IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 910 OF 2023

Ganesh Madhukar Amande,
Age- 48 years, Occu – Business,
R/at – Flat No.10, Santoshi Data CHS,
S. No. 85, Pune-Solapur Road,
Near Vaibhav Talkies, Hadapsar,
Tal – Haveli, Pune. ...Appellant
(At present in Yerwada Central Jail, Pune)

Versus

1. The State of Maharashtra
   (PI Hadapsar Police Station)

2. Sunanda Sumant Dethe,
   (W/o Sumat Rangnath Dethe,
   Age: 58 Years, Occu: Contractor,
   R/at Row House No.12/B, Phrase 4,
   Manjari Green, Behind Rukari Petrol Pump,
   Solapur Road, Manjari Budruk,
   Pune – 412 307 ...Respondent

Mr. Amol Deshpande a/w Mr. Yogesh Thorat for the Appellant

Mr. K. L. Vyas, Spl. P. P. a/w Mr. V. B. Konde Deshmukh, A.P.P for the Respondent No.1-State

None for the Respondent No. 2

CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.
WEDNESDAY, 11th OCTOBER 2023

ORAL ORDER (Per Revati Mohite Dere, J.) :

1 Heard learned counsel for the parties.

2 By this appeal, the appellant seeks his enlargement on bail in connection with C.R. No. 1380/2020 registered with the Hadapsar Police Station, Pune, for the alleged offences punishable under Sections 347, 385, 386, 387, 504, 506, 120B and 467 of the Indian Penal Code (`IPC'); Sections 3(1)(g)(r)(s), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act ('SCST Act'), Sections 39 and 45 of the Maharashtra Money Lending Act, 2014; Sections 3 r/w 25 of the Arms Act; and under Sections 3(1)(ii), 3(2), 3(3) and 3(4) of the Maharashtra Control of Organized Crime Act ('MCOC Act').

3 Learned counsel for the appellant submits that the appellant has been falsely implicated in the said case and that no

offences as alleged are disclosed *qua* the appellant. He submits that the allegation in the FIR as against the appellant is that he was present in the Sub-Registrar's office at the time when the alleged document was executed between the complainant and co-accused-Vishal Dhore with respect to the premises in question and that the appellant had taken the documents from the complainant and had affixed the complainant's photograph on the agreement entered into between the complainant and Vishal Dhore (original accused No.2). Learned counsel for the appellant relied on the observations made in the order dated 27th July 2023 passed by this Court (Coram : Revati Mohite Dere & Gauri Godse, JJ.) in Criminal Appeal Nos. 52/2023 and 60/2023. He submits that the appellant has no antecedents.

4 Learned Special Public Prosecutor has tendered a letter addressed by the Assistant Commissioner of Police dated 12th September 2023, which contains the statements of respondent No.2 (wife of the original complainant) and Akshay

Dethe (son of the original complainant). Learned Special Public Prosecutor submits that the respondent No. 2 was informed of the hearing of the appeal today and that she has stated in her statement recorded by the police that she would adopt all the arguments, as advanced by the learned Special Public Prosecutor. The said report and letter tendered by the learned Special Public Prosecutor is taken on record.

5 Learned Special Public Prosecutor opposes the appeal/grant of bail. He submits that a hard disc of the Agreement was seized at the instance of the appellant from the shop of the appellant. He submits that the appellant had forcibly made the complainant execute the Agreement with Vishal Dhore. He submits that the appellant is a member of the organised syndicate. Learned Special Public Prosecutor, however, does not dispute the fact, that the appellant has no antecedents. He also does not dispute the fact that the order dated 27th July 2023, has not been challenged by the State, before the Apex Court.

