07.04.2026

ORDER

1. This order shall dispose of an application filed on behalf of accused/applicant **Ayush Varshney** under Section 480 BNSS, 2023 for grant of regular bail.

2. In the application, it is stated that the entire case set up by the respondent/CBI against the accused/applicant is baseless and misleading without any evidence in support; that the respondent/CBI has failed to follow the mandatory requirements in law while making the arrest of the applicant; that the continued custody of the applicant is unjustified, unwarranted and not required for the purposes of investigation, especially when the applicant has cooperated at all stages; the entire case of the prosecution is based on documentary and electronic evidence which is already in the possession of the investigating agency; that there is no possibility whatsoever of the applicant tampering with such evidence; that the alleged transactions pertain to the period 2017-2018 and despite the passage of several years, there is not even a single instance attributed to the applicant of tampering with evidence or influencing any witness; that the applicant has consistently cooperated with the investigation and has joined proceedings before various investigating agencies as and when called upon to do so; that the alleged arrest of the Applicant, effected without prior notice under Section 35(3) BNSS and without proper written communication of the Grounds

of Arrest to the Applicant and his relatives, amounts to an arbitrary deprivation of personal liberty in violation of Article 21 of the Constitution of India; that the offences alleged against the applicant carry a maximum punishment of seven years or less and therefore, in terms of the statutory mandate, arrest is not to be made as a matter of course but only upon satisfaction of necessity as contemplated under Section 35 BNSS; that the purported "grounds of arrest" and "reasons of arrest supplied by the respondent are wholly mechanical, vague and bereft of any specific material qua the Applicant; that such vague allegations, without any specific overt act demonstrating dishonest intention or participation in the alleged fraud, cannot justify the arrest and detention of the Applicant; that the applicant is not involved in the development of the alleged MCAP token and therefore the allegations are completely false; that the essential ingredients of cheating and criminal breach of trust are completely absent qua the Applicant; that the Applicant had no role whatsoever in the inception or operation of the alleged fraudulent scheme; that the Respondent/CBI has failed to establish any nexus or link between the applicant's limited role in software development and the alleged fraudulent investment activities in the absence of any such connection, the implication of the Applicant is unjustified and unsustainable in law; that there is no allegation or material to show that any part of the alleged funds or Bitcoins collected from investors was ever received, controlled or benefited the applicant, thereby completely demolishing the prosecution's case qua wrongful gain or misappropriation; that the co-accused, namely Nikunj Jain and Sahil Baghla, who are stated to have had a more

active role in the affairs of the company Darwin, were granted regular bail by the Hon'ble High Court of Bombay; that the alleged transactions pertain to the year 2017-2018 and the Applicant has been available to the investigating agencies throughout, and therefore, his arrest after such a prolonged delay is unwarranted and contrary to settled principles governing arrest; that the object of bail is to secure the presence of the accused during trial and not to punish him by pre-trial incarceration; that the Applicant has already undergone police custody and is presently in judicial custody; no recovery is to be effected from him and no further interrogation is required, therefore, his continued incarceration serves no useful purpose; that the Applicant have already spent around 11 days in custody (Police and Jail) and all the interrogations with regard to investigation are completed and nothing is to be recovered from the applicant; that the applicant is a qualified professional with no criminal antecedents, he is a law-abiding citizen, has strong roots in the society, is a family man, is not at flight risk and will cooperate fully with the investigation of the present matter in case this court is pleased to grant regular bail to the Applicant; that the applicant will abide by all terms and conditions, in case the Applicant is to be released on regular bail. Hence, he be granted regular bail.

3. The bail application is contested by the prosecution. In its reply, it is stated that the investigation is at a highly crucial and sensitive stage and in view of the facts and circumstances stated hereinabove, grant of bail to the accused Ayush Varshney would

adversely affect the ongoing investigation; that that there exists cogent and substantial evidence against the accused; that all mandatory legal requirements as well as the guidelines laid down by the Constitutional Courts were duly complied with at the time of arrest; that the arrest memo alongwith the reasons and grounds of arrest was duly furnished to the accused under proper acknowledgment and copies thereof were also communicated to his father; that the case involves electronic evidence which is inherently fragile and highly susceptible to tampering; that the accused being technically proficient possesses the capability to manipulate or destroy digital evidence in a manner that may not leave any traceable link; that during the period of police custody, the accused did not cooperate with the investigation and deliberately withheld vital information including details regarding the whereabouts of co-accused persons and possible stashes of the defrauded cryptocurrency; that there is a strong likelihood that if released on bail, the accused may tamper with or destroy material evidence. influence witnesses, and evade the due process of law, thereby frustrating the course of justice. Hence, the bail application is liable to be dismissed.

4. Ld. counsel for the accused argued that the offences involved in the present case is Section 120B, 406, 420 IPC and Section 66 of IT Act, 2000 and all the offences are punishable upto maximum imprisonment of 7 years. It has been further argued that accused was detained by Immigration Authorities on 09.03.2025 and accused was arrested on 10.03.2026.

5. It has been further argued that the present matter pertains to the fraud of crypto currency by the company namely Variable Tech Pte. Ltd. through website gainbitcoin.com. It has been further argued that the said website belongs to accused Amit Bhardwaj who had already expired in the year 2022.

