

MHNS070004192022

**Sessions Case No. 43 of 2022.**

State

Vs.

1. Sarfaraz Javeed Shaikh, (Accused No.7)
2. Aatique Ahmed Saeed Ahmed
(Accused No.9).

ORDER BELOW EXH.3

1] This is second application under section 439 of the Code of Criminal Procedure filed by accused in C.R.No.76 of 2021 registered with Ayesha Nagar Police Station, Malegaon under sections 353, 332, 395, 143, 147, 148, 149, 427 of I.P.C., and section 3 of Prevention of Defacement of Property Act 1995 and 37(1)(3) p.u.s.135 of Maharashtra Police Act.

2] The first bail application 648 of 2021 was rejected by court on 18.12.2021. The accused has filed application u/sec. 439 before the Hon'ble High Court for bail. In the meanwhile the police has filed challan. Hence, the bail application was withdrawn with liberty to file fresh bail application. As the police has filed challan, it is a change in circumstance. The accused have contended that they are innocent and not committed offence. The accused are labourer by profession and only earning members of their families and others are dependent upon them. The accused is permanent resident of Malegaon. They are ready to furnish sureties. They are ready to abide the terms and conditions if the bail is granted. The ingredients of the alleged offences are not attracted against the accused. They are not the habitual offenders. They are ready to co-operate investigating machinery. They will not abscond. They will not tamper with the prosecution evidence. There is no direct or indirect iota of evidence to suggest involvement of accused in this crime. The allegations are general in nature. Nothing is seized from the possession of accused. Hence, prayed for bail.

3] The I.O. through Ld. APP Shri. A. N. Pagare for the state resisted the application by filing say at Exh.4. It is contended that the public property has been damaged. Accused No.9 seen in the CCTV Footage. The accused No.7 seen by the witnesses while pelting the stones. They have taken active participation in the crime. The accused have committed robbery. The accused have violated the orders passed by the District Magistrate Nashik and disturbed the peace. If the accused are released on bail they are likely to dispose of the property in the robbery. The accused persons are likely to commit similar kind of offence. If the accused are released on bail they are likely to tamper with the prosecution evidence and witnesses. Charge-sheet is filed in the court. Hence, it is prayed that the application be rejected.

4] Heard both sides at length. Heard advocate K. G. Ansari for the accused. He submitted that the alleged incident was occurred around and in the bus stand premises. He submitted that there are no over act or active role in the alleged offence. It is submitted that in the FIR only name of six persons are mentioned, but they are not arrested. As per statement of the ice cream stall owner Prajapat due to strike of ST employees his shop was closed. Therefore, he submitted that it is not possible that he has kept cash and ice cream other items in the shop. No identification parade is conducted. After two and half months the supplementary statement of Bharat Patil was recorded in which he has taken the name of both accused. He submitted that after filing of charge-sheet this is the first bail application. Filing of charge-sheet is a change of circumstance. There are no criminal antecedents. Nothing recovered from the accused. In the charge-sheet no witness identified the accused. The accused has not committed any over act. In the charge-sheet also the over act is not mentioned. He submitted that the accused are permanent

resident of Malegaon. They are ready to abide the terms and conditions. They are ready to co-operate with the investigating officer. He submitted that on terms and conditions the accused be released on bail.

5] Per contra, Ld. APP submitted that the accused formed an unlawful assembly. Filing of charge-sheet is not change of circumstance. Mob of 400 to 500 persons committed the act. Therefore, it is difficult to specify the act and the role of each of them in the FIR. The CCTV Cameras installed in new ST stand were damaged and stolen besides damaging the public property. It is submitted that the accused No.9 seen in the CCTV footage and accused No.7 is seen by the eye witnesses while pelting the stones. Prima facie there is evidence against both the accused. The accused have taken part in the riot. There are eye witnesses of the incident. If the applicant-accused is released on bail, it is likely that he will tamper with the prosecution evidence. The offence is serious. Hence, it is submitted that considering gravity of the offence application be rejected. I.O. is present. He submitted that mob of around 500 people entered into the bus stand Malegaon and started vandalized shops and public property. When the police tried to stop the mob, they pelted stones on police in which the police persons were injured. The shop was broken, the articles and amount was stolen. Accused Atique is seen in the CCTV Footage. The eye witnesses has named the other accused. Both the accused were present on the spot of riot.

6] Perused the FIR and the papers. After going through the police papers, I find that the present incident was occurred on 12.11.2021 at around 17.30 hours in new ST stand, at Malegaon. The first bail application No. 648/2021 was rejected on merit on 18.12.2021. Thereafter, the charge-sheet has been filed and the case has been committed to this court. Filing of charge-sheet is a change in

circumstance. However, the bail application is to be decided, on the basis of material against the accused, his role in the crime, gravity of the offence. I find that, in the FIR, the details of vandilization of property, robbery has been specifically mentioned. The supplementary statement of the informant, Police Naik Bharat Patil was recorded on 30.01.2022. As per the CCTV Footage and from the statements of witnesses besides the six persons named in the FIR the name of other 15 persons names were revealed. I find that the name of present accused are at Sr. No.1 and 3 in the supplementary statement of Police Naik Bharat Patil. Even in the supplementary statement of Sumit Patil the name of both the accused are at Sr. No.1 and 3. Besides the police person, the IO recorded statement of Ice-cream stall owner Govind Prajapat on 13.11.2021. This witness has stated that during the said riot, water bottle, chock-lets, wafers, cold drinks and other items worth Rs.10,000/-, home theater and cash was stolen. The photographs of ice cream parlour and the damage caused to the public property are filed with the charge-sheet. I find the names of both the accused are figured in the statements of the witnesses. Hence, I find prima facie, sufficient material against both the accused to show their involvement in the offence u/sec. 395, 353, 332 of IPC and in the other offences. Considering gravity of the offence, the role of the accused, I find that the accused are not entitled for regular bail. If the accused are released on bail, the possibility of tampering with the prosecution evidence cannot be ruled out. Therefore, the accused are not entitled for the bail. In the result, following order is passed :

ORDER

The application is rejected.

Date : 15.03.2022

(D. D. Kurulkar)
Additional Sessions Judge, Malegaon.

