

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 1804 OF 2018

Mr. Nitin Mahadev Moghal	...Applicant
Versus	
The State of Maharashtra & Anr.	...Respondents

**WITH
CRIMINAL BAIL APPLICATION NO. 854 OF 2018**

Mr. Rajendra Vijay Gaikwad	...Applicant
Versus	
The State of Maharashtra & Anr.	...Respondents

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Mr. Aniket Nikam, Mr. Aashish Satpute a/w. Nihal Mansuri i/b. Mr. Vivek Nandkishor Arote, Advocate for the Applicant in B.A. No.1804 of 2018.

Mr. Sudeep Pasbola a/w. Karl Rustomkhan i/b. Mr. Rahul Arote, Advocate for the Applicant in B.A. No.854 of 2018.

Mr. Sanjeev Kadam i/b. Mr. Vikas B. Shivarkar, Advocate for Respondent No.2.

Ms. A.A. Takalkar, APP for the Respondent – State.

P.S.I. - S.S. Gosavi, SDPO Baramati present.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 10th DECEMBER 2019.**

PC :

1. The applicants are seeking bail in connection with C.R. No.204 of 2015 dated 28th May 2015 registered at Loni Kalbhor Police Station, District Pune for the offences punishable under Sections 302, 143, 147, 148 and 149 of the Indian Penal Code, 1860 ('IPC' for short) and Sections 3, 4 (25) (27) of the Arms Act, 1959.

2. The applicants were arrested on 02nd June 2015.

Subsequently, the Investigating Agency obtained approval to invoke provisions of the Maharashtra Control of Organized Crime Act ('MCOC' for short). The approval was granted and provisions of Sections 3 (1) (i) (ii) and 3 (4) of MCOC Act were invoked.

3. The brief facts of the prosecution case :-

The First Information Report ('FIR' for short) lodged by Vaibhav Prakash Londhe @ Appa Londhe are that the uncle of first informant Vilas Haribhau Londhe was murdered in 2002 by Gorakh Baban Kankate and others. In the said case, father of complainant Prakash Haribhau Londhe @ Appa Londhe had lodged complaint with the police and had given evidence in the Court. The accused in the said case were convicted by the Trial Court. They have preferred an appeal before the High Court. They were granted bail. In view of the above, Gorakh Kankate and others were angry with his father and kept a watch over his movements. On 28th May 2015 at about 05:00 a.m., father of complainant left the house for morning walk. At about 05:45 a.m. Hanumant Jadhav informed that, he has received a phone call from Tushar Rohidas Kapare stating that something is happened to Appa Londhe and hence, he went to Shindavane Road and saw Appa Londhe at the spot. The complainant, his cousins namely Akshay Saikar and Navnath Londhe proceeded towards Shindavane

Road. They noticed crowd gathered on Sindavane Road near Urali Kanchan. Father of complainant was lying on the road and he had sustained injuries on his body. He was unconscious. He was taken to Nobel Hospital at Hadapsar Pune, where the doctors declared him dead before admission. The complaint was lodged against unknown persons.

4. During the course of investigation, the police invoked the provisions of MCOC Act by obtaining prior approval. Sanction was obtained for prosecuting the accused under the provisions of MCOC Act. Upon completion of investigation, charge-sheet was filed against the accused.

5. The applicants preferred an application for bail before the MCOC Special Court in MCOC Case No.19 of 2015, which were rejected by order dated 05th October 2016.

6. Heard learned Advocate Mr. Sudeep Pasbola appearing for applicant in Criminal Bail Application No.854 of 2018, learned Advocate Mr. Aniket Nikam appearing for applicant in Criminal Bail Application No.1804 of 2018, learned A.P.P. Ms. A.A. Takalkar and learned Advocate Mr. Sanjeev Kadam appearing for Respondent No.2 / complainant.

7. Learned Advocate representing the applicants submitted

that, there is no cogent evidence against the applicants. The charge of conspiracy is false and frivolous. It is based on statements of Ramesh Ramdas Mhetre and Suryakant Shridhar Khadsare. There is no recovery from the applicants. They have not participated in the assault. There are no criminal antecedents against the applicants. The confessional statements were retracted. The confession of co-accused needs corroboration. It is submitted that, accused Nitin Moghal is nephew of accused No.6. There is no reference of the said accused in the confessional statements of co-accused. The prosecution is relying on the statements of two witnesses alleging conspiracy. One of them has not referred to the applicant Nitin Moghal. There is no evidence that the applicants were members of organized crimes syndicate or they have indulged continues unlawful activity. There is no eye witness to incident. The statements of witnesses referring the alleged conspiracy are false and contradictory. Undisputedly, both the applicants were not assailants. There is discrepancy while recording confessional statement of co-accused. The accused were not given sufficient time before recording their confessional statement, which is in violation of rules relating to recording of confession provided under the MCOC Rules.

