

COMMON ORDER

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MHCC050028772021



**IN THE COURT OF SESSIONS, AT DINDOSHI
BORIVALI DIVISION), GOREGAON, MUMBAI
CRIMINAL BAIL APPLICATION NO.758 OF 2021
(C.R.NO.73/2021)
(CNR NO.MHCC05-002877-2021)**

Mr. Wasim Jahangir Shaikh

Residing at Room No.8,
Dev Sadan Chawl, Opp. Mohamadiay
Masjid, Chimmat Pada, Marol Naka,
Andheri E, Mumbai 400 059.

....Applicant/Original Accused

V/s.

State of Maharashtra

Sahar Police Station.

....Respondent

Ld. Advocate Mr. Nilesh Pandey for the Applicant/Accused
Ld. Addl.P.P. Mr. Savle for the State.

AND

MHCC050028762021



**IN THE COURT OF SESSIONS, AT DINDOSHI
BORIVALI DIVISION), GOREGAON, MUMBAI
CRIMINAL BAIL APPLICATION NO.759 OF 2021
(C.R.NO.73/2021)
(CNR NO.MHCC05-002876-2021)**

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Mr. Arbaaz Azeem Mukadam

Residing at Room No.7,
Raj Roop Chawl, Marol Naka,
Chimmat Pada, Near B.K.
Shahstore, Andheri East,
Mumbai 400 059.

....Applicant/Accused

V/s.

State of Maharashtra

Sahar Police Station.

....Respondent

Ld. Advocate Mr. Nilesh Pandey for the Applicant/Accused

Ld. Addl.P.P. Mr. Savle for the State.

AND

MHCC050028752021



**IN THE COURT OF SESSIONS, AT DINDOSHI
BORIVALI DIVISION), GOREGAON, MUMBAI
CRIMINAL BAIL APPLICATION NO.760 OF 2021
(C.R.NO.73/2021)
(CNR NO.MHCC05-002875-2021)**

Mr. Usman Islam Shaikh

Residing at Near Noori Masjid,
Ganesh Maidan, Chimmat Pada,
Marol Naka, Andheri East,
Mumbai 400 059.

....Applicant/Accused

V/s.

State of Maharashtra

Sahar Police Station.

....Respondent

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Ld. Advocate Mr. Nilesh Pandey for the Applicant/Accused
Ld. Addl.P.P. Mr. Savle for the State.

AND

MHCC050029222021



**IN THE COURT OF SESSIONS, AT DINDOSHI
BORIVALI DIVISION), GOREGAON, MUMBAI
CRIMINAL BAIL APPLICATION NO.770 OF 2021
(C.R.NO.73/2021)
(CNR NO.MHCC05-002922-2021)**

Shahzad Irshad Ahmed

Age 27 Years,
Residing at Room No. 7,
First Floor, Agarwal Nagar,
Chimat Pada, Marol Naka,
Opp. Indus Co., Andheri East,
Mumbai 400 059.

....Applicant/Accused

V/s.

The State of Maharashtra

At the instance of Sahar Police Station.

....Respondent

Ld. Advocate Mr. Ajay Tripathi for the Applicant/Accused
Ld. Addl.P.P. Mr. Savle for the State.

AND

MHCC050029212021



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**IN THE COURT OF SESSIONS, AT DINDOSHI
BORIVALI DIVISION), GOREGAON, MUMBAI
CRIMINAL BAIL APPLICATION NO.771 OF 2021
(C.R.NO.73/2021)
(CNR NO.MHCC05-002921-2021)**

1. Rafik Zakeer Shaikh

Age 27 Years,
Residing at Adarsh Chawl,
Marol Maroshi Road,
Landmark Hotel, Marol,
Manderi East, Andheri East,
Mumbai 400 059.

Presently residing at 10, Mohd. Hussain
Chawl, Chimat Pada, Marol Naka,
Andheri East, Near Ruby Couch,
A.K. Road, Andheri East, Mumbai 400 059.

