

MHNS070004232022

**S.C. No.44 of 2022**

State

Vs

1. Obaid Shamshuddin Ansari,(A-13)
2. Aftab Alam Ibn Hasan,(A-18)
3. Shakil Ahmed Mohammad Ismail @ Shakil Namak,(A-30)
4. Faisal Ahmed Shakil Ahmed,(A-37)
5. Ramzan Khan Shahir Khan,(A-40)
6. Raees Ahmed Abdul Samad,(A-41)
7. Ishtiyaque Ahmed Mohammad Mustafa, (A-44)
8. Shaikh Nasir Shaikh Mehboob,(A-47)
9. Wasim Akhtar Mohammad Salim,(A-48)
10. Altaf Anwar Shah,(A-49)
11. Mohammad Ismail Mohammad Israil,(A-53)
12. Mohammad Rafique Mohammad Yunus, (A-54)
13. Shaikh Shabbir Shaikh Mustafa,(A-55)
14. Wasim Ahmed Laeeque Ahmed,(A-56)
15. Javeed Khan Abdullah Khan,(A-57)
16. Abdul Raheem Abdul Rashid. (A-59)

**ORDER BELOW EXH. NO. 15**

1] This is second application under section 439 of the Code of Criminal Procedure filed by accused in C.R.No.75 of 2021 registered with City Police Station, Malegaon under sections 307, 353, 332, 333, 143, 144, 147, 148, 149, 120-B, 427, 186, of I.P.C., and section 3 and 4 of Police (Incitement to Disaffection) Act 1922 and 37(1)(3) p.u.s.135 of Maharashtra Police Act and Section 3(2) of Prevention of Defacement of Property Act and Child Care And Justice Rule 2015 Section 83(2),87.

2] This second bail application is filed on the ground of change in circumstances after filing of charge-sheet. Further the application is filed on the ground of parity. The accused have contended that they are totally innocent and they have not committed any offences as alleged by prosecution. They are labourer by profession and only earning member of their respective families and other are dependents upon them. They

are permanent resident of Malegaon having movable and immovable properties. They are ready to furnish sureties. They are ready to abide the terms and conditions if the bail is granted. The ingredients of the alleged offences are not attracted against the accused. There are no criminal antecedents. They are ready to co-operate investigating machinery. They will not abscond. They will not tamper with the prosecution evidence. There are no direct or indirect iota of evidence to suggest involvement of accused in this crime. Nothing is seized from the possession of accused. Hence, prayed for bail.

3] The I.O. through Ld. APP Shri. A.N. Pagare for the state resisted the application by filing say at Exh.27. The accused were present for the meetings and during band as a part of criminal conspiracy. The accused have participated in the band. As per the statement of the witnesses there was a participation of accused in the riot. It is contended that if the accused are released on bail they are likely to tamper with the prosecution evidence and witnesses. The accused are involved in the serious offence. The orders of District Magistrate and police were violated, the stones were pelted, public property were damaged during the band. It is a preplanned riot. The common citizens were also injured during the incident. The witnesses are frightened and not coming forward to give statement. Hence, it is prayed that the application be rejected.

4] Heard both sides at length. The advocate for accused submitted notes of argument (Exh.24). It is submitted that as per the case of the prosecution from accused No.48 Vasim Akhtar (page No.15;iron pipe), accused No.55 Shaikh Shabbir ( Page No.19;wooden stick) and accused No.56 Vasim Ahmed (Page No.13; iron pipe) were recovered u/sec. 27 of the Indian Evidence Act. It is submitted from two accused iron pipe were recovered and from one accused wooden stick

was seized. He drew my attention to the recovery statement and memorandum panchanama. It is submitted that it is not a substantive evidence. Recovery of article cannot be a ground to reject the bail. He submitted that the contents are stereo type. The articles are recovered from open space. Except the medical certificate at Exh.61 all other injury certificates are of simple injury. Injuries are possible by pipe, stone and wooden stick is not mentioned in the certificate. He further submitted that the nature of injuries by the above articles would be different. The accused are not responsible for committed any over act to connect them with the injuries. The member of unlawful assembly have caused those injuries cannot be ruled out unless the prosecution shows that the weapon recovered from accused 48, 55 and 56 are used they cannot connect with the offence. In support of his submissions he relied on :-

- i) Mani Vs. State Appeal (cri.) 443 of 2006, S.C.
- ii) Vijay Thakur vs. State of Himachal Pradesh, Cri. Appeal No. 632 of 2011.
- iii) State of Maharashtra Vs. Anil Jagannath Bahirat , Cri. Appeal No.547 of 2000.

5] I have gone through the ratio laid down in the supra case as well as the memorandum statement and the recovery panchanamas. I find that the place of recovery is not an open space. In all the supra cases in the appeal against conviction on the basis of evidence the court has made those observations. In the case in hand the trial is yet to be begin. Considering the facts and circumstances of the case, place of recovery, I find that the ratio laid down in the supra case on which the advocate for accused are relied on are not applicable to the case in hand.

