IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1047 OF 2017

Arjun Uttamrao Warade … Applicant
vs.
The State of Maharashtra … Respondent
…..

Mr. Jayant J. Bardeskar for the Applicant.
Mr. Deepak Thakare, APP for the State.

CORAM : T. V. NALAWADE, J.
DATE : 08.08.2017.

P.C.:

1. The application is filed for bail in C. R. No. 160 of 2016 registered with Indira Nagar Police Station for offences punishable under Section 420, 409 of the Indian Penal Code. Both the sides are heard. Papers of investigation were made available for the perusal.

2. The crime is registered on the basis of report of one Vikram Bhandalkar. He works as MS Executive with Diebold System Private Limited Company, Mumbai and he was posted at the relevant time at Pune. His company had appointed another company namely Active Secure Private Limited for maintenance of ATM Machines which were to be fixed for Nationalized Bank in Nashik. This work involved the collection of cash from Bank and keeping the cash in ATM machines. The period of agreement was 5 years from 6th July 2012. In the year 2014-15 a notice was given to Active Secure Company as it was not discharging the functions properly. Even after notice the service was not improved and so the company of the first informant had informed that it initiated to put an end to the agreement dated 6th July 2012.

3. On 5th January 2016, Secure Private Limited Company collected cash of Rs.1,90,00,000/- from bank of Baroda. This amount

was to be kept in 43 ATM Machines which were kept in different branches of this bank. The Secure Company kept the amount of only Rs.1,10,00,000/- in 18 ATM Machines. The remaining amount at Rs.80,00,000/- was not put in ATM Machines.

4. The aforesaid irregularities came to the notice of officer of complainant company on 25th January 2016. After that inquiry was made with present Applicant who is owner of Secure Private Limited Company. It is contended that present Applicant promised to see that the amount is deposited back in the Bank. However, he did not return the amount to the Bank. Then present Applicant started avoiding the contact with the complainant company. The complainant company then realized that there was intention to deceive and so the report was given against the present Applicant.

5. It was submitted that for the present Applicant that some amount was due from complainant company to the present Applicant in respect of aforesaid contract and some correspondence was also made in that regard. It was submitted that as the account was not settled and as some amount was due from the Complainant Company to the present Applicant, aforesaid amount was kept by present Applicant. This Court has gone through the correspondence of aforesaid nature.

6. The submission made and the record show that the present Applicant is not disputing that the amount of Rs.80,00,000/- belongs to Bank of Baroda and it was not put by him in the ATM Machine of that Bank. The Applicant was only a service provider. The amount belongs to the Bank and it did not belong to the complainant company. Due to these circumstances on the reasons given by the Applicant he was not entitled to keep that amount with him. As he kept the amount with him, he *prima facie* committed the offence punishable under Section 406 and 420 of Indian Penal Code.

7. In view of the aforesaid circumstances this Court made an

query and asked the learned counsel for the Applicant as to whether the Applicant is ready to deposit at least some amount to get out of jail. He is behind the bars for quite some time. After taking the instructions the learned counsel submitted that one flat is owned by the wife of present Applicant and by disposing of that flat she can deposit some amount. As the Applicant is behind bars, considering the aforesaid dispute with the Complainant company and the possibility that the complainant company must have returned the money to the Bank, this Court hold that bail can be granted to the Applicant, subject to condition of deposit of Rs.25,00,000/- in the Trial Court. This amount is to be treated as stolen property. In the result following order is made:-

O R D E R

a) The application is allowed subject to condition of deposit of Rs.25,00,000/- by the present Applicant in the present crime in the Court of JMFC. Only after depositing of the amount, he is to be released on bail on furnishing PB of Rs.1,00,000/-lakh with one or more solvent surety of like amount;

b) The Applicant is not to tamper with prosecution witnesses. The Applicant is not to commit similar offenses;

c) The Applicant is not to leave India without prior permission of Sessions Court Nashik. His passport and other relevant record is to be produced before police before releasing him on bail.

(T. V. NALAWADE, J.)