**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.313 OF 2016

1. Manisha d/o Lahu Shinde
   Manisha w/o Sanjay Jogdand),

2. Santosh s/o Narayan Tate,

3. Sow. Mangal w/o Lahu Shinde ..APPLICANTS

VERSUS

The State of Maharashtra ..RESPONDENT

Mr A.L. Kanade, Advocate for applicants;
Mr M.M. Nerlikar, Addl. Public Prosecutor for respondent;
Mr G.V. Mohekar, Advocate to assist Addl. Public Prosecutor

CORAM : N.W. SAMBRE, J.

DATE : 5th February, 2016

ORDER :

By the present application under section 438 of the Code of Criminal Procedure, the applicants seek their release on pre-arrest bail, in connection with C.R. No.38 of 2015, registered with police station, Parali Vaijnath, District Beed, for offences punishable under sections 379, 420, 404, 506, 507, 383, 201 read with section 34 of the Indian Penal Code.

2. The incident is alleged to have taken place on 25th August, 2014, for which the first information report came to be lodged with the police station on 9th December, 2015, pursuant to an order passed by the learned

Judicial Magistrate First Class, in exercise of powers under section 156 (3) of the Code of Criminal Procedure.

3. It is the case of the prosecution that the applicants herein, by operating ATM card issued in the name of deceased Tukaram Sambhaji Jogdand, who expired on 16th August, 2014, have withdrawn an amount of Rs.41,300/- and as such played fraud on the complainant.

4. Learned Counsel appearing on behalf of the applicants, while trying to make out a case for grant of pre-arrest bail, would urge that apart from delayed first information report, it is required to be noted that applicants no.1 and 3 are women and applicant no.3 is aged about 60 years. Apart therefrom, according to him, deceased Tukaram had issued a cheque in favour of applicant no.1, as is apparent from the cheque dated 21st June, 2014 for an amount of Rs.50,000/-. According to him, it is an admitted position on record that the applicants have withdrawn the amount of Rs.41,300/-. It is claimed by the applicants that for holding of the cheque by them there is presumption under section 139 of the Negotiable Instruments Act, in their favour that it was issued for discharge of debt by deceased Tukaram and complainant is his legal heir. According to him, withdrawal of the amount is admitted by the applicants, who are not running away from their responsibility.

5. Learned Addl. Public Prosecutor, who is assisted by Mr Mohekar, learned Counsel appearing on behalf of the applicants, submits that since

ATM card ought not to have been operated after 16th August, 2014, i.e. the date of death of Tukaram, there is apparent case of fraud practiced by the applicants. According to them, custodial interrogation of the applicants is necessary and thus prayed for rejection of the application.

6. Perusal of the entire record depicts that, admittedly the applicant no.1 is holding the cheque dated 21st June, 2014, drawn on HDFC Bank, for an amount of Rs.50,000/-, as against the death of Tukaram on 16th August, 2014. The fact remains that the cheque was issued by Tukaram prior to his death. Apart therefrom, the applicants are admitting withdrawal of the amount from the ATM towards admitted liability of Tukaram. There is presumption under section 139 of the Negotiable Instruments Act in favour of the applicants that the cheque in question was issued by Tukaram for discharge of debt. Although the learned Counsel for the complainant was given an opportunity to rebut the presumption by giving explanation, yet it is submitted that the cheque was also removed from the custody of the complainant. In the above background, in my opinion, custodial interrogation of the applicants is not necessary.

7. In that view of the matter, in my opinion, it will be appropriate to direct release of the applicants on pre-arrest bail. I, therefore, pass following order :-

In the event of arrest of the applicants, in connection with C.R. No.38 of 2015, registered with police station, Parali Vaijnath, District Beed, for offences punishable under sections 379, 420, 404, 506, 507, 383, 201 read with section 34 of the Indian Penal Code, they be released on bail, on each of them furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

The applicants shall attend the concerned police station initially on 15th and 16th February, 2016, between 10.00 a.m. and 12 noon and thereafter as and when called by the Investigating Officer.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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