

ORDER BELOW EXH.79 IN SPL CASE NO.293/2023**(CNR : MHPU14-003218-2023)****(Passed on : 27th July, 2026)**

1. This is an application u/s 227 of the Code of Criminal Procedure, 1973 for discharging accused no.2 – Bharat Bhabutmal Oswal and accused no.4 – Ajit Bhabutmal Oswal.
2. Perused the application, reply thereon and written notes of arguments filed by Ld. Counsel for accused no.2 and 4 at Exh.86. Heard Ld. Counsel for the accused, Ld. APP and Ld. Counsel for informant.
3. Ld. Counsel for the accused submitted that accused no.2 and 4 are the real brothers. They are falsely implicated in the crime. *Prima facie*, the offences as alleged by the prosecution are not made out against the accused no.2 and 4. There is no evidence on record to implicate them in the present offence. On the contrary, externment proposal bearing no.1/2019 was sent by Baramati City Police Station to Police Superintendent, Pune Rural against the original informant and in that proposal crime bearing no.442/2018 and 501/2018 are registered against informant, her husband and other accomplices and they were banned from Baramati, Indapur, Daund and Purandar. Moreover, NCR no.724/2026, FIR no.170/2026, NCR no.709/2026, NCR no.710/2026, NCR no.711/2026, NCR no.708/2026 and FIR no.163/2026 were registered against the informant at Baramati City Police Station.

Therefore, it shows that the informant is in habit of implicating the persons in false cases and to extract money from them.

4. It is further submitted that perusal of FIR does not show any *prima facie* evidence against accused no.2 and 4. Moreover, there is no eye witness to the incident. Furthermore, Section 42 and 43 of Maharashtra Money Lending Act are additionally inserted in the present crime. There are no criminal antecedents against accused no.2 and 4. There is no medical evidence. It is submitted that in the report, it is clearly mentioned that no blood samples or other samples are collected as there is difference of more than 96 hours in the date of FIR and medical examination. Moreover, there are no body injuries on the person of informant. Therefore, the offence punishable under Section 376 and 376D of The Indian Penal Code, 1860 cannot be said to be attracted. Moreover, the offences under Atrocity Act are also not made out. The crime was registered against the accused no.2 and 4 due to political indulgence. Moreover, Section 42 and 43 of the Maharashtra Money Lending Act cannot said to be attracted as they are having money lending licence.

5. It is further submitted that there is unexplained delay in lodging the FIR. Moreover, statement of informant as well as FIR is contradictory. Moreover, the spot of incident is not made clear from the FIR. Accordingly, it is prayed to discharge the accused no.2 and 4. To fortify his submissions, Ld. Counsel for accused has relied upon

authority of Hon'ble Supreme Court in case of ***Hitesh Verma Vs. The State of Uttarakhand (Criminal Appeal No.707/2020)***.

6. Application is resisted by the Ld. APP vide their reply at Exh.82. It is submitted that the application for discharge is wholly misconceived, devoid of merits. The offences are of serious in nature. *Prima facie*, there is sufficient evidence against accused no.2 and 4. Moreover, the investigation further discloses material regarding attracting the provisions of Maharashtra Money Lending Act. The statement of victim and supporting witnesses collected during the investigation discloses the active participation of accused no.2 and 4 in commission of offence. Accused no.4 acted in furtherance of the common intention with other accused by participating in the cast based abuses and criminal intimidation. Moreover, at this stage, the Court is not required to conduct a meticulous appreciation of evidence or determine its probative value. Furthermore, the grounds raised by the applicants relate to disputed questions of fact, which can only be adjudicated after recording of evidence during trial and therefore defence sought to be raised cannot be considered at the stage of discharge. Moreover, the investigation papers clearly discloses *prima facie* case against accused no.2 and 4. In short, it is contended that there are adequate grounds for framing charges against accused no.2 and 4. Hence, it is prayed to reject the application.

7. The application is also resisted by the informant vide say Exh.83. In addition to the reply filed by the Ld. APP, it is further submitted that accused no.2 in his discharge application admitted that the informant lent 10 tolas of gold with him on dt.19.08.2021. Moreover, she has filed on record receipts regarding pledging gold of 80 tolas with accused no.2. The FIR and statements of witnesses clearly show the involvement of accused no.2 and 4 in the present crime. Furthermore, it is contended that the informant is acquitted from the offences as is mentioned in the application by the accused. Hence, it is prayed to reject the application.

