

Digitally signed by  
HEMANT  
CHANDERSEN SHIV  
Date: 2025.07.31  
17:44:14 +0300

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

**INTERIM APPLICATION NO.2578 OF 2024  
IN  
CRIMINAL APPEAL NO.246 OF 2020**

|                              |               |
|------------------------------|---------------|
| Jamir Mohammadulla Shafiulla |               |
| Sharif @ Jammo               | ...Applicant  |
| <i>Versus</i>                |               |
| The State of Maharashtra     | ...Respondent |

Mr. Jagdish G. Shetty with Mohd. Ayus Shaikh for the Applicant.

Mr. Vinit A. Kulkarni APP for the Respondent-State.

**CORAM : SUMAN SHYAM &  
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 24<sup>th</sup> JULY, 2025**

**PRONOUNCED ON : 31<sup>st</sup> JULY, 2025**

**ORDER : (PER : SHYAM C. CHANDAK, J.)**

1. This is an Application for bail pending Appeal preferred by the Applicant who was the Original Accused No.2 in Sessions Case No.345 of 2014, before the Additional Sessions Judge, Mumbai. At the conclusion of the trial, the learned Judge *vide* his Judgment and Order dated 27<sup>th</sup> March 2019 convicted and sentenced the Accused No.1-Mohd. Umar Yusuf Shaikh @ Salman; Accused No.2-Jamir Mohammadulla Shafiulla Sharif @ Jammo; Accused No.3-Asif Sayyed Abdul Kadar Sayyed @ Raju; and Accused No.6-Mohd. Shafique Mohd. Rafiq Khan @ Shafiq Patel U/Sections. 302, 452 506 r/w 34 of the Indian Penal Code. The maximum sentence imposed was

to suffer Imprisonment for life, extending the benefit of set off. However, the said Accused Nos.1 to 3 and 6 were acquitted for commission of the offence punishable u/s.143, 144, 147, 148, 323 r/w 149, 504 r/w 149 of the Indian Penal Code. The Accused Nos.4 and 5 were acquitted of all the charges.

2. Heard Mr.Shetty, the learned Advocate for the Applicant and Mr.Kulkarni, the learned APP for the Respondent-State.

3. In short, the prosecution case is that on the relevant date, at time and place original Accused No.1-Mohd. Umar Yusuf Shaikh, the Applicant along with Original Accused Nos.3 to 6 forcibly entered the house of the informant and dragged his brother Azgar outside the house. Accused No.6 gagged the mouth of Azgar and gave him blow with shaving blade (*vastara*) on his stomach and waist. Accused No.3-Asif gave a blow of knife on the chest of Azgar. Accused No.1 inflicted a blow with a shaving blade on calf of Azgar, and the Applicant assaulted Azgar by means of a baseball bat.

4. During the course of investigation, the police arrested the accused persons, recovered from them the weapons used in the offence etc. and on completion of the investigation, the police submitted the charge-sheet against all the accused. During trial, the prosecution examined 14 witnesses. Accepting their testimonies, the trial Court convicted and sentenced the accused Nos.1 to 3 and 6 as stated above. Hence, the Applicant has preferred aforesaid Appeal and sought for bail by this Application.

5. The testimony of P.W.5-Aquib Shaikh is that, just prior to the incident, he saw the assailants armed with weapons. The evidence of the first informant PW1-Asif Pasha, is that on 12/01/2014, after finishing his wiring work at about 6.30 pm, while he was returning home, he came to know that his younger brother-Anis had a quarrel with the Applicant and

