

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3118 OF 2022

Nikhatjha Nasir Ansari	]	..	Applicant
vs.			
State of Maharashtra	]	..	Respondent

Mr.Aniket Vagal a/w Kunal Pednekar, for the Applicant.

Mr.S.J. Dedhia, APP for the State.

CORAM : BHARATI DANGRE, J

DATE : 15th DECEMBER, 2022.

P.C.

1] The Applicant charged as Accused No.13 seek her release on bail in CR No.366/2018, registered with Chaturshringi Police Station which invoke Sections 379, 420, 120-B read with 34 of the Indian Penal Code and under Section 43, 65, 66(c) and 66(d) of the Information and Technology Act, 2000.

On an earlier occasion, she had approached this Court and the Application was withdrawn seeking liberty to renew the request, if the trial do not commence within reasonable time.

2] Pursuant to the order passed on 09.10.2020, the Applicant approached this Court vide Bail Application No.4020/2021 which was permitted to be withdrawn with liberty to approach the JMFC, Pune. Needless to sate that even this time, she faced rejection.

3] The Applicant, who is charged of a serious offence alleging a fraud to the tune of Rs.94,42,00,00,000/- by hatching a conspiracy and by preparing cloned ATM cards and hacking server of the complainant bank, has undergone custodial interrogation and during her search, Samsung Mobile Phone, a Debit Card of Central Bank of India and some ATM cards came to be seized.

The information collected from her mobile phone reflected details of distinct banks, located abroad.

The prosecution allege that the accused persons have cloned ATM Cards of the banks and withdrawn money and this was operated on international level.

4] The magnitude of the offence is no doubt serious, as the investigation has revealed about 12000 plus transactions being effected by using cloned VISA cards in foreign countries and huge amounts were withdrawn abroad as well as in India. The complainant bank on realising that its customers have been defrauded, has lodged the complaint.

5] In the subject CR, 18 persons have been arraigned as accused, out of whom three are absconding which include husband of the Applicant. His whereabouts were not known in the year 2020 and even today he is not arrested. But, in any case, without the prosecution alleging specific role to her in the charge-sheet of being an active participant in the syndicate, who had forged ATM cards, awaiting trial, she cannot be further incarcerated. Her mobile phone containing information, is already seized and is in custody of the prosecution.

The prosecution do not express that she is at flight risk or that she shall not face the trial. By imposing strict conditions upon her

release, I deem it appropriate to secure her liberty, particularly when more than four years have elapsed since her arrest and the trial is likely to consume some more time, though it has commenced.

6] The observations made above are prima facie in nature and limited for the purpose of determination of the present Application and the learned Judge trying the Applicant for the offences, with which she is charged, shall not in any manner be influenced by the above order.

Hence, following order :

ORDER

(a) Application is allowed.

(b) Applicant – Nikhatjha Nasir Ansari shall be released on bail in connection with C.R.No.366 of 2018 registered at Chaturshringi Police Station, Pune on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

(c) The applicant shall report to the concerned Police Station on first Monday of every month between 11.00 a.m. to 12.00 noon and shall surrender her passport, if any, before the Investigating Officer.

(d) 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 and should not tamper with evidence.

(e) The Applicant shall regularly attend trial, on every date, unless exempted and her absence for more than 3 days would permit the concerned Court to take appropriate action.

(f) Upon release, the Applicant shall furnish her contact number and permanent residential addresses to the Investigating Officer and shall keep him updated in case of change in the same.

[BHARATI DANGRE, J]