

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1115 OF 2016

Aniket Jagdish NanekarApplicant

V/s.

The State of MaharashtraRespondent

WITH
CRIMINAL BAIL APPLICATION NO. 47 OF 2016

Sagar Sudam @ Dattoba PardeshiApplicant

V/s.

The State of MaharashtraRespondent

WITH
CRIMINAL BAIL APPLICATION NO. 2237 OF 2015

Kusum @ Papabai Dnyanoba NanekarApplicant

V/s.

The State of MaharashtraRespondent

Mr. Rajiv Patil senior counsel i/b Mr. Prashant M. Patil
Advocate for Applicant in BA 1115 of 2016
Mr. Nitin P. Dalvi Advocate for Applicant in BA 47 of 2016
Ms. Pranali Kakade i/b Mr. Subhash Hulyalkar
Advocate for Applicant in BA 2237 of 2015
Mr. Vinod Chate APP for the State.
Ms. Veera Shinde APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : OCTOBER 3, 2016.

PC :

1) Heard. These are applications under section 439 of Code of Criminal Procedure, 1973. Applicants herein are accused in crime no. 613 of 2014 registered at Chakan Police Station for offences punishable under section 387, 384, 507, 427 r/w 34 of the Indian Penal Code and under section 3 (1) (ii), 3 (4) of the Maharashtra Control of Organised Crime Act, 1999 (Hereinafter referred as 'MCOC'). Applicant Aniket Nanekar is arrested on 18/12/2014 in crime no. 553 of 2014 and was released on bail on 22/12/2014. However, in crime no. 613 of 2014, applicant was arrested on 30/04/2015. Applicant Sagar Pardeshi was arrested on 17/05/2015 and applicant Kusum @ Papabai Nanekar is arrested in the month of April 2015.

2) It is the case of the prosecution that one Amol Dangle had lodged a report at the police station that the accused Babusha Nanekar was collecting the rent of a stall which he had installed on the road. In fact, it was a public road. That the accused Babusha Nanekar had no authority to collect any amount from him, however, every month he continued to pay Rs. 3000/-.

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According to the complainant, the amount was being collected by Aniket Nanekar and on one or two occasions, by accused Sagar Pardeshi. It is alleged that the applicants used to indulge into extortion. The principal accused Babusha Nanekar happens to be the son of the applicant Kusum Nanekar. It is alleged that the applicant Kusum Nanekar used to call upon the complainant and ask him to pay Rs. 3000/-, in the eventuality that there was any delay in paying the said amount.

3) The learned counsel for the applicant Aniket Nanekar has submitted that initially applicant Aniket was arrested on 18/12/2014. He was enlarged on bail on 22/12/2014. In the interregnum, applicant Aniket Nanekar had filed Criminal Writ Petition No. 3757 of 2015 seeking quashing of the proceedings in crime no. 613 of 2014. In the course of hearing of the said writ petition, the original complainant Amol Dangle had filed an affidavit, specifically stating that he had no objection, if the proceedings are quashed against the petitioner in crime no. 613 of 2014 as he had no grievance against the petitioner. It was also submitted that the original complainant had consented for quashing of the charge-sheet against Aniket Nanekar. Affidavit was filed on 15/09/2015.

4) Investigating agency, in the meanwhile, had filed an application

seeking an approval to prosecute the accused under the provisions of MCOC. The said approval was granted on 05/04/2015 and the applicant Aniket Nanekar was re-arrested on 30/04/2015. The affidavit was filed on 15/09/2015 i.e. after re-arrest of Aniket Nanekar. Taking into consideration the fact that the accused was being prosecuted under the provisions of MCOC, the said writ petition was withdrawn.

5) The learned counsel for the applicant submits that applicant is not a member of an organization of Babusha Nanekar. That the compilation of the charge-sheet would indicate that accused Santosh Gujar is the leader of the said organization and in as much as 8 offences besides present one is registered against him. There are more than 6 offences registered against the absconding accused Babusha Nanekar and as far as Aniket Nanekar is concerned, 3 offences including the present one is registered against the applicant. In crime no. 37 of 2010, he is being prosecuted under section 324 of the Indian Penal Code. Applicant is also not being prosecuted with anybody belonging to the syndicate of Babusha Nanekar. In crime no. 553 of 2014, applicant Aniket Nanekar is being prosecuted for offence punishable under sections 326, 323, 504, 506 r/w 34 of the Indian Penal Code. The

learned counsel for the applicant submits that therefore, applicant deserves to be enlarged on bail.

6) As against this, the learned APP submits that the papers of investigation would clearly indicate that the applicant has a terrorizing nature and therefore, the victims are not coming forward to lodge any complaint against him. It is also submitted that the applicant indulges into extortion. That he would pressurize the witnesses. The learned APP also submits that the very fact that even when he was in jail, Amol Dangle had come forward to withdraw the allegations against him would clearly be an indication that applicant would indulge into coercion and threatening of witnesses. Besides this, it is submitted that the confessional statement of accused Aniket Nanekar is recorded and in the said confessional statement, the applicant has confessed to have committed the offence alleged against him. The said confession has not been retracted.

