

: ORDER BELOW EXH.15 IN SPECIAL CASE NO.58/2023 :
(CNR No. MHRG15-000674-2023)
(Passed on 01.10.2024)

1) The present application is filed by applicant/accused no.4 Vishnu Pandurang Dalvi, under section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 for regular bail, in respect of Crime No.71/2023, registered with Mahad MIDC police station, for the offence punishable under sections 406, 409, 420 r/w. section 34 of Indian Penal Code and section 3 & 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999.

2) The applicant/accused contended that he is businessman and residing at the address mentioned in the cause title of the application. He is a regular Tax Payer. He has not committed any offence.

3) He further contended that on 27.03.2023 the informant has lodged report alleging therein that in the year 2012 his villager Vijay Chandrakant Supekar told him that he and Sunil Raghunath Vandre are the Development Directors of Kalkam Real Infra India Ltd. The said company deals in business of mining, hotels, construction, transport and land development projects. The said company is getting huge profit from it. If a person deposits Rs.1,000/- per month in said company for a period of 3 years, the total amount of deposit will be Rs.36,000/- and after 3

years, he will get return of Rs.44,200/-. If a person deposits a fixed amount in the company at one time, then he will get half of the amount deposited in 39 months and double amount in 65 months. If a person works as a agent in the company, he will be paid commission @ 12 % on the invested amount and if the deposit is above Rs.15,500/- per month, 2% will be paid as an additional commission per month. The office of said company is at Bava Tower, 3rd floor, 309, 310, 311, Sector 17, Vashi, Navi Mumbai and they told him that Vishnu Pandurang Dalvi has formed said company. He trusted upon them and opened monthly Saving Account in R.D. form in said company in the year 2012 and since then he started working as an agent in said company. In the beginning many people started Saving Account in the company. As the customers, who deposited their money in the company, initially got their money back. The informant and many agents in Mahad used to deposit the amounts deposited by the customer in the office at Mahad and give them receipts for the same. Also every customer was given a Certificate by a company while opening an account. In the year 2015, a branch of Kalkam Real Infra India Ltd. was started by co-accused at Mahad. They had a meeting at Mahad and informed people about the schemes of company. After that the people in Mahad have also invested amounts in the company. Till the year 2018 the company paid the amount and commission to the customers and agents on time. But, after April 2018, the company was not refunding the amount to the customers on time. The agents were also not getting the

commission. The informant with other agents from Mahad tried to contact applicant and co-accused no.3. When accused no.3 was contacted, he said that due to demonetization there were difficulties in completing financial transactions. Then in the year 2012 the consumers were issued cheque by the company. However in March 2020 the company office at Mahad was closed due to commencement of lock-down by Central Government. When the informant and other agents contacted the co-accused on phone and also went to the office in Vashi, Thane to meet them. They told that due to demonetization and lock-down the company's project are stopped. They requested to give some time to the company and they will refund the amount.

4) The applicant further contended that he is arrested in present offence on 16.08.2024. The investigating officer has interrogated him. Therefore, nothing is to be recovered or discovered against him and prayed that he may be released on regular bail.

5) Ld. A.P.P. filed his say at Exh.16. He contended that the offence is serious in nature. The applicant alongwith co-accused has duped the investors to an amount of Rs.2,55,43,585/-. From the date of offence, the applicant was absconding. The applicant was taken into custody by seeking his production before this Court. He further contended that the investigation of the offence in respect of applicant is in progress and if the applicant is

released on regular bail, there are chances that he may pressurize the investors and tamper the evidence of prosecution. He prayed that the application be rejected.

6) Heard Ld. advocates appearing for parties.

7) On perusal of material available on record, it appears that the informant on 27.03.2023 has lodged report contending therein that the applicant alongwith co-accused have not paid the amount to the investors. The Investigating Officer pursuant to which has carried the investigation, in which it has revealed that more than 1028 customers are duped by the applicant. The total amount collected by the applicant from the investors is Rs.2,97,10,515/-.

8) The material available on record further shows that the investigation in respect of present applicant was pending. He was absconding from the date of filing the report. Thereafter he was arrested in another offence. The Investigating Officer thereafter sought his production and he was produced before this court on 16.08.2024. Thereafter the Investigating officer was granted custody of applicant.

