

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE**

HON'BLE SHRI JUSTICE ANAND PATHAK

ON THE 17th OF JANUARY, 2024

MISC. CRIMINAL CASE No. 52949 of 2023

Between:-

**PREM PARASHAR S/O SHRI RAMSWAROOP
PARASHAR, AGED ABOUT 35 YEARS,
OCCUPATION: AGRICULTURIST R/O ARYA
NAGAR DISTRICT BHIND (MADHYA PRADESH)**

.....APPLICANT

(BY SHRI ANAND PUROHIT -ADVOCATE)

AND

**STATE OF MADHYA PRADESH,
THROUGH POLICE STATION KOTWALI
DISTRICT BHIND (MADHYA PRADESH)**

.....RESPONDENT

**(BY SHRI RAVINDRA SINGH KUSHWAH -DY. ADVOCATE
GENERAL AND SHRI PAWAN DWIVEDI – AMICUS CURIAE)**

This application coming on for admission this day, the court passed the following:

ORDER

1. The applicant has filed this third bail application u/S.439 Cr.P.C for grant of bail. Applicant has been arrested on 15-09-2023 by Police Station Kotwali District Bhind in connection with Crime No.173/2022 registered for offence under Sections 409, 420, 34 of IPC. His first bail application (M.Cr.C.No.44386/2023) was dismissed as withdrawn vide

order dated 05-10-2023 and second bail application (M.Cr.C.No.47031/2023) was dismissed as withdrawn vide order dated 18-10-2023.

2. It is the submission of learned counsel for the applicant that he has been falsely implicated in the case and his source of implication is memo under Section 27 of the Evidence Act. Nothing less nothing more. He has no role to play directly or indirectly in commission of offence. He does not bear any tainted criminal background and also suffered more than two months of incarceration as pre-trial detention.
3. Learned counsel for the applicant further referred the fact that vide order dated 21-12-2023 temporary bail was granted to the applicant and he was released on temporary bail on his furnishing personal bond of Rs.50,000/- with one solvent surety in the like amount to the satisfaction of the trial Court. It is further submitted that charge-sheet has already been filed in the matter. He seeks continuance of such relief and prays for making temporary bail order absolute.
4. Learned counsel for the respondent/State opposed the prayer, however could not dispute the facts as narrated by counsel for the applicant.
5. Heard learned counsel for the parties at length and perused the case diary.
6. This is a peculiar case where Branch Manager of CMS Company, Gwalior Branch filed a complaint with the allegations that Company operates nationally and engaged in contracts with various Banks where it systematically collects fund from these Banks and subsequently in secured position transports this money for loading into the ATMs across different locations through designated agents. According to complainant, two custodians namely, Ashish Jadon and Satendra

Chauhan were appointed to load the cash in 18 ATMs following the route sequence 01 in Bhind. Both custodians had access to essential material including Admin Card, Key to the ATMs and One Time Password (OTP) for vault access.

7. During an audit conducted from 24-01-2022 to 28-01-2022 by Auditor Manish Yadav, it was discovered that in 15 out of 18 ATMs the loaded cash was less than the expected amount. It was further investigated in which it was revealed that custodians Ashish Jadon and Satendra Chauhan deliberately under reported the cash amount loaded into the ATMs. This coordinated efforts resulted in misappropriation of a total sum of INR 12,198,000/-. In an attempt to rectify the situation, Ashish Jadon returned a portion of the embezzled amount around Rs.8.5 lacs. During the course of investigation based on disclosure statement of prime accused Ashish Jadon, the present applicant has been arrayed in the capacity of accused. Moreover, he has also alleged that he had given Rs.7 lacs to the present applicant. Therefore, charge-sheet has been filed against the present applicant.
8. Considering the submission and the source of implication of the applicant and the fact that charge-sheet has been filed, this Court allowed the application of the applicant for temporary bail vide order dated 21-12-2023. This Court now confirms the said order of temporary bail and makes it **absolute**. Applicant may be released on already furnished bail bonds and surety with the condition as enumerated in the temporary bail order dated 21-12-2023. It is expected that applicant shall not be the source of embarrassment and harassment to the complainant in any manner.

Accordingly, the application preferred by the applicant under

Section 439 of Cr.P.C. is hereby **allowed**.