6. It has been further argued that the only role of the accused in the present case is that the accused/applicant had developed crypto Bitcoin Mining Pool namely 'G B Miners' Softwares for the main accused Amit Bhardwaj. It has been further argued that as per the allegations, the accused/applicant had developed 'G B Miners', M Cap Crypto Currency, one platform i.e. Bitcoin Growth Fund and Coin Bank E wallet. It has been further argued that accused had only developed Bitcoin Mining Pool namely G B Miners only. It has been further argued that development of Mining Pool Software is not illegal and not against the law, in India.

7. It has been further argued that M/s Darwin Labs Pvt. Ltd. is a company made by the accused/applicant alongwith two persons namely Sahil Bagla and Nikunj Jain. It has been further argued that Darwin Lab provides services to various entities and likewise to website gainbitcoin.com which is already in existence since 2015. It has been further argued that the Darwin Labs has been approached by accused Amit Bhardwaj (since expired) for developing mining pool software and they (including accused/applicant) developed the same and handed over to the accused Amit Bhardwaj after taking Rs. 1 crore as a fee for the

same. It has been further argued that thereafter the accused/applicant or the Darwin Lab has no role in the said Mining Pool Software except providing maintenance as well as technical support, if required.

8. It has been further argued that there is no law in India which prohibits trading of crypto currency. It has been further argued that there was amendment in Income Tax Act in Section 115 BBH as well as in Section 194 S where the Government started taxing the sale and purchase of crypto currency and impose transaction tax on the same which shows that trading of crypto currency is legal in India.

9. It has been further argued that the accused/applicant alongwith Sahil Bagla and Nikunj Jain also entered into Harmless and Indemnity Agreement with the accused Amit Bhardwaj on 21.03.2017 that the accused/applicant alongwith Sahil Bagla and Nikunj Jain would not be legally liable for any legal proceedings, if any initiated against accused Amit Bhardwaj pertaining to G B Miners Mining Pool App developed by them, which shows that the role of Darwin Labs including the accused/applicant was only to develop one App for consideration and development of App for third parties is the business of M/s Darwin Labs Pvt. Ltd.

10. It has been further argued that there is no iota of evidence on record to show that the accused/applicant had taken a single penny from any of the victim or the accused/applicant had duped any victim, except Rs. 1 crore taken as a fees to develop the

Mining Pool Software App for the use of accused Amit Bhardwaj.

11. It has been further argued that the Mining Pool Software is to mine the crypto currency and it is not the software where the investors can invest their money. Mining Pool Software is not the investment platform and only mining can be done in Mining Pool for which login ID and password is required, which has been handed over to accused Amit Bhardwaj immediately after the development and handing over of software to the accused. It has been further argued that there is no evidence that the accused/applicant was even involved in mining through software G B Miners at any point of time.

12. It has been further argued that the present case is the case of fluke arrest and the present case is more like a buyer builder scam i.e. a same scam where the builder promises the home buyer with the flats/home and do not provide the same, similarly, in the present case, the accused Amit Bhardwaj promised returns/crypto currency on the investment of the investors and not fulfilled the promise. In case of Buyer Builder Scam, the computer team or the staff working for the builder cannot be roped in the legal proceedings/criminal case as they were never the part of criminal conspiracy as they never had any intention to induce or deceive any investor and they are working as an employee in the said company, similarly, in the present case, the accused/applicant had only developed the software for accused Amit Bhardwaj after taking appropriate consideration and he was

never the part of any criminal conspiracy with any of the accused in the present case and had no intention to cheat or dupe any investor through this App.

13. It has been further argued that the CBI has opposed the bail application of the accused/applicant on the ground that the accused would abscond if bail is granted to him. It has been further argued by Ld. counsel for the accused that the arrest of the accused/applicant is illegal as the LOC opened by the CBI against accused/applicant is illegal and against the law settled by Hon'ble High Court of Delhi in '***Sumer Singh Salkhan vs. Asst. Director, 2010 SCC OnLine Del 2699'***, wherein it has been held that "***recourse to LOC can be taken by investigating agency in cognizable offences under IPC or other penal laws, where the accused was deliberately evading arrest or not appearing in the Trial Court despite NBWs and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest".***

14. It has been argued that in the present case, NBWs were never issued by this court against the accused/applicant and same were never sought by the IO of the present case, from this court. It has been further argued that notice under Section 41A CrPC was never served to the accused/applicant at any point of time.

15. It has been further argued that the accused visited abroad five times from 2021 to 2023 and he was never detained by the Immigration Authorities at Airport during these travels and if the

accused/applicant had intention to run or fly away from the country and had any intention to evade the process of law, the accused/applicant would have done the same easily in these five previous travels.

16. It has been further argued that the accused/applicant was traveling to Sri Lanka with his wife and son to celebrate his marriage anniversary and had already booked return tickets for the same which shows that accused/applicant had no intention to run away from the country or to evade the process of law.

17. It has been further argued that the accused/applicant was residing in Delhi previously when his father was working in RBI and after the retirement of his father, the accused/applicant shifted to Mumbai and since then, he was residing at the same address mentioned in all the identity proofs of the accused/applicant.

