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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.2078 OF 2023

**RAKESH MAHENDRA CHAUDHARI
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for Applicant : Ms. R.L. Jakhede h/f. Mr. Kulkarni Suniket Anil
APP for Respondents: Mrs. P.J. Bharad.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 8 DECEMBER, 2023

ORDER :-

1. The applicant seeks regular bail in connection with Crime No. 687 of 2023 registered with Nandurbar City Police station, Dist. Nandurbar for the offences punishable under Sections 409, 406, 407, 420 of IPC.

2. The investigation was set in motion on the basis of information dated 14.8.2023 given by Nikita Babanrao Abhuj, who is working as Branch Head with Righter Business Services Pvt. Limited. Her company is providing services to various banks for the purpose of filling up cash in the ATM machines. It is alleged that for execution of the said work, they have specified methods. So far as District Nandurbar is concerned, they received on-line order to collect the cash amount from bank and fill up the same in the ATM. The employees, namely Swapnil Jagan Chaudhari (custodian), Rakesh Mahendra Chaudhari (custodian), Shekhar Anil Marathe (custodian) and Ganesh Ramesh Mali (driver) and

Vakil Singh (Gunman) were deputed. It is alleged that on 14th August, 2023, the Nasik Branch received an order of Hitachi payment Services to withdraw an amount of Rs. 1 Crore 5 Lakhs from SBI and deposit the same in ATM machines. In pursuance of the aforesaid order, the employees – namely, Swapnil Chaudhari and Rakesh Chaudhari were entrusted the job. Accordingly, they collected the cash amount at about 10.30 a.m. and proceeded further in the assigned vehicle alongwith Ganesh Mali (Driver). The first informant alongwith Rakesh Chaudhari and Vakil Singh (Gunman) and were traveling in the vehicle. In the midst of journey, the custodian Rakesh Chaudhari (present applicant) left the place under the pretext that he missed the key of ATM at home and proceeded on motorcycle. After some time the driver Ganesh informed that Rakesh Chaudhari left the place alongwith cash amount of Rs. 1 Crore 5 Lakh on his motorcycle and did not return back. When search was taken for Rakesh Chaudhari he could not be traced. On the basis of aforesaid information, an offence has been registered with police station, Nandurbar under Sections 406, 407, 409, 420 of IPC. The applicant has been arrested on 16th August, 2023. Since then, he is behind bars.

3. Learned counsel for the applicant vehemently submits that the vehicle carrying cash amount would always be under CCTV surveillance. Similarly, spot of incident is at a public place, where such CCTV arrangements are made. However, there is no evidence to depict that the applicant left the place alongwith cash. She would further submit that the offence under Section 409 would not attract in this case. Rest of the offences are punishable with imprisonment upto 7 years. The investigating in the matter is complete. Charge sheet is filed. Further detention of the applicant would not be necessary.

4. In support of her submission, she relies upon the order passed by this Court dated 14.6.2023 in BA No. 814 of 2023 between ***Pankaj Kishor Chaudhari Vs. State of Maharashtra.***

5. The learned APP strongly opposes the prayer for grant of bail. She would invite attention of this Court to the statement of Swapnil Jagan Chaudhari, Vakil Singh, Raju and Ganesh Mali who were co-employees entrusted with the job. She would further submit that there is a recovery of cash amount of Rs. 50 Lakhs under the Seizure Panchanama and Rs. 15 Lakhs discovered on the basis of the statement of the applicant under section 27 of the Evidence Act. She would submit that the offences are serious. There is clinching evidence to pin-point the guilt of the applicant. In case of release of the applicant, it would be difficult to bring him for the trial. Possibility of tampering of evidence also cannot be ruled out. She would submit that since the applicant was in the chain of banking services and amount was entrusted to him, the offence under section 409 is clearly made out in the facts of the present case.

6. Having considered the submissions advanced, apparently, it is a serious offence, where the employee of the informant's company who was entrusted with transportation of huge cash amount withdrawn from the SBI fled away with cash. The statement of the co-employee Swapnil, Vakil Singh and driver Ganesh Mali, clearly shows that the applicant had fled away with cash amount under the pretext that he has forgotten to take the key of the ATM machine at home. There is a recovery of Rs. 50 Lakhs under the Seizure Panchanama, when the applicant/accused was

nabbed by the police. Further discovery of Rs. 15 Lakhs is effected under Section 27 of the Evidence Act as per the memorandum statement. The aforesaid circumstances clinchingly pin-point the role of the applicant in commission of the offence. So far as the second contention raised on behalf of the applicant that Section 409 of IPC would not attract in the present case, it is difficult to acceded to such contention as the applicant is an employee of the company providing service to the bank for transportation of the cash amount and filling it up in the ATM machines. In that way, he is acting as an agent of the bank. Prima facie, the contentions of the applicant can not be accepted. However, it would be subject matter of trial. Although learned advocate for the applicant relies upon order passed by this Court in BA No. 814 of 2023 to buttress her submissions, from the contents of the said order, it can be gathered that there was no recovery of incriminating articles from the accused therein. Further, this court has not recorded any finding as regards the applicability of Section 408 or 409 of IPC to the facts of the case.

7. In that view of the matter, reliance placed by the applicant on the order passed by this court in BA No. 814 of 2023 is misplaced. Hence, no case is made out for grant of bail. The application stands rejected.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-