6 Perused the papers. The prosecution case is as under:

The first informant, a resident of Pune is engaged in catering services and owns few hotels in Pune and surrounding areas. He is also stated to be running a Mess for Adivasi students where he got associated with one Balaji Lakhade. The first informant has alleged that through Balaji Lakhade, he met co-accused-Vishal and as such, they got acquainted with each other, somewhere in 2016-2017. The first informant has further alleged that as his catering business was flourishing, he was in need of financial help to expand his business, for which Balaji Lakhade suggested that he should approach the co-accused-Vishal, for investing money in the same. According to the first informant, on 9th June 2017, co-accused-Vishal and he entered into a Memorandum of Understanding (`MOU') wherein, co-accused-Vishal agreed to pay an amount of Rs.25,00,000/- to the first informant with an interest @ 5% per month. The said MOU is a notarized document and is executed between co-accused-Vishal and the first informant, in the presence of two witnesses. The said amount of Rs.25,00,000/- was given by co-accused-Vishal on 10th July 2017 vide cheque No.5033 drawn on Saraswat Bank. The first informant has alleged that he paid interest of 5% every month to co-accused-Vishal, however, in August 2017, co-accused-Vishal allegedly told the first informant, not to make the said payment by RTGS but by cash, as he wanted cash for election campaigning for contesting the Gram Panchayat Elections, scheduled to be held in February 2018. The first informant has further alleged that accordingly he paid cash payment of around Rs. 12 – 13 lakhs, from time to time. According to the first informant, co-accused-Vishal availed of his catering services on several occasions amounting to the tune of Rs.5.95 lakhs, which according to the first informant, was not paid by co-accused-Vishal.

The first informant has further alleged that his daughter's marriage was fixed on 21st April 2019 and that around the same time, he had taken a loan amount of Rs. 80 lakhs from Shriram Housing Finance for his row house situated at Manjari Green, Phase–IV. The first informant has stated that he had got Rs.2 lakhs from co-accused-Vishal, as loan, although promised Rs.10 lakhs. According to the first informant, on 16th April 2019, co-accused-Vishal called him and asked him and his wife to come to the office of the Sub-Registrar at Magarpatta Haveli-3 alongwith their photographs, original Aadhar Cards, and Pan Cards. According to the first informant, when the first informant and his wife went to Om Realtors Corporation's Office, which was in the same building in which the Sub-Registrar's Office was situated, they saw Ganesh Amande, the co-accused–Vishal Dhore and Nitin Pawar, Vinod Dhore, Ravindra Barhate, Police Head Constable-Shailesh Jagtap, Police Head Constable-Parvez Jamadar, Driver-Sachin Dhivar, co-accused-Vishal's bodyguard-Sujit Singh, Mr. Balaji Lakhade and one journalist Devendra Jain. According to the first informant, the said accused persons threatened him and his wife and also abused him; that co-accused–Sujit Singh pointed a revolver on his (first informant's) stomach and was threatening him and his wife; and it is under these circumstances that he and his wife gave signatures and thumb prints on some documents. It is further alleged by the first informant that the accused persons thereafter, took him to the office of the Sub-Registrar, where they again obtained his (first informant's) signature on some documents. He has further stated that after the aforesaid incident, he distanced himself from co-accused-Vishal and did not speak to him after 19th April 2019. According to the first informant, though he was willing to repay the amount of Rs.2 lakhs to co-accused-Vishal, and was trying to contact him, he could not be contacted. Thereafter, the first informant has alleged that in the first week of February 2020, co-accused-Vishal came to the Society Office of Manjari Green Society and met the Chairman–Mr. Sanjay Jhurange and showed the Chairman the documents i.e. the purchase documents and told him that he had become the owner of Row-House No.12B, Phase IV, Manjari Green Society belonging to the first informant. According to the first informant, he was shocked to know that co-accused-Vishal was claiming to be the owner of the Row-House belonging to him. The first informant has alleged that pursuant thereto, on 16th February 2020, he went to the Sub-Registrar's Office at Haveli-3, Magarpatta Mega Centre and sought copies of the documents dated 16th April 2019 and on receiving the documents, was shocked to see that co-accused-Vishal had prepared an Agreement to Sell and a Power of Attorney with respect to his house and had transferred the said house to his name vide Supplementary Agreement dated 24th January 2020. The first informant has alleged that all the documents i.e. Agreement and Power of Attorney are bogus and forged by co-accused-Vishal and other accused.

According to the first informant, on 15th June 2020 at around 7:30 p.m., all the accused including co-accused-Vishal threatened him to vacate his house, failing which he and his family would face dire consequences. The first informant has further alleged that from June 2017 to June 2020, co-accused-Vishal and other co-accused have threatened him by putting him in fear of death and have extorted monies from him.

It is in this background, that an FIR came to be lodged by the first informant on **2nd September 2020** with the Hadapsar Police Station, Pune, which was registered vide C.R. No.1380/2020 as against the appellant and others, alleging the offences as stated aforesaid.