7) As far as the accused Sagar Pardeshi is concerned, the learned counsel for the applicant submits that in fact, he is not the friend of any of the accused. He is not a beneficiary of the activities of the crime syndicate. Applicant is an accused only in crime no. 613 of 2014. It is submitted that

although, the investigating agency has recorded the confessional statement of accused Sagar Pardeshi, it would clearly show that since he has not made any inculpatory statement, it cannot be said that it is a confessional statement and the same cannot be taken into consideration.

8) The learned counsel for the applicant submits that only upon a request made by the absconding accused, Babusha Nanekar, he had collected Rs. 3000/- from the complainant Amol Dangle and had paid the said amount to accused Kusum Nanekar who happens to be the mother of the absconding accused. The learned counsel therefore submits that the provisions of MCOC cannot be made applicable to the present applicant and therefore, applicant deserves to be enlarged on bail.

9) As against this, the learned APP has drawn the attention of this court to the statements of the witnesses which was recorded in December 2014, where it was clearly stated that on the day of the incident, applicant Sagar Pardeshi was present along with Babusha and Aniket Nanekar at the stall of the complainant. That they all were aggrieved with Amol as he had not paid the amount of Rs. 3000/- at the proper time and therefore, applicant Sagar Pardeshi had helped the co-accused to destruct the Pan stall of the

complainant. Since there were statements of the witnesses implicating the present applicant, prior to approval of MCOC, investigating agency had arrived at a conclusion that applicant Sagar Pardeshi is the member of syndicate run by Santosh Gujar and Babusha Nanekar.

10) As far as applicant Kusum Nanekar is concerned, she happens to be the mother of the absconding accused. The papers of investigation would indicate that the amount was collected on behalf of Babusha Nanekar and the same was entrusted to Kusum Nanekar. It is also seen from the records that applicant Kusum Nanekar was receiving the amounts which were collected as protection money from the said syndicate. The amount was being extorted from Amol Dangle only because he was running the stall on the public road. The activities of her son were known to the applicant and that she was supporting him in the said activities.

11) Section 21 (4) & (5) of Maharashtra Control of Organised Crime Act, 1999 reads as follows.

“21. Modified application of certain provisions of the Code:

(1)

(2)

(3)

(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act, shall if in custody, be released on bail or on his own bond, unless-

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(5) Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the Court that he was on bail in an offence under this Act, or under any other Act, on the date of the offence in question.

12) There is a specific embargo been carved while granting bail under section 439 of the Code of Criminal Procedure, 1973 to the accused who have been prosecuted under the said Act. While contesting the a bail application, the court cannot ascertain or record a finding that the provisions of MCOC would not be applicable as the same has to be contested before the Division Bench. It is also seen that the accused Aniket was on bail in crime no. 553 of 2014 and sub section (5) of Section 21 of the said Act contemplates that accused shall not be granted bail if it is noticed by the court that he was

enlarged on bail in an offence under this Act or under any other act on the date of offences in question. In view of the mandatory provisions under section 21 (4) (5) of the said act, it would not be appropriate for this Court to enlarge the applicant on bail.

13) As far as applicants Sagar Pardeshi and Kusum Nanekar are concerned, there is no other offences registered against them. However, the confessional statements of the co-accused and other eye witnesses clearly implicates both the accused and it is seen that due to threat perception, witnesses and victims do not come forward to give any statement against both of them. As far as the incident of destroying the Pan stall of the complainant is concerned, the active role played by accused Sagar Pardeshi is *writ large* and it would clearly indicate that he shares the common object along with co-accused Babusha Nanekar and Aniket Nanekar.

14) Papers of investigation would clearly indicate that applicant Kusum @ Papabai Dnyanoba Nanekar is the beneficiary of the activities of her son and therefore by virtue of the mandatory provisions under section 21 (4) (5), she also would not be entitled to be enlarged on bail, although she is a woman. The act does not contemplate that any woman charge-sheeted under the

provisions of MCOC would be entitled to be enlarged on bail by virtue of proviso to section 437 of the Code of Criminal Procedure, 1973.

15) Moreover, upon perusal of papers of investigation, it would not be possible for this court to record the subjective satisfaction that in the eventuality applicants are enlarged on bail, they would not indulge into similar offences.

16) After passing of the orders, the matter was circulated for reconsideration on the ground that there are no antecedents against Sagar Pardeshi and Kusum Nanekar and that this is the first offence and therefore, provisions of MCOC Act would not be attracted. However, that does not fall within the jurisdiction of this Court to determine as to whether provisions of MCOC would attract. This Court while deciding bail application would be bound by the observations by the Hon'ble Apex Court in the case of ***The state of Maharashtra V/s. Vishwanath Maranna Shetty*** [2012 (10) SCC 561] which reads as follows.

“While dealing with a special statute like MCOCA, having regard to the provisions contained in sub-section (4) of Section 21 of this Act, the Court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused

during the investigation may not justify a judgment of conviction. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organized crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea”.

17) Hence, applications stand rejected.

(SMT. SADHANA S. JADHAV, J.)