**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**BAIL APPLICATION NO.2888 OF 2017**

Sagar Prakash Mohite .... Applicant

Vs.

The State of Maharashtra .... Respondent

Mr. Samir Arunkumar Vaidya a/w Mr. Kaustubh Marathe for the Applicant.
Mr. Vinod Chate, APP for the State.

***Coram : Smt. Sadhana S. Jadhav, J.***
***Date : 11th January, 2018***

P.C.:

1 Heard the learned counsel for the applicant and the learned APP.

2 This is an application under Section 439 Code of Criminal Procedure. The applicant herein is arrested on 6th July 2017 in Crime No.510 of 2017, registered at Satara City Police Station for the offences punishable under Sections 395, 304(II), 384, 323, 506 Indian Penal Code read with Sections 39 and 45 of the Maharashtra Money Lending (Regulation) Act, 2014.

3 It is the case of the prosecution that on 5th July 2017, one Sharad Narayan Fadtare had lodged a report at the police station alleging therein that he runs Vadapav Centre near Land Development Bank, Satara. That his father owns two trucks. That in March 2012, he was in need of money for expanding his hotel business and therefore he had leased 60 sq. ft. plot for a deposit of Rs.2,00,000/-. He was short of cash and therefore he had approached the present applicant. The applicant had introduced him as Pramod alias Khandya Dharashivkar, who had lent him money and had lent Rs.2,00,000/- at 15% rate of interest. He was paying the interest regularly. According to him, in March, 2013, he had repaid amount of Rs.2,00,000/- to Pramod Dharashivkar. He had purchased a truck from Shriram Finance, Satara and at that time he was in need of money and had therefore once again he borrowed Rs.2,00,000/- @ Rs.20% rate of interest. He was paying Rs.10,000/- per month and had paid the interest. According to the complainant, he had borrowed money from Dharashivkar on several occasions and that he could not repay the amount of interest or that there was a dispute between Dharashivkar and the informant in respect of payment of interest. It is alleged that on one occasion, the applicant and his associates had assaulted the complainant with fists and kicks blows and had taken away Indica Vista car belonging to his father-in-law. According to the complainant the said car is in the custody of the

present applicant and that the instalments had not been paid. The complainant has given several instances on which he was threatened by the present applicant and Pramod Dharashivkar for return of the amount. It is alleged that his mother could not bear the harassment meeted out to him at the hands of the present applicant and Dharashivkar. His mother was suffering from severe chest pains and hence was admitted in the hospital of Dr. R.G. Harshe. She was then admitted to Symbiosis Hospital. She died of cardiac arrest due to myocardial infarct. On the basis of the said report, the offence is registered against the present applicant and another.

4 Learned counsel for the applicant submits that wife of the applicant is the holder of money lending licence. That infact the complainant had borrowed money from Pramod Dharashivkar and the applicant had only introduced Pramod Dharashivkar to the complainant. There is an allegation that the complainant was also assaulted by the applicant. Learned APP submits that in fact it was the applicant who was lending money on interest although his wife is holder of money lending licence. It is also recorded that three co-accused in the present case are being prosecuted under the provisions of MCOC Act independently. The applicant is not charge-sheeted under the provisions of MCOC Act alongwith the co-accused. Learned APP also submits that accused nos. 7,9 and 12 are still absconding.

5 As far as the case of the present applicant is concerned, it is clear that the mother of the complainant had died due to cardiac arrest and it cannot be said that the applicant is liable for an offence punishable under Section 304(II) Indian Penal Code. The applicants are also being prosecuted for the offence punishable under Section 395 Indian Penal Code, which is punishable for dacoity. Dacoity as defined under Section 391 is as follows :

> "391. Dacoity.-- When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity" .

In the present case, it cannot be said that there is any element of robbery, hence, prima facie Section 395 is not attracted.

6 It is true that the applicant was pressurising the complainant to return the amount. At the same time, it can be seen that although there were earlier transactions, the complainant denied to borrow money from Dharashivkar and others and he used to take loan for payment of interest, one of the borrowers and was indulging into several such transactions, money of the loan have not been paid by the complainant. Prima facie, it cannot be said that the present applicant is liable for the offence punishable under Section

304 (II) Indian Penal Code. Hence, the applicant deserves to be enlarged on bail. It is made clear that the co-accused shall not claim parity with the present applicant.

7 However, it is made clear that the observations made hereinabove are prima facie in nature and are restricted to the application under Section 439 Code of Criminal Procedure and shall not be taken into consideration for the purpose of quashing of F.I.R., discharge application or at the time of trial. Hence, the order :

**O R D E R**

1 The application is allowed.

2 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.

3 The applicant shall not visit in Satara the date of framing of charge-sheet and thereafter shall attend the court only on the scheduled dates.

4 The applicant shall report to Narhe Police Station on every Saturday and Sunday between 10.30 am to 12.00 noon, till framing of the charge.

**( *Smt. Sadhana S. Jadhav*, J)**