8. When the mobile phone was allegedly snatched from Vikas Sharma (PW-1), he would have seen the accused only for few seconds. It is doubtful whether he would have been in a position to identify the appellant-accused. Having regard to the passage of time between the occurrence and the identification of the accused-appellant for the first time in the court by Vikas Sharma (PW-1) becomes highly doubtful. This is more so, when the said mobile phone was recovered only at the behest of the disclosure statement of the co-accused, Javed. The benefit of doubt has to be given to the accused.

9. In our considered view, the prosecution has not established the guilt of the appellant beyond reasonable doubt. Accordingly, the appeal is allowed and the impugned order is set aside. The appellant is acquitted of all the charges under Section 379-A I.P.C. and is ordered to be set at liberty forthwith unless his presence is required in connection with any other case.

***Result*:-** Appeal allowed.

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**ABC 2019 (I) 247 SC**
**ACQUITTAL & BAIL CASES**

## SUPREME COURT OF INDIA

(A.M. Khanwilkar & Ajay Rastogi, JJ.)
Criminal Appeal No. 859/2018
(From Gujarat High Court)
Decided On 22 January, 2019

***KISHAN KHUBCHAND KORANI & ANR.*** ***- Appellant(s).***

***Versus***

***STATE OF GUJARAT & ANR.*** ***- Respondent(s).***

***Law Covered*:-** ***(A) Code of Criminal Procedure, 1973 — Section 439 — Regular bail — Acquittal by trial Court — on the ground that the accused was named by only two police officials — His name was not mentioned in the FIR — No identification parade — reversal by High Court — Held, the approach of the High court is debatable— the applicant was on bail during the trial — convicted only for offence punishable maximum with ten years —nothing on record to indicate that the applicant had jumped the conditions of bail— applicant is undergoing HIV treatment— Bail granted—Indian Penal Code, 1860 — Section 436.***

March 2019

***(B) I.A. No. 7679 OF 2019 in Criminal Appeal No. 1573 of 2018***

***Code of Criminal Procedure, 1973 — Section 439 — Interim bail — on the ground of daughter's marriage —the factual position stated in the application was found to be correct by the local police — applicant was granted bail during the trial — nothing on record to show that he had misused or jumped any bail condition at that stage — interim bail — granted.***

***(C) Crl. Appeal No. 1214-1215 of 2018***

***Code of Criminal Procedure, 1973 — Section 439 — Regular bail — Acquittal by trial Court —reversal by High Court — on the ground that — even in absence of any specific role attributed presence established— member of the unlawful assembly — Held, prima facie approach of high Court doubtful— especially when the witnesses are police officials and no Identification Parade of the applicant — Identification in Court — Held, the identification cannot take the matter any further, unless they had known him personally in the past— Moreover, the presence of applicant is stated to be in the group of around fifteen thousand persons gathered at the scene of offence— Bail granted.***

***(D) Crl. Appeal No. 1573 of 2018***

***Code of Criminal Procedure, 1973 — Section 439 — Regular bail — Appellant had been convicted for offence punishable with 10 years maximum sentence period — already undergone more than 5 years of actual imprisonment — hearing of the appeal is not likely to take place in the immediate near future— Bail granted.***

***Counsel:-*** ***For Appellant(s):*** *Mr. Nikhil Goel, Ms. Naveen Goel, Mr. Ashutosh Ghade, Mr. S.B. Upadhyay, Mr. Pawan Upadhyay, Ms. Anisha Upadhyay, Mr. Nishant Kumar, Ms. Vanshika Gupta, Ms. Sharmila Upadhyay, Mr. R. Basant, Ms. Archana Pathak Dave, Mr. Santosh Kumar, Mr. praneet Pranav, Mr. Sunil Mehta, Mr. Ashwin Kumar D.S., Ms. Surbhi Mehta, Mr. U.R. Lalit, Mr. M. Purushendra Kaurav, Ms. Rashmi Singhania, Mr. Gopal Jha, Mr. Vinay Navre, Mr. Praneet Pranav, Mr. Santosh Kumar, Mr. Ayush, Mr. Amit Kumar Pathak, Mr. Bhakti Vardhan Singh, Advs.*

***For Respondent(s):*** *Mr. Tushar Mehta, Ms. Hemantika Wahi, Mr. R.C. Kodekar, Mr. Nachiket Kodekar, Ms. Vishakha, Ms. Aparna Bhat, Ms. Tipoo Ningombam, Advs.*

## *ORDER*

**CRLMP NO. 104563 OF 2018 in CRIMINAL APPEAL NOs. 975-976 OF 2018**

Appeals Admitted. To be heard alongwith Crl. A. No. 859 of 2018.

This bail application is filed by accused No.3 namely Umeshbhai Surabhai Bharwad. It is not in dispute that after a full fledged trial, the applicant was acquitted by the trial court on the finding that he has been named by only two police officials. His name was not mentioned in the FIR. The police officials named him after a gap of four days from the date of incident claiming to have seen the applicant in a group of around 15,000 persons gathered at the scene of offence. No identification parade was conducted in respect of this applicant. The High Court has reversed the acquittal only on the basis of evidence of two police witnesses. *Prima facie*, we find that the approach of the High court is debatable.

In addition, we find that the applicant was on bail during the trial and has already undergone sentence of around 9½ months and has been convicted only for offence punishable maximum with ten years under Section 436 of the Indian Penal Code, 1860 (IPC). Further, there is nothing on record to indicate that the applicant had jumped the conditions of bail.

It is also seen from the record that the applicant is undergoing HIV treatment.

Taking overall view of the matter, application for bail is allowed. Applicant is ordered to be released on bail during the pendency of the appeal on such terms and conditions as may be imposed by the trial court.

