IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION No. 5567 of 2016

Usha w/o Parmeshwar Hausalmal,
Age: 34 years,
Occu: Household and Agril,
R/o Bhimnagar, Kallam,
Tq. Kallam Dist. Osmanabad ..APPLICANT

VERSUS

The State of Maharashtra
Through Police Station Shiradhon,
Tq. Kallam, Dist. Osmanabad ..RESPONDENT

Mr S. J. Salunke, Advocate for applicant;
Mr S. D. Ghayal, Addl. Public Prosecutor for respondent;
Mr V. S. Undre, Advocate to assist Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO. 5691 OF 2016

Vishwas s/o Bhagwat Housalmal @
Baban s/o Bhagwat Housalmal,
Age: 29 years, Occu: Hotel Business,
R/o Kallam, Tal. Kallam,
Dist. Osmanabad

VERSUS

The State of Maharashtra
Through Police Station Shiradhon,
Tq. Kallam, Dist. Osmanabad

Mr S. S. Thombre, Advocate for applicant;
Mr S. D. Ghayal, Addl. Public Prosecutor for respondent;
Mr V. S. Undre, Advocate to assist Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO. 5560 OF 2016

Rangnath s/o. Dadarao Waghmare,
Age : 62 years,
Occupation : Pensioner,
R/o. Punarvasan Sawargaon,
Behind Rural Hospital, Kallam,
Taluka : Kallam,
District : Osmanabad. ..APPLICANT

VERSUS

The State of Maharashtra,
Through Police Inspector,
Police Station, Shiradhon,
Taluka : Kallam,
District : Osmanabad. ..RESPONDENT

Mr S. S. Thombre, Advocate for applicant;
Mr S. D. Ghayal, Addl. Public Prosecutor for respondent;
Mr V. S. Undre, Advocate to assist Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO. 5761 of 2016

1. Jalal @ Jalil Munna Shaikh(j.K.),
   Age: 28 years, Occ: Labour,
   R/o Babanagar, Kallam,
   Tq. Kallam, Dist. Osmanabad

2. Wasim s/o Murtuja Shaikh,
   Age: 30 years, Occu: Agril.,
   R/o Momin Galli, Madina Chowk,
   Kallam, Tq. Kallam,
   Dist. Osmanabad ..APPLICANTS

VERSUS

The State of Maharashtra,
Through Police Station,
Shiradhon,
Taluka : Kallam,
District : Osmanabad. ..RESPONDENT

Mr. S.J. Salunke, Advocate, for the applicant
Mr. S. D. Ghayal, Addl. Public Prosecutor, for the respondent;
Mr V. S. Undre, Advocate to assist Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO. 5760 OF 2016

Baliram s/o Bhimrao Jadhav,
Age: 42 years, Occu: Business,
R/o Dhoki Road, Behind Jan-Kalyan Bank,
Kallam Tq. Kallam
Dist. Osmanabad ..APPLICANT

VERSUS

The State of Maharashtra,
Through Police Station, Shiradhon,
Tq. Kallam, Dist. Osmanabad ..RESPONDENT

Mr. S.J. Salunke, Advocate, for the applicant
Mr. S. D. Ghayal, Addl. Public Prosecutor, for the respondent;
Mr V. S. Undre, Advocate to assist Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO. 5649 OF 2016

Pravin s/o Arvind Deshmane,
Age: 23 years, Occu: Agri.,
R/o Kallam Tq. Kallam,
Dist. Osmanabad ..APPLICANT

VERSUS

The State of Maharashtra,
Through Shiradhon Police Station,
Tq. Kallam, Dist. Osmanabad ..RESPONDENT

Mr. S.J. Salunke, Advocate, for the applicantS
Mr. S. D. Ghayal, Addl. Public Prosecutor, for the respondent;
Mr V. S. Undre, Advocate to assist Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO. 5622 OF 2016