2. Rehan Rafique Shaikh

Age 27 Years,
Residing at Room No.21,
K.H. Ali Kadri Chawl,
Andheri Kurla Road,
Andheri East, Mumbai 400 059.

3. Imtiyaz Rafique Shaikh

Age (Not mentioned)
Residing at Room No.21,
K.H. Ali Kadri Chawl,
Andheri Kurla Road,
Andheri East, Mumbai 400 059.

....Applicants/Accused

V/s.

The State of Maharashtra
At the instance of Sahar
Police Station.

....Respondent

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Ld. Advocate Mr. Khalid Azmi for the Applicants/Accused
Ld. Addl.P.P. Mr. Savle for the State.

AND

MHCC050029632021



**IN THE COURT OF SESSIONS, AT DINDOSHI
BORIVALI DIVISION), GOREGAON, MUMBAI
CRIMINAL BAIL APPLICATION NO.784 OF 2021
(C.R.NO.73/2021)
(CNR NO.MHCC05-002963-2021)**

1. Mr. Mohd. Asif Ahmed Shaikh

Aged 44 Years, Occupation: Business,
Of Mumbai, Adult, Indian Inhabitant,

2. Mr. Arif Ahmed Shaikh

Aged 40 Years, Occupation: Business,
Of Mumbai, Adult, Indian Inhabitant,

Both residing at Room No.6,
Dinabai Chawl, 1st Floor, Andheri
Kurla Road, Near BMC Ground,
Chimatpada, Marol Naka,
Andheri (East), Mumbai 400 059.

....Applicants/Accused

V/s.

The State of Maharashtra

Sahar Police Station.

....Respondent

Ld. Advocate Mr. Abhishek Gupta for the Applicants/Accused
Ld. Addl.P.P. Mr. Savle for the State.

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AND

MHCC050029622021



**IN THE COURT OF SESSIONS, AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI
CRIMINAL BAIL APPLICATION NO.785 OF 2021
(C.R.NO.73/2021)
(CNR NO.MHCC05-002962-2021)**

Noman Riyazuddin Shaikh

Age 22 Years, Occupation: Student,
Residing at Usman Chawl,
Tunga Village, Powai, Sakinaka,
Mumbai 400 072.

....Applicant/Accused

V/s.

The State of Maharashtra

Sahar Police Station.

....Respondent

Ld. Advocate Mr. Abhishek Gupta for the Applicant/Accused

Ld. Addl.P.P. Mr. Savle for the State.

**CORAM: H.H.THE ADDITIONAL SESSIONS JUDGE
SHRI D.D.KHOCHE
(C.R.NO.13)**

DATE : 25TH JUNE, 2021.

COMMON ORDER

These are applications u/s. 439 of the Criminal Procedure Code 1973 for grant of bail in Crime No.73/2021 for the offences punishable under sections 307, 323, 324, 326, 504, 506, 143, 144, 147, 148, 149 of the Indian Penal Code, 1860 (hereinafter referred to as "I.P.C.") and sections 37(1), 135 of the Maharashtra Police Act registered with Sahar Police Station.

2. Court perused the applications and replies filed by API Mr. Mahesh Patil of Sahar Police Station. Perused the copy of the charge-sheet. Heard Ld. Advocate Mr. Nilesh Pandey for the applicants/accused (Bail Application Nos.758/2021, 759/2021 & 760/2021), Ld. Advocate Mr. Ajay Tripathi for the applicant/accused (Bail Application No.770/2021), Ld Advocate Mr. Khalid Azmi for the applicants/accused (Bail Application No.771/2021), Ld. Advocate Mr. Abhishek Gupta for the Applicants/Accused (Bail Application Nos.784/2021 & 785/2021) and Ld. Addl.P.P. Mr. Savle along with API Mr. Mahesh Patil of Sahar Police Station, Mumbai for the State.