18. It has been further argued that the accused have been summoned by the ED at the very same Mumbai address and the accused went to ED office five times in two months and joined the investigation of ED. It has been further argued that when the accused/applicant had joined the investigation being conducted by ED, then there is no reason as to why the accused/applicant would abscond and would not join the investigation being conducted by CBI. It has been further argued that the accused/applicant has never absconded or tried to evade the investigation being conducted by CBI and the CBI is plotting the

story regarding the fact that the accused/applicant was absconding.

19. It has been further argued that the accused/applicant was not produced before the Magistrate's Court within 24 hours of his arrest in compliance of Section 57 of CrPC and Article 22 (2) of the Constitution of India as the accused was detained by the Immigration Authority at the Mumbai Airport at around 10.30 am. on 09.03.2025 and accused was produced before Ld. ACJM, 37th court, Esplanade, Mumbai at 11.50 am. on 10.03.2025 i.e. beyond the period of 24 hours. Ld. counsel for accused relied upon the judgments in ***Hem Prabhakar Shah vs. State of Maharashtra, 2024 SCC OnLine Bom 2006, Directorate of Enforcement vs. Subhash Sharma and Harsh Pal Singh vs. State (NCT of Delhi), 2026 SCC OnLine Del 523,*** wherein it was held that the period of 24 hours in terms of Section 57 CrPC as well as Article 22 (2) of the Constitution starts from the very moment the accused was detained even if it was not formally arrested.

20. It has been further argued that CBI has opposed the bail on the ground that the accused is not cooperating in the investigation and not providing the relevant password of his cloud accounts, gmail accounts etc. It has been further argued that non-cooperation in the investigation and non-declaration of password is not the ground to reject the bail as the accused/applicant is not legally bound to provide the password of his cloud as well as gmail accounts and for this Ld. counsel for accused relied upon

the judgment of Hon'ble Supreme Court of India in ***'Santosh vs. State of Maharashtra (2017) 9 SCC 714'***, wherein it is held:-

> ***"it appears, the IO was of the view that the custody of appellant is required for recording his confessional statement in terms of what the co-accused has already stated in the statement under Section 161 of the Code of Criminal Procedure, 1973. The IO was of the opinion that the appellant was not cooperating because he kept reiterated that he had not purchased the food grains. The purpose of custodial interrogation is not just for the purpose of confession. The right against self-incrimination is provided for in Article 20 (3) of the Constitution. It is well settled position in view of the Constitution Bench decision in Selvi vs. State of Karnataka, that Article 20 (3) enjoys an "exalted status". This provision is an essential safeguard in criminal procedure and is also meant to be a vital safeguard against torture and other coercive methods used by investigating authorities. Therefore, merely because the appellant did not confess, it cannot be said that the appellant was not cooperating with the investigation. However, in case, there is no cooperation on the part of the appellant for the completion of the investigation, it will certainly be open to the respondent to seek for cancellation of bail.***

21. It has been further argued that the CBI has also opposed the bail application on the ground that the accused/applicant being the technical brain behind the bitcoin scam in the present case, possesses in-depth knowledge of the entire operational and technological framework of the fraudulent activities, including the locations and nature of critical electronic evidences and data relevant to the present case, the accused/applicant may attempt to tamper with or destroy the crucial evidence and might influence or intimidate the material witnesses. It has been further argued that the Mining Pool Software was developed by the accused/applicant in the year 2016 and if the accused would have

any malafide intention while developing the said software, he had ample time of nine years and ample opportunities to destroy all the incriminating evidences against him and in no case, the accused/applicant would have waited for nine years and for his arrest and then for grant of bail, to delete/tamper the evidences.

22. It has been further argued that the CBI has also opposed the bail application on the ground that co-accused are absconding. It has been further argued that the bail of an accused cannot be dependent on the alleged absconding of another co-accused and relied upon the judgments/orders in *'Narender Kumar vs. Directorate General of GST Intelligence, Judgment dated 08.10.2025 passed in Bail Appln. 3065/2025, Munshi Sah vs. The State of Bihar & Anr. and Sebil Elanjimpally Sebil Elanjimpally vs. The State of Odisha, Judgment dt. 18.05.2023 passed in Crl. Appeal No. 1578/2023,* wherein it has been held by Hon'ble Supreme Court of India that absconding of co-accused cannot be a germane factor to decline bail to the accused who has been arrested.

23. It has been further argued that any dishonest intention/knowledge is absent on the part of the accused and he is entitled to bail. Ld. counsel for accused relied upon the judgments in *Adnan Nisar vs. Enforcement Directorate, 2024 SCC OnLine Del 6498 (crypto currency case), Nirod Kumar Das vs. State of Odisha, 2024 SCC OnLine Ori 1375 and Razorpay Software (P) Ltd. vs. Union of India, (2024) 1 HCC (Kar) 1.*

24. It has been further argued that bail is a rule and jail is an exception and gravity of an offences cannot *per se* be the ground for denial of bail even in alleged multi crores scams. Ld. counsel for accused relied upon the judgments in ***Manish Sisodia vs. Directorate of Enforcement 2024 SCC OnLine SC 1920 and Narinder Kumar Joshi vs. Directorate General, Goods and Service Tax Intelligence, 2025: PHHC:071840.***