1. Samir s/o Babar Mirza,
   Age: 22 years, Occu: Agril.,
   R/o Baba Nagar, Kallam,
   Tq. Kallam, Dist. Osmanabad

2. Uman Babar Mirza,
   Age: 24 years, Occu: Agril.,
   R/o Momin Galli, Kallam,
   Dist. Osmanabad

3. Aref Salim Mirza,
   Age: 23 years, Occu: Business,
   R/o Ganesh Nagar, Kallam,
   Tq. Kallam, Dist. Osmanabad ..APPLICANTS

VERSUS

The State of Maharashtra,
Through Police Station, Shiradhon,
Tq. Kallam, Dist. Osmanabad ..RESPONDENT

Mr. S.J. Salunke, Advocate, for the applicants
Mr. S. D. Ghayal, Addl. Public Prosecutor, for the respondent;
Mr V. S. Undre, Advocate to assist Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO. 5536 OF 2016

Javed Shamim Shaikh,
Age: 31 years, Occu: Business,
R/o Kallam, Tq. Kallam,
Dist. Osmanabad ..APPLICANT

VERSUS

The State of Maharashtra,
Through Police Station Officer,
Shiradhon Police Station,
Tq. Kallam, Dist. Osmanabad ..RESPONDENT

Mr. Niteen V. Gaware, Advocate for the applicant
Mr. S. D. Ghayal, Addl. Public Prosecutor, for the respondent;
Mr V. S. Undre, Advocate to assist Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO. 5501 OF 2016

Santosh s/o Sukhdeo Sonwane,
Age: 28 years, Occu: Agri.,
R/o Gandhi Nagar, Kallam,
Tq. Kallam, Dist. Osmanabad ..APPLICANT

VERSUS

The State of Maharashtra,
Through Shiradhon Police Station,
Tq. Kallam, Dist. Osmanabad ..RESPONDENT

Mr. S. S. Gangakhedkar, Advocate for the applicant
Mr. S. D. Ghayal, Addl. Public Prosecutor, for the respondent;
Mr V. S. Undre, Advocate to assist Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO. 5595 OF 2016

Minhaj s/o Murtaza Shaikh,
Age: 40 years, Occu: Agri.,
R/o Diksal,Tq. Kallam,
Dist. Osmanabad ..APPLICANT

VERSUS

1. The State of Maharashtra,
Through Superintendent of Police,
Osmanabad, Dist. Osmanabad

2. The Police Inspector,
Shiradhon Police Station,
Tq. Kallam, Dist. Osmanabad ..RESPONDENTS

Mr. Y. B. Bolkar, Advocate for the applicant
Mr. S. D. Ghayal, Addl. Public Prosecutor, for the respondents;
Mr V. S. Undre, Advocate to assist Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO. 5604 OF 2016

Sadek Jabbar Pathan,
Age: 43 years, Occu: Business,
R/o. Islampura, Diksal, Tq. Kallamb,
Dist. Osmanabad ..APPLICANT

VERSUS

1. The State of Maharashtra,
Through Shiradhon Police Station,
Shiradhaon, Tq. Kallam,
Dist. Osmanabad ..RESPONDENT

Mr. P. V. Jadhavar, Advocate for the applicant
Mr. S. D. Ghayal, Addl. Public Prosecutor, for the respondents;

Mr V. S. Undre, Advocate to assist Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO. 5628 OF 2016

Sattar s/o Munaf Shaikh,
Age: 33 years, Occu: Business & Agricultural,
R/o. Islampura, Diksal, Tq. Kallamb,
Dist. Osmanabad ..APPLICANT

VERSUS

The State of Maharashtra,
Through the Police Station Officer,
Shiradhaon Police Station,
Tq. Kallam, Dist. Osmanabad ..RESPONDENT

Mr. A. R. Devakate, Advocate for the applicant
Mr. S. D. Ghayal, Addl. Public Prosecutor, for the respondents;
Mr V. S. Undre, Advocate to assist Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO. 5710 OF 2016

Uttam s/o Rambhau Kumbhar,
Age: 56 years, Occu: Agricultural,
R/o. Mungrul, Tq. Kallamb,
Dist. Osmanabad ..APPLICANT

