

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

BAIL APPLICATION NO.1007 OF 2022

Mukesh Chunilal Bhatia ...Applicant

Versus

The State of Maharashtra ...Respondent

**WITH
INTERIM APPLICATION NO.3721 OF 2022
IN
BAIL APPLICATION NO.1007 OF 2022**

Divyesh Rajendra Desai ... Applicant

In the matter between

Mukesh Chunilal Bhatia ...Applicant

vs.

State of Maharashtra ...Respondent

**WITH
BAIL APPLICATION NO.1251 OF 2022**

Arun Purshottamdas Upadhyay ...Applicant

vs.

State of Maharashtra ...Respondent

**WITH
INTERIM APPLICATION NO.3211 OF 2022
IN
BAIL APPLICATION NO.1251 OF 2022**

Divyesh Rajendra Desai ... Applicant

In the matter between

Arun Purshottamdas Upadhyay ...Applicant

vs.

State of Maharashtra ...Respondent

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**WITH
BAIL APPLICATION NO.2423 OF 2022**

Mandar Ajit Borkar ...Applicant
vs.
State of Maharashtra ...Respondent

**WITH
INTERIM APPLICATION NO.3213 OF 2022
IN
BAIL APPLICATION NO.2423 OF 2022**

Divyesh Rajendra Desai ... Applicant

In the matter between

Mandar Ajit Borkar ...Applicant
vs.
State of Maharashtra ...Respondent

....

Mr. Shekhar Jagtap i/b. J. Shekhar & Co. for the Applicant in BA/1007/2022.

Mr. Ponda, Senior Advocate i/b. Sidharth Sharma a/w. Shantanu Phanse, Ilsa Shaikh and Ashok Saraogi for the Applicant in BA/1251/2022.

Mr. Niranjan Mundargi a/w. Ms. Keral Mehta i/b. Rushikesh Kale a/w. A.K.Sheikh for the Applicant in BA/2423/2022.

Mr. Sudeep Pasbola a/w. Mr. Ayush Pasbola for the Applicant in IA/3721/2022, IA/3211/2022 and IA/3213/2022.'

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 27th JULY, 2023.

P.C.:-

1. The Applicants seek enlargement on bail in Special MCOC Case No.101276 of 2021, pending on the file of the Special Court, Mumbai, for offences under Sections 143, 144, 147, 326(2), 188, 269, 326, 324, 307, 504, 506(2) and 120B and 149 of the Indian Penal Code, 3(i)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crimes Act,

1999 and Section 51(b) of the National Disaster Management Act.

2. The brief facts necessary to decide these applications are as under :-

On 18/07/2021 Mr. Divyesh Desai lodged FIR at MHB Colony Police Station alleging that the land under Survey No.301/6 situated near Zen Garden, Kanderpada, was purchased by Taukir Khan and the same has been reserved for school. The First Informant and Taukir Khan formed a construction Company under the name of Solaris Constructions and proposed to construct a school building in the said property. On 08/07/2021, the First Informant learnt that the Applicants- Arun Upadhyay and Mukesh Bhatia, who claim to have purchased the said property, attempted to remove the sign board displayed by the First Informant and put up their signboard instead. On 18/07/2021, when the First Informant, his father, Taukir and his two sons and their Advocates visited the property, about 15 to 20 persons tried to remove the sign board displayed by the First Informant. The said 15 to 20 persons abused and threatened the first informant and others and assaulted them with swords, iron rods etc. Based on this information, C.R.No.599/2021 came to be registered with MHB Colony Police Station.

3. The first informant and others were taken to the hospital for medical treatment. The statements of the injured were recorded. In the course of the investigation, some of the accused persons came to be arrested and weapons of assault were recovered. One of the witnesses, who was employed as a security guard informed that the said 15 to 20 persons were instigated by Mandar Borkar, who was present at the place of the incident. On the basis of the said statement, Applicant Mandar Borkar, who is stated to be the gang leader, came to be arrested on 26th July 2021. Subsequent to his arrest, the investigation was transferred to Crime Branch Unit and C.R.No.63/2021 was registered with DCB, CID, Unit – II, Mumbai.

