IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

BAIL APPLICATION NO.1349 OF 2021

Murshid Akhtar Ansari
...APPLICANT

VERSUS

The State of Maharashtra
...RESPONDENT

...
Mr.Shaikh Shoyab Advocate for Applicant.
Mr.A.M. Phule, A.P.P. for Respondent – State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 21st DECEMBER, 2021

ORDER :

1. Present Application has been filed under Section 439 of the Code of Criminal Procedure by the applicant who has been arrested in connection with Crime No. 165 of 2020 registered with Paranda Police Station, Taluka-Paranda, District-Osmanabad for the offence punishable under Section 420 of the Indian Penal Code and Section 66(C) of the Information Technology Act.

2. Learned Advocate appearing for the applicant submitted that there is absolutely no direct evidence against the present applicant. The charge-sheet is filed, which depicts that the investigation is over. The co-accused are not yet arrested and have been shown to be absconding. From the documents those have been collected, it can be seen that amounts of Rs.20,000/- and Rs.5,000/- respectively were received on 12th June 2020 from the account of Chandan Gulchit, resident of Purba Mednipur, West Bengal. However, he has not been made as an accused. There is no entry in the Paytm account of the applicant which could connect him with the transaction alleged by the informant and therefore he deserves to be released on bail.

3. Learned APP strongly opposed the application and submitted that the investigation so far done would show that in all amount of Rs.2,37,956/- was withdrawn from the Paytm account of the informant by misrepresenting him that his KYC period has come to an end. After getting the necessary information from the Nodal Officer from Paytm, the police could get that the amount withdrawn from the informant’s account went to the account of one Akila Khatun and further perusal of the account transaction from Akila Khatun would show that two

amounts of Rs.20,000/- and Rs.5,000/- respectively went to the account of one Chandan Gulchit and from Chandan Gulchit amount of Rs.20,000/- went to the account of present applicant. That amount has been recovered from the applicant and therefore, there is evidence against the present applicant. Since such frauds are committed, the applicant does not deserve to be released on bail.

4. Perusal of the First Information Report lodged by one Jakir Hussain Hukmoddin Mulla would reveal that he had account with ICICI Bank and also State Bank of India. It also appears that he has Paytm App downloaded. He had received a phone call informing him that duration of his KYC has come to an end and therefore, he should download the Quick Support App and then complete the transaction. Accordingly, he downloaded the said App which asked him the Identification Number and therefore he opened the Paytm App. It resulted in withdrawal of amounts during the period from 1.30 p.m. to 2.30 p.m. Amount of Rs.1,62,957/- was withdrawn from his ICICI Bank account whereas amount of Rs.74,999/- was withdrawn from his State Bank of India account. In all he was defrauded by unknown persons for an amount of Rs.2,37,936/-.

5. It appears that during the course of investigation the account extracts were collected and the Cyber investigation with the help of Nodal Officers of the Banks revealed that the entire amount had gone to the account of one Akila Khatun, who is still absconding. The address that has been given of said Akila Khatun is - Banamshid South, 24 Pargana, West Bengal.

6. The documents with the charge-sheet would further reveal and also the information that has been given by the investigating officer to the learned APP would show that this amount i.e. Rs.2,37,956/- was not transferred anywhere else but then the investigating officer had considered the Paytm account of Akila Khatun and then revealed that on the same day two amounts, as aforesaid, were transferred to the account of one Chandan Gulchit and from Chandan Gulchit amount of Rs.20,000/- went to the account of present applicant. This connection will have to be established by the prosecution at the time of final hearing. But when it is stated that the amount which was received from the account of the informant through the account of Akila Khatun was not transferred or that transaction cannot be located, then how it can be connected to the amount which was in the account

of the applicant. Interestingly, said Chandan Gulchit has not been made accused in this case who allegedly received the amount from Akila Khatun.

7. Taking into consideration this kind of evidence though there appears to be some kind of recovery shown from the present applicant, he deserves to be released on bail. Hence the following order:-

O R D E R

i) The Application stands allowed.

ii) The applicant – Murshid Akhtar Ansari be released on bail in connection with Crime No. 165 of 2020 registered with Paranda Police Station, Taluka-Paranda, District-Osmanabad for the offence punishable under Section 420 of the Indian Penal Code and Section 66(C) of the Information Technology Act on PR Bond of Rs.50,000/- (Rupees Fifty Thousand) with with one solvent surety of Rs.50,000/- (Rupees Fifty Thousand).

iii) The applicant shall, within thirty days of his release from the prison, procure a smartphone, and inform its IMEI number and other details to the

Investigating Officer. He shall keep the phone location/GPS always on the "ON" mode. Before replacing his mobile phone, he shall produce the existing phone to the Investigating Officer and give details of the new phone. Whenever the Investigating Officer asks him to share his location, then he shall immediately do it. He shall not clear the location history nor format his phone without prior permission of the concerned Investigating Officer.

iv) The applicant shall also give his Mobile Number to the Trial Court and shall comply with the requirements set out in Para No. 12 (1) to (6) of Chapter-I of Criminal Manual, whichever are applicable.

v) The applicant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence in any manner.

vi) Bail before the Trial Court.

[SMT. VIBHA KANKANWADI , J.]

asb/DEC21