

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

CRIMINAL APPLICATION NO. 62 OF 2021

Aatique Salimuddin Shaikh
Aged: 46 years, Occ; Business
R/o Baiganiwadi Shivaji Nagar,
Govandi.

...**APPLICANT**

Versus

1. The State of Maharashtra
Through the Police Station Officer
Shivaji Nagar Police Station,
Dist. Aurangabad.

2. Abdul Bari Shafi Ansari
Age: 46 years, Occ: Business,
R/o: Baiganwadi, Gowandi,
Mumbai-43

...**RESPONDENTS**

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Mr. Mohsin M Khan with Mr. Babu Singh for the applicant.

Ms. A.S. Pai, APP for resp-State.

Mr. J.K. Agarwal with Ms. Aspha Ashrafi with Mr. F.A. Shaikh for
respondent No. 2.

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**CORAM : S. S. SHINDE &
MANISH PITALE, JJ.**

DATE : 18th FEBRUARY, 2021.

JUDGMENT [PER S.S. SHINDE, J.]:

1. The applicant has filed this application with following
substantive prayer:-

A. Application may kindly be allowed,
record in respect of F.I.R. bearing Crime
No. 293/2012 registered at Shivaji nagar
Police Station for the offence punishable
U/sec, 307, 141 to 149, 342, 324, 323, of
IPC and Sec. 4 and 25 of Arms Act is
required to be quashed and set aside.

2. It is alleged that on 14.09.2012 at 12.30 a.m. at Road No. 8, Plot No. 1, near public toilet at Baiganwadi, Govandi, all the accused alongwith absconded accused namely Atiq Shaikh i.e. the applicant herein, formed a unlawful assembly and assaulted the father of the informant namely Abdulbari Shafi Ansari with chopper on his head. The accused also assaulted with hockey stick on his leg and back and by kicks and fists. They also threatened him to kill him. The FIR was lodged by Sabiha Abdulbari Ansari, daughter of injured on the same day at 2.30 a.m. Accordingly, at Shivaji Nagar Police Station, crime bearing No. 293 of 2013 is registered. Initially, police arrested accused No. 1, 2 and 3 and filed the chargesheet bearing S.C. No. 478 of 2014. Later on, separate chargesheet is filed against accused No. 4 which is separately registered as S.C. No. 35 of 2015. In both these chargesheets the present applicant is shown as absconding accused.

3. It is submitted by the learned counsel for the applicant that the applicant has no concern with the alleged offence and he has been falsely implicated. He has further submitted that the trial against the other co-accused has already been completed and the Sessions Court has acquitted the co-accused. He therefore submitted that the impugned FIR against the applicant deserves to be quashed.

4. Learned APP appearing for Respondent-State submitted that the present applicant is absconding since beginning and he has not faced the trial. The alleged offence registered against the present applicant is of serious nature. The applicant is yet to be arrested and no chargesheet is filed against him. She therefore submitted that the application may be dismissed.

5. Heard the learned counsel appearing for the applicant, learned APP appearing for Respondent-State and learned counsel for Respondent No. 2. With their able assistance we have carefully perused the allegations in the FIR and we are of the considered view that, the ingredients of alleged offence are attracted and consequently, alleged offences have been disclosed against the applicant. It is stated in the FIR that at the relevant time of incident, the present applicant was holding chopper and another accused was holding hockey stick. It appears that accused attempted to kill the father of the informant. The offences punishable under Section 307, 141 to 149, 342, 324, 323, of IPC and Sec. 4 and 25 of Arms Act are very serious in nature.

6. It appears that the trial proceeded against four co-accused, however, the applicant absconded and did not subject himself for the investigation and consequently, no chargesheet

could be filed against the applicant. The status of the applicant was shown as absconding. The impugned FIR had been registered in the year 2012 and this application is filed in the year 2021. The law should lean in favour of law abiding citizen and not a person like the applicant who has absconded from the legal process. In that view of the matter, on merits as well as on conduct of the applicant, we are not inclined to exercise our discretion in favour of the applicant. For the reasons aforestated, the application stands rejected.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)