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

CRIMINAL APPLICATION NO. 450 OF 2016

Kailas Ramdas Patil ...APPLICANT

VERSUS

The State of Maharashtra & anr. ...RESPONDENTS

Mr Alok Sharma, Advocate for applicant;
Mr S. Y. Mahajan, Public Prosecutor for respondents;
Mr A. K. Tiwari, Advocate to assist Addl. Public Prosecutor

CORAM : N.W. SAMBRE, J.

DATE : 15th February, 2016

ORDER :

By the present application under section 438 of the Code of Criminal Procedure, the applicant seeks his release on pre-arrest bail, in connection with C.R. No.I-173 of 2015, registered with Dharangaon police station, Jalgaon, for offences punishable under sections 306, 506 read with section 34 of the Indian Penal Code and under sections 39 and 45 of the Bombay Money Lenders Act.

2. The prosecution case is that Varsha Annasa Kshtriy filed complaint that the applicant has secured blank cheques and stamp papers bearing her signatures and signatures of deceased Anna, in the loan transaction and were fraudulently used for transfer of the property in favour of the applicant.

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3. While trying to make out a case for grant of pre-arrest bail, Mr Alok Sharma, learned Counsel appearing on behalf of the applicant would urge that even if the allegations made in the first information report are taken at its face value, still no offence could be made out as against the present applicant. He has invited attention of this Court to the judgment and decree rendered by the learned Civil Judge Senior Division, Amalner, in Special Civil Suit No.54 of 2004, instituted by the present applicant against deceased Anna, which came to be decreed on 27th November, 2006. It is submitted by Mr Sharma that against the said judgment decreeing the suit for specific performance in favour of the applicant and against the husband of the complainant, second appeal is pending at the behest of the complainant before this Court. According to him, the defence as was raised in the suit for specific performance is the same as that of the story narrated in the first information report. He would urge that once the Civil Court has gone into the said issue, the applicant cannot be held responsible for the crime in question.

4. Learned Addl. Public Prosecutor, who is assisted by the learned Counsel for the complainant, has strenuously urged that there is suicide note left over by deceased Anna naming the present applicant as a culprit and specific role is attributed to him in the crime in question. It is further claimed that from one of the co-accused, who was arrested in the present crime, the blank cheques and stamp papers bearing signatures of either complainant or deceased Anna was recovered. It is further claimed that having regard to strong prima facie material available against the applicant

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and sanctity of the suicide note scribed by deceased as a last document before his death is required to be considered. Thus, he prayed for rejection of the application.

5. I have perused the judgment and decree for specific performance, rendered by the learned Civil Judge Senior Division, Amalner, in Special Civil Suit No.54 of 2004, which was instituted by the applicant against Anna Kshtriy – the husband of the complainant, who is the author of the suicide note. In the said civil suit, deceased Anna had filed his written statement at Exh.14 and had come out with the same story of execution of the blank stamp paper and the cheques and also stated that the transaction in question was a loan transaction.

6. Learned Civil Judge Senior Division, after framing the specific issue vide issue no.4 about alleged loan transaction, has decreed the suit in favour of the present applicant. An appeal against the said judgment and decree also came to be dismissed and the matter is *sub judice* in the second appeal before this Court.

7. The fact remains that based on the story as narrated in the first information report, the parties are already before the civil court contesting their respective claims.

8. In the above background, the claim as is sought to be put-forth by the prosecution for rejection of bail, needs to be rejected, as the suicide

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note placed before this Court speaks of the same transaction as is narrated in the suit before the civil court.

9. Once the Civil Court has analyzed the issue as regards loan transaction, issuance of blank cheques and stamp papers, in my opinion, custodial interrogation of the applicant is not necessary. Thus, the applicant is entitled for pre-arrest bail. I, therefore, pass following order :-

In the event of arrest of the applicant, in connection with C.R. No.I-173 of 2015, registered with Dharangaon police station, Jalgaon, for offences punishable under sections 306, 506 read with section 34 of the Indian Penal Code and under sections 39 and 45 of the Bombay Money Lenders Act, he be released on bail on furnishing P.R. Bond of Rs.25,000/- with one surety in the like amount.

The applicant shall attend the concerned police station initially from 22nd to 24th February, 2016, between 10.00 a.m. and 12 noon and thereafter as and when called by the Investigating Officer.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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