

MHNS070004192022



Sessions Case No. 43 of 2022.

State

Vs.

Mohd. Rizwan Mohd. Akbar (A-16)

ORDER BELOW EXH.16

1] This is second application after the charge-sheet. The accused has filed this 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 70 of 2021 was rejected by this court on 23.02.2022. The accused came before this court for bail on the ground of parity. The accused has contended that he is social activist having no connection with any political party or religious institution. After the riot has been started, the police officials telephoned the petitioner and called him on the spot to specify the mob. The accused has took up some burning issues. Therefore, the police and the political persons have grudge. Hence, he has been falsely implicated in this case. The accused has contended that he has not committed offence and falsely booked in the present crime on the basis of his delivery of speech. The name of accused is not mentioned in FIR Accused is nowhere seen in the CCTV footage. His name is mentioned in the supplementary statement which is false. The speech delivered by accused which cannot be termed as a hate speech. Charge-sheet is filed, hence custodial interrogation of accused is not required. The accused is permanent resident of Malegaon. He belong to respectable family. 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. Nothing is seized from the possession of accused. Hence, prayed for bail. The accused in other crimes are released on bail, therefore the accused prayed for bail on the ground of parity.

3] The I.O. through Ld. APP Shri. S.K. Sonawane for the State resisted the application by filing say at Exh.18. It is contended that the public property has been damaged. The accused broke open the shop and robbed amount and stolen CCTV cameras from ST stand premises. The accused has violated the orders passed by the District Magistrate Nashik and disturbed the peace. Accused is seen in the CCTV Footage. 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 Rankawat 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. He has filed application (Exh.19) requesting this court to ask the prosecution to play the CCTV footage. Prosecution has sought time to file reply. On the next date, the IO came with Laptop and the relevant CCTV footage in the court. The prosecution on its own with the consent advocate for accused played the CCTV footage in the open court. The advocate for accused has not disputed that in the CCTV footage the accused is seen in the ST stand premises.

According to the advocate for accused, the accused is seen taking the mob outside with hand signals. On the contrary, the IO submitted that in between he is calling the mob towards him by giving hand signals. According to IO the accused was present on the spot and he instigated the mob for pelting the stones. The accused has active role in the crime.

5] The advocate for accused submitted that the accused is social activist. In order to damage his political carrier he has been falsely root in this case. There is no over act committed by him. ASI Manoj Pawar has not taken the name of the accused. Nothing has been recovered from the accused. Accused is not seen committing dacoity and vandalizing the public property. 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.

6] Per contra, Ld. APP submitted that the accused formed an unlawful assembly. After filing of charge-sheet this is second bail application. On merit the first bail application was rejected. There is no change in circumstance to file second bail application. Granting of bail in another CR cannot be a ground to seek parity in the present crime. The accused is seen in the CCTV footage. He has instigated the mob. 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 in the CCTV footage the accused is seen giving hand signals to mob. He submitted besides this there is one more CR 75 of 2021 against the accused. The accused was

present on the spot of riot.

7] 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. After filing of charge-sheet the first bail application No. 70/2022 was rejected 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, 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. While adjudicating the earlier bail application No. 70 of 2022, this court has considered all the aspects and come to the conclusion that there is prima facie, sufficient material against the accused. The accused is seen in the CCTV footage play in the open court. I find that as already on merit this court has rejected the first bail application after filing of charge-sheet. The presence of the accused seen in the ST stand premises is not disputed. Considering the scope of the present application, at this stage, I find that, the accused is not entitled for bail. 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.