3. In short, submissions of Ld. Advocate for the applicants/accused if considered together, are that applicants/accused, informant Shubham and injured Puneet are residents of the same local area. Their age group is also the same. However, FIR shows a highly motivated story concocted just to falsely implicate the applicant/accused in a criminal case. There is a delay of about three hours in lodging the FIR.

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There is absence of grievous injury to any of the injured persons. There is no evidence on record to attract section 307 of IPC. Rather, initially Section 326 of IPC was applied, but on the next day Section 307 IPC was added. This shows that it is an intentional act of the informant by making hands in gloves with the Investigating machinery. Statements of witnesses are recorded after about 24 hours, even though witnesses were available immediately. Recovery of the weapons used in the offence were not immediate but after a considerable period of the arrest of the respective applicants/accused. There were no blood stains on those weapons and even on the clothes of the applicants/accused. Consequently, the recovery of the weapons at the instance of the respective applicants/accused is doubtful. Even otherwise, the applicants/accused are arrested long back. They are sufficiently investigated and thereafter, a charge-sheet is filed. Name of applicant/accused Noman Riyazuddin Shaikh is not mentioned in the FIR. In aforesaid circumstances, bail is the rule and jail is the exception. Consequently, applicants/accused are proper to be released on bail. They are residents of Mumbai and can be available for the trial. There are no criminal antecedents against them. They are ready to abide with terms and conditions of the bail. On these grounds, Ld. Advocates for the respective applicants/accused prayed to release applicants/accused on bail.

4. *Per contra*, Ld. APP for the State and API Mr. Mahesh Patil of Sahar Police Station submitted that though initially crime was registered under section 326 of IPC, on next day, the medical papers of the injured person were made available. The Medical Certificate was seen and only

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thereafter, section 307 of IPC was added. There were 13-14 assailants in the offence. They had applied various dangerous weapons to cause assault on Puneet Choubey and tried to commit his murder. They even had shown the weapons to the public in general and tried to create terror in the area. There is CCTV footage of the incident. In such circumstances, even though the names of some of the applicants/accused are not in the FIR, still their participation in the offence can be gathered. Even though, charge-sheet is filed, yet some accused are wanted, and therefore, investigation is incomplete. In such circumstances, it is just and proper to reject the bail applications. There are no more submissions.

5. This Court minutely went through the charge-sheet. At the inception, it is found from the FIR of Shubham that a quarrel had started between Puneet Choubey and Rehan Shaikh in Gym. It was because Puneet Choubey had removed his shirt during gym and was taking his selfie. Rehan had warned him not to remove the shirt in the gym as Rehan's lady relative was residing near the gym. Then Rehan and Imtiyaz had beaten Puneet and Puneet had beating marks on his back. Thereafter, as per informant Shubham Choubey, on next day, when Puneet Choubey and Sudhanshu Choubey were talking at Chimatpada, Marol Naka, Andheri (E), Mumbai, applicant/accused Imtiyaz came there on motorcycle and threatened Puneet Choubey to show him consequences. Again applicant/accused Imtiyaz and his maternal uncle Mohd. Asif Shaikh came there and told Puneet Choubey that they would settle the case by going home but an informant who had come there in between, told them to have talk of settlement at said place itself where they were gathered and