Accused No.1, 3 and 6 on account of parking of motorcycle. They had assaulted Anis with hand. When his brother Azgar came to know this fact, he went to question the Applicant and Accused Nos.1, 3 and 6. At that time, the Applicant and Accused Nos.1, 3 and 6 manhandled Azgar. Thereafter, Azgar returned to his house. P.W.1 stated that, at about 7.15 pm, he was seated near one shop. At that time, he saw the Applicant and Accused Nos.1, 3 and 6 coming towards his house. They were armed with sharp weapons viz., shaving blade, baseball bat and knife. Immediately, P.W.1 went to his house. But all the four accused forcibly entered his house and thereafter, dragged Azgar out of house. Two accused persons caught hold of P.W.1. The accused persons assaulted Azgar. Thereafter, Azgar and P.W.1 were taken towards Bismillah store. At that time, Accused No.6 had gagged the mouth of Azgar and assaulted him with shaving blade on his stomach. Accused No.3 assaulted Azgar by means of a knife on his chest. Accused No.1 assaulted Azgar on his leg by means of a knife. The Applicant assaulted Azgar with a baseball bat. Azgar sustained bleeding injuries. The accused persons threatened to kill anyone who intervenes in their quarrel. They further threatened P.W.1 and his family members and then they left.

6. The testimony of P.W.3-Ms.Nilofer Khaizar is consistent with that of P.W.1. The testimony of P.W.4-Mumtaz Shakeel is also on the similar lines.

7. Considering the evidence of the aforesaid witnesses, it appears that the Applicant was present along with the other accused persons when Azgar was dragged out of the house and was assaulted causing fatal injuries to him.

8. Mr. Shetty, the learned Counsel for the Applicant submits that as alleged, the Applicant was present at the time and place of incident and he had a baseball bat. It was alleged that, the applicant assaulted Azgar over head with the baseball bat. However, the medical evidence of P.W.11 –

Dr.Ganesh Dhumal clearly states that there was no head injury to Azgar, and the other injuries on the body of Azgar were not inflicted by baseball bat. This suggests that the Applicant did not intend to cause death of Azgar. He further submits that in the said incident, the Applicant also suffered grievous injury which fact was admitted by the Investigating Officer. However, the said injury was not explained by the prosecution. He submits that the Applicant has been in custody since the date of his arrest and till date, the Applicant has undergone imprisonment of more than 10 years. The Applicant has no criminal antecedents. Therefore, the Applicant deserves to be released on bail.

9. Mr.Kulkarni, the learned A.P.P., on the other hand, submitted that there is sufficient evidence that, the Applicant knew that the co-accused were carrying weapons. However, the Applicant did not separate himself from them nor he prevented the co-accused from assaulting Azgar. As such, this is a clear case of sharing common intention for committing the murder of Azgar by the Applicant along with co-accused persons. He submitted that Azgar had suffered serious injuries on account of the assault by the accused persons. Therefore, the Application be rejected.

10. We have considered these submissions in the light of material on record.

11. Upon careful scrutiny of the evidence, we find that as stated by the witnesses, the Applicant assaulted Azgar over his head with the baseball bat. However, the medical evidence of Dr. Ganesh Dhumal indicates that there was no head injury. The other injuries were not attributed to the baseball bat. The prosecution did not dispute that the applicant had sustained some injury in the said incident. As such, we find merit in the submissions of the learned Counsel for the Applicant.

**12.** The learned A.P.P. did not dispute that the Applicant has been in jail since the date of his arrest. The learned Counsel for the Applicant stated that the Applicant is ready to abide by any condition that is imposed on him for the grant of bail.

**13.** In view of the above, we are inclined to allow the Application and grant bail during pendency of his Appeal.

**14.** It is made clear that our observations made above are solely for the purpose of deciding this bail application. All these aspects will have to be considered finally at the stage of hearing. At this stage, the Applicant has made out a case for grant of bail pending his Appeal.

**15.** Hence, the following Order :-

- (i) During pendency and final disposal of the Criminal Appeal No.246 of 2020, the Applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only), with one or two sureties in the like amount.
- (ii) During the bail period, the Applicant shall be of good behaviour and shall not commit any offence.
- (iii) The Applicant shall attend Meghwadi Police Station between 12 noon to 4.00 pm on the first Monday of every calendar month until further orders.

**16.** Interim Application stands disposed of accordingly.

**SHYAM C. CHANDAK, J.)**

**(SUMAN SHYAM, J.)**