

(Order passed below Exh59)

MHNS070004232022



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

State

Vs

Atik Ahmed Jamal.(A-51)

**ORDER BELOW EXH. NO. 59**

1] This is third 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 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 has contended that no specific role is mentioned in the FIR. He is falsely involved in this crime. The accused has no direct or indirect concerned with the alleged offence. He is not the member of political group or organization. He is labourer and small businessman by profession. No name of accused is mentioned in the memorandum statement. His name is not mentioned in the statements recorded u/sec. 164 of Cr. P.C. He has 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. He is permanent resident of Malegaon having movable and immovable properties. 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

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attracted against the accused. There is no criminal antecedents. 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. S.K. Sonawane for the state resisted the application by filing say at Exh.120. The accused was present in the riot occurred under the fly over. The accused is seen in the CCTV footage and the recording made in mobile while pelting the stones and damaging the public property. As per the statement of the witnesses there was a participation of accused in the riot. The accused is seen pelting the stones on the police persons. The accused violated the orders of the District Magistrate and disturbed the law and order. Accused being member of unlawful assembly was equally responsible for the act committed during 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 properties were damaged during the band. 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 has delivered the speech or circulated any pamphlets. He has not the organizer of rally. There is no evidence of criminal conspiracy. There is no evidence to show nexus between the incident and the accused. The accused was not member of unlawful assembly. In their statement u/sec. 161 they have not named the accused persons seen on the spot of riot. No identification parade is conducted. From the accused there is no recovery as per the case of the prosecution. The co-accused from whom the articles are seized named that Accused Nos. 9 and 13 were with them at the time of incident. They are released by this court on bail. The High Court has granted

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anticipatory bail to co-accused Muslim Dande Pahilwan who has identical role. Accused Mustkin Dignity was named by accused No.48 in his statement u/sec.27. This court has granted bail to Mustkin Dignity. The CCTV footage of pelting of stone in the nearby area of fly over is not available as per the case of the prosecution. 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 he submitted that on any terms and conditions the accused be released on bail.

5] Per contra, Ld. APP submitted that this is third 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. He submitted that the mobile location of the accused as per the CDR record is found on the location of riot. The accused has delivered provocative speech. He was member of unlawful assembly. Stone has been seized at the instance of accused. Accused No.48 in the charge-sheet has stated the name of the accused in his statement. 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. The second bail application (Exh.14) after filing of charge-sheet as well as on the ground of parity was rejected by this court on merit by order dated 24.03.2022, observing that :-

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*"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.*

*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. "*

7] I have gone through the ratio laid down in Amit Redlan Vs. State of Maharashtra and Vishal Redlan Vs. State of Maharashtra, on which advocate for accused is relied on. I have also gone through the order in A.B.A. No.776 of 2022 of Hon'ble High Court granting anticipatory bail to accused Mohommad Muslim @ Muslim Dande Pahilwan. Police Constable Vishal Gosavi in his statement dated 14.11.2021 stated the name of the accused that he has seen him while pelting the stones and vandalizing the property. Police Constable Yogesh Thakur is the second eye witness who has seen the accused in the mob. The CCTV footage also support the case of the prosecution. So the role of the present accused is different from the role of the co-accused who have been enlarged on bail by this court. While applying the principle of parity must focus on the role of the accused and the reasons cannot be usage of similar weapons of accused who was granted bail. In deciding the aspect of parity, the role attached to the accused, their position in

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relation to the incident and to the victim is of utmost important. The ratio laid down in the supra case on which the advocate for accused is relied is not helpful considering the role attributed by him and the prima facie evidence against accused. Considering facts and circumstances of the present case, the role attributed by the accused in the incident, gravity of the offence and his active participation in the crime is recorded in the CCTV footage, this court is of opinion that on the ground of parity the accused is not entitled for bail. In the result, following order is passed :

**ORDER**

The application is rejected.

Date : 11.04.2022

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