9) The Hon'ble Supreme Court in **Arvind Kejriwal Vs. Central Bureau of Investigation**, passed on 13.09.2024 in **Criminal Appeal No. 3816/2024**, has held as under :-

“20. At this juncture, it is pertinent to first address the Appellant’s allegations regarding the CBI’s non-compliance with Section 41A of the CrPC, particularly concerning the issuance of notice or lack thereof. In this regard, it is crucial to draw reference to the language and intent of the provision, which aims to ensure an individual’s appearance through the issuance of a notice. The provision, however, does not outline any express procedure to be undertaken where the individual in question is already incarcerated. It is to be remembered that the Court is, in a way, the guardian of an undertrial, while he is in judicial custody. That being so, there could possibly be no other way to secure the Appellant’s physical presence for the purpose of further investigation, except to seek prior permission of the Trial Court for his interrogation.

21. In fact, given what was contended by the Appellant, it must be explicated that Section 41A does not envisage or mandate the issuance of a notice to an individual already in judicial custody. As such a person is already under the court’s authority, any request to include them in an investigation in another case must be approved by the competent court. The CBI has thus followed the procedure which is contemplated in terms of the intent and purpose of Section 41A CrPC.

22. Contrarily, if the Appellant’s contention is taken to its logical conclusion, it could lead to detrimental consequences. For instance, serving a notice upon an undertrial in jail through the Jail Superintendent, without informing the court that placed them in judicial custody, would effectively enable the police to

arrest such individuals in a new case without the court's knowledge. This could result in a misuse of police authority and a violation of the Constitutional and procedural rights afforded to undertrials. Alternatively, when the court's permission is sought, it ensures the application of judicial scrutiny to assess whether custodial interrogation is necessary and, if so, for what duration.

23. In the case in hand, the Trial Court's approval of the CBI's application to interrogate the Appellant should be viewed as satisfying the essential requirements of Section 41A, as the issuance of a formal notice through the jail authorities would have had an adverse impact on the rights of the Appellant. Thus, it is our considered view that the CBI complied with the procedure encompassed within the framework of Section 41A of the CrPC.

24. That being said, let us now address the specific contention pertaining to the alleged violation of Section 41A(3) of the CrPC. The provision elucidates, at the risk of reiteration, that an individual who complies with the notice issued under Section 41A should not be arrested, unless the police officer for reasons recorded, opines that arrest is necessary. The vital takeaway from this provision is that while compliance with the notice generally shields an individual from arrest, the police may still proceed with the arrest if they conclude that it is essential and provide duly recorded reasons for doing so.

25. In the present case, following the interrogation, the CBI moved another application to the Trial Court

on 25.06.2024, seeking permission to arrest the Appellant. The CBI justified the arrest on the grounds that the Appellant had allegedly given evasive responses during questioning and that custodial interrogation was necessary to confront him with evidence and uncover a purported larger conspiracy involving the accused persons in the implementation of the excise policy. The Trial Court, after considering these reasons, allowed the CBI's application for the Appellant's arrest and issued production warrants on the same day.

26. In this respect, our analysis is confined to assessing whether Section 41A(3) was violated, thereby rendering the arrest per se illegal. First, it is trite law that there is no insurmountable hurdle in the conversion of judicial custody into police custody by an order of a Magistrate. Thus, there is no impediment in terms of arresting a person already in custody for the purposes of investigation, whether for the same offence or for an altogether different offence. The Appellant's arrest by the CBI was thus entirely permissible, in light of the Trial Court's order dated 25.06.2024."

10) Therefore in view of the law laid down by the Hon'ble Supreme Court in **Arvind Kejriwal** (referred supra), there is no substance in the argument canvassed by the Ld. Advocate for accused that the provisions of section 41 & 41-A of Code of Criminal Procedure were not followed while arresting applicant.

11) The material shows that the investigation of the

offence in respect of the applicant, is in progress. The offence committed by the applicant is serious in nature. Therefore, taking into consideration the seriousness of offence and the fact that the investigation of the offence is in progress, in my opinion, at this stage, the applicant is not entitled to be released on regular bail. Hence, I proceed to pass following order :-

: ORDER :

- 1) The application is rejected.

(Dictated and pronounced in open Court)

Mangaon.
Date : 01.10.2024.

(H. K. Bhalerao)
Special Judge, Mangaon
Dist. Raigad