

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (BA) NO. 653 OF 2021

(Mayur s/o Anilrao Kayarkar ..vs.. State of Maharashtra, through PSO, Saoner, District Nagpur)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. O.K. Masurke, Counsel for the applicant,
Mrs. Kalyani Deshpande, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.

DATED : 23-09-2021

Mr. Uttam Chandpurkar lodged report dated 24-2-2020, with the Saoner Police Station, District–Nagpur, alleging that he went to the ATM of Axis Bank to withdraw certain amounts, he faced difficulties in operating the ATM and two persons who were standing besides him, offered assistance, and he handed over the ATM card to one of them. It is further alleged that the said person inserted the ATM card, asked the complainant the PIN, the ATM still did not operate and the ATM card was returned to the complainant. According to the complainant, when he went home, within few minutes, the complainant received SMS on his mobile phone that various amounts aggregating Rs.65,000/- were withdrawn from different ATMs. The complainant alleged that it was the applicant who switched/changed his ATM card and withdraw the amount.

2. It appears that the applicant is arrested on

suspicion and other than the statement recorded in custody, which obviously is not admissible, there is no material as such to make out a strong *prima facie* case in the sense that neither is an identification parade held nor was a CCTV footage available. The learned Additional Public Prosecutor Mrs. Kalyani Deshpande fairly confirms the impression of the Court.

3. Considering the nature and extent of the material on record, a case for bail is made out, particularly since the applicant is in custody from 22-10-2020.

4. Before parting with the order, it would be necessary to note the submission of the learned Additional Public Prosecutor Mrs. Kalyani Deshpande that the applicant is known history-sheeter and he is facing as many as sixteen prosecutions which involve similar *modus oparandi*. While there may be room for strong suspicion, and it is presumably such suspicion which led to the arrest, in the absence of any admissible incriminating material in the present crime, it would be impermissible to deny bail in this crime only on the basis of the earlier criminal antecedents.

5. The application is allowed.

6. The applicant shall be released on bail on executing personal bond of Rs.25,000/- with a solvent surety of like amount.

7. The applicant shall not involve himself in any criminal activity while on bail. Breach of this condition may *ipso facto* entail cancellation of bail.

8. The applicant shall report at the Saoner Police Station thrice a week on Monday, Wednesday and Friday from 11-00 a.m. to 1-00 p.m. till the conclusion of the trial and shall obtain acknowledgment of attendance in a diary specially maintained for the said purpose. Any breach of this condition shall *ipso facto* entail in cancellation of bail, if an appropriate motion is moved.

9. The applicant shall, within forty-eight hours of the release, make available to the Investigating Officer his residential address and the current phone numbers and shall keep the Investigating Officer updated of any change.

10. The applicant shall not make any attempt to tamper with the evidence or to influence witnesses, directly or indirectly.

11. The applicant shall attend each date of hearing scrupulously.

12. The applicant shall not leave the country without the permission of the trial Court.

JUDGE