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

CRIMINAL BAIL APPLICATION NO. 3924 OF 2022

Ashwin Kantilal Gohil

.. Applicant

Vs.

The State of Maharashtra

.. Respondent

.....

Mr. Tapan Thatte a/w Mr. Vivek Arote, Mr. Ganesh Bhujbal i/b B.D. Shinde for the applicant

Mr. Y.Y. Dabke for the APP – State

Mr. Bharat Ghone, PI, DCB, CID Unit -11, Mumbai present in Court

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CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 2nd JANUARY, 2024

PRONOUNCED ON : 4th JANUARY, 2024

P.C.

1. By this application the applicant seeks his enlargement on bail, who has been arrested by the respondent in connection with Special MCOC Special Case No. 1276 of 2021 in C.R. No. 63 of 2021 registered with DCB, CID, Unit-11, Mumbai.

2. Briefly stated, the facts are as follows.

3. An FIR came to be lodged at MHB colony Police Station, Mumbai by one Divyesh Desai on 18.07.2021. He alleged that land Survey No.301/6 situated near Zen Garden, Kandarpada, Dahisar (W), Mumbai, was purchased by one Taukir Khan and the same has been reserved for a school. The First Informant and Taukir Khan formed a construction company in the name and style as “Solaris Constructions’ and proposed to construct a school upon the said piece of land.

4. On 08.07.2021, the First Informant came to know that one Arun Upadhyay and Mukesh Bhatia (co-accused) claimed to have purchased the said property and had attempted to remove the sign board displayed by the First Informant and put up their sign board. On 18.07.2021 when the First Informant along with his father, Taukir Khan and his two sons along with his Advocate visited the property, they were confronted by 15 to 20 persons, who tried to remove the sign board displayed by the First Informant. Those 15 to 20 persons abused, assaulted and threatened the First Informant and others by means of sword, iron rods etc.

5. On the basis of the information, C.R. No.599 of 2021 came

to be registered with MHB Police Station, Mumbai. The First Informant and the other injured were taken to the hospital for medical treatment. Statements of the injured were recorded. Some of the accused persons came to be arrested along with weapons of offence. One of the witnesses, who was employed as a Security Guard, informed that those persons were instigated by one Mandar Borkar, who was present at the scene. On the basis of the statement, Mandar Borkar who is said to be a kingpin of an organized crime syndicate, was arrested on 26.07.2021. Subsequently, investigation was transferred to Crime Branch Unit and C.R. No.63 of 2021 was registered with DCB, CID, Unit-11, Mumbai.

6. During investigation, a confessional statement of accused no.16 was recorded under Section 18(1) of the MCOC Act. Supplementary statement of the First Informant as well as other witnesses were also recorded wherein it is stated that the said Mandar Borkar was present at the scene during the incident and the assailants acted at his instance. Considering the involvement of the leader of an organized crime syndicate, namely Mandar Borkar, Investigating Agency invoked provisions of MCOC Act. Sanction

was obtained and charge-sheet came to be filed against all the accused.

7. Bail Application preferred by the applicant came to be rejected by the Special Court. As such, the applicant is before this Court.

8. ACP, Crime Branch has sworn an affidavit-in-reply wherein he strongly opposed release of the applicant on bail by raising various grounds. The main ground is that the applicant is a member of an organized crime syndicate, of which the kingpin is one Mr. Mandar Boarkar. There are several offences registered against the gang leader as well as rest of the accused, including the applicant. It is stated in the affidavit that there is direct nexus of the applicant in the alleged crime, in the sense, there was an eye-witness to the incident. It is submitted that if the applicant is released on bail, there is every likelihood that he may threaten the witnesses and would commit another offence. It is also contended that in case of his release, the applicant would abscond and may not be available for trial.

9. I heard Mr. Thatte, learned Counsel for the applicant and

Mr. Dabke, APP for the respondent – State.

10. At the outset, learned Counsel for the applicant submits that he is claiming release of the applicant only on the ground of parity, in the sense, almost all the accused including the main assailants and the gang leader of the alleged organized crime syndicate namely; Mandar Borkar, have already been enlarged on bail by this Court on 27.07.2023. It is an admitted fact that other accused namely; Mukesh Bhatia, Divyesh Desai and Arun Upadhyay have already been released by this Court.

11. Indeed, the applicant is entitled to be released on bail on the ground of parity. Needless to repeat the observations of this Court as regards the nature of investigation, invoking the provisions of MCOC Act and other factors, which itself rendered the investigation doubtful. It would be essential to extract relevant paragraphs of the earlier order passed by this Court, which read thus :-

“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 5 th 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.”

12. Thus, it can be seen that there are omnibus statements against the present applicant and no overt act has been attributed.

13. Learned APP reiterated the grounds raised in the affidavit-in-reply by the ACP. However, he has not said anything on the aspect of the observations made by this Court in the earlier order.

14. I, therefore, do not see any reason to refuse the bail to the applicant. As such, the following order is expedient:-

ORDER

(i) The applicant, who is facing trial in Special MCOC Case No. 1276 of 2021, pending on the file of the Special Court, Mumbai, is ordered to be released on bail on executing PR bonds in the sum of Rs.50,000/- with one or two solvent sureties to the like amount;

(ii) The applicant shall not influence either the First

Informant or any other prosecution witnesses in any manner whatsoever;

(iii) The applicant shall report to the investigating officer, DCB, CID, Unit-11, Mumbai, once in three months, on the first Monday of the month, till framing of the charge;

(iv) The applicant shall surrender his passport to the Investigating Officer and in the event, he does not hold the passport, to file an affidavit to that effect before the Special Court.

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

(vi) The applicant shall keep the Special Court informed of his current address and mobile number and / or change of residence or mobile details, if any, from time to time.

15. The application is disposed of in the above terms.

(PRITHVIRAJ K. CHAVAN, J.)