

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

CRIMINAL APPLICATION (ABA) NO. 827 OF 2019

Gopal s/o Babulal Agrawal .Vs. State of Maharashtra, through PSO, P.S.
Khamgaon (City), Tal. Khamgaon, Dist. Buldana.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. S.V. Sirpurkar, Advocate for applicant.
Mr. V.A. Thakare, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.
DATED : JANUARY 06, 2020

Heard Mr. Sirpurkar, learned counsel for the applicant and Mr. Thakare, learned Additional Public Prosecutor for non applicant-State. Also perused the reply filed on behalf of the prosecuting agency.

2. Applicant is apprehending his arrest in connection with Crime No.642/2018 registered with Police Station, Khamgaon (City), Tq. Khamgaon, Dist. Buldhana for an offence punishable under Section 39 of the Maharashtra Money-Lending (Regulation) Act, 2014 (for short "the said Act").

3. As per reply filed on behalf of the prosecuting agency, Mr. Anil Sakharam Shastri, an Assistant Registrar, Cooperative Societies, Khamgaon lodged a report with Police Station, Khamgaon (City) wherein it is stated that through Baburao Namdevrao Solanke resident of Sajanuri of

Khamgaon taluka made a complaint to the District Deputy Registrar, Cooperative Societies, Buldhana against applicant alleging therein that applicant is involved in illegal money lending business. In pursuance to the said, a raid was conducted under Section 16 of the said Act on 17.11.2018 and various documents were seized by drawing seizure panchanama which includes blank cheques, bundles of electric bills and sale deed, etc.

4. In view of the aforesaid reply, it is the submission of the learned Additional Public Prosecutor for the State that custodial presence of the applicant is required and therefore he prayed that application be rejected.

5. From the compilation of documents filed along with application for pre-arrest bail and the documents which are not in dispute by prosecuting agency, it appears that the applicant filed suit against Baburao Namdevrao Solanke, at whose instance Assistant Registrar of the Cooperative Societies, lodged a report with the police for declaration and also filed an application for temporary injunction. Learned Civil Judge Junior Division in whose Court suit was filed and the application for temporary injunction was submitted, granted temporary injunction in favour of the present applicant. Said Baburao Solanke feeling aggrieved thereby, filed an appeal before the appellate Court and the learned Judge of the appellate Court vide judgment and order dated 21.08.2010 dismissed the appeal and confirmed the order of

injunction granted in favour of the applicant.

6. It appears that the said Baburao Solanke being dissatisfied with the grant of injunction and its confirmation at the hands of the appellate Court, approached to this Court by filing writ petition and this Court on 21.09.2011 dismissed the writ petition. Baburao Solanke then filed a letters patent appeal bearing Letters Patent Appeal No.449/2011 and on 18.01.2012, the Hon'ble Division Bench of this Court (Coram: B.P. Dharmadhikari and P.D. Kode, JJ.) dismissed the letters patent appeal and confirmed grant of injunction in favour of the present applicant.

7. During the course of submission at bar a submission is made by learned counsel for the applicant that the suit in which the injunction is confirmed and the letters patent appeal was filed, it is still pending before the Civil Court.

8. The applicant has also filed an application under Section 482 of the Code of Criminal Procedure (for short "the Code") for quashment of the First Information Report (FIR) in which, he is apprehending his arrest. The Division Bench of this Court (Coram : Z.A. Haq and Vinay Joshi, JJ.) on 23.03.2019 in Criminal Application (APL) No. 197/2019 has issued notice and has also granted interim protection in favour of the applicant that though the investigation may go on, charge-sheet should not be filed without leave of the

Court. It has also revealed to this Court that the said petition under Section 482 of the Code is also pending before the Division Bench of this Court.

9. From the aforesaid, it is clear that said civil suit is pending in between applicant and the *de facto* complainant i.e. Baburao Solanke. Further, it is also clear that the Police Officer has already conducted a raid on the premises of the applicant and various documents are already seized by drawing seizure panchanama and those are already in custody and possession of the investigating officer. It is not the case of the prosecution that during the raid the applicant tried to obstruct the legal process and/or has not cooperated with the investigating officer.

10. On 04.12.2019, this Court has granted interim protection in favour of the applicant on a condition that applicant shall attend police station from 06.12.2019 to 12.12.2019 and shall be with the investigating officer from 11:00 a.m. to 05:00 p.m. It is not disputed by the learned Additional Public Prosecutor that the applicant attended the investigating officer and joined the investigation and also he has extended full cooperation to the investigating officer. In that view of the matter, I pass the following order:

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest in connection with Crime No.642/2018 registered with Police Station, Khamgaon

(City), Tq. Khamgaon, Dist. Buldhana for an offence punishable under Section 39 of the Maharashtra Money-Lending (Regulation) Act, 2014, applicant- Gopal s/o Babulal Agrawal be released on he executing P.R. bond in the sum of ₹50,000/- with one solvent surety in the like amount.

(iii) Applicant is directed to attend Police Station, Khamgaon (City), Tq. Khamgaon, Dist. Buldhana as and when he is called by the investigating officer. However, for that investigating officer shall give clear cut two days written communication to the applicant.

The application is disposed of.

JUDGE

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