

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 970 OF 2021

Sukhdev s/o. Dinkar Kedari
Versus
The State of Maharashtra.

...

Mr. R.V. Gore, Advocate for the applicants
Mr. S.B. Narwade, APP for respondent
Mr. M.B. Sandanshive, Adv. For application in Cri. Application No. 2028
of 2021

CORAM : V.G. BISHT, J.

RESERVED ON : 7th September, 2021.
PRONOUNCED ON : 15th September, 2021.

PER COURT:

1] This is an application under Section 438 of Cr.P.C. preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No.450 of 2021, registered with Police Station, Karjat, Dist. Ahmednagar for the offences punishable under Sections 452, 504, 506 r/w. 34 of IPC and Section 39 of the Maharashtra Money Lending (Regulation) Act.

2] It is the case of prosecution that one Dattatray Devidas Korde, a milk supplier was known to the informant. In the year 2015, as the informant was in need of monies to run a stationery business, he told the same to Dattatray Korde, who took him to money-lender Sukhdeo Kedari i.e. applicant. The applicant agreed to give Rs. 2 Lakhs @ 4% p.a.

without having money-lending licence and it was also decided to sell 20 Gunthas of land out of Gat No. 104/2 in favour of said Dattatray Korde as per the request of applicant. The informant accordingly executed sale-deed on 7.12.2015. As the informant could not pay loan amount in time, the applicant got the sale deed executed in respect of said land in the name of his wife, namely, Chhaaya Sukhdeo Kedari from Dattatray Korde. On 23.1.2017, the applicant acted as attesting witness for the said sale deed alongwith Ashok Kedari. According to prosecution, said Dattatray Korde had told the informant that if the loan is repaid with interest, said 20Guntha land will be re-conveyed in his favour. In the month of April, 2021, the informant alongwith family members visited the house of the applicant and requested him to re-convey the said land after taking the loan amount, but the applicant demanded Rs. 25 Lakhs. Even the applicant threatened the informant that he would not give possession, abused him and threatened to kill him. An FIR accordingly came to be lodged.

3] Mr. Gore, learned counsel for the applicant, submits that on account of a civil dispute between the parties and the fact that the informant has lost his civil remedy to challenge the sale deed executed in favour of Dattatray Korde due to limitation, the present FIR came to be filed to falsely implicate the applicant. Even sale deed executed by Dattatray Korde in favour of applicant's wife is not challenged. On the other hand, applicant's wife has filed RCS No. 81 of 2021 against the informant in respect of said property, which is still pending.

4] The learned counsel then submitted that if the FIR is read carefully, no case is made out under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014, inasmuch as, a single transaction

of money lending is not sufficient to prove the business of money lending.

5] The learned counsel then next submitted that the sale transaction took place way back in the year 2017. Present FIR has been lodged after four years and thus, there is a huge delay which is nowhere explained. For all these reason, the application deserves to be allowed, argued learned counsel.

6] Mr. Narwade, learned APP, on the other hand, submitted that even after filing an FIR, the applicant has indulged into criminal intimidation. Similar acts of accused are clear in 5/6 sale deeds secured by him and those would prima facie show that he is engaged in money lending business. The learned APP also invited my attention to the statement of Dattatray Korde recorded during the course of investigation and would submit that having regard to the nature of offence, custody of the applicant is necessary.

7] From bare reading of FIR, it is clear that the so called transaction between the applicant and informant took place way back in the year 2017, whereas, the present FIR came to be lodged on 14.7.2021. The only reason given in the FIR is that the informant was hopeful that the applicant would re-convey the land in his favour. Interestingly, there is no challenge to the submission of the learned counsel for the applicant that no civil proceeding were taken out by the informant in respect of the sale deed allegedly executed by him in favour of Dattatray Korde due to limitation. Even the sale deed executed by Dattatray Korde in favour of wife of applicant also went un-assailed and un-challenged. Similarly, there is no dispute to the fact that RCS No. 81 of 2021 for perpetual

injunction filed by the applicant's wife is pending against the informant, said Dattatray Korde and others.

8] I have gone through the record. The said Dattatray Korde in his statement recorded by Investigating Officer has supported the contents of FIR. Similarly, I have also gone through the complaint made by the informant before the District Sub-Registrar, Cooperative Societies and Registrar Money Lending, Ahmednagar, alleging therein that the applicant and his wife are habitual money lenders and have given details thereof. However, there is no finding adverse to the applicants. There is nothing on record to prima facie conclude that some adverse finding has been recorded against the applicant and his wife.

9] Even otherwise, the case is based on documentary evidence. This being so, I am of the considered opinion, the applicant cannot be subjected to custodial interrogation.

10] In view of above, I am inclined to allow the application, with certain conditions.

: O R D E R :

[I] In the event of arrest of the applicant in connection with Crime No.450 of 2021, registered with Police Station, Karjat, Dist. Ahmednagar for the offences punishable under Sections 452, 504, 506 r/w. 34 of IPC and Section 39 of the Maharashtra Money Lending (Regulation) Act. the applicant be enlarged on bail on his furnishing PR Bond in the sum of Rs. 20,000/-, with one or two sureties in the like amount.

[II] The applicant shall attend the concerned police station

as and when called and shall cooperate with the police in the investigation.

[III] He shall not tamper with the evidence.

11] Criminal application No. 2028 of 2021 for permission to assist APP is allowed and disposed of.

12] The application stands disposed of in aforesaid terms.

**[V.G. BISHT]
JUDGE.**

grt/-