

MHNS070004192022



Sessions Case No. 43 of 2022.

State

Vs.

Mohammad Sabir Mohammad Sadki  
@ Sabir Gauhar. (A-2)**ORDER BELOW EXH.8**

1] This is first application after filing of charge-sheet. The accused 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 accused has contended that he has not committed offence and there is no prima facie evidence against him. There is no direct or indirect concerned of the accused in the alleged crime. His name is involved in the said crime on the ground of political rivalry. He is respectable person. There are no criminal antecedents. In the memorandum statement his name is not mentioned. His name is not mentioned in the statement recorded u/sec. 164, Cr. P.C. The accused has not pelted stone or obstructed the public servants from discharging their service. The accused has also not vandalized the public property. 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. 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. 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.10. 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 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.N. Shaikh 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 the role attributed by the accused is not mentioned. He has been released on bail in CR NO. 75 of 2021. The co-accused who has given the memorandum statement has also not taken the name of accused as his companion. In the supplementary staement also the name of accused No.2 is not figured. Nothing is recovered from accused No.2. Even in the statement recorded u/sec. 164, Cr. P.C. have not taken the name of 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. 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. 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. The accused has instigated the mob. In the FIR the name of accused is figured. Police Officers have received the injuries during the incident. Against the accused there is one more CR No. 75 of 2021 pending. The offence is serious. Hence, it is submitted that considering gravity of the offence application be rejected. I.O. is present. He submitted that in the FIR the accused has been named. The presence of accused is noticed on the spot is seen in the CCTV footage. The mob informed city police station jurisdiction towards ST stand in which the accused was present. The mob vandalized shops and public property. 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. 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 complainant has specifically stated that the mob from Shivaji Statue came towards the ST stand area. In the FIR the complainant has stated six names which includes the name of the accused at Sr. No.2 as Sabir Gauhar. He further stated in the complaint that those persons have pelted stones on the police in that area on bandobast duty. So on the face value of the allegations in the FIR, it is clear that the accused was present in the mob and he has active role in the offence. With the charge-sheet the police have filed the photographs of vandalized public property, robbed shop. I find the name 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.