7 Whilst granting bail to co-accused-Vishal Dhore, this Court (Coram : Revati Mohite Dere & Gauri Godse, JJ.) in its order dated 27th July 2023 passed in Criminal Appeal Nos. 52/2023 and 60/2023, has observed in paras 8 to 14 as under :

> *"8. It is not in dispute that the first informant had also filed a Civil Suit before the learned Civil Judge, Pune bearing Civil Suit No.751 of 2020 on* ***16th July 2020*** *with respect to the property in question. As noted above, the Civil Suit*

*was filed on **16th July 2020** and the FIR in question was lodged on **2nd September 2020.** It appears that in the Civil Suit, no interim order was granted in favour of the first informant. Admittedly, a perusal of the Civil Suit, which is annexed at page No.225 of Convenience Compilation -II shows that there is no mention that at gun point and by giving threats, documents were executed by the appellant, in his favour. The first informant has alleged threatening at gun point by the appellants to sign documents on 16th April 2019, however, no complaint was made against appellant – Vishal or any other accused, to any authority and as noted above, has not even been mentioned in the Civil Suit. It also appears that appellant – Vishal had filed two complaints dated 25th February 2020 and 7th July 2020 respectively, as against the first informant as he apprehended being falsely implicated by the first informant. It is also pertinent to note, that in the complaint dated 12th June 2020 of the first informant and complaint dated 19th June 2020 by the wife of the first informant, there is not a whisper or any allegation of extortion and/or of the alleged incident of 16th April 2019.*

9. Apart from the aforesaid, it is pertinent to note that appellant – Vishal had paid an outstanding loan of Rs.79,12,000/- to Shriram Housing Finance. The said loan amount was taken by the first informant from Shriram Housing Finance against his own house, which was subsequently paid by appellant – Vishal. A perusal of the statements of Sachin Lakule, Regional Manager of Shriram Housing Finance, which is at page 162 of the appeal memo of Criminal Appeal No.52 of 2023 and the *statement of Mr. Ritesh Gupta, Legal Manager of Shriram Housing Finance, which is at page 164 of the appeal memo of Criminal Appeal No.52 of 2023, would show that the first informant had taken appellant – Vishal for re-payment of his (first informant's) loan towards the house purchased by him, from Shriram Housing Finance. The statement of the Bank Manager of the Saraswat Bank from where appellant – Vishal had taken a loan for an amount of about Rs.70 lakhs to be paid to Shriram Housing Finance, is on page 167 of the appeal memo of Criminal Appeal No.52 of 2023, is also relied upon by the learned counsel for the appellant – Vishal.*

10. Sachin Lakule, Regional Manager of Shriram Housing Finance in his statement which is at page 162 of the appeal memo of Criminal Appeal No.52 of 2023 has stated that the first informant – Sumant and his wife had purchased a house at Manjari (row house). He has stated that they had taken a loan of Rs.59,29,000/- from Union Bank of India and had approached them seeking finance, on the very same property. He has stated that after doing valuation of the property, he told them, that an additional top-up loan of Rs.25,71,000/- could be given on the property; thereafter, on the request of the first informant, the loan taken from Union Bank of India of Rs.59,29,000/- was taken over by Shriram Housing Finance and as such, the loan taken by the first informant from the Union Bank of India was closed. Accordingly, the previous loan plus the top-up loan of Rs.92,15,000/- was sanctioned, out of which, Rs.64,28,000/- odd was home loan and top-up loan was Rs.27,87,000/- odd. Accordingly, the first informant's *property came to be mortgaged to Shriram Housing Finance on 8th September 2019. The said witness has stated that initially for 7 months, the loan amounts were paid by the first informant in time, however, subsequently the payment became irregular and thereafter in September 2018, since the loan amounts were not paid, SARFAESI Act was invoked and notice as contemplated under the SARFAESI Act was sent to the first informant; that notice was also published in the newspaper for taking the property and steps were also taken with the Collector Office, Pune. According to Sachin Lakule on 26th September 2019, the first informant requested that since his financial condition was not good, the amount be reduced and that by 30th October 2019, he would pay the loan amount, however he did not pay the said amount. He has further stated that in November 2019, the first informant got appellant – Vishal, who requested to reduce the amount; that pursuant thereto, on 10th November 2009, a new settlement letter was prepared for Rs.79,12,000/- and time was extended upto 28th November 2019; that on 27th November 2019, appellant – Vishal gave a cheque of Rs.9,12,000/- and sought extension of time of one month to pay the balance amount of Rs.70,00,000/-; that he learnt that appellant – Vishal had paid an amount of Rs.70,00,000/- on 27th December 2019 by Demand Draft from Saraswat Bank and that the same was paid towards the loan account of the first informant and his wife - Sujata. A copy of the power of attorney allegedly given by the first informant to appellant – Vishal was also sent to their office. He has further stated that since the first informant had brought appellant – Vishal to their office, all* *information of the loan account was given to appellant – Vishal, in the presence of the first informant.*

