

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2007 OF 2021**

Azharuddin Shafi Shaikh .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr. Abhijit Patil i/b Mr. Dhananjay B. Thoke for the Applicant.

Mr. S.H. Yadav, A.P.P. for the State.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 11TH AUGUST, 2021.

P.C:-

1. The Applicant is praying for his release on regular bail in connection with Crime No.155 of 2019 dated 03/07/2019 registered with the Nandgaon Police Station, Dist. Nashik, thereby invoking Sections 302, 324, 323, 504, 506 read with Section 34 of the IPC. On completion of investigation, charge-sheet is filed and the case is committed for trial to the learned Additional Sessions Judge, Malegaon bearing Sessions Case No.211 of 2019.

AJN

2. The FIR is lodged by one Shaikh Rihan Shaikh Majid, who reports that he is residing in the neighbourhood of the family of his aunt Noorjaha Shafi Shaikh. The incident took place on 25/06/2019 at 4.00 p.m., when he was seated outside the house. At that time, his aunt started hurling abuses at him and when asked, she appears to have been aggrieved because the goat of the Complainant had nibbled her wheat. While she caught hold of him in his collar, it is alleged that his cousins Gufran Shafi Shaikh, Parvez Shafi Shaikh and Azhar Shafi Shaikh (the Applicant) arrived with wooden sticks in their hands and started assaulting him. At that time, his father Majid Shaikh intervened and it is alleged that Parvez also abused him and Gufran assaulted him by means of a spade with a wooden rod, in his stomach, hands and back thereby injuring him. Shaikh Azhar is alleged to have assaulted by means of wooden stick in the back of his father. Further, Shaikh Parvez Shafi and aunt Noorjaha Shafi Shaikh also assaulted his father by fists and blows and threatened him to be done to death. The fight was resolved by some persons in the neighbourhood and, his father, who sustained injuries in his stomach was taken to the hospital, where he was offered treatment. He breathed his last on 10/07/2019 and four persons were arraigned as accused. The mother of the Applicant – Noorjaha Shafi Shaikh is already released on bail by the Sessions Court.

3. When the postmortem report is perused, it reflects injury to the abdomen in midline extending from epigastric region to umbilical region. The cause of death is opined to be due to splenic rupture and hemoperitoneum. When a query was made whether the injuries were individually sufficient to cause death, the response is that the internal damage mentioned in column No.21 records evidence of therapeutic intervention present in the form of laparotomy wound, which refers to injury Nos.1 to 3 mentioned in column No.17.

4. In the wake of the injury sustained and the consistent version of the witnesses, whose statements are compiled in the charge-sheet, co-accused is assigned the role of assaulting the deceased by means of spade and this injury is attributed to be sufficient to cause death. Though the Applicant is present on the spot and is also one of the assailants, the assault in the stomach is not his act, as it was Gufran, who assaulted the deceased with the blunt side of the spade having a wooden rod. The Applicant is a young boy, aged 21 years and the incident cannot be said to be pre-meditated as it occurred at the spur of the moment as can be seen from the material in the charge-sheet. On the investigation being complete, the incarceration of the Applicant becomes unnecessary since it is not the case of the Applicant that he will flee the course of justice. Hence, the following order:

: ORDER :

- (a) The Applicant – **Azharuddin Shafi Shaikh**, shall be released on bail in C.R. No.155 of 2019 registered with the Nandgaon Police Station, District Nashik, on executing P.R. bond to the extent of Rs.20,000/- and furnishing one or two sureties of the like amount.
- (b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.
- (c) The Applicant shall mark his attendance in the Nandgaon Police Station on first Monday of every month between 10.00 a.m. and 02.00 p.m. for four weeks and, thereafter, as and when required by the Investigating Officer.
5. The Application is disposed of in the aforestated terms.
6. All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

[SMT. BHARATI DANGRE, J.]