

MHNS070004232022

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

State

Vs

Mohammad Asif Mohammad Yusuf.(A-12)

ORDER BELOW EXH. NO. 19

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 is second bail application on the ground of change in circumstance after police filed charge-sheet. The accused also prayed for bail on the ground of parity. The accused claimed to be innocent. It is contended that the injured are fully recovered. The accused has contended that prima facie there is no evidence against him. He has not pelted stones on the police and not vandalized the public property and not obstructed in their duties. He has no direct or indirect concerned with the alleged offence. No specific role is mentioned in the FIR. He is falsely involved in this crime. He is respectable person. There are no criminal antecedents. He has no direct concerned with the alleged offence. No name of accused is mentioned in the memorandum statement. No recovery is remained to be made. He is permanent resident of Malegaon and having movable and immovable property. Since last 4 months he is in jail. 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 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. A.N. Pagare for the state resisted the application by filing say at Exh.28. The accused was present for the meetings and during band as a part of criminal conspiracy. The accused has participated in the band. The accused seen in the CCTV footage but his face is not clear. As per the statement of the witnesses there was a participation of accused in the riot. It is contended that if the accused is released on bail he is likely to tamper with the prosecution evidence and witnesses. The accused is 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 that the accused has not delivered the speech or circulated any pamphlets. He is 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 was 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 not 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 seen on the spot of riot. 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. 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. Considering the ensuing Ramzan, Id festival, the period for which the accused are in jail, change in circumstances, parity she submitted that on any terms and conditions the accused be released on bail.

5] 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 is seen in the CCTV Footage but his face is not clear. The APP has adopted the submissions made by the I.O. Hence, it is submitted that considering gravity of the offence application be rejected.

6] 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. 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.

7] I have gone through the statements of the witnesses mentioned by the IO in the chart with the other details mentioned therein. Nothing is recovered from the accused. 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.

8] Considering submissions, the role of accused 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 accused is entitled for regular bail. Now the investigation is over. The accused is permanent resident of Malegaon. His 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 accused is entitled for regular bail. In the result, following order is passed :

ORDER

1. The application is allowed.
2. The accused be released on PB and SB of Rs.15,000/- (Rs. Fifteen Thousands only) 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 will not tamper with the prosecution witnesses and evidence in any manner.
 - c. He will not involve in any antisocial activity or commit any other offence.
 - d. The accused shall furnish his detail address along-with the photo ID.
 - e. The accused shall furnish his detail address with mobile number along-with photo ID proof as well as the address, mobile number and photo IDs of his three close relatives.

Date 24.03.2022

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

