

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

CRIMINAL APPLICATION (BA) 1177 OF 2021

(Mohammad Talib s/o. Umar Mohammad..vs.. State, thr PSO, PS Bajaj Nagar, 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 applicant.
Mr. M.K. Pathan, APP for non-applicant /State.

CORAM: ROHIT B. DEO, J.

DATE: 29.11.2021.

Heard.

2. The applicant Mohammad Talib is arraigned as accused 3 in Crime 102/2021, registered with Bajaj Nagar Police Station, Nagpur, for offences punishable under sections 379, 420 read with section 34 of Indian Penal Code. According to the prosecution, accused 1 and 2 fraudulently withdrew amount of Rs. 2,30,000/- (Rupees Two Lacs Thirty Thousand) from the State Bank of India ATM within the jurisdiction of the Bajaj Nagar Police Station, Nagpur in twenty three transactions.

3. It is alleged that the ATM card used in the crime is issued to the wife of the applicant. Briefly, and without going into the technicality, the case of the prosecution is

that the ATM was used in such a manner, that amount is initially shown as withdrawn from the account and then immediately credited while as a fact the amount is actually withdrawn and received by accused 1 and 2.

4. The ATM card is in the name of the wife of the applicant, who is not arraigned as an accused.

5. In so far as the applicant is concerned, the material which is allegedly incriminatory is that he was in touch with accused 1 and 2 which is substantiated by the Call Detail Report. It is not even alleged that the applicant was in the vicinity. The applicant was in Haryana at the relevant time.

6. Considering the nature of the material on record, at least, at this stage, I am satisfied that a case for bail is made out since the fact that the applicant was in touch with accused 1 and 2 *ipso facto* is not indicative of culpability or complicity unless there is some other material on record in support of the accusation. This is a prima facie observation and it would be ultimately for the trial Court to take final

look. I note with some sense of disappointment that the order of the learned Sessions Judge does not consider the nature of the material at all. Strangely, the learned Sessions Judge, who rejected the bail observes that the applicants, including the applicant herein, did not place on record documentary evidence to substantiate the submission of innocence and false implication. In the interest of observing restraint, I make no further observation.

7. This application is allowed subject to the following conditions:

(i) The applicant be released on bail in connection with Crime 102/2021, registered with Bajaj Nagar Police Station, Nagpur, for offences punishable under sections 379, 420 read with section 34 of Indian Penal Code, on executing PR bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with one solvent surety of the like amount. The surety shall be a permanent resident of Nagpur and a person of reputation and credibility. Before accepting the surety, the jurisdictional Court shall ensure that this condition is satisfied.

(ii) While on bail, the applicant shall not indulge in any criminal activity.

(iii) The applicant shall not, directly or indirectly, make any attempt to influence the witnesses or otherwise tamper with the evidence.

(iv) The applicant shall not leave the country without the permission of the trial Court.

8. *The Registrar (Judicial) is requested to bring this order to the notice of the Principal District and Sessions Judge, Nagpur within next 72 hours.*

Judge

Belkhede