against the present applicant. That, the applicant has criminal antecedents and there are all changes that if he is released on bail, he may try to win over the witnesses and tamper with the evidences. That, as the applicant is involved in the serious offence, no linency view should be taken in favour of the applicant by releasing him on bail. Ultimately, it was submitted by learned advocate for the applicant to reject present application.

6. Having heard learned advocate for the applicant as well as learned APP for the respondent-State and considering the averments made by the applicant in his application, it appears that the applicant was arrested in connection with an FIR being CR NO. I-11210015220075 of 2022 registered with DCB Police Station, Surat City for the offence punishable under Sections 406, 409 of the Indian Penal Code and Sections 3 and 4 of GPID Act and Sections 4, 5 and 6 of the Lottery Cheating and Money Circulation Scheme Act.

7. From the documents produced on record, it appears that the applicant is involved in other offences as mentioned in

the memo of the application ie., FIR being Crime No. 54 of 2021 for the offence punishable under Sections 420, 406, 34 of the Indian Penal Code and Sections 3 and 4 of the MPID Act, Section 66D of the IT Act with the PS Cyber Crime (Pune City), Maharashtra as well as FIR being CR No. 166/2022 for the offence punishable under Sections 406, 420, 34 of the Indian Penal Code, Sections 3 and 4 of the MPID Act and Section 66D of the Information Technology Act. Thus, while considering the present bail application, such aspect of antecedents cannot be ignored in such kind of serious offence.

8. It appears from the order passed by learned trial court while rejecting the bail application filed by the applicant being GPID Criminal Misc. Application No. 142 of 2022 that learned trial court has concluded that applicant has actively participated in the commission of offence and there is strong prima facie case against the present applicant. It was further concluded that there is very high probability of tampering with the evidence of the prosecution at the hands of the applicant.

9. Moreover, learned advocate for the applicant has placed his reliance on the various judgments of Hon'ble Supreme Court of India as mentioned above but, this court thought it fit that every case has its own facts and therefore, while considering such aspect, the facts mentioned in the

judgments produced by learned advocate for the applicant are not applied to the present case.

10 Thus, while considering the aforesaid discussion and observations, this court deems it not fit to accept the prayer of the applicant to release him on regular bail and accordingly, present application stands rejected.

Rule stands discharged.

(SAMIR J. DAVE,J)

K. S. DARJI