25. It has been further argued that Hon'ble Supreme Court of India in catena of judgments has categorically held that there shall be mandatory compliance of Section 50A CrPC (Section 48 BNSS) and also held that initial illegal remand is not relevant and violation of statutory/constitutional safeguards are always the grounds for granting bail. Ld. counsel for accused relied upon the judgments in ***Vihaan Kumar vs. State of Haryana & Anr. (2025) 5 Supreme Court Cases 799, Basheer Thaliyil vs. State of Kerala & Anr. Order dt. 19.02.2026 passed in Bail Appln. No. 828/2026 and Habibur Molla vs. State (NCT of Delhi), 2026 SCC OnLine Del 229.***

26. It has been further argued that no notice was served to the accused/applicant under Section 41A CrPC (Section 35 (3) BNSS) which is a rule and the arrest is an exception and necessity of arrest has to be shown in additions to conditions mentioned in Section 41 CrPC (Section 35 BNSS). Ld. counsel for accused relied upon the judgments of Hon'ble Supreme Court of India in ***Satender Kumar Antil vs. CBI, 2026 SCC OnLine SC 162 and Arnesh Kumar vs. State of Bihar (2014) 8 SCC 273.***

27. It has been further argued that it has been categorically held by Supreme court of India in ***P Chidambaram vs. Directorate of Enforcement (2020), 13 SCC 791*** that rejecting the bail on the basis of documents placed in a sealed cover is against fair trial. It has been further argued that accused/ his counsel is privy to the documents like case diary etc. which can be seen only by the court and the same could not be seen and the copy of the same could not be provided to the accused and therefore, these documents can be said to be the documents which were placed in sealed cover before this court and therefore the bail to the accused/applicant cannot be rejected on the basis of these documents.

28. It has been further argued that the accused/applicant has already been granted anticipatory bail by Ld. ASJ/Special Judge (CBI-04), New Delhi on 06.02.2019 in FIR No. 35/18 under Section 420/120B/406 IPC and Section 66 IT Act, PS EOW, Mandir Marg and in the present RC, the said FIR has been clubbed by the CBI as the principal FIR. It has been further argued that since the accused/applicant is already on anticipatory bail in the principal FIR, his arrest is illegal as the bail in the principal FIR would amount to bail in all the FIRs clubbed by the CBI in the present RC. For this, Ld. counsel for accused relied upon the judgment of Hon'ble Supreme Court of India in Writ Petition (Crl.) No. 394 of 2024 titled as ***'Ravinder Singh Sidhu vs. The State of Punjab & Ors.'*** wherein it was held that in case the petitioner has been granted bail in connection with principal proceedings/criminal case to which the other cases have been

clubbed, the bail so granted must enure to the petitioner's favour in the other FIRs now clubbed as well.

29. Ld. PP for the CBI, on the other hand, submitted that the LOC of the accused/applicant was not opened by the CBI and same was opened by Pune Police in their FIR which is also not the FIR which has been clubbed by CBI in the present RC and the same is the subject matter of RC registered in Maharashtra by CBI. However, the IO of all the RCs in Maharashtra, Delhi etc. is same. That when the accused was detained by the Immigration Authority at Mumbai Airport, the Immigration Authority intimated the same to the Pune Police who informed the Immigration Authority that the present matter was transferred to CBI and thereafter, the Immigration Authority informed about the detention of accused/applicant to the CBI.

30. It has been further argued that accused/applicant was detained by the Immigration Authority at around 10.30 am. on 09.03.2025 and accused was produced before the concerned court on 10.03.2025 at 10.00 am. but since the concerned court was on leave, the accused/applicant was produced before the Link court and the Link Court of Ld. ACJM had taken the application for transit remand after exhausting the regular causelist at 11.50 am. It has been further argued that even if for the sake of argument, the court consider the time of production of accused/applicant before the Mumbai Court as 11.50 am., as per Section 57 of CrPC, the time necessary for the journey from the place of arrest to the Magistrate's Court has to be excluded and

the excess time from 10.30 am. to 11.50 am. shall be excluded as the time necessary for the journey from the place of arrest to the Magistrate's court. Moreover, this objection has not been taken by the Ld. counsel for accused/applicant before the concerned Mumbai Court who has granted the transit remand.

31. It has been further argued by Ld. PP that accused is tech savy and has in-depth knowledge of technology and if he is granted bail, he would definitely destroy and tamper the evidences as all the evidences are digital and electronic in nature.

32. It has been further argued by Ld. PP for CBI that investigating officer always has power to arrest the accused in the offences punishable for the imprisonment upto seven years subject to the conditions mentioned in the law itself.

33. It has been further argued by Ld. PP that co-accused persons are absconding and after the arrest of co-accused persons, there is a need to confront the accused/applicant with the other co-accused persons.

34. It has been further argued by Ld. PP that the anticipatory bail to the accused/applicant was granted in FIR No. 35/2018, PS EOW, New Delhi, however, CBI has registered the present RC clubbing 10 FIRs including FIR No. 35/2018, PS EOW, New Delhi and anticipatory bail in FIR No. 35/2018 does not amounts to anticipatory bail in the RC registered by the CBI.

35. It has been further argued by Ld. PP that the accused/applicant shares handsome profits generated from the Gain Bitcoins Scheme indicating their active role and participation in the conspiracy with the other co-accused persons.

36. It has been further argued by Ld. PP that accused/applicant is not cooperating in the investigation.

37. It has been further argued by Ld. PP that the arrest memo, reasons of arrest and grounds of arrest have been duly informed to the father of the accused/applicant through whatsapp in compliance of Section 50A of CrPC and the said fact is admitted by his father during the hearing of remand application before this court.

