

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1304 OF 2017**

Zonubiya Monis Dawoodani	...Applicant
Versus	
The State of Maharashtra	...Respondent

**WITH
CRIMINAL APPLICATION NO. 781 OF 2017
(FOR INTERVENTION) (NOT ON BOARD)
IN
ANTICIPATORY BAIL APPLICATION NO. 1304 OF 2017**

Khairunnisa Anwar Abdul Aziz	...Intervener
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IN THE MATTER BETWEEN :

Zonubiya Monis Dawoodani	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Ansari Shahid Ali Inayat Ali for the Applicant

Mr. V. V. Gangurde, A.P.P for the Respondent-State

Mr. Suhail Shariff for the Intervener

CORAM : REVATI MOHITE DERE, J.
MONDAY, 21st AUGUST, 2017

P.C.

1. Heard learned Counsel for the parties.

2. By this application, the applicant seeks pre-arrest bail in connection with C.R. No. 143 of 2017 registered with the Bhoiwada Police Station, Dadar, Mumbai, for the alleged offence punishable under Section 406 of the Indian Penal Code.

3. The complainant is Khairunnisa Shaikh. The applicant is the niece of the complainant. According to the complainant, she is a resident of Kuwait and whenever she came to India, she took the help of the applicant for withdrawing her money from the bank, by using the ATM card. According to the complainant, the applicant misused the card and withdrew an amount of Rs. 12,00,000/- from time to time.

4. Learned Counsel for the applicant submitted that the applicant, being complainant's niece, was helping her for the last several years. Learned Counsel for the applicant relied on the bank statement, which indicates that only an amount of Rs. 70,000/- was withdrawn from the complainant's account and not Rs. 12,00,000/- as alleged in the FIR.

5. Learned A.P.P submits, on instructions, that after perusing the passbook entries of the complainant, it appears that only an amount of Rs. 1,000/- was withdrawn by the applicant during the period when the complainant was not in India. He submits that other withdrawal entries are during the period when the complainant was in India.

6. Perused the papers. The prosecution case is based on documents and statements of accounts. According to the complainant, an amount of Rs. 12,00,000/- was withdrawn by the applicant from her account, by misusing her ATM card. Whereas, according to the applicant, the bank statement shows that only a sum of Rs. 70,000/- was withdrawn. It also appears that most of the amount was withdrawn during the period when the complainant was in India. Whether or not the amounts were withdrawn by the applicant in the presence or at the behest of the complainant, is a matter, which will be decided by the trial Court.

7. In the peculiar facts of the case, the custody of the applicant is not warranted. Accordingly, the application is allowed and the applicant is granted pre-arrest bail, on the following terms and conditions :

ORDER

- (i) In the event of the arrest, the applicant be enlarged on bail on executing P.R. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount;
- (ii) The applicant shall report to the Investigating Officer of the concerned Police Station as and when called;
- (iii) The applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;
- (iv) The applicant shall inform her latest place of residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;
- (v) The applicant to cooperate with the conduct of the trial.

8. The application is accordingly disposed of.
9. It is made clear that the observations made herein are *prima facie*, for the purpose of deciding this application.
10. In view of the above order, intervention application being Criminal Application No. 781 of 2017 does not survive. The same stands disposed of.
11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.