

MHNS070004192022



Sessions Case No. 43 of 2022.

State

Vs.

Sherkhan Hayatkhan. (A-18)

ORDER BELOW EXH.12

1] This is second application after charge-sheet has been filed. The accused has filed application under section 439 of the Code of Criminal Procedure 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 74 of 2022 was rejected by court on 23.02.2022. It is contended by accused in the meanwhile the police has filed challan. As the police has filed challan, it is a change in circumstance. The accused has contended that there is no prima facie evidence to connect the accused in the alleged offences. The ingredients of the alleged offences are not attracted against the accused. In the FIR no specific role is attributed against the present accused and the name of the accused is not mentioned in the FIR. There is no direct and circumstantial evidence against him. At the time of incident the accused was not present on the spot and was not a member of unlawful assembly. The accused is doing labour work on contract basis. There is no criminal antecedents. He is in jail since last two months. He is sole bread winner of his family. The accused is permanent resident of Malegaon. He is ready to furnish surety. He is ready to abide the terms and conditions if the bail is granted. He is ready to co-operate investigating machinery. He will not abscond. He will not tamper with the prosecution evidence. He is respectable person. Co-accused already released on bail. Charge-sheet

is filed. There is no recovery from the accused. He is not habitual offender. Hence, on the ground of parity he prayed for bail. Nothing is seized from the possession of accused. Co-accused already released on bail, so on the principle of parity the accused is entitled to be released on bail. 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.14. 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 No.18 is seen in the CCTV Footage. Co-accused are absconded since commission of offence. The accused has committed robbery. If the accused is released on bail he is likely to dispose of the property in the robbery. The accused is likely to commit similar kind of offence. If the accused are released on bail he is 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.I. Wasif for the accused. He submitted that the alleged incident was occurred around and in the bus stand premises. The bail application 74 of 2022 was rejected by this court. As per FIR, mob of around 400 to 500 persons was shown to be there. He submitted that there are no over act or active role in the alleged offence. It is submitted that in the FIR no role is attributed to accused No.18. His name is not figured in the FIR. None of the alleged section alleged against the accused No.18. After 2 months of registration of FIR in the supplementary statement for the first time the name of accused No. 18 is mentioned. He drew my attention to the statement of ice cream stall owner Prajapat and Depot Manager Dhanwate. He

submitted that both the witnesses have not named the accused seeing in the incident. He also drew my attention to the statement of witness ASI Manoj Pawar, Rajendra Pagare, PHC Bhausahab Gule. He submitted that only in the supplementary statement of all these witnesses they have taken the name of accused No.18, but they have not stated the over act or the role attributed by accused No.18 in the riot or as a member of unlawful assembly. No identification parade is conducted. 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. Section 395 IPC will not attract as the accused was not the member of rally or unlawful assembly. All the medical certificates placed on record are of simple injury. The accused has not pelted stone and vandalized the property. The incident was occurred in market area. So the person on the road were caught and the cases are filed. The accused is working on contract basis in Malegaon Municipal Corporation as a Wireman. He has also shown his ID card during the course of arguments. He submitted that prosecution has opposed the bail application contending that the accused is seen in the CCTV Footage. He submitted that merely the persons seen in the CCTV Footage is not sufficient to make him accused unless he did some over act. No purpose will be served by further detention of the accused. Holi, Ramjan festival has been started. The accused is not seen in the CCTV footage while committing the robbery or vandalizing the property. He submitted that the accused is permanent resident of Malegaon. He is ready to abide the terms and conditions. He is 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 No.18 seen in the CCTV footage. There are eye witnesses of the incident. He further relied on the statement of witness Thakur who has seen the accused in the mob proceeding towards the ST stand from Dudh bajar area. Prima facie there is evidence against the accused. The accused has 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 the eye witnesses seen the accused while he was entered into the bus stand Malegaon. The shops were vandalized and public property was damaged. 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. The accused were present on the spot and his active participation in the 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. After the charge-sheet has been filed on the ground of change in circumstances bail application 74 of 2022 was filed. The application was decided on merit on 23.02.2022. Considering all the grounds and arguments advanced by the advocate for accused including the role attributed by the accused, his identity card issued by Malegaon Municipal Corporation, police papers on merit, the application was rejected. Therefore, after filing of charge-sheet this is second bail application before this court hence it has very limited scope. Now only the change in circumstance is required to be considered by this court. As this is second bail application after filing of charge-sheet, hence first ground of change

in circumstance raised in the application is not available to the accused. I find in the application, the grounds raised for the bail are filing of charge-sheet and on the ground of parity. The accused has not placed on record any bail order in connection with CR No.76 of 2021 on the basis of which he is claiming the bail on the ground of parity. So far the second ground of parity is concerned, I find that this court has not granted bail to any of the accused in the matter. That apart, I find that the eye witness Yogesh Bhagwan Thakur has seen the accused going towards the New ST Stand. The argument advanced on behalf of accused that it was a market area. Therefore, public seen on the road cannot be called as member of unlawful assembly in the absence of any over act committed by him is found to be not convincing as already while adjudicating the earlier bail application No. 74 of 2022, this court has considered all the aspects and prima facie, sufficient material against the accused. Considering gravity of the offence, the role of the accused, I find that the accused is not entitled for regular bail. If the accused is released on bail, the possibility of tampering with the prosecution evidence cannot be ruled out. For the ground of parity, the role attributed by the accused needs to be considered. As this court has not released any of the co-accused on bail, the question of parity does not arise. Therefore, the accused is 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.