38. It has been further argued by Ld. PP that in the Harmless and Indemnity Agreement entered between accused Amit Bhardwaj (since expired) and accused/applicant alongwith Sahil Bagla and Nikunj Jain, indemnifier is mentioned as Santoshi Studios Incubator 1 Pvt. Ltd. and not the Darwin Labs which shows that there is something fishy and the said agreement was entered in March 2017 despite the fact that the Mining App was developed by accused/applicant in the year 2016.

39. I have considered the rival submissions and have gone through the case file.

40. Facts of the case, in brief are that the instant case pertains to a large-scale crypto currency fraud known as the "Gain

Bitcoin" Ponzi scheme floated by Variabletech Pte. Ltd., wherein the accused persons in criminal conspiracy with each other, dishonestly induced investors to invest Bitcoins in a fraudulent scheme "Gain Bitcoin" promising high returns @ 10 percent per month for 18 months in the form of Bitcoins and obtained huge investments from thousands of victims. However, they cheated the investors and misappropriated the collected funds. The present RC bearing No. RC 221/2024/E0010 was registered in compliance of the order of Hon'ble Supreme Court of India dt. 13.12.2023 passed in Writ Petition (Criminal) No. 231/2019. It is further alleged that during investigation of the case, the role of Darwin Labs Private Limited and its co-founders, including accused Ayush Varshney, Sahil Baghla and Nikunj, has emerged in relation to the design, development and deployment of the crypto token known as "MCAP" and development of Bitcoin mining pool GBminers.com. Accused Amit Bhardwaj and other agents involved in this scheme show the images and videos of above Gbminer mining platform/form to investors for cheating. Later, the accused persons got a cryptocurrency token MCAP created and distributed amongst the investors, which had negligible value. It is further alleged that during the investigation of the case, accused Ayush Varshney was absconding therefore LOC was opened against him. On 09.03.2026, when he was trying to leave India, it was caught by Immigration authorities at Mumbai who informed the same to CBI. Thereafter. immigration authorities have handed over accused Ayush Varshney to CBI who brought him to the CBI office, Mumbai and interrogated. As the accused was not cooperating and not disclosing the material

facts pertaining to crime and other absconding accused persons, he was arrested on 10.03.2026 at around 12.28 AM in presence of independent witness. Information about his arrest has been given to his father over WhatsApp call. An arrest cum personal search memo, reasons for arrest and grounds of arrest have been prepared and a copy of the same have been provided to accused Ayush Varshney under proper acknowledgeable. Copies of the above-mentioned documents have also been sent to father of accused person through WhatsApp. It is further alleged that during the investigation of the case, the accused Ayush Varshney was produced before Incharge, Court No. 3. Esplanade, Fort Mumbai on 10.03.2026 and prayed for transit remand. The Ld. Court had perused the records and heard both parties, thereafter, granted transit remand till 5 PM on 13.03.2026. It is further alleged that during the investigation of the case, that accused persons promised victims that they would invest their Bitcoins into crypto mining and showed lucrative photos and videos featuring GBminer i.e. mining business of Gainbitcoin and promised them high return. However, instead of returning the investors' investment in Bitcoins, the accused persons provided MCAP tokens to the investors, which were launched and used as a mechanism to dupe the investors and facilitate continuation of the fraudulent scheme. The MCAP tokens were created as an ERC-20 standard digital token on the Ethereum public blockchain on or around 24th May 2017 as a venture associated with and controlled by accused Amit Bhardwaj. Ajay Bhardwaj and his family members. The technological architecture and deployment of the said token were undertaken by Darwin Labs

Private Limited, Gurugram, wherein the accused Ayush Varshney was the Co-Founder and functioning as the Chief Technology Officer. It is further alleged that during the investigation of the case, accused persons promised victims that they would invest their Bitcoins into crypto mining and showed lucrative photos and videos featuring GBminer i.e. mining business of Gain Bitcoin and promised them high return. However, instead of returning the investors' investment in Bitcoins, the accused persons provided MCAP tokens to the investors, which were launched and used as a mechanism to dupe the investors and facilitate continuation of the fraudulent scheme. It is further alleged that during the investigation of the case, that at the time of deployment of the MCAP smart contract, the entire token supply of 100,000,000 (One Hundred Million) MCAP tokens were automatically generated and credited to the wallet address controlled by the accused persons. These generated tokens had no intrinsic value, asset backing or any legitimate mechanism for conversion into Bitcoin or any fiat currency. It is further revealed in the investigation of the case, that in or around early 2017, the accused persons carried out extensive promotional campaigns, including front-page advertisements in national newspapers, online media publications, promotional videos and social media platforms, representing that a public Initial Coin Offering (ICO) was being conducted. It is further revealed in the investigation of the case, that the accused persons represented that the MCAP token is an instrument in a diversified crypto currency index fund and further claimed that its price would reach USD 100 per token by May 2018, thereby promising

