

MHNS070004232022

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

State

Vs

1. Mohammad Imran Mohammad Usman,(A-34)
2. Aftab Ijaj Baid,(A-38)
3. Shaikh Alim Shaikh Saleem,(A-39)
4. Aasif Ahmed Nihal Ahmed,(A-42)
5. Shaikh Aarbaj Shaikh Sardar,(A-43)
6. Shaikh Gyasuddin Shaikh Shakil Uddin,(A-45)
7. Atik Ahmed Jamal.(A-51)

**ORDER BELOW EXH. NO. 14**

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, 153, 153(A), (B), (C) 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 parity. The application is also filed on the ground of change in circumstances as the police has filed challan. The accused have contended that no specific role is mentioned in the FIR. They are falsely involved in this crime. The accused persons have no direct or indirect concerned with the alleged offence. They are not the member of political group or organization. They are labourer and small businessman by profession. No names of accused are mentioned in the memorandum statement. Their names are not mentioned in the statements recorded u/sec. 164 of Cr. P.C. They have not pelted stones on the police and not vandalized the public property and not obstructed in their duties. No recovery is

remained to be made. They are permanent resident of Malegaon having movable and immovable properties. Since last 4 months they are in jail. 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. 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.25. 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 properties were damaged during the band. It is a preplanned riot. Hence, it is prayed that the application be rejected.

4] Heard both sides at length. The advocate for accused 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 names 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.

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 No.51 Atik Jamal is seen while vandalized public property. The other 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. 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. During argument, IO admitted that the copy of CDR is not filed with the charge-sheet. The IO in the open court submitted that the presence of the accused during the riot is seen in the CCTV Footage, except accused No.51 the faces of other accused Nos.34,38, 39, 42, 43 and 45 are not clear. As per chart in the police papers on record the accused No.51 Atik Jamal was seen vandalizing the shops under the fly over. 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] So far the accused No.51 is concerned, I find that prima facie there is evidence as he is seen in CC TV footage while vandalizing the shops under the fly over. The role accused No.51 in the offence is different from the other accused with whom he has filed bail

application. If the accused No.51 is enlarged on bail possibilities of tampering with the witnesses cannot be ruled out. The act in antisocial which disturbs the law and order. If accused is released on bail, his involvement in similar offence disturbing public peace and law and order is more. Therefore, I find that accused No.51 is not entitled for bail.

9] Considering above submissions, the role of accused Nos.34, 38, 39, 42, 43 and 45 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.51) are entitled for regular bail. 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 accused are entitled for regular bail. In the result, following order is passed :

**ORDER**

1. The application is partly allowed.
2. The accused Nos. 34, 38, 39, 42, 43 and 45 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.