VERSUS

The State of Maharashtra,
Through the Police Station,
Shiradhaon, Dist. Osmanabad ..RESPONDENT

Mr. A. T. Jadhavar, Advocate for the applicant
Mr. S. D. Ghayal, Addl. Public Prosecutor, for the respondents;

Mr V. S. Undre, Advocate to assist Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO. 5712 OF 2016

Sham s/o Sadhu Thorat,
Age: 29 years, Occu: Agri. & Business,
R/o. Borgaon(Bk.), Tq. Kallam,
Dist. Osmanabad,
At present R/o. Sy. NO. 12,
Fortune Society, Building B-4,
Flat No. 603, 604, Pune-14 ..APPLICANT

VERSUS

The State of Maharashtra ..RESPONDENT

Mr. Satej S. Jadhav, Advocate for the applicant
Mr. S. D. Ghayal, Addl. Public Prosecutor, for the respondents;
Mr V. S. Undre, Advocate to assist Addl. Public Prosecutor

CORAM : A.S. CHANDURKAR,J.

DATE : 13th DECEMBER, 2016

ORAL ORDER :

Since all the applicants apprehend their arrest in connection with Crime No. 189 of 2016 registered at Shiradhon Police Station, Taluka Kallam, District Osmanabad for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code, they have filed present

applications under Section 438 of the Code of Criminal Procedure.

2. As per the first information report dated 28th August, 2016, the informant Sumit Gaikwad has reported that prior to two years, his brother Swapnil was in need of money and hence, he had borrowed various amounts from the accused persons. It was agreed that the amounts borrowed would be repaid with interest. It is then stated that the informant and his family members had executed certain sale deeds in favour of some of the accused persons towards repayment of the loan amounts. However, the accused persons used to come to the house of the informant and used to demand the repayment of further amounts. The informant and his family members used to be abused and threatened. It is stated that on 27th August, 2016 some of the accused persons had again visited the house of the informant and had harassed the family members. As the mother of the informant felt harassed, she consumed poison and committed

suicide. It is stated that a chit was found written by the informant's mother in which the names of various accused persons were written. On that basis, the aforesaid offence came to be registered.

3. The learned Counsel for the applicants submitted that no offence under Section 306 of the Indian Penal Code can be stated to have been committed by the applicants. According to the first information report, the amounts in question had been borrowed by the informant and his brother Swapnil. It was submitted that with regard to the applicants – Baliram Jadhav, Santosh Sonawane, Minhaj Shaikh, Sattar Shaikh, Uttam Kumbhar, Sham Thorat, Pravin Deshmane and Usha Housalmal, various sale deeds had been executed by the family of the informant in their favour and merely to get back the said lands, the present offence had been registered. Reference was made to the pleadings in Civil Suit No. 76 of 2015 filed by one Sudhakar Gaikwad, in which, the informant and his family members were added as defendants. It was submitted

that the same was a suit for partition and lands purchased by the aforesaid applicants had been shown as joint family property. It was then submitted that on 29th August, 2016 a complaint came to be made by the informant and his brother to the District Deputy Registrar, Co-operative Societies, Osmanabad, in which, reference was made to some money lending transactions entered into by some of the accused persons. However, the names of Sadek Jabbar, Samir Babbar, Jalal @ Jalil, Rangnath Waghmare, Vishwas Hoiusamal and Javed Shamim Noorani were not included in the said complaint.

Referring to the provisions of Section 107 of the Indian Penal Code, it was submitted that as per averments in the first information report, the aspect of the abetment was missing. The mother of the informant having not borrowed any amounts, there was no question of she being threatened and coerced to commit suicide. No earlier report with regard to the alleged threats and demands by the accused persons was ever made by the informant. In

support of their submissions, reference was made to the judgments of the Honourable Supreme Court in Sanju alias Sanjay Singh Sengar vs. State of M.P., AIR 2002 SC 1998, Manoj Mahavir Prasad Khaitan vs. Ram Gopal Poddar and another, 2010(10) SCC 673 as well as the judgment of the learned Single Judge in Santosh Nathumal Goenka and another vs. State of Maharashtra, 2010(1) Bom.C.R. (Cri.) 233. It is, therefore, submitted that the applicants were entitled for protection.