8. Learned A.P.P. submitted that, there is sufficient evidence

against the applicants. Both of them are part of conspiracy to liquidate deceased. The evidence of the witnesses implicate the applicants as conspirators. The confessional statement of the co-accused refers to involvement of the applicants. The gang leader has several antecedents. The applicants are members of crime syndicate headed by gang leader. The applicant Rajendra Vijay Gaikwad was present at the scene of offence which is evident from the confessional statement of the accused. From the statement of Ramesh Mhetre, Suryakant Khadsare, Mayur Gaikwad and Mangesh Londhe the names of the accused were disclosed. During the course of investigation, police seized sickle, motorcycle and clothes of the accused as per memorandum statement of Santosh Shinde. Motorcycle and sickle was recovered at the instance of Nilesh Solankar and two pistols, four used cartridges were recovered from accused No.6 Vishnu Jadhav. In the house search of Vishnu Jadhav six pistols, two country made revolver and 30 live cartridges were recovered. In the supplementary statement of complainant, he had stated that his father had a business of sand and he was earning profits. Pravin Kunjir and his gang was suffering loss. In order to gain economic benefits, Pravin Kunjir had conspired with the accused. In accordance with conspiracy of accused Nos.1 to 4 and

accused Nos.6 and 7 committed murder. Weapons were purchased from accused No.8 Mani Kumar Chandra @ Anna. Similar version is given by Tushar @ Gotya Rohidas Kapar, nephew of deceased. In his statement, Ramesh Mhetre has stated that he had seen accused sitting in the hotel and discussing the plan to eliminate Prakash @ Appa Londhe. They hatched the conspiracy. There is long standing enmity between deceased and accused. The provisions of MCOC Act are applied in the present case. The statements of two witnesses relating to conspiracy shows the involvement of the applicants. The confessional statement under Section 18 of the MCOC Act also implicate the applicants. There are six cases against gang leader Pravin Maruti Kunjir. The applicants are member of syndicate run by Pravin Kunjir. Thus, there is sufficient evidence against the applicants and bail may not be granted. The prosecution has filed affidavit opposing the bail.

9. Learned Advocate for the intervener submitted that, the incident is of serious nature. The applicants were members of crime syndicate. The deceased was assaulted on account of enmity. The deceased had given evidence against some of the accused which had resulted in conviction. It is submitted that, the statement of witness Surykant Khadsare implicate and Ramesh Mhetre the applicants in

the crime. The evidence discloses that the applicants and the other accused had close proximity. The Statement of Sanju Tilekar and Mayur Gaikwad refers to the conflict between the accused and family of the complainant. Kailas Nagori has referred to the conspiracy by the accused. The irregularity if any, in recording confessional statement is to be decided at the time of trial. It is submitted that, the applicant had written a letter from jail, admitting their connection with the gang of Kunjir. The case is fixed for framing charge. The confessional statements of the co-accused implicate the applicants.

10. I have perused the documents on record, the FIR was lodged on 28th May 2015. The applicants were arrested on 02nd June 2015. The applicants are in custody for a period about four years and six months. There is no eye witness to the incident. There is no recovery at the instance of applicants. There is no evidence of CDR to show complicity of applicants with co-accused. Undisputedly, the applicants are not assailants. The prosecution is relying on the statements of Ramesh Mhetre and Suryakant Khadsare to bring home charge of conspiracy. Suryakant Khadsare is allegedly driver of accused Vishnu Jadhav. The FIR proceeds on the basis that Prakash @ Appa Londhe was murdered on account of previous enmity between accused and deceased. In the year 2002, brother of deceased

was murdered in which accused were prosecuted by the deceased in the present case. He had examined as a witness in the said case and hence the accused has motive to murder him. Subsequently, the prosecution has also alleged that the deceased was dealing in sand and earn income. The accused had suffered economic loss and to get financial benefit, the accused formed organized crimes indicate headed by Pravin Kunjir committed offences for their pecuniary benefits. Undisputedly, the applicants were not involved in any other case with the gang leader. Apparently, the prosecution is trying to built up the case that the crime was also committed for pecuniary benefit. The prosecution has also relied upon the confessional statements of the co-accused. The statements of Akash Mahadik and Nagesh Zadkar were recorded under Section 18 of the MCOC Act. It is alleged that, the confessional statement of the said accused shows the involvement of the applicant Rajendra Gaikwad in the crime. It is pertinent to note that, the confessional statement do not refer to involvement of accused Nitin Moghal in any manner.

