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

CRIMINAL APPLICATION NO.3816 OF 2016

1. Prakash s/o Mariba Gaikwad,
Age : 33 years, Occ. Service,
R/o Phulwad, Tq. Kandhar,
District – Nanded

2. Potanna s/o Piraji Chinchlod,
Age 36 years, Occ. Service,
R/o Yeoti, Tq. Dharmabad,
District Nanded

..APPLICANTS

VERSUS

The State of Maharashtra,
Through Police Inspector,
Police Station Vajirabad, Nanded,
Tq. & District - Nanded

..RESPONDENT

Mr S.M. Vibhute, Advocate for applicants;
Ms R.P. Gaur, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 4th August, 2016

ORAL ORDER :

By this 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.72 of 2016, registered with Vajirabad police station, Nanded, for offences punishable under sections 406, 409, 477-A, 420 read with section 34 of the Indian Penal Code.

2. It is the case of the prosecution that the applicants were the employees of Active Secure Management Pvt. Ltd., which was engaged in depositing cash in ATM machines. Taking undue advantage of the ID code available with the applicants and their right to access to ATM machines, it is claimed that the applicants have unauthorizedly withdrawn the amount,

(2)

resulting into registration of the offence.

3. While trying to make out a case for grant of pre-arrest bail, learned Counsel appearing on behalf of the applicants would submit that the applicants are falsely implicated in the crime in question, as according to him, if the quantum of amount *qua* which withdrawal is alleged against the applicants, no intention could be noticed as regards commission of the crime. He would then submit that so as to show their *bona fides*, each of the applicants is ready and willing to deposit amount of Rs.75,000/-, which covers the amount of defalcation alleged against them.

4. Learned Addl. Public Prosecutor strenuously opposed the application on the ground that there is strong *prima facie* case against the applicants and it is an economic offence, in which the applicants arrest is required.

5. Having bestowed my thoughts to the submissions and the investigation as is carried out, the amount alleged to have been misappropriated by the applicants by unauthorized withdrawal from ATM machines could be secured by accepting their undertaking as regards deposit of Rs.75,000/- by each of them with the Investigating Officer, who in turn shall deposit the same in the Court, in case if he decides to file charge-sheet against the applicants. If the Investigating Officer, upon investigation notices non-involvement of the applicants in the crime in question, still he can deposit the said amount with the Court while filing the charge-sheet and applicants will be entitled to have release of the said amount in their favour from the Court.

6. Apart from above, it is to be noted that having regard to the nature of employment of the applicants and absence of any criminal antecedents, in my opinion, it will be appropriate to grant pre-arrest bail to the applicants, as the amount of defalcation is already secured by this Court.

(3)

7. In this view of the matter, in my opinion as the offence is based on the documents and technical considerations, custodial interrogation of the applicants is not warranted.

8. Amount be deposited within one week from today with the Investigating Officer.

9. In view thereof, the applicants are entitled to be released on pre-arrest bail. I, therefore, pass following order :-

In the event of arrest of the applicants, in connection with C.R. No. 72 of 2016, registered with Vajirabad police station, Nanded, for offences punishable under sections 406, 409, 477-A, 420 read with section 34 of the Indian Penal Code, they be released on bail, on each of them furnishing P.R. Bond of Rs.25,000/- with one surety in the like amount.

The applicants shall attend the concerned police station on 8th August, 2016, between 10.00 a.m. and 12 noon, at which time they shall deposit the amount with the Investigating Officer and thereafter shall attend the Investigating Officer as and when called by him.

The applicants shall not tamper prosecution evidence or influence witnesses.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

amj