

MHNS070004192022



Sessions Case No. 43 of 2022.

State

Vs.

Arif Akhtar Abdul Ahad. (A-10)

**ORDER BELOW EXH.8**

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 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 Hence, the bail application was withdrawn with liberty to file fresh bail application.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 has contended that he is innocent and not committed offence. The accused is labourer by profession and only earning member of his and others are dependent upon him. The accused is permanent resident of Malegaon and having movable and immovable property. He is ready to furnish surety. He is ready to abide the terms and conditions if the bail is granted. The ingredients of the alleged offences are not attracted against the accused. He is not the habitual offenders. He is ready to co-operate investigating machinery. He will not abscond. He 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.9. It is contended that the public property has been damaged. The accused broke open the shop and robbed amount and stolen CCTV cameras. The accused has violated the orders passed by the District Magistrate Nashik and disturbed the peace. Accused is seen in the CCTV Footage. The accused has pelted the stones on the Government servant. He has taken active participation in the crime. 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 is 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.A.Khan 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 name of accused No.10 is not figured. In the supplementary statement recorded on 30.01.2022 after two months, the name of accused is taken by the police witnesses. There is no recovery from the accused. The police has not disclosed the source of identification of the person seen in the CCTV footage is the accused present before the court. There is no over act mentioned by the police. Even the eye witnesses of the incident, the persons from the ST department has not identified the accused was seen something over act during the incident. There is no criminal antecedents. He submitted that after filing of charge-sheet this is the first bail application. Filing of charge-sheet is a change of circumstance. In the charge-sheet also the over act is not mentioned. He submitted that the accused are 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 formed an unlawful assembly. Filing of charge-sheet is not change of circumstance. In the CCTV footage the accused is seen. The accused has covered his face with handkerchief so as to hide his identify. The police sources have identified the accused on the basis of CCTV footage. Prima facie there is evidence against the accused. The accused has taken part in the riot. There are eye witnesses of the incident. 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 accused is seen in the CCTV footage. The accused is identified by the secret informant of the police. The eye witnesses has named the other accused. The accused was 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.

7] 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 Sham Pawar 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 is at Sr. No.4 in the supplementary statement of Police Naik Sham Pawar and the other police witnesses. Even in the supplementary statement of Sumit Patil the name of the accused is at Sr. No.4. 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 the accused is figured in the statements of the witnesses. Hence, I find prima facie, sufficient material against the accused to show his 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 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. 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.

