IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.

Criminal Application No. 5262 of 2016

District : Osmanabad

Dattatraya s/o. Balasaheb Devkate,
Age : 40 years,
Occupation : Service as Assistant Teacher with Bhairavnath High School at village Dharur,
Taluka & District : Osmanabad,
R/o. Devkate Galli, Osmanabad,
Taluka & District : Osmanabad. .. Applicant.

versus

1. The State of Maharashtra, through Police Inspector, Osmanabad City Police Station, Osmanabad, Taluka & District : Osmanabad.

2. The Superintendent of Police, Osmanabad. .. Respondents.

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Mr. Rajendra S. Deshmukh, Advocate, for the applicant.

Mr. A.S. Shinde, Addl. Public Prosecutor, for respondent nos.1 and 2.

Mr. Brahmanand M. Dhanure, Advocate, for intervenors (Applicants in Criminal Application No. 5660 of 2016 seeking permission to assist the Addl. Public prosecutor).

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CORAM : A.M. BADAR, J.

DATE : 6TH OCTOBER 2016

ORAL ORDER:

The applicant / accused in Crime No. 213/2016 for the offence punishable under Section 39 of the Maharashtra Money Lending (Regulation) Ordinance, by this application, is seeking pre-arrest bail.

2. Heard the learned Counsel appearing for the applicant / accused. He argued that the applicant is a Primary Teacher and residing jointly with his other family members including his brother Patal who is licensed money lender. The learned Counsel strenuously urged that Malhari s/o. Sadhu Shirsath is an instrumental behind lodging the FIR. His two complaints were duly examined by the officers of the Co-operation Department and those were closed. In the suit filed by said Malhari Shirsath for specific performance of re-conveyance, the Civil Court rejected the temporary injunction. The learned Counsel by drawing my attention to the FIR argued that nothing incriminating except one document of agreement for 99 years, executed by Somnath Annarao Nagtilak naming the applicant is seized.

3. I have heard the learned Addl. Public Prosecutor. By pointing out statements of several witnesses, the learned Addl. Public Prosecutor has stated that the applicant is doing illegal money

lending business. He has purchased plots in the name of his father. The learned Addl. Public Prosecutor further argued that statement of bank account of the applicant as well as his father shows illegal money lending business. The learned Addl. Public Prosecutor submitted that the applicant is having criminal antecedents.

4. I have also heard the learned Counsel appearing for intervenors. It is argued that the license for money lending is in respect of Osmanabad whereas the business is being done at several places including Latur. Name of father of the applicant is shown in several 7/12 extracts. The applicant is named in several complaints made to several authorities and even the Grampanchayat is addressed as a money lender.

5. Though in the FIR, reference to the ordinance is made, now the Maharashtra Money Lending (Regulation) Act 2014, is enacted and Section 39 deals with penalty for doing money lending without valid license. The punishment prescribed is imprisonment which may extend to five years with fine which may extend to Rs. 50,000/- or both.

6. The FIR came to be lodged by Balaji Harishchandra Savtar, Officer of the Co-operation Department, after raiding the house of the present

applicant. The learned Addl. Public Prosecutor has made a statement that this house is jointly in occupation of the applicant as well as his brother Patal. The learned Addl. Public Prosecutor has accepted the fact that said Patal is holding money lending license but the learned Addl. Public Prosecutor informed that after the raid, said license is cancelled.

7. Perusal of the FIR lodged by the Officer of the Co-operation Department shows that several documents came to be seized from the house of the present applicant. So far as present applicant is concerned, the FIR itself disclose that his name is there in the agreement for 99 years executed by Somnath Nagtilak. Apart from that, the FIR does not disclose that any other document containing name of the present applicant came to be seized from the applicant.

8. The Investigation Officer has recorded statements of several witnesses, such as Sampat Warbhuvan, Sahdev Ghadge, Ranjit Dongre, Shaikh Nawab Rashid, etc. Those statements are to the effect that the applicant had advanced loan to the witnesses. However, witnesses are not stating that any document was executed in the name of the present applicant. Though chart was placed in service to show criminal antecedents of the present applicant, perusal of the

chart does not lead us to anywhere. Apart from name of the present applicant, several figures and dates are mentioned in that chart which does not bear any crime number or section of penal laws invoked.

9. One register is also placed in service by the learned Addl. Public Prosecutor. Perusal of the register shows that only names of persons and amount is mentioned therein. Whether the amount was advanced and who has advanced that amount is not mentioned in the register. In the wake of the fact that the brother of the applicant was a licensed money lender, this evidence at this stage is of no assistance.

10. It is seen that on earlier occasion, two complaints of illegal money lending business were there against the present applicant and on being enquired, officers of the Co-operation Department vide communications dated 14.08.2015 and 22.06.2016 had closed those complaints.

11. Be that as it may, the offence is purely based on documentary evidence. Apart from that, the Investigation Officer has recorded statements of witnesses. Necessary recoveries are effected by raiding the house of the applicant. The offence is punishable with maximum imprisonment of five years with fine. In this view of the matter, as nothing is

now required to be recovered at the instance of the present applicant, his custodial interrogation is not warranted.

12. Hence, I pass the following order :-

(a) The Application is allowed.

(b) The applicant / accused, in the above crime, in the event of his arrest, be released on bail on his executing P.R. Bond in the sum of Rs. 50,000/- and on furnishing one or more solvent sureties of the like amount.

(c) As conditions of this order, the applicant shall abide by the following directives :-

> (i) The applicant shall attend the concerned Police Station on every alternate Sunday in between 11.00 a.m. and 01.00 p.m. till filing of the charge-sheet and he shall cooperate the investigator in investigation of the crime in question.
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> (ii) The applicant shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the

Court or to any police officer.

(iii) The applicant shall not tamper with the prosecution evidence in any manner.

13. The Application stands disposed of in the aforesaid terms.

14. Needless to mention that the observations made in this order are prima facie in nature which shall have no bearing on trial, if any, of the case.

(A.M. BADAR)
JUDGE

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