

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.941 OF 2020

Alok s/o Madhukarrao Sathe,
Age 49 years, Occupation Service,
Shantipura, Behind Little Flower High
School, Chawani, Aurangabad.

...Applicant

VERSUS

1. The State of Maharashtra,
Through Its Secretary,
Home Department, Mantralaya,
Mumbai -32.
2. The Superintendent of Police,
Aurangabad Dist. Aurangabad.
Through Cantonment (Chawani)
Police Station, Aurangabad.

...Respondent

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Advocate for Applicant : Mr. N. S. Kadarale.
APP for Respondents : Mr. S. W. Munde.

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CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 22-10-2020.

ORDER :

- 1) Present applicant is apprehending his arrest in connection with Crime No.289 of 2020, dated 13-09-2020, registered with Cantonment (Chawani) Police Station, Aurangabad Dist. Aurangabad, under Section

420 of Indian Penal Code and Section 66 C, 66 D of the Information Technology (Amendment) Act, 2008.

2) Heard learned Advocate Mr. N. S. Kadarale for applicant and learned Additional Public Prosecutor Mr. S. W. Munde for respondents – State.

3) It has been vehemently submitted on behalf of the applicant that, the applicant is in fact the near relative of the informant. Informant is serving as driver at Walunj in a company. The applicant used to help him due to his old age to operate his bank account especially the withdrawals by Automated Teller Machine (ATM). The applicant is also the neighbours to the informant. In fact due to COVID-19 their bonding with each other has more strengthen. Applicant is educated and serving as a lecturer. He was suffering from economic difficulties and, therefore, had approached the informant in the month of May 2020 to help him. Accordingly informant had given him hand loan of Rs.80,000/- on 15-05-2020. Applicant could not manage the said amount due to COVID-19 situation, however he asked the informant to wait till August 2020. When again he asked time to extend the repayment period till November 2020, informant has deliberately lodged the report

contending that there is withdrawal of Rs.1,19,500/-. The custodial interrogation of the applicant is not at all required. The First Information Report is belated by five months and it is against the present applicant to implicate him, he therefore, be released on anticipatory bail.

4) Per contra, the learned Additional Public Prosecutor strongly opposed the application contending that, the First Information Report would show that the informant never authorized the applicant to operate his ATM card. In fact the informant is coming with a case that, he had never received the said card from his bank. The accused has taken disadvantage of the fact that informant is 61 year old person who retired as a driver from a company and the accused only had the knowledge about the amount in the account of the informant. Definitely custodial interrogation of the applicant is necessary.

5) Here the informant has come with a case that, he has a bank account with State Bank of India, MIDC Branch, Walunj. When he had gone to the Bank to update his passbook on 03-09-2020, he came to know that somebody had withdrawn the amount from his account through ATM. In fact, he has deposit of Rs.1,49,000/- on 29-09-2020 as a fixed deposit (MODS) account which he had received at

the time of his retirement. He further states that he had applied for ATM Card in 2010, however due to some reasons he had not received it, thereafter he forgot to take that card. When he made inquiry with the Bank regarding the alleged withdrawal, it was informed that, he has received the ATM card on 05-06-2018. When he noted the said fact, he realized that when he had not at all received the card yet the withdrawal has been made, he lodged the report. The First Information Report was registered against the holder of mobile No.9552421004. The informant says that, it is not his mobile number. In a way it can be said that, the said First Information Report was not directly against the present applicant. Now the informant himself has come with a case that, he is apprehending his arrest, however in his entire application he has not stated that he is the holder / owner of the said mobile number. He is coming with a case that, he has taken hand loan from the informant, however it is not his case that, at that time the informant had allowed him to take the amount by using the said ATM card. Definitely custodial interrogation is required to connect the accused to the crime which has been mentioned in the First Information Report. It has been pointed out that, the police want to make inquiry against the present applicant in view of the Closed-Circuit Television (CCTV) Footage from the bank. The manner of the withdrawal of the amount, how he

procured that ATM card when according to the informant he never received the said card etc., are required to be gone into and, therefore, this is not a case where the discretion can be exercised. Hence, application therefore deserves to be rejected, accordingly it is rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-