



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 CRIMINAL APPLICATION NO.257 OF 2024

Kartarsingh Uttamsingh Patava,
Age 34 yrs., Occ. Business,
R/o Gurugovindsingh Nagar,
Main Road, Partur,
Tq. Partur, Dist. Jalna.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through Police Station, Kallam,
Tq. Kallam, Dist. Osmanabad.
- 2 Abhay Balasaheb Salunke,
Age 35 yrs., Occ. Service,
R/o Samarth Nagar, Juna MIDC Road,
Latur, Tq. & Dist. Latur.

... Respondents

...

Mr. M.V. Thorat, Advocate for applicant
Mr. N.R. Dayama, APP for respondent No.1

...

CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

DATE : 30th APRIL, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed initially for quashment of First

Information Report vide Crime No.392/2023 dated 30.08.2023 registered with Police Station, Kallam, Tq. Kallam, Dist. Osmanabad, for the offence punishable under Sections 380, 461 of the Indian Penal Code, 1860 and later on by way of amendment for quashing the proceedings in Regular Criminal Case No.240/2023 pending before learned Judicial Magistrate First Class, Kallam, Dist. Osmanabad.

2 Heard learned Advocate Mr. M.V. Thorat for applicant and learned APP Mr. N.R. Dayama for respondent No.1.

3 Learned Advocate for applicant has taken us through entire charge sheet including First Information Report. First Information Report has been lodged by respondent No.2 in his official capacity. His company provides ATM machine facilities to Axis Bank and State Bank of India. His company had provided one ATM machine for State Bank of India in block No.5, Jantre Complex, Dhoki-Kallam road in Kallam, however, no security was provided at the said place. The work of loading cash in ATM machine was with 'Secure Value' company. Two of the employees, who used to load the cash from the said 'Secure Value' company had opened the cash box of ATM machine around 14.30 to 15.30 hours on 28.08.2023. Taking into consideration the cash which was at balance was Rs.11,17,500/- and fresh currency notes of Rs.28,00,000/- were also loaded making the box filled with

cash. The ATM machine was then made operational and report was submitted online to the company of informant. The informant had then opened the App of the company around 6.00 a.m. on 30.08.2023 to see, as to whether all the machines are still working ? He could see that server of the ATM machine in block No.5 at Kallam was down. He checked online CCTV access and saw that around 3.30 a.m. one person, who had covered his face wearing blue jacket and yellow pant, entered the ATM machine. He was followed by another person, who have also covered his face. Then they had made a loop and with the help of a rope wire pulled the machine out of the block, but no security alarm rang. Therefore, informant was sure that theft has been committed. He then contacted the Bank Manager and his own higher authority. Then the Team generated report to see as to how much cash has been stolen. They could get that amount of Rs.21,91,500/-, which were 5983 currency notes of Rs.500/- each was stolen.

4 Learned Advocate appearing for applicant then states that in the entire charge sheet there is nothing to connect the applicant with the crime. Though certain articles have been recovered, those were recovered from co-accused. There is no eye witness to the incident nor the CCTV footage appears to have been seized. Except the alleged statement of accused recorded by police, there is nothing. The said statement has no evidentiary

value at all and, therefore, asking the applicant to face the trial would be injustice to him.

5 Per contra, learned APP has strongly opposed the application. Respondent No.2 though served, failed to appear. Learned APP submits that present applicant is involved in six more offences; one is for offence punishable under Section 399, 402 of the Indian Penal Code, another is under Section 380, 427, 457 of the Indian Penal Code and others are mainly under the Maharashtra Prohibition Act. Since charge sheet has been filed, let there be trial, as the possibility of proving the panchnama under Section 27 of the Indian Evidence Act of co-accused cannot be ruled out.

6 Here, in this case, First Information Report is against unknown person. In First Information Report informant states that he had seen the CCTV footage and he could see two persons. Though their face were covered, whether that footage would have helped the investigating agency and then for proving the offence against accused, would have been a different question. On 04.04.2025 when the matter was on board and we have heard learned Advocate for applicant, we felt need for the presence of Investigating Officer, taking into consideration whether he has seized the CCTV footage or not. He was present today and says that he has not seized the CCTV footage. He has tried to see that CCTV installed at the spot, but

found that its hard disc was not working. We are afraid that after so many years without seeing any writing the Investigating Officer was able to tell that he could not seize the CCTV footage. But he had not taken into consideration that from a remote place with the help of App informant was able to see the CCTV footage through online CCTV access. He has given the login id also and that CCTV camera was installed over the ATM machine and not the outside of the ATM which would not have been seen by the Investigating Officer. In case of search of the spot where the offence has been committed a police officer should minutely consider each piece of evidence/thing lying there, from the point of view as to whether it would be a piece of evidence. Now, there may not be the said CCTV footage preserved, but then only due to the Investigating Officer a vital piece of evidence appears to have been destroyed or not collected.

7 The involvement of present applicant in other crimes cannot be considered independently. If there would have been a piece of evidence here against the applicant even *prima facie*, the pendency of other crimes against him can be considered.

8 Here, except the statement of co-accused there is nothing. Investigating Officer is relying upon the alleged confession before him and even the prosecution wants to prove that which is inadmissible in evidence as

it is barred under Section 25 of the Indian Evidence Act. Hence, continuing the prosecution against applicant would be an abuse of process of law. Therefore, case is made out to exercise powers under Section 482 of the Code of Criminal Procedure in favour of applicant. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) The proceedings in Regular Criminal Case No.240/2023 pending before learned Judicial Magistrate First Class, Kallam, Dist. Osmanabad, arising out of First Information Report vide Crime No.392/2023 dated 30.08.2023 registered with Police Station, Kallam, Tq. Kallam, Dist. Osmanabad, for the offence punishable under Sections 380, 461 of the Indian Penal Code, 1860, stands quashed and set aside as against applicant viz. **Kartarsingh Uttamsingh Patava.**

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)