4. In the course of the investigation, the confessional statement of the accused no.16 was recorded under section 18(1) of the MCOC Act. The supplementary statements of the first informant as well as the other witnesses were also recorded wherein they claimed that the Applicant – Mandar Borkar was present at the place of the incident and the assailants had acted at his instance. Considering the involvement of the gang leader, Mandar Borkar, the investigating agency invoked provisions of the MCOC Act. Sanction was obtained and charge-sheet came to be filed against the Applicants and others for the offences as stated above.

5. The Applicants filed bail applications before the Special Court, which have been dismissed in view of the gravity of the offences. Being aggrieved by the dismissal of the applications, the Applicants have filed these applications under section 439 of Cr.P.C.

6. The Assistant Commissioner of Police has filed this affidavit-in-reply wherein it is stated that the confessional statement of the co-accused-Vivek Manjrekar and other material on record prima facie proves that the Applicants-Upadhyay and Bhatia had entered into criminal conspiracy with the gang leader - Mandar Borkar to dispossess the First Informant from the subject land. The investigation further revealed that in pursuance of the said conspiracy, the Applicant -Bhatia had paid Rs.5,00,000/- to Mandar Borkar through the co-accused Vivek Manjrekar. It is stated that the gang leader with the help of the other co-accused assaulted the First Informant and others by means of dangerous weapons with an object of pecuniary gain by creating reign of fear and danger to the life of the general public.

7. Heard Mr. Shekhar Jagtap, learned counsel for the Applicant - Mukesh Chunilal Bhatia, Mr. Ponda, learned senior counsel for the

Applicant-Arun Purshottamdas Upadhyay, Mr. Niranjan Mundargi, learned counsel for the Applicant-Mandar Ajit Borkar, Mr. Ayush Pasbola for the first informant - Divyesh Rajendra Desai and Mr. S. V. Gavand and Ms. Takalkar, learned APPs for the State.

8. Learned counsel for the Applicants contend that Taukir Khan has no title and is not in possession of the said property. It is further stated that there is absolutely no material on record to indicate that the Applicants had engaged the services of the gang leader to dispossess Taukir Khan. It is submitted that Mandar Borkar, who is stated to be a gang leader, was arrested and implicated in this crime only to invoke provisions under sections of the MCOC Act. It is submitted that none of these Applicants had indulged in an unlawful activity, as a member of Organized Crime Syndicate, or on behalf of such syndicate. Hence, the provisions of the MCOC Act are not attracted.

9. Per contra, learned APP states that the statements of the security guard as well as the supplementary statements of the first informant and the other witnesses prima facie prove the presence of the Applicant – Mandar Borkar at the place of the incident. The statements are further corroborated by the confessional statement of the accused

no.16 as well as CCTV footage. He submits that the material on record prima facie reveals that the Applicants – Arun Upadhyay and Mukesh Bhatia had engaged services of the gang leader – Mandar Borkar to take unlawful possession of the property. He submits that the offence is of serious nature and hence, the Applicants are not entitled for bail.

10. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

11. The case of the prosecution is that Taukir Ahmed Khan, one of the partners of M/s. Solaris Constructions, has purchased the land under Survey No.301/6 opposite Zen Garden, Dahisar from Deubai Thakur under registered agreement of the year 1983 and that since then he is in possession of the property. The First Informant claims that the Applicants- Mukesh Bhatia and Arun Upadhyay have purchased the said land from the heirs of Kashibai Patil. It is alleged that with the aid of a gang leader- Mandar Borkar, these Applicants tried to take forcible possession of the said land. Mr. Ponda, learned senior counsel for the Applicants has drawn my attention to order dated 28/03/2019 in Chamber Summons No.405 of 2017 in Suit No.799 of 2014 wherein the application filed by one Govind Bhadricha to implead him as a party in the said suit was dismissed on the

ground that he was claiming right to the said property by virtue of an unregistered agreement executed in favour of Taukir Ahmed Khan. It was observed that said Taukir Ahmed was not put in possession of the property and consequently he could not have transferred any right, title or interest in the property on the basis of an unregistered agreement. The said order prima facie reveals that Taukir Khan was not in possession of the property. Hence, the very contention, that the Applicants-Upadhyay and Bhatia had engaged services of Mandar Borkar to dispossess said Taukir Khan and the First Informant from the suit property appears to be doubtful.