11. The confessional statement of the co-accused needs corroboration. There is no direct evidence against applicants. The prosecution is based on statements of conspiracy and confessional statement of co-accused. The applicants are not involved in any other

case with the alleged gang leader. Although the prosecution case as reflected in FIR is the victim was killed on account of enmity, subsequently the prosecution has tried to make out the case that the accused had committed murder for economic gain. It was also contended that, the applicants had forwarded letter requesting to lail authorities stating that the accused is associated with gang of Gorakh Kankate and there is danger from the rival gang which shows that the accused were members of crime syndicates. It is pertinent to note that, the accused were arrested in this case and they were detained. Only on account of such letter it cannot be said that the applicants were members of the crime syndicate and were indulging with unlawful activities in the absence of cogent evidence in that regard. The statements of Ramesh Mhetre and Suryakant Khadsare were recorded. They have referred to the alleged conspiracy. Ramesh Mhetre have stated that, in February 2015 he had visited hotel Ill Fungo Magico and while he was standing at the counter he saw Gorakh Kankate, Vishnu Jadhav, Pramod Kanchan, Anna Gavari, Somnath Kanchan, Ravindra Gaikwad, Vikas Yadav and Pravin Kunjir. He heard the conversation of Kunjir that he suffering loss in sand business because of Appa Londhe and they should create terror by inducting new members. He has not preferred the presence of

Nithin Moghal. The discussion had occurred in February 2015. According to him he had informed the said fact to another witness. The explanation is belated. The person to whom he had disclosed the controversy would have taken some action. The conversation also does not indicate that the said persons had decided to liquidate the victim. In the statement of Ramesh Mhetre recorded before the Magistrate, he had stated that in February 2015 the accused Pravin Kunjir had stated that he is suffering loss because of Appa Londhe in his business and with the help of new boys action should be initiated. The initial statement recorded by the police however, does not mention that there was any discussion about liquidating the victim. The statement of Suryakant Khadsare refers to an incident which was occurred 5 to 6 months ago. According to him he was driver of Vishnu Jadhav. He was called by Vishnu to office he saw Gorakh, Anna, Pramod, Kadam, Somnath, Ravindra Gaikwad, Pravin Kunjir and Vikas Yadav in office. Pravin told Jadhav that Appa is interfering in Court matters and Vishnu should liquidate him. He further stated that 10 to 12 days before incident at Sortopwadi he saw Santa, Niles, Rajendra, Nagesh, Vishnu and Nitin Moghal. Vishnu was driving some lines on surface. He asked Suryakant whether he would participate in murder of Appa. He declined. He did not inform that

the incident to any person. If is conspiracy was hatched as stated by Mhetre, what was need of again hatching constrively as stated by Khadsare. He did not lodge any complaint nor informed the family of the deceased about the said incident. Admittedly, the applicants are not the assailants. There is no incriminating recovery from the applicants. There are no antecedents against them. The confessional statement of Akash Mahadik was recorded. He has not referred to presence of Moghal at any time. He stated that one month ago the accused had met near poultry farm and discussion took place about liquidating Appa. According to Khadsare there was plan of conspiracy 5 to 6 months ago and 10 to 12 days ago. The conspiracy referred to by Ramesh Mhetre and Khadsare do not match with time/plan of in confusion of co-accused. Similar confession is of Nagesh Zhadkar. He has not referred to moghal. Presence of Rajendra is shown. As per confession Rajendra is not assailant. There is no corroborative evidence. The confession, statements of witnesses are not sufficient to show that applicants are members of crime syndicate and indulging in continuous unlawful activity. The involvement of applicants in crime itself is under shadow of doubt.

12. In these circumstances, the bar under Section 21 (4) of the MCOC Act would not preclude the Court for granting bail to the

applicants. Hence, I pass the following order.

ORDER

- i) Criminal Bail Application No.1804 of 2018 and Criminal Bail Application No.854 of 2018 are allowed;
- ii) The applicants are directed to be released in connection with C.R.No.204 of 2015 registered with Loni Kalbhor Police Station, District Pune, which is subject matter of MCOC Special Case No.19 of 2015, on furnishing P.R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- iii) The applicants shall stay out of jurisdiction of Pune Rural Police till conclusion of trial;
- iv) The applicants shall furnish details of their residence where they would reside after released on bail, to the Investigating Officer;
- v) The applicants shall report nearest Police Station where they would reside after being released on bail;
- vi) The applicants shall not tamper with evidence and shall attend Special Court proceedings regularly, unless exempted by the Special Court for some reason;
- vii) The trial is expedited.

(PRAKASH D. NAIK, J.)