

MHNS070004192022

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

State

Vs.

1. Tauseef Khan Noor Khan, (A-11)
2. Aftab Ejaz Beg, (A-12)
3. Arbaz Shaikh Sardar, (A-13)
4. Shakil Ahmed Mohammad Ismail (A-14)
5. Shaikh Gaysuddin Shaikh Safiuddin(A-15)
6. Ateeque Ahmed Jamal Ahmed (A-17)
7. Shaikh Amir Shaikh Jameel(A-19).

**ORDER BELOW EXH.15**

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, 145, 146, 147, 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 51 of 2022 was rejected by court on 23.02.2022. In the meanwhile the police has filed challan. 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 persons are 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. S.K. Sonawane for the State resisted the application by filing say at Exh.17. It is contended that the public property has been damaged. The accused broke open the shop and robbed CCTV cameras, amount. The accused have violated the orders passed by the District Magistrate Nashik and disturbed the peace. Accused Nos.4, 15 and 19 are seen in the CCTV Footage. The accused Nos.11,12,13,14 and 17 seen by the witness P.C. Yogesh Thakur while committing the offence. The accused have committed robbery. 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 A.N. Shaikh for the accused. He submitted that the alleged incident was occurred around and in the bus stand premises. He submitted that accused have not committed over act or active role in the alleged offence. It is submitted that in the FIR only names of six persons are mentioned. In the statement of the ice cream stall owner Prajapat he has named the persons whose name is figured in the FIR and no other persons. In the statements of ST employees, they have not named any of the accused. The accused before the court have not vandalized the properties and vehicles. From the spot of incident nothing incriminating evidence is collected against the accused. There is no recovery from the accused. The name of present accused are not figured in the FIR. As per the prosecution, some of the accused is seen the CCTV Footage but which accused is figured and what act he committed with details are not mentioned by the prosecution in

the reply. As per the prosecution 3 CCTV Footage are recovered during the investigation. In the CCTV Footage in the ST stand area the accused are not seen. The person in whose mobile the incident of riot was recorded. He has not given consent to hand over the said recording to the police. Therefore, the said recording cannot be used as an evidence against the accused. After about 1 month, in the supplementary statement of the witnesses the names of all accused are mentioned stereo type without specifying their role or the act in the crime. He drew my attention to the statement of police constable Yogesh Thakur. He submitted that his statement was recorded in CR No.75 of 2021 registered with Malegaon City Police Station. As per the statement of this witness he has seen the persons name in his statement going towards ST stand. This witness further says that latter on he came to know about the incident of robbery. Therefore, according to him this witness is not an eye witness of the incident took place in the ST stand, Malegaon. He submitted that only 4 police persons are injured. All the injury certificates are shown the injuries are simple in nature. He submitted that if at all as alleged the mis credence who committed the robbery in the ST stand area definitely those persons will not stop there. It is submitted that passers by and the innocence persons were arrested and hence there is no recovery from the accused. No identification parade is conducted. There are no criminal antecedents against the accused. In the last five months the police has not arrested anyone else regarding the present crime. Except the ice cream shop owner all other witnesses are government servant. Hence, no question tampering will arise. Filing of charge-sheet is a change of circumstance. There are no criminal antecedents. There is no prima facie incriminating evidence against the accused. He submitted that the Ramzan has been started. Considering the festival and the accused are in jail since last 4 months. 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. It is submitted that the accused No.15,19 are seen in the CCTV footage. 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 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 Nos.17 and 19 are seen in the CCTV Footage. The eye witnesses police constable Yogesh Thakur has named the accused before this court while going towards the ST Stand.

6] Perused the FIR and the charge-sheet. After going through the charge-sheet, 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. 51/2022 was rejected on merit on 23.02.2022. Charge-sheet has been filed in the court of ACJM on 10.02.2022. So the earlier bail application 51/2022 was adjudicated on merit after filing of charge-sheet. Therefore, the scope of the present bail application is very restricted, as already the other grounds are considered by this court while adjudicating the first bail application on merit. 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 Police Constable Yogesh Thakur was recorded on 13.11.2021. As per the CCTV Footage and from the statements of witnesses besides the six persons named in the FIR the names of other 15 persons names were revealed. I find that the name of present accused are at Sr. Nos.1 to 5, 7 and 9 in the supplementary statement of Police Constable Yogesh Thakur. He has specifically stated that he has seen the present accused while proceeding with the mob in the S. T. Stand. So prima facie, it is evident that the accused were members of unlawful assembly entered in the S. T. Stand. Hence, the accused have attributed role in riot. The photographs of damaged ice cream parlour and the damage caused to the public property are filed with the charge-sheet. I find the names of 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. The offence is anti-social. 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 : 08.04.2022

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

