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

BAIL APPLICATION NO.1457 OF 2023

AFZAL HAJI KHAN

..APPLICANT

VS.

THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

Adv. Niranjan Mundargi a/w Adv. Keral Mehta i/b. Capri
Legal for the applicant.

Mr. A. A. Palkar, APP for respondent No.1-State.

Adv. Hrishikesh Chavan for respondent No.2.

PSI Shekhar B. Pawar, RAK Marg Police Station, Mumbai.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 27, 2023.

P.C. :

1. Heard learned counsel for the applicant, learned APP
for the State and learned counsel for respondent No.2.

2. This is an application for bail in respect of the offence
punishable under Sections 307, 324 read with 34 of the
Indian Penal Code (hereafter 'IPC' for short) registered on
03.12.2022 vide C.R. No.668 of 2022 with RAK Marg Police
Station.

3. It is alleged by the complainant that three unknown
persons assaulted him when he was near the highway for

answering nature's call. The FIR was lodged on 03.12.2022. There are in all four accused. The applicant is the accused No.1. The date of the incident is 02.12.2022. The applicant was arrested on 26.12.2022. In the supplementary statement of the complainant made on 08.12.2022 it is stated that on 14.11.2022 the complainant had received a phone call on which the threat was received from the unknown caller that whatever the complainant is doing against Afzal Haji Khan (applicant herein) is not proper and that he will face the consequences. It is then stated in the supplementary statement that the factum about what was orally stated by one of the accused on 03.12.2022 remained to be mentioned in the FIR. In the supplementary statement the complainant states that one of the assailant before the assault had said that though the applicant had asked him not to proceed ahead with the paperwork he went ahead. The informant was thereafter assaulted.

4. Learned APP as well as learned counsel for respondent No.2 appointed by this Court opposed the application for bail. It is contended by Mr. Hrishikesh Chavan, learned

counsel for respondent No.2 that there are several criminal antecedents reported against the applicant. It is further submitted that even in the trial Court premises the applicant had threatened the complainant which resulted into lodging of an NC complaint.

5. From the materials it transpires that the applicant and the complainant are not on good terms and there are complaints and cross complaints against each other. Prima facie, there is some delay on the part of the complainant in implicating the applicant in the supplementary statement.

6. Learned APP submitted that the call detail record reveals that the applicant was very much in the same area where the assault took place. To counter this learned counsel for the applicant submitted that the applicant is a resident of the same area. It appears that the applicant was not present on the spot nor is the actual assailant. The accusation is that the assault took place at the behest of the applicant.

7. Considering the nature of the accusations and the criminal antecedents, though the applicant can be enlarged

on bail, it is necessary that the applicant resides outside the jurisdiction of the Mumbai/Mumbai Suburban district and Thane district till the trial is over. In the facts and circumstances of the present case, the applicant can be enlarged on bail by imposing conditions. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Afzal Haji Khan in connection with C.R. No.668 of 2022 registered with RAK Marg Police Station shall be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or more sureties in the like amount.
- (c) The applicant shall attend the Investigating Officer of RAK Marg Police Station once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(f) Except for attending the trial and for the purpose of reporting to the Investigating Officer, the applicant shall not enter the Mumbai/Mumbai Suburban district and Thane district after being released on bail, till the trial concludes.

8. The application is disposed of.

9. I express my gratitude for the able assistance rendered by the Advocate – Mr. Hrishikesh Chavan representing the respondent No.2 who appeared at my request.

10. The Legal Services Authority may regularize the appointment of Mr. Hrishikesh Chavan.

(M. S. KARNIK, J.)