

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

**CRIMINAL BAIL APPLICATION NO.2210 OF 2018**

|                            |               |
|----------------------------|---------------|
| Hadisullah Jamirullah Khan | .. Applicant  |
| <b>Vs.</b>                 |               |
| State of Maharashtra       | .. Respondent |

**WITH  
CRIMINAL BAIL APPLICATION NO.2277 OF 2018  
ALONGWITH  
CRIM. INTERVENTION APPLICATION NO.1170 OF 2018**

|                                |               |
|--------------------------------|---------------|
| 1) Mohd. Wasim Afzal Khan; and |               |
| 2) Sahidullah Jamirullah Khan  | .. Applicants |
| <b>Vs.</b>                     |               |
| State of Maharashtra           | .. Respondent |

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Mr.Subhash Jha a/w. Mr.Harekrishna Mishra i/b. Mr.Sanjay Singh,  
Advocate for the Applicants.

Mr.A.R. Kapadnis, APP for the Respondent – State.

Mr.Raghavendra Mehrotra, Advocate for the Intervener in  
Criminal Application No.1170 of 2018.

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**CORAM : PRAKASH D. NAIK, J.**

**DATED : SEPTEMBER 28, 2018.**

**P.C. :**

Applicants in both these applications are praying for bail in connection with C.R. No.404 of 2018. The First Information Report ("FIR", for short) was registered with Sakinaka Police Station, Mumbai, under Sections 367, 323, 504

and 506 read with Section 34 of Indian Penal Code ("IPC", for short), at the instance of Taukiq Ahmed @ Lalbabu Mohd. Amin Shaikh. Applicants in both these applications were impleaded as accused.

2            Prosecution case is that on 20<sup>th</sup> April, 2018, complainant had purchased an iphone from one of accused (applicant no.1 in B.A. 2277 of 2018) and payment was made through his credit card, as the said accused had promised that he would repay the amount within one month. However, the accused refused to repay the amount. On 21<sup>st</sup> June, 2018, the complainant, his brother Mr.Shafik and Mr.Rafiqullah went to the shop of the said Mohd. Wasim Afzal Khan. Mr.Hamid, Mr.Hadisullah and 4 to 5 unknown persons were present at the shop. The complainant demanded money. There was a quarrel between both the parties. Mr.Hamid and Hadisullah got injured. Due to fear of retaliation, complainant and his associates fled from the shop. Thereafter, complainant learnt that FIR has been registered against them and on 28<sup>th</sup> June, 2018, the complainant and his brother came to Mumbai to inquire about the same. They were also accompanied by their friend Mr.Siraj. On 29<sup>th</sup> June, 2018 at about 00:30 a.m., when they were proceeding towards police station by auto-

rickshaw through Durgagalli, Sakinaka, accused Mohd Wasim saw them and on noticing him due to fear they told the auto-rickshaw driver to take “U” turn. Accused Mohd. Wasim was on a motor cycle and accused Hadisullah along with one unknown person were in Innova car. They started chasing them. When the rickshaw reached at Chedha Nagar, Ghatkopar (East), accused Mohd. Wasim blocked the path by his vehicle. Complainant and his brother was pulled from the auto rickshaw and they were assaulted by the applicants. They were forcibly taken into Innova Car and were also assaulted in the car and left outside Sakinaka Police Station. They were also threatened not to file any complaint. The injured was taken for medical treatment and it was found that there was fracture to the right shoulder of the injured.

3            Applicants were arrested and produced before the Court for remand on 4<sup>th</sup> August, 2018. Learned Metropolitan Magistrate remanded the accused to judicial custody. While passing the said order, it was observed that considering the nature of offence, reasons stated in the remand report for police custody of the accused, for the purpose of detailed investigation, presence of the accused with police is not necessary. Applicant

preferred an application for bail, which was rejected on 4<sup>th</sup> August, 2018, by the learned Metropolitan Magistrate. Applicants then preferred an application for bail before the Sessions Court, which was also rejected on 16<sup>th</sup> August, 2018.