substantial returns to investors. Such representations were false and misleading, and were made by the accused persons with full knowledge of their misrepresentation with the intent to induce and deceive investors. It is further revealed in the investigation of the case that the fraudulent nature of the aforesaid representations is established from the blockchain data, which constitutes an immutable and publicly verifiable record incapable of alteration or fabrication. The data recorded on the Ethereum blockchain, retrievable through public blockchain explorers reveals that approximately one month after the launch, a majority of tokens remained concentrated in the deployers' wallet under the control of the accused persons. This reflects that the distribution was fabricated and that the entire token supply remained under the control of the accused persons at all times. It is further revealed in the investigation of the case that the accused persons further perpetuated the fraud through a deliberately engineered two-exchange price manipulation scheme. That MCAP token was listed on only few trading platforms viz. C-CEX. On the Gainbitcoin website which was owned and controlled by accused persons, the MCAP was artificially priced at very exorbitant prices whereas it was worthless. It is further revealed in the investigation of the case that the value of MCAP was given very high i.e. 25/26 USD per MCAP at Gain Bitcoin Website, thereby making them believe that the tokens had significant value. However, when the investors attempted to withdraw or convert the tokens into Bitcoin through the MCAP Exchange, the withdrawal requests were blocked and the orders remained pending. It is further

revealed in the investigation of the case that the true purpose of the MCAP token was not investment but substitution. That the accused persons, having been unable to honor the Bitcoin return obligations promised under the Gain Bitcoin scheme le 10% monthly returns for 18 months, devised the MCAP token as a mechanism to avoid those obligations using tokens created at negligible cost. It is further revealed in the investigation of the case that the investors who were invested in the scheme and entitled to receive Bitcoins were instead given MCAP tokens, which were assigned an artificially inflated value on the internal Gain Bitcoin Website, thereby enabling the accused persons to discharge liabilities worth crores of rupees using self-issued tokens having no corresponding real value. Moreover, the victims were also induced to not spend MCAP so that its value would increase quickly. They were also encouraged to perform trading in MCAP so that its value could be artificially increased. Despite all these efforts, the value of MCAP remained very low on the independent exchanges. When investors tried to sale MCAP to recover their invested money, they found that the MCAP has no value. It is further revealed in the investigation of the case that when pressure from the investors intensified and the collapse of the scheme became imminent; the accused persons introduced an additional mechanism through the platform "GB21.com". Through this platform, the MCAP tokens held by investors were forcibly converted into a proprietary internal credit termed "GB Money" without the consent of the investors. At the time of such conversion, Gain Bitcoin Website was displaying the token price at approximately USD 20 per token. It

is further revealed in the investigation of the case that GB Money had no blockchain existence, no withdrawal facility and existed only within the accused persons' privately controlled database, thereby further trapping the investors in another layer of the fraudulent scheme. That the entire technological infrastructure of the fraudulent scheme "Gain Bitcoin" was developed by Darwin Labs Private Limited, including GB Minder mining portal, MCAP tokens etc. It is further revealed in the investigation of the case that the investigation revealed that the co-founders of Darwin Labs Private Limited, including accused persons, received handsome share of the profits generated from the Gain Bitcoin scheme, thereby indicating their active participation in the conspiracy. During custodial investigation, Bitcoins were recovered from the possession of Sahil Baghla and Nikunj Jain. That the accused persons cheated the investors and misappropriated the invested funds. The investigation revealed that approximately 2,00,000/-Bitcoins were involved in the Gain Bitcoin Scheme. Approximately, 1,66,000/-BTCs were collected from investors and remaining 28,000/- were mined through Gbminer. The end use of said funds or possible stashes are still unknown. It is further revealed in the investigation of the case that GB Money had no blockchain existence, no withdrawal facility and existed only within the accused persons' privately controlled database, thereby further trapping the investors in another layer of the fraudulent scheme.

41. Ld. counsel on behalf of the applicant has vehemently argued that CBI failed to follow the guidelines issued by the

Hon'ble Apex Court in the case titled as ***Arnesh Kumar Vs. State of Bihar and another (2014) 8 SCC 273***, further relied in ***Satinder Kumar Antil Vs. CBI and another (2022) 10 SCC 51*** while effecting arrest of the applicant. He has further contended that as per the said decision, it is mandatory to issue notice under Section 41-A Cr.P.C., where punishment prescribed for an offence is imprisonment for seven years or below seven years and in the case on hand, as such a procedure is not followed by police, therefore, the arrest of the applicant in the present case is illegal and therefore, the applicant is liable to be released on bail.

42. On the contrary, it was contended on behalf of Ld. PP for the of CBI that the incriminating role of accused/applicant surfaced and, therefore, he was arrested as his custodial interrogation was required to unearth the larger conspiracy, role of other accused persons, *modus operandi* and end use of defrauded amount.

43. The guidelines that were issued by the Hon'ble Apex Court in the ***Arnesh Kumar judgment (Supra)***, so far as the police officers are concerned with regard to Section 41 Cr.P.C. (presently Section 35(1) and (2) BNSS, 2023) are as under: -

> ***"7.1 From a plain reading of the aforesaid provision, it is evident that a person accused of an of-fence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from***

causing the evidence of the offence to disappear, or tampering with such evidence in any manner, or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer, or unless such accused person is arrested, his presence in the court when-ever required cannot be ensured. These are the conclusions, which one may reach based on facts. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.

7.3. In pith and core, the police officer before ar-rest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before ar-rest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied fur-ther that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC."

