

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

CRIMINAL BAIL APPLICATION NO. 2038 OF 2017

Bapu @ Kumar Prabhakar Nair ...Applicant

Versus

The State of Maharashtra ...Respondent

**WITH
CRIMINAL BAIL APPLICATION NO. 432 OF 2019**

Nilesh Shriniwas Baswant ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Sudeep Pasbola i/b Priyal G. Sarda, Advocate for the Applicant in Bail Application No. 2038 of 2017.

Mr. A. P. Mundargi Sr. Advocate, i/b Mr. Satyam H. Nimbalkar, Advocate for applicant in Bail Application No. 432 of 2017

Smt. A. A. Takalkar, APP for the State-Respondent.

Mr. N. S. Chavan (P.S.I.), Mr. S. G. Kadam (A.S.I.), Kondhwa Police Station, Pune, Present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 30th January, 2020

PC :

1. The applicants in both these applications are seeking bail in connection with C.R. No. 477 of 2015 registered with Kondhwa Police Station, Pune for offences punishable under Sections 307, 387, 447, 504, 506(1), r/w Section 34 of Indian Penal Code. The First Information Report was lodged on 12th December, 2015.

2. The case of the prosecution is as follows :

a) The complainant Nilesh Kantilal Botra has alleged that on 25th September, 1996, his wife and sister in law had purchased land bearing S.No. 66, Plot No. 1/5/3 to the extent 14 Gunthas of land situated at Village Kondhwa Budruk, Pune. The said property was looked after by the complainant along with his brother-in-law, father-in-law, and brother of father-in-law. Adjacent to the said property scheme of Unnati Dham Gruharachna Sanstha is being implemented on plot. The construction work of the said Sanstha was in progress. One Sanjay Gundecha had executed power of attorney in favour of the brother of complainants father-in-law Pramod Botra in respect of adjacent 20 Gunthas land.

b) 15 days ago, Pramod called the complainant and inquired about work of tin shed on the property. The complainant and his wife visited the property, they found that the work of constructing the compound wall of tin shed was going on. Upon inquiry with the person who was present, whose name was Deepak Krishna Kadam stated that the property belongs to him and he is the owner of the said land.

c) Thereafter, complainant received call from cell phone No. 7385969475. The name of the caller was given as Amol

Basavant. He told the complainant to meet his boss Bapu Nair (applicant) and show him the property papers. The complainant should talk to Bapu Nair and Deepak Kadam and resolve the dispute of erection of tin shed installed at the property.

d) The complainant husband of his sister-in-law Hemant Lodha, visited the property. They did not find anybody at the spot. The complainant again received phone call from Amol and he was told that he should meet Bapu Nair, hence, they went to office at Manish Plaza, NIBM Road, Pune. While visiting the said place Nilesh Basavant (applicant) was present with them. Amol Baswant introduced one person as Bapu Nair and told the complainant to show papers of property to him. Applicant Bapu Nair threatened the complainant to show papers of the property and not to stay on the property. Complainant and others came out of the office. Amol threatened the complainant to part with amount of Rs. 6 Lakhs for releasing the property from their possession and threatened that, if he does not part with the amount, he would be murdered. On 12th December, 2015 at about 1.30 p.m. the complainant along with his brother-in-law, father-in-law were present at the said property. Accused Deepak Krishna Kadam, Nilesh Baswant, Amol Baswant and Bapu Nair arrived in their cars. They abused and threatened the complainant. The complainant urged that the property belongs to

them and the accused cannot erect tin shed compound wall and take forcible possession of the property. Deepak Kadam attacked complainant by sickle by threatening the complainant. Accused Deepak Kadam mounted assault on the complainant with sickle intended to strike him on his head, complainant moved back and averted the attack. The people present at the place of incident ran away. Police arrived and apprehended Deepak Kadam. The FIR was registered on 12th December, 2015. Investigation proceeded.

3. Approval was sought for applying the provision of M.C.O.C. Act. Approval was granted. Section 3(1) (ii) 3(2), 3(3), 3(4), 3(5) and 4 of MCOCA Act were involved. Investigation was conducted. Accused were arrested. On completing investigation, charge-sheet was filed.

4. Applicants had preferred applications for bail before the M.C.O.C. Special Court, Pune which were rejected.

5. Learned Advocate Mr. Pasbola appearing for applicant Bapu Nair submitted that, the applicants are in custody from 8th May, 2016. The trial has not commenced. The complaint is false. The role of assault was not attributed to the applicant. No injury caused to the victim. Provisions of M.C.O.C. Act are not applicable. There is no evidence to establish that the accused were involved in continuous

unlawful activities as members of crime syndicate. The prosecution relied upon the cases for seeking approval to apply the provisions of M.C.O.C. Act which is resulted in acquittal. The confessional statement of the accused were vague. The confessional statement of accused Amol Basavant and the applicants do not bear the Certificate required under Section 18(3) of the M.C.O.C. Act. Bapu Nair has tetracted his statement on 30th May, 2016 stating that he has signs statement under coercion. No harm was caused to the victim and the witnesses. Learned counsel pointed out the statement of witness Sachin Gaikwad stated that confessional statement was recorded under coercion and the same was retracted. There is no evidence to indicate that there was *modus operandi* in committing the crime.

