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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.269 OF 2022

Shabnam Shaikh Jakir Pinjari APPLICANT

VERSUS

Mahemud Samshoddin Pinjari and Others RESPONDENTS

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Mr. Manikrao L.Wankhade, Advocate for the applicant
Mr. A. A. Jagatkar, APP for respondent - State

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 9th FEBRUARY, 2023

ORDER :

1. By this application, filed under section 439 (2) of the Criminal Procedure Code, the applicant – original informant seeks cancellation of bail granted to respondents No.1 and 2 – original accused in Crime No. 706 of 2022 registered with MIDC Police Station, Jalgaon for offence punishable under sections 323, 406, 504, 506 read with 34 of the Indian Penal Code, by the learned Additional Sessions Judge, Jalngaon, on 19th October, 2022.

2. According to the applicant, she resides with her husband at Shirsoli, Jalgaon. Her husband was working in Saudi Arabia from 2010 to 2021. During the period 2012 to 2018, the applicant

used to frequently go to Saudi Arabia to her husband. She is having savings account in State Bank of India at Zilla Peth Branch, Jalgaon. Her husband used to transfer money in her account for her day to day expenditure. Whenever she needed money, she used to take her brother Ashafak Pinjari with her to withdraw money from ATM. Ashafak knew her ATM PIN and password.

3. She went to Saudi Arabia on 24th October, 2017 and before going, left house keys with Ashafak. She had kept her ATM Card and bank passbook in the cupboard. On 25th October, 2017, her husband transferred an amount of Rs.5,00,000/- in her account. Said information was given by her to Ashafak on 26th October, 2017 and he was asked to get the passbook printed and thereafter be kept the same in the cupboard.

4. It is alleged by the informant that the respondent - accused, by using her ATM card, have withdrawn an amount of Rs.5 lakh from her bank account between 26th October, 2017 and 8th November, 2017 and used the said amount for their own expenses. The respondent – accused were granted anticipatory bail by the Sessions Court, vide order dated 19th October, 2022.

5. Heard learned advocate for the applicant and the learned

Additional Public Prosecutor. Perused the documents placed on record.

6. Admittedly, the FIR is lodged after 5 years of the alleged withdrawal of amount. It is common knowledge that after withdrawal of amount from ATM, text message is received on mobile number and for some transactions One Time Password (OTP) is required for withdrawal of amount from ATM and the OTP is sent on mobile number registered with the bank. Obviously, mobile number of the applicant must have been registered with the bank and without providing OTP, withdrawal of amount is not possible. Even if it is assumed for the sake of arguments that amount can be withdrawn without providing OTP, yet in such cases, immediately after withdrawal of amount, text message is sent on the mobile intimating that particular amount is withdrawn from your account.

7. In this view of the matter, *prima facie*, it is not possible to accept the allegation of the informant – applicant that during the said period, an amount of Rs.5 lakhs was withdrawn by the respondent – accused and she did not have knowledge of the same. There is delay of 5 years in lodging the FIR.

8. Considering all these aspects, the Sessions Court has

rightly granted anticipatory bail in favour of the respondent – accused and no case is made out by the applicant to cause interference in the said order.

9. The application is, therefore, rejected.

[NITIN B. SURYAWANSHI]
JUDGE

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