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standing. FIR shows that thereafter, some three motorcycles, having two riders on each and some 3-4 persons came there by an auto-rickshaw with wooden bamboo sticks, cricket bat, chopper, motorcycle chain and motorcycle kick. Thereafter, applicant/accused Osman started abusing Puneet and others and then all applicants/accused started beating the informant Shubham and Puneet Choubey. FIR describes applicants/accused's role played in the offence. Not only this, but there are 5 to 6 eye witnesses of this incident. FIR, supplementary statement of the informant Shubham and the statements of other eyewitnesses show that applicant/accused Mohd. Asif Shaikh had caught Puneet, applicant/accused Imtiyaz hit at the head of Puneet by a cricket bat so aggressively that the cricket bat was broken in two pieces and Puneet fell down. Then Rehan attacked Puneet with a chopper at his head causing serious injury to his head. Chopper is seized by the police which is blood stained. Rafik Shaikh was beating Puneet by hands and then by wooden bamboo when he fell down in injured condition. Not only this, but Shahzad Ahmed also attacked by a cricket bat on the head of Puneet when he was fallen down in injured condition. When Sudhanshu, Shubham and other eyewitnesses were trying to relieve Puneet, Wasim Shaikh beat Sudhanshu by motorcycle chain and Arbaaz Mukadam attacked by iron kick of the motorcycle at Shubham. Arif had abused and beaten informant and other witnesses by hands while Noman Shaikh had beaten informant and Sudhanshu by wooden bamboo stick.

6. Injury Certificate of the Holy Spirit Hospital which was issued on next date of incidence shows that Puneet had suffered following injuries:

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- [1] CLW (4x2x2 cm) over the occipital region-sutured already.
- [2] 0.5x0.5cm abrasions on neck and right side upper back.
- [3] Swelling and tenderness over the left side of the neck.
- [4] Bruise and abrasion on face, neck and chest.
- [5] Epistaxis present.
- [6] Swelling and tenderness over dorsolumbar region with 3x6 cm bruise and abrasion.

Relying on it, Ld. Advocate for the applicants/accused submitted that there is no serious injury to Puneet. However, the same certificate further shows that CT Scan of brain with face of Puneet was done. It was suggestive of right temporal bone fracture with underlying EDH and contusion in right frontal lobe. He was admitted in the ICU under CMO, Neurosurgeon and was treated.

7. The medical papers of Shubham also show the history of assault by some 15-20 persons at Chimatpada, Andheri(E), Mumbai and he had suffered [a] abrasion on left scapullary area [12x5 cm] veddish; [b] abrasion on left forearm [6x1 cm] with bleeding; [c] he had contusion lacerated wound with blood and swelling over left shoulder and back region; [d] he had contusion [4x3x0.5cm] over back of chest on left scapular region; [e] he had contusion [2x2x0.5cm] over back of left shoulder; [f] he had pain at right clavicular area, blurs trauma to right shoulder; [g] abrasion on right face [1x1 cm] with bleeding.

8. Medical papers also show injuries with Puneet. However, those are already covered with the certificate of Holy Spirit Hospital. It

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appears that these three persons were severely beaten by applicants/accused. Puneet suffered a fracture injury to his brain and was admitted in the ICU and hospital for about six days. Though he was discharged thereafter, that does not lessen the effect of the injuries caused to him. Thus, it can be gathered that in said attack, Puneet had suffered grievous injuries at his head/ brain and it was a fractured injury which could have caused his death. This attracts Section 307 r/w. 149 of IPC for which the punishment prescribed for is life imprisonment. It shows the gravity of the offence and severity of punishment prescribed.

9. Ld. Advocate for the applicants/accused submitted that the history given by informant Shubham in the medical papers shows that the accused were unknown to him. It is not completely, though partially true. Same is written in the history given by Shubham but Puneet clearly mentioned that those were known and unknown persons. This shows that he was knowing some of the assailants. Therefore, this submission would be of little help to the applicants/accused.

10. Coming to further things, those are the recovery of respective weapons from the respective applicants/accused by their memorandum statements and recovery panchanamas alike motorcycle chain was seized at the instance of Wasim; iron kick of motorcycle was seized from Arbaaz; cricket bat was seized at the instance of Imtiyaz; Chopper and wooden bamboo were seized from Rehan and Rafik; wooden bat was seized from Shahzad and bamboo stick was seized from Noman. Thus, there is ample material against applicants/accused in this case.

