

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

CRIMINAL BAIL APPLICATION NO. 2836 OF 2021

Ismail Mohammed Sharif	..Applicant
V/s.	
The State of Maharashtra	..Respondent

Mr. N.R. Bubna for the Applicant.
Mr. S.R. Agarkar, APP for the Respondent/State.

CORAM : C.V. BHADANG, J.

**DATE : 4 JANUARY 2022
(Through Video Conferencing)**

PC.

1. The Applicant (accused No.5) has been chargesheeted along with 5 others for the offence punishable under Section 307, 143, 147, 148, 149, 504 and 506 of IPC and Section 37(1) and 135 of the Maharashtra Police Act.

2. I have heard the learned counsel for the Applicant and the learned APP. Perused record.

3. The prosecution case is that on 27.09.2020 at about 11.30 p.m, the injured Shaikh Khalid Shaikh Samad had gone for taking dinner to Ismail Restaurant on Salim Chacha Road at Malegaon. It

is said that the present Applicant went there and accosted the injured as to why he has filed an appeal against an order of acquittal. Saying so, the Applicant made an attempt to assault the injured with a weapon. The injured managed to escape and informed about the incident to his brother Shahid Ahmed, who is the complainant in this case. Thereupon, the injured along with the complainant Shahid Ahmed and his wife Nafisa went to the Police Station and lodged a report against the Applicant. As the injured had not taken dinner on account of this incident, he again went to Ismail Restaurant at about 00.30 hrs on 27.09.2020. It is said that at that time, the present Applicant along with co-accused went there and accosted the injured why he has lodged the complaint against the present Applicant and assaulted him with iron pipe and wooden rod. As a crowd gathered there and a police van arrived, the assailants fled from the spot. The injured was taken to the hospital for treatment. It appears that the incident was reported by Shaikh Ahmed, who is the brother of the injured, on the basis of which, an offence was registered under the aforesaid section with Police Station Iyesha Nagar, Malegaon. During the course of investigation, the statement of the injured and other witnesses came to be recorded.

4. The learned counsel for the Applicant stated that there was previous enmity on account of a prosecution of the Applicant, in which the Applicant was acquitted. It is submitted that the injured along with his brother i.e. the complainant are trying to falsely implicate the Applicant and others on account of such enmity. The learned counsel for the Applicant pointed out that there are discrepancies *inter se* between the version given by the prosecution witnesses.

5. The learned APP has submitted that there are eye witnesses to the assault and also the statement of the injured implicating the Applicant.

6. It prima facie appears that there was a previous prosecution in which the accused were acquitted against which an appeal was filed by the injured. According to the prosecution, annoyed by this, the Applicant went and accosted the injured Shaikh Khalid in the night at about 11.30 p.m. on 26.09.2020 which incident was reported to the police. It appears that in the second incident which followed after a short time i.e. after mid night, the injured was assaulted in a public place by the Applicant and others. Prima facie there are statements of the complainant as well as the injured and other

witnesses showing involvement of the present applicant in the offence. The Applicant was arrested on 21.01.2021 and at the time of filing of the chargesheet, was shown to be absconding. Thus, possibility of misuse of the liberty, if granted, cannot be ruled out.

7. Considering this, I do not find that a case for grant of bail is made out.

8. The Criminal Application is accordingly dismissed.

(C.V. BHADANG, J.)