44. Thus, for exercising the power of arrest under Section 41 Cr.P.C., twin conditions have to be complied. Firstly, the police officer has reason to believe that on the basis of complaint or information or suspicion, the accused has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years. Further, the offences alleged are cognizable in nature. Second condition to be taken care of is that the police officer has to be satisfied that arrest of such persons is necessary to prevent such persons from committing any further offence or for proper investigation or to prevent such persons from causing the evidence to disappear or to prevent such persons from tampering with such evidence or to prevent such persons from

making any inducement, threat or promise to any person acquainted with the facts of the case or on finding that one such persons are arrested their presence in the Court whenever required cannot be ensured.

45. Perusal of the records shows that the ground and reasons of arrest have also been communicated to the accused as well as his relative as per the requirements of Section 50 and 50A of CrPC (Section 47 and 48 BNSS) as clear from the arrest memo as well as transit remand petition. It has been argued by Ld. counsel for the accused that copy of reasons of arrest and grounds of arrest has not been supplied in writing to the father of the accused rather it has been supplied by way of whatsapp which is not the proper compliance of Section 50A of the CrPC. The legislative intent for providing the copy of arrest memo, reasons of arrest and grounds of arrest to the relative of accused is to ensure that those in a position to act i.e. to secure legal representation, initiate the process of bail, are empowered to do so without any delay, thereby safeguarding the fundamental rights of the accused person as enshrined in Article 21 of the Constitution of India as the accused who was arrested was not in a position to act being in custody. The communication to the father of accused through whatsapp fulfills the legislative intent and the record also shows that the accused have been duly represented by his counsel at every stage and in every application moved by the prosecution/accused.

46. It is an admitted fact that the applicant was not served upon with the notice U/s 35 BNSS (erstwhile section 41A CrPC) before his arrest. From the perusal of the arrest memo, it has transpired that the applicant has been arrested primarily for the reasons which are being extracted below:

> *"WHEREAS, during the course of investigation, it has been revealed that you, in connivance with accused Amit Bhardwaj, Sahil Baghla and Nikunj Jain, were involved in the development of the GBMiners mining pool platform. The said GBMiners platform constituted the central operational component of the GainBitcoin Scheme, through which thousands of investors were induced to invest Bitcoins on the promise of high monthly returns under the guise of cloud mining contracts. The accused persons projected GBMiners as a legitimate cryptocurrency mining enterprise and, on that basis, induced a large number of innocent investors to invest in the GainBitcoin Scheme. However, the investors were not paid their returns and their hard-earned money was siphoned off.*
>
> *Investigation has further disclosed role of Darwin Labs Private Limited and its co-founders, including yourself, in the design, development and deployment of the cryptocurrency token known as MCAP, which formed a key instrumentality in the execution and continuation of the fraudulent scheme namely "GainBitcoin". The CA Innocent investors were promised returns in the form of bitcoin, but they were paid MCAR which was a worthless token Moreover, the investors were made to believe that the value of MCAP would increase very quickly and may surpass Bitcoin which was a lie just to deceive the investors so that they accept MCAP instead of Bitcoin and may not go to Police for lodging complaint against accused persons, WHEREAS despite the above facts having emerged during investigation, you have failed to disclose the complete details regarding the manner in which you, along with other co-accused persons, conspired to deceive thousands of investors under the GainBitcoin Scheme through GBminers and MCAP. You have not been cooperating with the investigation being conducted by the CBI and are withholding material facts relating to the role and whereabouts of the other co-accused persons involved in the commission of the offence."*

47. Thus, from a perusal of the reasons of arrest as well as checklist, it is manifest that the investigating officer had duly

recorded the reasons in writing which led him to come to the conclusion that the accused not only has committed the offence but he has further satisfied himself that such arrest was necessary for the reasons mentioned therein. Hence, the twin conditions prior to making arrest which is the mandate of the Arnesh Kumar judgment stand fulfilled.

48. It seems that the Ld. counsel for the accused/applicant seems to entertain misconception that there is a mandatory requirement of issuance of Notice under Section 41A Cr.PC in all the cases which are punishable with less than seven years or upto seven years imprisonment even in cases where the investigating officer is of the belief that the arrest is necessary. No where in the judgment that is rendered by the Hon'ble Apex Court in Arnesh Kumar's case, it is laid down that the police officer is not empowered to arrest the accused for the offences punishable with imprisonment of either description for a term of seven years or less than seven years, though the offences alleged to have been committed are cognizable in nature and falls within the ambit of Section 41(1) Cr.P.C. The police officer is under obligation to record the reasons in writing either for making the arrest or for not making the arrest as provided under Section 41 (1) Cr.P.C Further, Section 41-A Cr.P.C, clearly lays down that in all cases, where the arrest of a person is not required under the provisions of Section 41(1) Cr.P.C., the police officer shall issue a notice as required under the said provision. Reliance in this regard can be placed on case law titled as ***State of Telangana Vs.***

Ramachandra Barathi @ Sathish Sharma & Ors decided on 29.10.2022, wherein it was observed as under: -