6] He submitted that None of the accused have delivered the speech or circulated any pamphlets. They have not the organizer of rally. There is no evidence of criminal conspiracy. The persons seen in

the photographs are 15 in numbers but only three are made accused. The police cannot choose or select the persons and made them accused. He submitted that personal liberty is the fundamental right. There is no evidence to show nexus between the incident and the accused. The accused were not member of unlawful assembly. The CCTV Footage collected from the mobile, hotels and shop. However, the statement of those persons were not recorded. Against four persons the police submitted the report u/sec. 169 even though their names are reflected in the statements. Tahsildar and Superintendent of Police were present on the spot. In their statement u/sec. 161 they have not named the accused persons seen on the spot of riot. He submitted that in the chart submitted by the IO it has been mentioned in respect of all accused that they are seen in the CCTV Footage but the faces are not clear. No identification parade is conducted. The police has not disclosed the source on the basis of which they came to know the name of accused. The medical certificate from Noor Hospital is not placed on record. On the basis of CDR the prosecution tried to show the presence of the accused on the spot of incident. However, alongwith the charge-sheet the copy of CDR is not filed on record. The persons from whom there is no recovery as per the case of the prosecution they are entitled for bail. It is submitted that considering the role of the accused and role of the persons who are released on bail by this court are identical. Hence, on the ground of parity he prayed that the accused be released on bail. He submitted that except 3 accused, there is no recovery from the rest of the accused who have applied for bail. Considering the ensuing Ramzan, Id festival, the period for which the accused are in jail, change in circumstances, parity he submitted that on any terms and conditions the accused be released on bail.

7] Per contra, Ld. APP submitted that this is second bail application. There is no change in circumstances. I.O. is present. It is

submitted that the accused are seen in the mob, they have pelted stones and vandalized public property. The accused are seen in CCTV Footage. But their faces are not clear. He submitted that the mobile location of the accused as per the CDR record is found on the location of riot. It is submitted that from accused No.48 and 56 iron rod is recovered. From accused No.55 wooden rod is seized. She further submitted that the accused No.59 Abdulla has made announcement prior to the rally and threatened the public. The APP has adopted the submissions made by the I.O. Hence, it is submitted that considering gravity of the offence application be rejected.

8] Perused the FIR and the papers placed on record. After going through the police papers, I find that the present incident was occurred on 12.11.2021 at around 17.30 hours between Dudh Bazar area to fly over on old Agra Road at Malegaon. The first bail application No. 645/2021 was rejected on merit on 18.12.2021. Thereafter, the charge-sheet has been filed and the case has been committed to this court. I have gone through the objections raised by the prosecution for the bail. The IO in the open court submitted that the presence of the accused during the riot is seen in the CCTV Footage, but their faces are not clear. In view of the ratio laid down in Laxman Hatti vs. State of Maharashtra, the bail application after filing of charge-sheet is tenable on the ground of change in circumstances.

9] I have gone through the statements of the witnesses mentioned by the IO in the chart with the other details mentioned therein. During argument, IO admitted that the copy of CDR is not filed with the charge-sheet. Except accused No.48, 55 and 56 nothing is recovered from the other accused who have applied for bail. The ratio laid down in Sanjay Chandra's case that bail is rule and committal to jail is exception is not disputed. I have gone through the ratio laid down in

State of Kerala on which advocate for accused is relied on. I find that the facts in the supra case are totally different from the facts in the present case. Hence, the ratio laid down therein is not applicable to the case in hand.

10] So far the accused Nos.48, 55 and 56 are concerned, I find that prima facie the recovery of iron rod and the wooden stick at their instance u/sec. 27 of Indian Evidence Act is sufficient to show their involvement in the antisocial act and crime. If the accused No.48, 55 and 56 are enlarged on bail possibilities of tampering with the witnesses cannot be ruled out. Therefore, I find that accused Nos. 48, 55 and 56 are not entitled for bail.

11] The APP has not disputed that in Malegaon there is tradition that the person using a bike and the loudspeaker inform the death of a person in mohalas. The advocate for accused submitted that the accused No.59 is the person who is doing the said job. As a part of job he made announcement of band in mohalas. Considering above submissions, the role of accused Nos.13, 18, 30, 37, 40, 41, 44, 47, 49, 53, 54, 57 and 59 in the alleged offence as per the chart placed on record by the IO with the police papers and the role of the accused who has been enlarged on bail by this court I find that on the ground of parity, the above accused (except accused No.48, 55 and 56) are entitled for regular bail on the ground of parity. Now the investigation is over. The accused persons are permanent resident of Malegaon. Their presence can be secured by imposing terms and conditions. Considering the papers placed on record, charge-sheet has been filed and the role of the accused as per the prosecution case, I find that the applicant-accused is entitled for regular bail. In the result, following order is passed :

**ORDER**

1. The application is partly allowed.

2. The accused Nos. 13, 18, 30, 37, 40, 41, 44, 47, 49, 53, 54, 57 and 59 be released on PB and SB of Rs.15,000/- (Rs. Fifteen Thousands only) each on following terms and conditions :-
- a. The accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with facts of accusation, so as to dissuade them from disclosing such facts to the Court or to any Police Officer.
  - b. The accused shall not tamper with the prosecution witnesses and evidence in any manner.
  - c. They will not involve in any anti social activity or any other offence.
  - d. The accused shall furnish their detail address along-with the photo ID.
  - e. The accused shall furnish their detail address with mobile number along-with photo ID proof as well as the address, mobile number and photo IDs of their three close relatives.

Date : 24.03.2022

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

