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

CRIMINAL APPLICATION NO. 6237 OF 2016

1. Pappu @ Dattatraya s/o Chandar Madke,
Age: 68 years, Occu: Agri.
2. Suresh s/o Sandipan Madke,
Age: 37 years, Occu: Agri.,
3. Rohit @ Guddya Jalindar Madke,
Age: 20 years, Occu: Education & Business,

All R/o Moha, Tq. Kallamb,
Dist. Osmanabad

..APPLICANTS

VERSUS

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

..RESPONDENT

Mr S. J. Salunke, Advocate for applicants;
Mr C. V. Dharurkar, Addl. Public Prosecutor for respondent

CORAM : A.S. CHANDURKAR, J

DATE : 15th December, 2016

ORAL ORDER :

The applicants who have been arrested in connection with Crime No. 168 of 2016 registered at Police Station, Kallamb, Tq. Kallamb, Dist. Osmanabad for the offences punishable under Sections 306 read with Section 34 of the Indian Penal Code and under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014, seek their release on bail.

2. As per the first information report dated 5th August, 2016, the informant has reported that his brother Sunil had borrowed an amount of

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Rs.1,000/- from the applicant No.1 prior to about 2-3 years. However, no documents in that regard were executed. The demand was made for repayment of Rs.5,000/- towards principal amount and interest. It is stated that on the same day in the morning, the applicants had assaulted said Sunil, due to which he felt insulted and committed suicide at about 11.30 a.m. On that basis, present applicants have been arrested.

3. It is submitted by the learned Counsel for the applicants that the first information report does not indicate any offence made out under Section 306 of the Indian Penal Code. Merely because it is alleged that the applicants had assaulted the deceased and had demanded repayment of said amount, same cannot constitute abetment for purpose of Section 107 of the Indian Penal Code. It is submitted that documents seized from the applicant No.1 do not indicate any such amount being lent to the deceased. It is further submitted that on the contrary, the deceased was serving at Pune since last two years and was habituated to drinking liquor. The alleged chit seized by the prosecution also does not indicate the names of the applicants. It is then submitted that said Sunil and one Vikram Madke were facing prosecution in Criminal Case No. 175 of 2014 which was fixed for judgment on the day of the incident. Said Vikram Madke had also acted as a panch witness on behalf of the prosecution. The initial report given by uncle of the deceased also indicates that deceased was having habit of drinking liquor. As regards offence under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014, it is submitted that even if the applicant No.1 is to be convicted for such offence, the maximum punishment prescribed is that of five years. It is

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further submitted that as the chargesheet is filed and investigation is complete, further detention of the applicants is not warranted.

4. The application is opposed by the learned Addl. Public Prosecutor by relying upon police papers. He has referred to the statements of witnesses to indicate that said Sunil was assaulted by the applicants and they had been demanding dues from him. Deceased Sunil had been assaulted and humiliated due to which he committed suicide. It is submitted that the documents seized at the instance of the applicant No.1 indicate that he was indulging in money lending business without having a valid licence. Considering the alleged assault on the deceased and his humiliation resulting in commission of suicide, the applicants do not deserve to be released.

5. With the assistance of the learned Counsel for respective parties, I have perused the first information report as well as the chargesheet. As per the said report, the applicants were demanding sum of Rs.5,000/- from deceased Sunil on the ground that the amount of Rs.1,000/- had been borrowed by him 2-3 years ago. There is no document to that effect. The first information report indicates assault on said Sunil, after which he went home and committed suicide. Prima facie, on the basis of material on record and statements recorded, the aspect for abetment as contemplated under Section 107 of the Indian Penal Code does not appear on record. If the demand of said amount and assault thereafter is taken into consideration, on the basis of material on record, it cannot be said that the applicants had intended that said Sunil should end his life. Insofar as

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offence under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014 is concerned, the maximum punishment is for a period of five years. All the incriminating material has now been seized and the chargesheet has been filed on 1st October, 2016. In view of this fact, I find that the applicants can be enlarged on bail subject to imposing conditions. Hence the following order:

The applicants, who are arrested pursuant to Crime No. 168 of 2016 registered at Police Station, Kallamb, Tq. Kallamb, Dist. Osmanabad for the offences punishable under Sections 306 read with Section 34 of the Indian Penal Code and under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014, shall be released on bail on furnishing P.R. Bond of Rs. 15,000/- each, with one surety in the like amount.

The applicant No.1 shall not enter the limits of Tahasil Kallamb, Dist. Osmanabad till completion of the trial.

The applicants shall not take any steps to influence the prosecution witnesses. They shall co-operate in completion of the trial.

It is made clear that the observations made in this order are only for deciding the present application. Same is accordingly allowed and disposed of.

[A.S. CHANDURKAR]
JUDGE

sjk