9. Since it is a case of very wider financial/social ramification and performed with innovative criminal bent of mind, therefore, to understand the fall outs of such crimes, this Court earlier appointed Shri Pawan Dwivedi, Advocate as *amicus curiae* to advance arguments and to suggest some measures to curb such menace. He filed a detail synopsis in this regard. He argued at length about the working pattern of ATMs and predicaments of the Banks as well as common customers to make them safe from the onslaught of Cyber/Regular Criminals. Shri Dwivedi referred different RBI notifications which safeguard the working of ATMs. He discussed and deliberated with different stakeholders of Banking Industry. The Observations as contained into his synopsis are as under:

“After taking to various persons who are working in the field of Banking or related operations it has been observed that:

(i) Main problem lies in the fact that there are no strict compliance with the instructions/guidelines issued by the RBI with respect to cash loading procedure

(ii) Most of the banks are not doing reconciliation process with the time frame as suggested by the RBI.

(iii) Most of the CCTV camera are not working.

(iv) The process of engaging workers is not robust in the organisations providing services of cash loading. The data grid of employees is not being maintained in accordance with the instructions of the RBL

(v) The rotation of custodian 1 and custodian 2 and

shifting them to different teams at times is not frequent.”

- 10.** After referring observations which are mainly in the nature of problematic area, learned *amicus curiae* made certain suggestions also which are reproduced for posterity and for better understanding of the problems and its solutions. These suggestions can be taken into account by the Policy Makers of Banks and other Stakeholders:

“(A) The Banks, The Service Provider and the Sub-Contractor shall strictly adhere to the time lines and instructions/guidelines issued by the RBI from time to time with respect to cash replenishment in ATMs.

(B) All the vans should have a GPS installed and also the controlling technology for immobilizing the van whenever required. They must have active CCTV camera at all times of their operations.

(C) All the ATMs must have active CCTV camera at all times.

(D) The cash replenishment procedure should be watched over by a Cyber Security Operations Centre.

(E) Custodian 1 and Custodian 2 shall be equipped with active body camera during their ATM replenishment procedure.

(F) Custodian shall submit both Cash Position receipts (i.e. before and after cash replenishment) on the same day to the concerned Bank.

(G) The Banks must do reconciliation of transactions (replenishment) between the Banks, The Service Provider and Sub- Contractor within 3 days from the date of

loading of cash.

(H) The Custodian 1 and Custodian 2 shall be changed frequently as a team (i.e. making team of different persons like sometimes A with B and sometimes A with D & so on) also their duty shall be shifted to different zone of ATMs from time to time.

(I) The mandate of digital One Time Combination Lock for operating ATM for cash replenishment shall be strictly adhered to.

(J) The indent of cash shall be made at least one day in advance.

(K) The CCTV footage of the ATMs shall be preserved till the reconciliation of cash replenishment is done and till resolution of any dispute (if arises).”

Hopefully, these suggestions would serve as wake up call for all stakeholders especially for Banking industry.

11. Besides that, one more development is being observed by this Court about recurring cases of ATMs cutting by Gas Cutter and thereafter taking money from it. This daredevilry is performed by outstationed criminals or inter-state operatives in absence of or under non-operational condition of CCTV Cameras and absence of Guards. Therefore, it is expected from the Banks that their ATMs would be installed near Public Institutions or at a place from where CCTV Cameras of some other buildings can capture the scene of crime with clarity so that at least vehicle number and other material particulars regarding robbers can be ascertained for nabbing them in case of such incident. These suggestions may already exist but their constant

followup would certainly check the apprehension of crime in substantive manner.

12. Copy of this order be sent to the **Finance Secretary, Govt. of India, North Block, New Delhi, Governor, Reserve Bank of India, Mumbai, Managing Director/Chief Executive Officer of C.M.S. Info System Ltd. Company, Goregaon East, Mumbai, Managing Director, State Bank of India, Sector -11, CBD Belapur, Navi Mumbai, Managing Director, Punjab National Bank, Dwarka, Delhi, Managing Director, ICICI Bank, ICICI Bank Towers, Bandra -Kurla Complex, Mumbai and Managing Director, Axis Bank, Axis House, Mumbai** for information and contemplation over the suggestions given. Reserve Bank of India may circulate this order with suggestions and directions to different Banks, if advised so.
13. Before parting, this Court intends to record deep appreciation for the valuable assistance rendered by Shri Pawan Dwivedi, Advocate as *amicus curiae*.
14. Application stands **disposed of**.

(Anand Pathak)
Judge

Anil*

**ANIL
KUMAR
CHAURASIYA**

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