12. It is pertinent to note that the First Informant has not made any reference to Mandar Borkar in the FIR dated 18/07/2021, which was lodged immediately after the incident or in the statement under Section 161 recorded on 22/07/2021. Similarly, the statements of the other injured persons under Section 161 of the Cr.P.C., recorded first in point of time, do not disclose that Mandar Borkar was present at the place of the incident or that the assailants had assaulted the First Informant and others at his instance.

13. The security guard, who was allegedly on duty at the site has stated in his statement recorded on 25/07/2021 that on 18/07/2021

about 20 to 25 persons came to the said property and prevented the construction work. He claims that there was altercation between the First Informant and the Applicants-Bhatia and Upadhyay over ownership of the property. He claims that the co-accused had told him that they were sent by the Applicant-Mandar Borkar. It is on the basis of this statement that the Applicant-Mandar Borkar, who is allegedly heading an organized criminal syndicate, came to be arrested on 26/7/2021 and subsequently provisions of MCOC Act came to be invoked. As stated above, neither the First Informant nor the other witnesses, who were present at the spot of the incident had referred to Mandar Borkar. It is only in their supplementary statements recorded after the arrest of the Applicant-Mandar Borkar, the First Informant and the other witnesses have claimed that the Applicant -Mandar Borkar was sitting in an Inova Car parked near the place of the incident. They claim that the said assailants had acted as per the instructions of the Applicant -Mandar Borkar.

14. It is pertinent to note that the statements of these witnesses indicate that even as on the date of the incident they were aware that the assailants were acting as per the instructions of Mandar Borkar. There is no tangible explanation as to why the involvement of Mandar Borkar was not disclosed in the FIR or the statements recorded prior to the arrest of

Mandar Borkar. It is also to be noted that while the investigating agency collected Call Details Record (CDR) of the other accused, conspicuously the call details of Mandar Borkar were not called for and have not been relied upon. All these facts give rise to a prima facie suspicion that the Applicant – Mandar Borkar has been implicated in the crime only to invoke the provisions of MCOC Act, particularly considering the fact that there is no other prima facie material to show that the Applicants-Upadhyay and Bhatia are the members of the Organized Crime Syndicate or that they have any nexus with the Organized Crime Syndicate.

15. As regards the payment of money, the confessional statement of the co-accused – Manjrekar, which has been subsequently retracted, reveals that he had demanded Rs.5 Crores to relinquish his rights and rights of Attarwala. Even otherwise, the confessional statement reveals that he has totally disassociated himself from the incident and the confessional statement is prima facie self exculpatory. The statement of the witness-Joshi indicates that the co-accused Vivek Manjrekar had paid token amount to Chaitanya More of Mauli Developers for purchase of the said land. The co-accused-Vivek Manjrekar was told that the land was already purchased by the Applicants-Upadhyay and Bhatia and on 03/07/2021 he was taken to the office of Arun Upadhyay. The witness

states that the Applicants-Upadhyay and Bhatia had told Vivek Manjrekar that he had no right to the land and to give the details / statement of the money paid to Mauli Developers. Subsequently on 12/07/2021 the Applicant-Bhatia paid Rs.15,00,000/- to the co-accused Vivek Manjrekar. Said Manjrekar had informed this witness that the money was towards transaction in respect of plot no.301/6, Opposite : Zen Garden. The statement of this witness prima facie indicates that Vivek Manjrekar was claiming right to the property and that the Applicant – Bhatia had paid money to him to clear the title and protect their rights without entering into any litigation.