As a squeal to the above, I.A. Nos. 174211 of 2018 and 2670 of 2019 – applications for permission to bring on record subsequent events and for additional documents are also allowed.

**I.A. NO. 7679 OF 2019 IN CRIMINAL APPEAL NO. 1573 OF 2018**

Appeal Admitted.

This bail application is filed by accused No.21, namely Prakashbhai Sureshbhai Rathod (Chhara). He prays for grant of interim bail on the ground that his daughter is getting married on 10th February, 2019. An advance copy of this application was served

on the standing counsel for the State of Gujarat, who has taken instructions and submits that the factual position stated in the application has been found to be correct by the local police.

It is also not in dispute that the applicant was granted bail during the trial. There is nothing on record to show that he had misused or jumped any bail condition at that stage.

Taking overall view of the matter, we accede to the request of the applicant and grant him interim bail for the period between 28th January, 2019 to 15th February, 2019 on such terms and conditions as may be imposed by the trial court. The applicant must surrender on or before 15th February, 2019.

We make it clear that the applicant shall not be permitted to claim equity on the basis of this indulgence, while considering his regular bail application.

This application for bail stands disposed of.

**Crl. Appeal No. 1214-1215 of 2018**

Appeal admitted.

Heard Mr. S.B. Upadhayay, Senior Advocate and Mr. Tushar Mehta, Solicitor General.

This bail application is filed by accused No. 24 – Rajkumar @ Raju. The High Court has reversed the acquittal order passed by the Trial Court on the finding that the witnesses have established the presence of the applicant at the scene of offence. The High Court further observed that even in absence of any specific role attributed to the applicant his presence being established, the charge of being a member of the unlawful assembly must hold good. Prima facie, we find this approach to be doubtful, especially when the witnesses relied upon by the prosecution are police officials and no Identification Parade of this applicant was conducted during the investigation by the Police. Identifying the applicant in court by police officials (witnesses) cannot take the matter any further, unless they had known him personally in the past. Moreover, the presence of applicant is stated to be in the group of around fifteen thousand persons gathered at the scene of offence.

Accordingly, we are inclined to grant bail to this applicant. The application is allowed. The applicant is ordered to be released on

bail to the satisfaction of the Trial Court and on such terms and conditions as may be imposed by the Trial Court.

**Crl. Appeal No. 1275-1276 of 2018**

Appeal admitted.

Heard Mr. U.R.Lalit, Mr. Purushendra Kaurav, Senior Advocates and Mr. Tushar Mehta, Solicitor General.

This bail application is filed by accused No. 19 – Padmendrasinh Jaswantsinh Rajput. The High Court has reversed the acquittal order passed by the Trial Court on the finding that the witnesses have established the presence of the applicant at the scene of offence. The High Court further observed that even in absence of any specific role attributed to the applicant his presence being established, the charge of being a member of the unlawful assembly must hold good. Prima facie, we find this approach to be doubtful, especially when the witnesses relied upon by the prosecution are police officials and no Identification Parade of this applicant was conducted during the investigation by the Police. Identifying the applicant in court by police officials (witnesses) cannot take the matter any further, unless they had known him personally in the past. Moreover, the presence of applicant is stated to be in the group of around fifteen thousand persons gathered at the scene of offence.

Accordingly, we are inclined to grant bail to this applicant. The application is allowed. The applicant is ordered to be released on bail to the satisfaction of the Trial Court and on such terms and conditions as may be imposed by the Trial Court.

**Crl. Appeal No. 1573 of 2018**

Appeal admitted.

Since the applicant has already been granted interim bail till 15.02.2019, list the matter on 20.02.2019 for consideration of prayer for bail.

**SLP (Crl. ) No. 8726 of 2018**

Leave granted.

Heard counsel for the parties.

Admittedly, the applicant namely, Harshad @ Mungda Jila Govind Chhara Parmar (accused No.39) has been convicted for offence punishable with 10 years maximum sentence period and he has already undergone more than 5 years of actual imprisonment

coupled with the fact that the hearing of the appeal is not likely to take place in the immediate near future.

Accordingly, applicant is ordered to be released on bail to the satisfaction of the Trial Court and on such terms and conditions as may be imposed by the Trial Court.

**SLP (Crl.) No. 8835 of 2018**

Leave granted.

List the matter on 31.01.2019 for consideration of prayer for bail.

In the meantime, learned counsel for the State to take instructions on the factual averment made in the application about health condition of the applicant.

***Result:-*** Applications disposed of.

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**ABC 2019 (I) 252 SC**
**ACQUITTAL & BAIL CASES**

## SUPREME COURT OF INDIA

(N.V. Ramana & Mohan M. Shantanagoudar, JJ.)

Criminal Appeal No. 151 of 2019
(@ Special Leave Petition (Criminal) No. 9054 of 2018)
(From Karnataka High Court)
Decided On 25 January, 2019

***H. RAMANJINI & ORS.*** ***- Appellant(s).***

***Versus***

***STATE OF KARNATAKA & ANR.*** ***- Respondent(s).***

***Law Covered:-*** ***(A) Indian Penal Code, 1860 — Sections 324 & 326 r/w 34 — Compromise between parties — Neigbours & already living happily — Counsel for the State has no objection to the compromise — Nature of Injuries — not covered u/s 326 — Compromise accepted — Acquittal. (Para 6 & 7)***

***(B) Indian Penal Code, 1860 — Sections 324, 326 & 320 — Nature of Injuries —Medical evidence — regarding grievous injuries — not on the vital portions of the body — lacerated wounds over the legs — No fracture or permanent privation of the sight or of the hearing etc — Held, though the doctor deposed that both these injuries are grievous in nature, in our opinion, both the injuries will not fall within any of the eight categories of Sec. 320 of the IPC —***