4            Learned counsel for the applicants submitted that the applicants in both these applications are falsely implicated in this case. FIR is counter blast to the complaint lodged by Hamid with Sakinaka Police Station on 22<sup>nd</sup> June, 2018, vide C.R.No.382 of 2018. Police had received the information of the incident on 29<sup>th</sup> June, 2018 at 14:00 hrs. and the alleged incident had occurred on 29<sup>th</sup> June, 2018 at 00:30 hrs. The delay in lodging the FIR creates suspicion about the genuineness of the complaint. The injury report about the examination of the injured in Government Hospital shows that there was no external injury. The history given before the medical officer reflect that injured were assaulted by 15 to 20 people at Asalfa on 29<sup>th</sup> June, 2018. It is submitted that there is variance in statement recorded before the police and the medical officer. The alleged role of assaulting the complainant and others attributed to the accused is assault by fist blows. It is submitted that the applicants have neither assaulted nor abducted the complainant and others and a false case has

been lodged against the applicants. It is submitted that Section 367 of IPC is not attracted in this case. The other offences are bailable in nature.

5            Learned APP submitted that the complainant has attributed specific overtact to the applicants. It is submitted that the complainant and others were assaulted on account of previous incident. They were intercepted by the accused. They were pulled from the auto-rickshaw and were dragged in the Innova vehicle. All the accused has assaulted the injured persons. The medical report indicate that the injured had suffered fracture to shoulder. The facts narrated in the FIR clearly makes out a case under Section 367 of IPC. It is, therefore, prayed that the application be rejected.

6            Learned counsel for the intervener opposed grant of bail. He has reiterated the submissions advanced by learned APP. It is submitted that the medical evidence discloses fracture sustained by the injured person. The investigation was completed hurriedly. There is possibility of tampering with the evidence. It is also submitted that there is discrepancies in the investigation hence the complainant had prayed for further investigation. He

pointed out statement of witnesses and submitted that case under Section 367 of IPC is made out. He further submitted that the applications for anticipatory bail preferred by the accused were rejected. Considering the role and injuries sustained by the injured, application for bail be rejected.

7            Applicants are in custody from 4<sup>th</sup> august, 2018, offences are registered under Sections 367, 323, 504 and 506 read with Section 34. FIR indicates that there was an incident of quarrel and assault on 22<sup>nd</sup> June, 2016 and FIR was registered against the complainant in the present case and others. The said FIR was registered at the instance of Abdul Hamid Yasin Khan on 22<sup>nd</sup> June, 2018 vide C.R. No.382 of 2018, under Sections 323, 324, 504 and 506 read with Section 34 of IPC. After the arrest of the applicants, they were produced before the Court for remand. Considering the nature of allegations, the role attributed to the accused, they were remanded to judicial custody. Applicants have not used any weapon while allegedly assaulting the injured person. The case of the complainant is that fist blows were given to them. The complainant and his associates were dropped near Sakinaka Police Station, after they were allegedly assaulted. Applicability of Section 367 of IPC is debatable. Trial Court would

deal with the said issue at appropriate stage. However, considering the fact that the applicants are in custody from the date of arrest and investigation is, apparently, completed, further detention of the applicants is not necessary and the case for grant of bail is made out.

8                    Hence, I pass the following order:

**:: ORDER ::**

- (i) Bail Application Nos.2210 and 2277 of 2018, are allowed;
- (ii) The applicants are directed to be released on bail in connection with C.R.No.404 of 2018, registered with Sakinaka Police Station, Mumbai, on their furnishing P.R. Bond in the sum of Rs.20,000/-, each with one or more sureties in the like amount;
- (iii) Applicants shall attend Sakinaka Police Station, Mumbai, once in a Month on first Saturday of the month between 10:00 a.m. to 12:00 noon,

till further order;

- (iv) Applicants shall not tamper with the evidence, should not indulge in threatening or they shall not approach the complainant and the other witnesses in this case;
- (v) Applicants are permitted to furnish cash security of Rs.20,000/-, each, in lieu of surety for a period of four weeks;
- (vi) Bail Application Nos.2210 and 2277 of 2018, stands disposed of;
- (vi) Intervention Application No.1170 of 2018, stands disposed of;
- (viii) Trial Court shall act upon an authenticated copy of this order.

**(PRAKASH D. NAIK, J.)**