> *38. Thus, it is explicit that only when the police officer feels that arrest of a person is not required under the provisions of Section 41(1) Cr.P.C., he is bound to issue notice under Section 41-A Cr.P.C. Therefore, what can safely be held is that where the police officer feels that arrest of a person is required under any of the categories mentioned under Section 41(1) Cr.P.C., he can arrest the person and there is no requirement of issuance of notice under Section 41-A Cr.P.C.*
>
> *39. Thus, at the cost of repetition, it is again reiterated that nowhere in the judgment rendered by the Hon'ble Apex Court in Arnesh Kumar's case (first cited supra), it is laid down that when the case falls within the ambit of Section 41(1) Cr.P.C., there is requirement to issue notice under Section 41-A Cr.P.C."*

49. Even if, the court considers the argument of Ld. counsel for accused that the accused was detained at around 10.30 am by the Immigration Authority on 09.03.2026 and produced by CBI before the concerned court for transit remand at 11.50 am on 10.03.2026, the excess time of 1 hour 20 minutes shall be excluded as the time necessary for the journey from the place of arrest to the Magistrate's court as provided in Section 57 CrPC itself. Therefore, the accused is very well produced within the time frame of 24 hours as provided by law.

50. The LOC of the accused has not been opened by the CBI and the same has opened by the Pune Police in their FIR which have been later on clubbed by CBI in RC registered in Maharashtra, therefore, in the present case, there is no violation of law laid down by Hon'ble High Court of Delhi in ***Sumer Singh Salkan (supra)*** as no LOC was opened by CBI in the present RC.

51. The anticipatory bail to the accused/applicant was granted by Ld. ASJ, Special Judge (CBI-04), New Delhi in FIR No. 35/2018, PS EOW, New Delhi, however, CBI has registered the present RC clubbing 10 FIRs including FIR No. 35/2018, PS EOW, New Delhi and anticipatory bail in FIR No. 35/2018 does not amounts to anticipatory bail in the RC registered by the CBI.

52. The gravity of the offences alleged against the accused would be a factor at the time of consideration of bail but at the same time it cannot be the only criteria for denying bail either. The object of bail is neither punitive nor preventative and same is to secure the presence of accused at the trial. The underlying principle in the judicial pronouncements by the Hon'ble Apex Court as well as Hon'ble High Court of Delhi is that a person who otherwise has roots in the society and is satisfying the other general conditions for grant of bail, not be kept in continued judicial incarceration as a matter of punishment, even before filing of charge-sheet.

53. In the facts of the present case, it is to be seen whether keeping the accused/applicant in custody is justified specially when some of the persons are yet to be arrested. The accused cannot be kept in custody on the grounds that co-accused are absconding and need to be arrested and thereafter, need to be confronted with the present accused as there is no certainty as to when the co-accused persons would be arrested and the liberty of the accused could not be curtailed for indefinite period on this ground.

54. The prosecution opposed the bail on the ground that the accused is tech savvy and he can destroy/tamper the evidences. The accused/applicant had several opportunities to destroy/tamper the evidences many years back when initially the FIRs have been lodged all over India against accused Amit Bhardwaj including the present accused in some FIRs. The accused/applicant was granted anticipatory bail in FIR No. 35/2018, PS EOW, Mandir Marg in the year 2019 and thereafter also accused had sufficient and ample opportunities to destroy and tamper the evidences. Therefore, this argument of prosecution cannot be a ground to reject the bail of the accused at this stage.

55. There is no iota of evidence on record that the accused/applicant had induced any complainant/victim and received any amount from them.

56. Perusal of record reveals that the accused/applicant had joined five times the investigation being conducted by ED in the connected case and do not evade the proceedings being conducted by ED, which shows that accused had no intention to abscond. It is also admitted fact that notice under Section 41A CrPC was never served to the accused, therefore, there may be chances that accused might not be aware of the proceedings of the present case. The summons to the accused had been duly served by ED at the Mumbai address of the accused, which shows that ED always had knowledge about the address of the accused and the IO could get the address of the accused from ED.

57. Perusal of record also reveals that accused Amit Bhardwaj was doing the crypto trading or getting the investment from the investors through gainbitcoin.com even before 2016 i.e. before the development of Mining Pool Software App. by M/s Darwin Labs Pvt. Ltd. including accused/applicant.

58. Considering all the facts and circumstances, **accused/applicant Ayush Varshney is directed to be released on bail upon furnishing a personal bond in the sum of Rs. 1,00,000/- alongwith one surety of like amount to the satisfaction of the trial Court/Duty ACJM subject to following conditions: -**

(i) That the accused/applicant shall not leave the India without the permission of the Court.

(ii) That the accused/applicant shall deposit his passport, if he has, before this court.

(iii) That the accused/applicant shall not indulge in the offence(s) of the same nature.

(iv) That the accused/applicant shall not influence the witness(es) and shall join the further investigation and appear in the court as well as before IO as and when directed to do so.

(v) That the accused/applicant shall not hamper with the further investigation in any manner.

(vi) That the accused/applicant shall not tamper the evidences.

(vii) That the accused/applicant shall give all his mobile numbers to the IO and keep them operational at all times.

(viii) That the accused/applicant shall not change his current address and in case of change of address, the accused/applicant shall inform the same to this Court as well as to the IO.

59. **The instant application stands disposed of.**

60. *Copy of this order be given dasti to all concerned quarters, as prayed for.*

MAYANK GOEL

Digitally signed by MAYANK GOEL
Date: 2026.04.07 15:42:34 +0530

(Mayank Goel)
ACJM-02-cum-ACJ
RADC/New Delhi/07.04.2026