

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2153 OF 2021

Kamlesh Lakhan Chaudhary	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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Mr. Pratik Kalantri for the applicant.
Mr. A.R. Kapadnis, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 30th AUGUST, 2021

P.C:-

1 The applicant is charge-sheeted in his capacity as Accused no.2 in C.R.No. 25 of 2019 registered with Pimpalgaon police station for the offences punishable under Section 420, 467, 468, 471 r/w Section 34 of the IPC along with Section 66-C and D of the I.T. Act, 2000. In connection with the said C.R, the applicant came to be arrested on 17th May 2019 and since then, he remain incarcerated.

 He seek his release on bail on the ground that the investigation is complete and the charge-sheet has been filed and there are no criminal antecedents to his credit which warrant his release on bail in light of the accusations levelled against him in the charge-sheet.

Tilak

2 The C.R came to be registered on a complaint filed by one Santosh Pachorkar against two unknown persons in the age group of 25 years. It is alleged by him that when he visited the ATM for withdrawing certain amount, two unknown persons spoke to him and directed him to enter the ATM Pin so as to cancel the transaction. Prompted by them, he inserted his card in the machine, entered his pin code and cancelled the transaction in the ATM. However, after two days, he received a message on mobile phone at 4.18 a.m in the morning that an amount of Rs.40,000/- has been debited from his account through four transactions and on every occasion, Rs.10,000/- was withdrawn. He immediately called the Customer Care and directed them to cancel his ATM facility. This resulted in registration of FIR by invoking the aforesaid provisions.

3 The applicant came to be arrested along with accused no.1 Javed Khan and in the charge-sheet, it is alleged that when the informant went to the ATM to withdraw the amount, accused nos.1 and 2 recorded the transaction in their mobile phone and this is recorded in the CCTV footage of the banks from where the informant had withdrawn the amount. As far as the present applicant is concerned, it is alleged that he arranged for a white colour Hyundai Verna car for the co-accused. It is also alleged that after the incident, the accused including the present

applicant, stayed at various hotels, where the present applicant booked rooms in his name and it is alleged that by referring to the video recording clips and after noting the 16 digit number on the debit card and on obtaining the 4 digit pin from the video footage, with the help of the software in the laptop, the accused indulged in the work of card cloning and with the help of the said card, withdrew an amount of Rs.40,000/- from ATM. Accused no.1 came to be arrested in Patna and from his personal search and search of his house, incriminating material was seized from him. The amount which he had withdrawn was credited in his account as well as in the account of his younger brother and it is revealed that total amount of Rs.11,56,745/- was credited into the respective accounts.

4 As far as the present applicant is concerned, no amount has been traced to his account and it is the case of the applicant that he was working as a Driver for Accused nos.1 and 2. He is an illiterate person who has no capacity to mastermind the activity of cloning of the Debit card and operating the system to their benefit as is alleged. As far as accused no.2 is concerned, he is absconding. The material seized from accused no.1 confirm his involvement in the said offence. However, merely the fact that the present applicant has booked rooms in his name on various occasions, do not *prima facie* attribute him to be the mastermind/planner of the entire transactions. In any event,

investigation is now complete and charge-sheet has been filed. The amount which has been traced in the account of the accused no.1 has been freezed. It is informed that till date, charge is not framed. The applicant cannot be incarcerated indefinitely, pending his trial. However, since it is informed that the applicant is a resident of Gujarat, it must be ensured that he shall face the trial. A stringent condition of he reporting to the concerned police station frequently would ensure his presence during the trial. Hence the following order :-

ORDER

- (a) The Applicant – Kamlesh Lakhan Chaudhary in connection with C.R.No.25 of 2019 registered with Pimpalgaon Police Station, shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.

- (c) The Applicant shall report to the concerned Police Station on first Monday of every month between 10.00 am to 5.00 pm till the charge is framed.
- (d) The applicant shall provide his current address, telephone number, place of residence and intimate about the change if any, to the concerned Investigating Officer.

The Application is allowed in the aforestated terms.

SMT. BHARATI DANGRE, J