

MHNS070004192022

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

State

Vs.

1. Shaikh Imran Shaikh Saleem, (A-7)
2. Aateque Ahmed Saeed Ahmed (A-9)
3. Raees Ahmed Abdul Samad @ Raees Moteya (A-4)

**ORDER BELOW EXH.20**

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, 148, 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] 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 the accused have not committed over act or taken active role in the alleged offence. It is submitted that in the FIR only name of five persons are mentioned. The name of accused are subsequently array on the basis of supplementary statement of the witnesses. He submitted that all supplementary statements are stereo types. He submitted that mere presence on the spot of incident is not sufficient to deny the bail. He submitted that there is no direct allegations of vandilization of property against the accused but said allegations are against the 100-200 persons. He submitted that the accused has not committed over act. There is no evidence that the persons seen in the CCTV Footage is the accused persons who have been arrested. He submitted that no statement to that effect has been recorded by the IO. Identification parade is not conducted. According to him this is not the quality evidence this shows that the accused are the authors of

the crime. He submitted that the statement of ice cream parlor owner Prajapati is on the basis of hearsay information. He submitted that after the arrest of the accused supplementary statements were recorded. Accused No.4 Rais is weighing about 140 to 150 kg. He submitted that even he could not move easily. Even then he was made accused in CR No. 74/2021, 75/2021 and 76/2021. He submitted that the witnesses have taken the name of the accused but that itself is not quality evidence to reject the bail. In the absence of any specific allegations or over act is committed by them. Nothing is recovered from the accused. In the reply advocate for accused submitted that there is no over act pointed out during the incident committed by the accused before accused Nos.4,8 and 9. He submitted that misconception of statement is a legal change in circumstances. He submitted that the main accused Shahid Reshimwala his name is figured in the FIR has been released on interim anticipatory bail. It is submitted that after rejection of the earlier bail application of the accused, Shahid Reshimwala was granted interim anticipatory bail by Hon'ble High Court. Therefore, that ground was not available when the earlier application was adjudicated. Now that the ground of parity is available to the accused. He submitted even on the ground mercy as the accused are in jail for last about 6 to 7 months he prayed that they be enlarged on bail. In support of his above submissions he relied on :

- i) Arun Kumar vs. Police Inspector, Colva & Anr. 2022 All MR(Cri) 1019.
- ii) Nanha s/o Nabhan Kha vs. State of U.P. 1992 STPL 6683 Allahabad.
- iii) Dilip @ Dinesh Shivabhai Patel &1 vs. of Gujrath, Cri. Misc. Appln. No. 6181 of 2012.

3] Per contra, APP submitted that all the points submitted in the course of argument are considered by this court while adjudicating the earlier bail application on merit. He submitted that there is no change in circumstance to grant bail to the accused. He submitted that the

application is not tenable. Hence, application be rejected.

4] I.O. is present. He submitted that the name of Raees Moteya (A-4) is reflected in the FIR. He is also accused in CR No. 75 of 2021. The accused Nos.4,8,9 are seen in the CCTV Footage. He submitted that considering the involvement in the offence bail be rejected.

5] Perused the FIR and the papers. The earlier bail application filed by the accused after filing of charge-sheet was rejected on merit. Therefore, only on the ground of change in circumstance, the bail application is tenable. The name of accused No.4 is figured in the FIR. I find that, in the FIR, the details of volatilization of property, robbery has been specifically mentioned. The supplementary statement of the informant, Police Naik Bharat Patil 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 are at Sr. Nos.2 and 3 in the supplementary statement of Police Naik Bharat Patil. Even in the statement dated 13.11.2021 and in the supplementary statement dated 30.01.2022 of Deepak Khairnar the name of both the accused are at Sr. Nos.2 and 3. In the earlier bail orders I find prima facie, sufficient material against the accused to show their involvement in the crime. The present application has been filed on the ground of parity that the co-accused Shahid Reshimwala was enlarged on interim anticipatory bail by Hon'ble High Court. I have gone through the ratio laid down in Nanha's case and Arun Kumar's case. I find that the co-accused Shahid Reshimwala's anticipatory bail application was not decided by Hon'ble High Court on merit. He has been granted interim protection. Therefore, on the ground of parity, the accused are not entitled for the bail. I have also gone through the ratio laid down in Dilip vs. State (Gujarat High

Court). Bail was granted on the ground on the sympathetically and also on mercy ground in the said proceeding. Considering gravity of the offence, the role of the accused, I find that the accused are not entitled for regular bail on the sympathetically and on mercy ground. I find no change in circumstances is made out. 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 : 02.05.2022

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