



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1002 CRIMINAL WRIT PETITION NO. 839 OF 2023

Dattatraya Ramkisan More

...Petitioner

Versus

1. The State of Maharashtra
2. Urmila Bhausahab Kadu
3. Amol Bhausahab Kadu
4. Akash Bhausahab Kadu
5. Vikas Bhausahab Kadu

...Respondents

...

Advocate for the Petitioner : Mr. N. R. Thorat

APP for Respondent No.1: Mr. R.B. Dhaware

Advocate for Respondent No.2 : Mr. M.P. Kale

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CORAM : SHIVKUMAR DIGE, J.

DATED : 16th JULY, 2024.

PER COURT :-

1. By way of this writ petition, the petitioner is challenging the order dated 2.3.2023 passed by the Judicial Magistrate, First Class Dharur below Exh.19 in R.C.C. No. 3 of 2023.

2. It is the contention of learned counsel for the petitioner that respondent Nos. 2 to 5 are doing money lending business and the petitioner is victim of the said business. Learned counsel further submitted that the complaint was filed against respondents on 30.3.2022 under Section 39 of the Maharashtra Money Lending (Regulation) Act, 2014. Respondent Nos.2 to 5 have not been

arrested in the said crime. Thereafter, respondent Nos.2 to 5 appeared before the Magistrate's Court. The Magistrate without taking the say of the A.P.P. has released respondent Nos.2 to 5 on bail without imposing any conditions on them. The learned Magistrate even has not passed any order of remand. Hence, requested to allow the writ petition.

3. It is the contention of learned counsel for respondent Nos.2 to 5 that the punishment for the offence registered against respondent Nos. 2 to 5 is up to five years, hence, investigating officer had given notice under section 41-A of the Code of Criminal Procedure to respondent Nos. 2 to 5. Accordingly, respondents appeared before the investigating officer and co-operated in the investigation. Thereafter, charge sheet has been filed against respondent Nos. 2 to 5. After filing of the charge sheet, respondent Nos.2 to 5 filed an application for bail before the trial court. The trial court considering the fact that the charge sheet is filed, has released the respondent Nos. 2 to 5 on bail. The order passed by the trial court is legal and valid and no interference is required in it.

4. Learned A.P.P. submitted that appropriate order be passed.

5. I have heard all the learned counsel. Perused the impugned order passed by the trial court. It appears that respondent Nos. 2 to 5 had filed an application for bail before the trial court. The trial court without obtaining the say of the A.P.P. has passed the impugned order. In my view, the trial court should have considered that the non bailable offence is registered against respondent Nos. 2 to 5. The trial court should have taken the say of the A.P.P. on the said application but it has not been taken. After hearing both the parties the bail application should have been decided. Hence, I pass the following order:-

O R D E R

- I. The writ petition is allowed.
- II. The order dated 2.3.2023 passed by the Judicial Magistrate, First Class Dharur below Exh.19 in R.C.C. No. 3 of 2023 is quashed and set aside.
- III. Respondent Nos. 2 to 5 shall file fresh application for bail before the trial court. The trial court shall take say of the A.P.P. or the petitioner herein on it and decide the said application on its own merits.
- IV. The respondent Nos. 2 to 5 are already on bail. They be remained on bail till the decision on the bail application filed by the respondent Nos. 2 to 5 before the trial court.

(SHIVKUMAR DIGE, J.)