11. On similar lines, is the statement of Ritesh Gupta, working as a Legal Manager with Shriram Housing Finance. The said witness has stated that when a call was made to the first informant, as to when payment would be made, the first informant came to the Kothrud office alongwith one person - Vishal Dhore (appellant in Criminal Appeal No.52 of 2023) and introduced him to them and informed them, that he is selling the property to Vishal Dhore and that Vishal Dhore would be paying the finance amount; that pursuant thereto, the period for making the payment was extended. Ritesh Gupta has further stated that appellant – Vishal had accompanied the first informant on several occasions for payment of the said loan, even at the time of extending the time limit for paying the loan. He has stated that in view of the payment made by appellant – Vishal towards the loan amount, the loan account of the first informant was closed and thereafter, on showing of the power of attorney, the property papers and the NOC was handed over to appellant – Vishal. He has further stated that the first informant had orally told them that all the original papers and NOC be handed over to appellant – Vishal, since he had given him power of attorney. However, no written instructions were received from the first informant.

12. The statement of Priyanka Devdhar, Bank Manager, Saraswat Bank also shows that appellant – Vishal had 4 accounts in their bank i.e. two current accounts and 2 overdraft accounts. She has stated that on 27th December

2019 appellant – Vishal had made an application and sought an amount of Rs.67,50,000/- as loan on the basis of his two Fixed Deposits i.e. one Fixed Deposit of Rs.50,00,000/- and one Rs.25,00,000/-; that pursuant thereto an amount of Rs.67,50,000/- loan was granted to appellant – Vishal. Pursuant to which Rs.70,00,000/- Demand Draft was prepared in favour of Shriram Housing Finance i.e. Rs.67,50,000/- loan amount and Rs.2,50,000/- from his current account.

13. It is pertinent to note, that in the Civil Suit filed by the first informant against appellant – Vishal, cancellation of sale deed is sought. The grievance of the first informant is that Rs.25,00,000/- was not paid by appellant – Vishal to him.

14. According to the appellant – Vishal, the first informant had approached him in June 2017 for investing money in his business, since the first informant wanted to expand his catering business; that pursuant thereto, a partnership deed was executed between them; that since the registration of the partnership deed was pending, appellant – Vishal and the first informant entered into a general term of understanding and a promissory note dated 9th June 2017; for an amount of Rs.25,00,000/- vide cheque number 005033 dated 10th June 2017, by giving an assurance that the first informant would execute a partnership deed, however the partnership deed was not executed. It is appellant – Vishal's case, that the first informant again approached him in March 2018 showing that he was in great financial losses; that he had an outstanding loan of Rs.91 lakhs with Shriram Housing