4. The applications were opposed by the learned Additional Public Prosecutor by relying upon the police papers. It is submitted that from the statements of the witnesses recorded, it was clear that the applicants herein had harassed the mother of the informant from time to time, due to which, she committed suicide. The applicants had indulged in illegal money lending activities and were pressurizing the family of the informants to repay the amounts with high rate of interest. It was submitted that from the material seized, names

of the present applicants were stated by the deceased as having harassed her. It was then submitted that some of the applicants had previous antecedents and therefore, the applications were liable to be rejected.

5. The learned Counsel for the informant while assisting the prosecution submitted that in the first information report, there was clear reference to the harassment of the entire family at the instance of the present applicants. All the accused had visited the house of the deceased prior to the incident. The amounts alleged to be paid and as mentioned in the sale deeds were never given in the presence of Sub Registrar. As the applicants were carrying on money lending activities without licence, they were not entitled for any relief.

6. With the assistance of the learned Counsel for the parties, I have perused the material on record along with the police papers. As per the first information report, it is stated that the

applicants had advanced certain amounts to the informant and his brother. The material further indicates various sale deeds being executed by the members of the informant's family in favour of the some of the applicants. In a suit for partition filed by one of the members of the joint family, the properties sold are also included and described as joint family property. Some of the applicants are also added as defendants. Similarly, in the complaint to the District Deputy Registrar reference to illegal money lending activities is made with regard to only some of the applicants.

7. *Prima facie*, for the purposes of making out an offence punishable under Section 306 of the Indian Penal Code, the aspect of abetment as contemplated by Section 107 of the Indian Penal Code is material. The first information report refers to the acts of persistent demands and the acts of violence against the informant and his family members. The aspect of abetment as required by Section 107 of the Indian Penal Code *prima*

facie does not appear to be present in the said report. It may be true that there was persistent demand of alleged amounts advanced to the informant and his brother. As observed by the learned Single Judge in Santosh Nathumal Goenka and another (supra), persistent demands for repayment of loans advanced by itself would not constitute abetment within the meaning of Section 107 of the Indian Penal Code. Moreover, such amounts not being alleged to have been advanced to the mother of the informant, there was no question of the applicants instigating the mother to commit suicide. The fact that such allegations are made against eighteen accused persons also cannot be ignored. The material on record *prima facie* indicates disputes between the members of the joint family with regard to the partition of various properties. Mentioning of names of only some of the applicants in the complaint dated 29th August, 2016 made to the District Deputy Registrar, Co-operative Societies, is also required to be taken into consideration. The chit in question only refers to certain amounts

taken as loan. Thus, considering overall material on record, I find that the applicants have made out a case for grant of pre-arrest bail.

8. As regards antecedents of some of the applicants, once when it is *prima facie* found that a case has been made out for grant of protection in the present applications the said aspect would have a lesser degree of relevance. Moreover, some of the applicants have been duly acquitted in these proceedings at the conclusion of the trial. Hence, in this back ground, I am inclined to confirm ad interim protection granted earlier.

9. In view of aforesaid, the following order is passed : -

(i) In the event of applicants' arrest in connection with Crime No. 189 of 2016 registered at Shiradhon Police Station, Taluka Kallam, District Osmanabad for the offence punishable under Section 306 read with Section 34 of the Indian Penal Code,

they shall be released on bail, on furnishing P.R. bond of Rs.15,000/- each, with one surety in the like amount.

(ii) The applicants shall attend the concerned police station on 22nd December, 2016 and thereafter as per directions of the Investigating Officer.

(iii) The applicants shall not take any steps to influence the prosecution witnesses.

10. The observations made in this order are only for the purposes of deciding present applications.

11. All Criminal Applications are allowed and disposed of.

(A.S. CHANDURKAR, J.)

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