11. After above discussion, Court prefers to observe following things.

12. First, the gym was not of Rehan, nor he claimed the same. Therefore, it was not for Rehan to dictate how Puneet would exercise, whether with shirt or without shirt. That was the total outlook of Puneet; it was his liberty to take his selfie without shirt and unless prohibited by law, it could not have been curtailed; therefore such dictation on the part of Rehan was in fact, threatening Puneet by Rehan and even then by Imtiyaz. Not only this, but after such an incident, neither Puneet nor his family members had asked for settlement, but those were Rehan, Asif and Imtiyaz who were requiring a meeting for settlement at their house. This shows a clear act of threatening and pressurizing Puneet; Thirdly, when Shubham, at the insistence of Asif told to take the meeting on the said spot, then only applicants/accused about 10 in numbers came at a time by three motorcycle or two auto rickshaws, that too, with the multiple weapons as mentioned above and attacked Puneet. FIR never shows what they were saying in said meeting nor applicants/accused said what was their contention in said meeting. Rather, FIR shows that the Osman started abusing Puneet and then the applicants/ accused caused assault on thm and principally on Puneet by multiple weapons and ultimately attacked on his head causing fracture of his brain. This shows that the offence was pre-planned, premeditated, and committed with a common object to kill him. Nature of his injury show that it was sheer and sure attempt to commit his murder. None of the applicants/accused say that Puneet was the assailant

or had called for the meeting. Thus, it was one sided attack on Puneet by applicants/accused. Similarly, coming on the spot with multiple weapons and beating Puneet was *prima-facie* but clearly an act for creating terror in the area which is improper. All accused had come together and therefore, their common object can be gathered. Thus, it is a clear case of an attempt to murder attracting section 307 of IPC. In such circumstances, submission of the learned advocates for the applicants/accused that this offence is only punishable under section 326 of IPC but it is falsely converted into Section 307 of IPC is without merits if the fracture to the head of Puneet is looked into.

13. Further, the act of Rehan of moving chopper in the air and threatening the public *prima-facie* shows that applicants/accused were creating terror in the area. This is serious and affecting the public in general. If it is tolerated, the public will not have support even of the Government machinery. Not only this, but it must be noted that applicants/accused, injured Puneet and witnesses are residents of the same or nearby area. In aforesaid circumstances, when the applicants/accused apparently appear to have created terror in the area by severely attacking Puneet, their release on bail would also create the same effect in the area and even the witnesses would prefer to come to depose against them. Otherwise, the applicants/accused may again form unlawful assembly, make riot with weapons with an object of creating terror in the area cannot be ruled out, which is not expected in the peaceful and civilized society. Considering all these facts and possibility of threatening and tampering with the witnesses and destroying the prosecution evidence, this

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Court feels that applicants/accused are not fit to be considered for bail.
Hence, following order:

ORDER

Criminal Bail Applications Nos.758/2021, 759/2021, 760/2021, 770/2021, 771/2021, 784/2021 and 785/2021 stand rejected.

(Dictated and pronounced in open Court)

One print of this common order be taken and kept in Criminal Bail Application No.758/2021 and photocopies of the same be kept in other Criminal Bail Applications Nos. 759/2021, 760/2021, 770/2021, 771/2021, 784/2021 and 785/2021.

Date:25.6.2021

**(D.D.KHOCHE)
THE ADDL.SESIONS JUDGE
CITY CIVIL & SESSIONS COURT,
BORIVALI DIVISION, DINDOSHI**

Dictated on	: 25.6.2021
Transcribed on	: 28.6.2021
Checked & corrected on	: 28.6.2021
Signed on	: 28.6.2021
Sent to Dept. on	:

COMMON ORDER

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“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED ORDER”

29.6.2021 AT 9.59 A.M.

MRS.M.S.PENDKHALKAR

Name of the Judge (With Court Room No.)	HHJ D.D.KHOCHE (Court Room No.13)
Date of Pronouncement of ORDER	25.6.2021
ORDER signed by P.O. on	28.6.2021
ORDER uploaded on	29.6.2021