

2 This is an application under Section 438 Code of Criminal Procedure. The applicant herein is apprehending his arrest in Crime No.73 of 2018, registered at Otur Police Station, District Pune on 24th April, 2018, for the offences punishable under Sections 323, 504, 505 of Indian Penal Code, Sections 31(A), 33, 35(C) of the Bombay Money Lenders Act and Section 3 and 25 of Arms Act.

3 It is the case of the prosecution that one Pravin Bhimirao Barbade lodged a report at the police station alleging therein that in the year 2017, he was in dire need of funds and through his friend, Balasaheb Bhikaji Dhamale, he had approached the present applicant and had taken a loan of Rs.80,000/- at the rate of 10% per month. It was decided that the loan amount should be returned within 7 months. In January 2018, he had paid Rs.20,000/- towards the interest. On 17th March, 2018, he was threatened by the present applicant. The applicant abused him, assaulted him and thereafter the applicant had demanded money. That he had threatened the complainant at the point of revolver. He had taken a cheque of Rs.2,00,000/- from the first informant. The incident is dated 17th March 2018, whereas the first information report is lodged on 24th April 2018.

4 Learned counsel for the applicant has drawn attention of this Court to the Say filed by the prosecution at the time of hearing of the anticipatory bail application before the Sessions Court. It was

the case of the investigating agency that custodial interrogation is imperative for the purpose of recovering the revolver.

5 It is pertinent to note that the applicant has indulged into tampering of evidence and since one Ejaj Iqbal Inamdar has filed an affidavit on 4th June 2018 in the course of hearing of the bail application before the Sessions Court contending therein that on 24th May 2018 panchanma was conducted in the house of applicant and no incriminating material was seized. Needless to say that this amounts to tampering of evidence. However, there are several lacunae in the present case.

6 Learned APP submits that the panchanama was rather conducted on 24th April 2018 i.e. on the date of registration of F.I.R. and no incriminating material was found. It is submitted that notice under Section 41-A was issued to the applicant, however, he did not respond to the same and instead chose to file an application under Section 438 of Cr.P.C. It is clear that the witness has deliberately given the date of 24th May 2018, since the Say was filed on 2nd June

2018 and the affidavit is filed on 4th June 2018. Learned APP submits that the brother of applicant was present in the house when the panchanama was conducted. In fact the notice under Section 41A was issued, after the panchanama was conducted. It does amount to tampering of evidence. However, since the offence is registered only under Section 323 of Indian Penal Code and under the Money Lending Act i.e cognizable offence. In the above mentioned facts, the applicant deserves pre-arrest bail.

7 Grant of pre-arrest bail would not be an impediment to enquire into the activities of Money Lending by the investigating agency and the same shall be enquired through the Deputy Registrar of Co-operative Societies.

8 However, the observations are restricted to application under Section 438 of the Code of Criminal Procedure, 1973 and shall not be taken into consideration for the purpose of quashing of FIR, discharge application or at the time of trial. Hence, the order :

ORDER

- i) The application is allowed.
- ii) In the event of arrest, the applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.1,00,000/- with one or more solvent sureties in the like amount.
- iii) The applicant shall report to the concerned police station everyday from 10th August 2018 to 14th August 2018 between 10.30 am. to 1.00 pm. and co-operate the investigating agency.

(Smt. Sadhana S. Jadhav, J)