

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.41 OF 2018**

Ashish Balasaheb Shinde & Anr. Applicants

Vs.

The State of Maharashtra Respondent

Mr. Amey Deshpande for the Applicants.
Mr. N.B. Patil, APP for the State.

Mr. B.R. Bairagi, ASI, Ozar Police Station, Taluka Niphad, Dist. Nashik.

***Coram : Smt. Sadhana S. Jadhav, J.
Date : 10th January, 2018***

P.C.:

1 Heard the learned counsel for the applicants and the learned APP.

2 This is an application under Section 439 Code of Criminal Procedure. The applicants herein are arrested on 18th December 2017 in Crime No.161 of 2017, registered at Ozar Police Station on 17th December 2017 for the offences punishable under Sections 143, 147, 148, 149, 326, 341, 427, 504, 506, 507 and 114 Indian Penal Code.

3 It is the case of the prosecution that on 17th December 2017, one Yogesh Himmatrao Chaudhari lodged a report at the Police Station alleging therein that he is a proprietor of Hotel Priya Garden. That on 15th December 2017 at about 8.30 pm., owner of Krushidhan Hotel, Bhaskar Shinde had called him on his cellphone and threatened and abused him. There was also a threat that the first informant would be assaulted. On 16th December 2017, at about midnight, the complainant was returning home in his car, at that time, 2 two-wheelers had intercepted his car. He was forced to alight from the car by Ashutosh Shinde and was assaulted with an iron rod on his head. That Ashutosh Shinde was accompanied by 5-6 persons, who had also assaulted the complainant. In the said scuffle, he had lost Rs.13,400/-. On the basis of the said report, Crime No. 161 of 2017 was registered. It had transpired that the accused was incorrectly named and in fact his name is Ashish, who happens to be a nephew of Bhaskar Shinde. The applicant no.2 is the brother of applicant no.1.

4 Learned counsel for the applicant submits that it could be a case of mistaken identity. That the first informant had sustained minor injuries. The discharge summary would show that the first informant had sustained multiple abrasion all over the body and head injury with soft tissue swelling scalp on the right side. It is

submitted that prima facie, it cannot be said that the applicants have committed an offence punishable under Section 326 Indian Penal Code and at the most, it may be an offence under Section 324 Indian Penal Code.

5 Upon perusal of the papers of investigation and upon hearing the respective counsel, it can be said that the applicant has made out a case for grant of bail and further incarceration would be unwarranted. However, it is made clear that the observations made hereinabove are restricted to the application under Section 439 Code of Criminal Procedure and shall not be taken into consideration for the purpose of quashing of F.I.R., discharge application or at the time of trial. Hence, the order :

ORDER

- 1 The application is allowed.
- 2 The applicants be enlarged on bail on furnishing P.R. bonds in the sum of Rs.50,000/- each with one or more solvent sureties in the like amount.
- 3 The applicants shall not enter into the jurisdiction of Ozar Police Station till filing of the charge-sheet.

(Smt. Sadhana S. Jadhav, J)