6. Learned Sr. Advocate Mr. Mundargi submitted that, the applicant Nilesh Baswant has not been attributed role of assault. He is in custody from the date of arrest. The confessional statements are not in consonance with the provisions of M.C.O.C. Act. In pursuant to recording of confessional statement, the accused had stated before the magistrate that he did not make any statement as alleged by the prosecution. Mr. Mundargi Pointed out letter dated 17th August, 2016 forwarded to MCOC Court with confession statement of Amit Jerande and Nilesh Baswant. The statement of Nilesh Baswant dated 17th August, 2016 recorded before magistrate mentions that he did

not give any statement before police and he has not stated any statement. He do not know the contents of statement. Thus, no credence can be given to the confessional statements. Learned counsel also pointed statement of Amit Jerande dated 17th August, 2016 recorded by Magistrate. The accused had stated that his signature has been forcefully obtained. He do not know contents of statement. It is submitted that there is no compliance of Section 18(3) of M.C.O.C. Act.

7. Learned APP submitted that there is voluminous evidence against the applicants. They have been continuously indulging in unlawful activity. The applicant Bapu Nair is the gang leader. Several cases are registered against him. The prosecution under the provision of M.C.O.C. Act would not be vitiated even if cases were resulted in acquittal. What is required is registration of offences and filling of charge-sheet. The statements of witnesses attributes specific role to both the applicants. The applicant Nilesh Baswant is associated with applicant Bapu Nair. The material on record clearly establishes that both the accused were continuously indulging in criminal activities. The confessional statements of the accused shows the involvement of the applicants and crime committed by them which is sufficient to invoke the provisions of M.C.O.C. Act. It is further submitted that requisite certificate envisaged under Section 18(3) of M.C.O.C. Act,

was issued, to confessional statements of applicant Bapu Nair and accused Amol Baswant. Assuming that there is infirmity with regards to recording of the confessional statement, the same will have to be adjudicated at the time of trial. The confessional statements cannot be discarded at this stage. The accused have referred to their continuous unlawful activity in their confessional statements. The confessional statements of Bapu Nair, Dipak Kadam, Amit Jerande, Amol Baswant, Datta Mane and Nilesh Baswant were recorded. Learned APP relied upon the order passed by the Division Bench of this Court in Criminal Application No. 986 of 2016 wherein the mother and the wife of the applicant Bapu Nair had challenged the proceeding and the proclamation issued against them declaring them absconding. It is submitted that while dismissing the said application, this Court had observed that the allegations attributed to them support the allegations to constitute the offences under Sections 3(4) & 4 of M.C.O.C. Act.

8. I have perused the papers. The FIR was lodged on the basis of the complaint. Specific role has been attributed to both the applicants. During the course of investigation statement of witnesses were recorded which shows the involvement of the applicants. Statements of policemen who visited the place of incident was recorded. The co-accused was present at the place of incident with

the applicant had admitted assault on complainant with sickle which blow was averted by the complainant. There are witnesses to incident. The said witnesses have referred to the presence of accused. The statement of Police Constable Ajay Bhosale, Avinash Marathe and Police Head Constable Sunil Chikhale supports the version of the other witnesses. The co-accused Deepak Kadam, Amol Baswant have given confessional statements under Section 18(1) of M.C.O.C. Act. The confessional Statement of the applicant Bapu Nair was also recorded. The statements prima facie shows that the accused were present at the scene of offences. The said statements giving details as to how the accused were involved in dealings with all properties and criminal activities carried out by them.

9. The absconding accused Rani Nair and Joyti Nair had preferred application before this Court challenging the proclamation and contended that the prosecution carried out in Crime Register No.477 of 2015 be quashed. In the order dated 25th January, 2019, Division Bench of this Court has observed that on due consideration of over all allegations attributed to the said applicants in commission of offences and materiel on record relied against them support the allegations to constitute the offences under Sections 3(4) & 4 of M.C.O.C. Act and the Court is of the view that the evidence relied upon by the prosecution prima facie makes out the case for

investigation against them. The allegations against the said accused is that they had abetted the applicant Bapu Nair in commission of crime. Properties were purchased in their name and money was deposited into their account.

10. I have perused the confessional statements of the accused. The version reflected therein, cannot be discarded at this stage. There are cases registered against both the applicants in past and they were charge sheeted. In view of the nature of evidence against the applicants, no case for grant of bail is made out.

11. Hence, I pass the following order :

ORDER

Bail Application Nos. 2038 of 2017 and 432 of 2019 stands rejected and disposed of accordingly.

(PRAKASH D. NAIK, J.)