8. It is significant to note that in view of Section 48 of The Maharashtra Money Lending (Regulation) Act, 2014 it is clear that offence punishable under Section 43 of The Maharashtra Money Lending (Regulation) Act, 2014 is not a cognizable offence. Therefore, cognizance of the said offence cannot be taken on the basis of police report. Moreover, offence punishable under Section 42 of the said Act is in respect of taking promissory note, acknowledgment, bond or other writing which does not state the actual amount of loan and rate of interest of which states the amount wrongly or execute an instrument in which blanks are left to be filled in after execution, without mentioning the date and amount of loan. It is not the contention of prosecution that accused no.2 and 4 have taken any promissory note, acknowledgment, bond or other writing from the informant which does

not state the actual amount of loan and rate of interest of which states the amount wrongly or got executed any blank/inchoate instrument from the informant. Therefore, offence punishable under Section 42 of the above-said Act is also not made out against the accused no.2 and 4. As such, accused no.2 and 4 are entitled to be discharged for the offence punishable under Section 42 and 43 of The Maharashtra Money Lending (Regulation) Act, 2014.

9. It is well settled that at the stage of adjudicating discharge application, appreciation of evidence or material on record cannot be conducted. Therefore, contention of Ld. Advocate for the accused that accused are entitled to be discharge due to inconsistency in the statements of informant is not tenable in the eye of law. Moreover, the delay in lodging FIR is the subject matter of trial and it cannot be a ground for discharge of the accused.

10. Perusal of FIR *prima facie* shows the allegation of gang rape, cheating, intentional insult, criminal intimidation, abusing the informant by referring her cast at the public place and intentionally insulting and intimidating her with intent to humiliate the informant who is the member of Scheduled Cast. Therefore, *prima facie* offence punishable under Section 376D, 420, 504, 506 r/w Section 34 of The Indian Penal Code, 1860 Section 3(1)(r), Section 3(1)(s), Section 3(2) (va), Section 3(1)(w) of Scheduled Cast and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Section 7(1)(d) of Protection

of Civil Rights Act is made out against accused no.2 Bharat. So far as Section 376 and Section 354A of The Indian Penal Code, 1860 are concerned, it is pertinent to note that as the aggravated form of the said offences i.e. Section 376D is attracted against the accused no.2, it is not necessary to frame charge against the accused no.2 for the lesser offence of Section 376 and 354A of The Indian Penal Code, 1860.

11. Moreover, FIR also shows the allegation regarding intentional insult, criminal intimidation, abusing the informant by referring her cast at the public place and intentionally insulting and intimidating her with intent to humiliate the informant who is the member of Scheduled Cast. Therefore, *prima facie* offence punishable under Section 504 and 506 r/w Section 34 of The Indian Penal Code, 1860 Section 3(1)(r), Section 3(1)(s), Section 3(2)(va), Section 3(1)(w) of Scheduled Cast and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Section 7(1)(d) of Protection of Civil Rights Act is made out against accused no.4 Ajit @ Jeet.

12. I have carefully gone through the authority relied upon by the Ld. Counsel for the accused No.2 and 4. It is significant to note that facts of the authority cited supra are different from the facts of the present case. Therefore, with due respect to the ratio laid down in the authority cited supra I hold that it is not helpful to the accused at this stage.

13. In view of aforesaid facts and circumstances of the case, application deserves to be partly allowed. Hence, I pass the following order :

ORDER

- 1) The application at (Exh.79) is hereby partly allowed.
- 2) Accused no.2 and 4 are discharged for the offence punishable under Section 42 and 43 of The Maharashtra Money Lending (Regulation) Act, 2014.
- 3) Charge be framed against the accused no.2 Bharat for the offence punishable under Section 376D, 420, 504, 506 r/w Section 34 of The Indian Penal Code, 1860, Section 3(1)(r), Section 3(1)(s), Section 3(2)(va), Section 3(1)(w) of Scheduled Cast and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Section 7(1)(d) of Protection of Civil Rights Act.
- 4) Charge be framed against the accused no.4 Ajit @ Jeet for the offence punishable under Section 504 and 506 r/w Section 34 of The Indian Penal Code, 1860, Section 3(1)(r), Section 3(1)(s), Section 3(2)(va), Section 3(1)(w) of Scheduled Cast and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Section 7(1)(d) of Protection of Civil Rights Act.

Date :- 27.07.2026

(Hitendra Urmila Anilkumar Wani)
Additional Sessions Judge, Baramati.