16. The first informant and his associates were allegedly assaulted by swords, knives, rods, etc. They were referred to Dr. Babasaheb Ambedkar Hospital on the same date. The injury certificates issued by Dr. Babasaheb Ambedkar Hospital reveals that the First Informant and the other injured had sustained the following injuries:–

- (i) The first informant had sustained CLW on occipital region, simple injury caused by blunt weapon.
- (ii) Abbas Khan had an abrasion on left foot, a simple injury caused by blunt weapon.
- (iii) Advocate Tandon had sustained lid edema on left eye,

simple injury caused by blunt object.

- (iv) Advocate Joshi had sustained CLW on right leg and right little finger and abrasions on right elbow and occipital region, simple injuries caused by blunt object.

17. It may be mentioned that the prosecution has relied upon certificates issued by Arihant Heart Clinic and Nursing Home, a private hospital which indicate that the First Informant and the other witnesses had sustained the following injuries:-

- (i) the first informant had sustained head injury with multiple lacerations and blunt trauma wounds, left calf hematoma and that he was admitted on 18/07/2021 and discharged on 19/07/2021.
- (ii) Advocate Joshi had multiple lacerations with blunt trauma wounds, left chest wall hematoma, CLW of left little finger and undisplaced fracture of left 5th rib. He was allegedly admitted on 18/07/2021 and 26/07/2021.
- (iii) Advocate Tandon had sustained blunt force injury to left eye, blunt injury to left leg, left calf swelling with tenderness.

18. The certificates issued by Dr. Babasaheb Ambedkar Hospital, which is a Government Hospital, reveal that the first informant and the other witnesses were examined immediately after the incident and as per the injury certificates, the injuries sustained by them were simple in nature and caused by blunt object. This prima facie rules out the use of swords and knives. It is to be noted that the injuries referred to in the certificates issued by a private hospital are not in consonance with those mentioned in the certificates issued by the Government Hospital. This discrepancy prima facie creates a serious doubt about the prosecution case.

19. The facts and circumstances of the case prima facie reveal that the Applicants-Upadhyay and Bhatia as well as the First Informant and Taukir Ahmed are claiming right to the property under Survey No.301/6. The altercation and scuffle between the parties over the said dispute has been given a colour of an organized crime. The complicity of the Applicant-Mandar Borkar is prima facie doubtful and the Applicants - Upadhyay and Bhatia have no nexus with the crime syndicate. Hence, prima facie the bar under Section 21(4) of the MCOC Act is not attracted. It is also pertinent to note that the Applicants herein are in custody for

over two years. The charge is not yet framed and considering the large pendency, there is no possibility of the trial being concluded within a reasonable period and prolonged detention of the Applicants would be in violation of their rights under Article 21 of the Constitution. Hence, the Applicants are entitled to be enlarged on bail.

20. In view of the above facts and circumstances, the applications are allowed on the following terms and conditions:-

(i) the Applicants, who are facing trial in Special MCOC Case No.101276 of 2021, pending on the file of the Special Court, Mumbai, are ordered to be released on bail on executing PR bonds in the sum of Rs.50,000/- each with one or two solvent sureties to the like amount;

(ii) The Applicants shall not interfere with the First Informant and the other witnesses and shall not tamper with the evidence in any manner;

(iii) The Applicants shall report to the investigating officer, DCB CID, Unit-II , Mumbai, once in three months, on

the first Monday of the month, till framing of the charge;

(iv) The Applicants shall surrender their passports to the Investigating Officer and in the event, they do not hold the passport to file an affidavit to that effect before the Special Court.

(v) The Applicants shall not leave the country without prior permission of the Special Court;

(vi) The Applicants shall keep the Special Court informed of their current address and mobile contact numbers, and /or change of residence or mobile details, if any, from time to time.

21. The applications as well as the interim applications stand disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)