Finance and since he was unable to repay the loan amount, there was an attachment order under the SARFAESI Act; that he (appellant – Vishal) agreed to purchase the first informant's said bungalow for Rs.1.5 crore and it was decided that appellant – Vishal would pay an amount of Rs.35 lakhs to the first informant and the balance amount of Rs.79,12,000/- to Shriram Housing Finance, where the first informant had an outstanding loan towards the said house. The said amount of Rs.79,12,000/- was a one time settlement towards the outstanding loan of the first informant with Shriram Housing Finance and that under these circumstances, the first informant and appellant – Vishal executed and entered into a registered agreement for sale, deed on 16th April 2019 vide registration No.5851 of 2019 and Special Power of Attorney Registration No.5852 of 2019 in favour of appellant – Vishal. According to appellant – Vishal, before entering into the agreement for sale, the parties i.e. appellant – Vishal and the first informant had also entered into an MOU dated 8th April 2019, in which all details and break-up of payment of the entire amount was agreed upon between the parties; that upon completion of entire payment as described in the MOU, the parties also executed a deed of assignment dated 25th February 2020; that on payment of the entire consideration amount of the property to the first informant as well as to Shriram Housing Finance by cheque, the possession was to be handed over by the first informant to appellant – Vishal; that as the entire payment was not made and as the first informant refused to part with his possession and started threatening to commit suicide or falsely implicate him under the atrocity Act, he filed a *written complaint with the Hadapsar Police Station and higher authorities dated 25th February and 7th July 2020. In complaint dated 25th February 2020, made by the appellant – Vishal to the Senior Police Inspector, Hadapsar Police Station, Pune, it is requested that an FIR be registered against Sumant Dethe (first informant) for misappropriation of funds, cheating and criminal breach of trust. Both the complaint copies are annexed to the appeal memo of Criminal Appeal No.52 of 2023, as Exhibit – D (colly) from page nos.1993 to 2006. According to appellant – Vishal, on 19th June 2020 the first informant's wife filed a written complaint against him and the first informant also filed a complaint on 12th June 2020, against appellant – Vishal, however, both the said complaints are silent regarding the contents of the present FIR, the names and roles of the accused persons mentioned in the FIR. The said complaint made by the first informant's wife and the first informant are annexed to the appeal memo of Criminal Appeal No.52 of 2023 at 'Exhibit – E (colly)' from page nos.2007 to 2042. A perusal of the said complaints show that the allegations that the first informant and his wife were threatened at gun point are also missing in the said complaints dated 12th June 2020 and 19th June 2020."*

8 Whilst granting bail to co-accused-Vishal, we, in para 15 of the order dated 27th July 2023, have observed that there were some financial transactions between the first informant and

co-accused–Vishal, right from 2016 and that the first informant has suppressed in his FIR, the fact of co-accused-Vishal paying his outstanding loan of Rs.79,12,000/- to Shriram Housing Finance, or the circumstances under which the payments were made by co-accused-Vishal to Shriram Housing Finance. We have further observed in our aforesaid order that co-accused-Vishal had paid the entire loan amount of the first informant, to Shriram Housing Finance on the first informant's request and there is not a whisper with respect to the same, by the first informant in his FIR, with regard to repayment of loan amount by co-accused-Vishal to Shriram Housing Finance. We, having perused the statements of Sachin Lakule, Regional Manager of Shriram Housing Finance and Mr. Ritesh Gupta, Legal Manager of Shriram Housing Finance, had observed that their statements show that the first informant had taken co-accused-Vishal with him and disclosed that he would be repaying his loan amount. It also appears that the first informant, in his FIR, has not disclosed about the Civil Suit filed by him for cancellation of the Sale

Deed, nor has he disclosed in the Civil Suit that he was threatened at gun point to sign the documents.

9 As far as the appellant is concerned, the allegations are that he was present in the Sub-Registrar's Office, when the Agreement was entered into between the first informant and co-accused-Vishal and he had taken the documents from the first informant forcibly and had affixed his photographs on the said Agreement.

10 Considering our findings as recorded in our order dated 27th July 2023 and having regard to the role of the appellant, we are of the view that there are no reasonable grounds for believing that the appellant is guilty of the offences with which he is charged and as such the bar of Section 21(4) of the MCOC Act, will not apply. The appellant is in custody for last more than 2½ years. Accordingly, the appeal is allowed on the following terms and conditions :

ORDER

i) The appellant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

ii) The appellant shall attend the concerned Police Station, on the first Saturday of every month from 10.00 a.m. to 12.00 noon, till the conclusion of the trial, unless the date coincides with the trial Court date;

iii) The appellant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing;

iv) The appellant shall co-operate in the conduct of the trial and shall attend the trial Court on every date of hearing, unless exempted;

v) An undertaking to the aforesaid clauses (ii) to (iv), shall be filed by the appellant in the Registry of the trial Court, within two weeks of his release;

vi) If there are 2 consecutive defaults either in attending the Police Station or if the appellant fail to appear before the trial Court or there is breach of any of the conditions as stated above, the prosecution will be at liberty to apply for cancellation of appellant's bail.

11 Appeal is accordingly disposed of in the aforesaid terms.

12 It is made clear, that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

13 All concerned to act on the authenticated copy of this order.

GAURI GODSE, J. **REVATI MOHITE DERE, J.**