

MHNS070002142022

SC No. 44 of 2022

State
Vs
Nasir Khan Kasam Khan (A-60)**ORDER BELOW EXH. NO.53**

1] This is an application for grant of regular bail 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, 143, 144, 147, 148, 149, 120-B, 427, 186 of I.P.C., section 3 and 4 of Police (Incitement to Disaffection) Act 1922 and 37(1) (3) punishable under section 135 of Maharashtra Police Act and section 3(2) of Prevention of Defacement of Property Act.

2] After the charge-sheet is filed, bail application No.50 of 2022 was filed. The application was rejected on 23.02.2022. The accused has filed bail application 906 of 2022 before the High Court. The same was withdrawn on 25.3.2022 as he intend to move bail application on the ground of parity and on merit. Accordingly, the permission was granted by Hon'ble High Court. Thereafter, the accused has filed this application for bail. The applicant-accused has contended that he has not committed any offence and he has been falsely booked in the alleged crime. His name is not mentioned in FIR. There is no direct evidence against him. He was not present on the spot at the time of incident. He has not delivered the speech. He is not a member of Raza Academy or any other political party. Mere presence in the meeting cannot be termed as a criminal conspiracy. In the supplementary statements the name of the accused is arrayed. There is no direct evidence against the accused to attribute his role in the crime. The co-accused having identical role are released by this court on bail.

Therefore on the ground of parity the accused moved bail application before this court. He is permanent resident of Malegaon having properties. He is ready to furnish surety. 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. Nothing seized from the possession of the applicant-accused. No specific role is mentioned against him in the FIR. Investigation is over. 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. 117. It is contended that the offences are serious. It is submitted that it is a pre plan riot. The accused has given provocative speech and against the prohibitory order passed by the Dist. Magistrate gathered the mob. The accused is responsible for disturb the law and order. The accused has attended the meetings and present in the rally. The accused has distributed the pamphlets. The accused is equally responsible with the co-accused in the crime. The presence of the accused in the riot is revealed during the investigation. During the incident the police persons received grievous injuries. The public property has been damaged. Hence, it is prayed that the application be rejected.

4] Heard both sides at length. The advocate Shri. A.A. Khan for the accused submitted that the name of accused is not figured in the FIR. After gape of 2 months in the supplementary statement his name is arrayed. There is no recovery from the accused. In the chart submitted by IO only the presence of accused is shown in the Hussainseth compound. He submitted that statements of all the police witnesses are similar and copy paste. Co-accused having identical role are released on bail by this court. Evidence against the accused is similar, hence on the

ground of parity, he prayed that the accused be enlarged on bail. The accused has not committed any over act. He drew my attention to the statement of PSI Shailesh Patil and submitted that this witness has not stated the name of accused in his statement. Except in Hussainseth compound the accused is not seen at any other place. The accused is permanent resident of Malegaon. He is ready to abide the terms and conditions. He is ready to co-operate with the investigating officer. He submitted that on terms and conditions the accused be released on bail.

5] Per contra, Ld. APP submitted that the accused formed an unlawful assembly. This is second bail application after the charge-sheet. The first bail application after filing of charge-sheet was rejected on merit. There is no change in circumstance. The role of the accused is different from the co-accused who has been released on bail. I.O. is present. The accused was present for the meetings earlier to the incident. As per the speech he has gathered the mob. The eye witnesses have named the presence of the accused on the spot of incident. If the accused is released on bail he is likely to tamper with the prosecution witnesses. If the accused is released on bail he is likely to disturb the public peace and create obstruction in further investigation Hence, it is submitted that considering gravity of the offence application be rejected.

6] Perused the FIR and the papers placed on record by both sides. After going through the police papers, I find that, the present incident was occurred on 12.11.2021 at around 17.30 hours near fly over on Old Agra Road, Malegaon. After charge-sheet bail application 50 of 2022 was rejected on merit by order dated 23.02.2022. The present application is filed on the ground of parity as the other co-accused having identical role are released on bail. I have gone through the statement of eye witnesses cited by the IO in the chart. I find that as per the statement of witness Yogesh Thakur not only for the meetings the

accused was present, but his presence was noticed by eye witnesses during the riot. Similarly, the name of accused is stated by the witnesses PSI Shailesh Patil, Police Constable Kale, Police Constable Vishal Gosavi, Police Naik Bankar. All the above witnesses in their statement dated 13.05.2021 stated that they have seen the accused in the mob. The accused was not only present in the Hussainseth compound but eye witnesses noticed his presence during the riot. As per prosecution case, accused has gathered the mob inspite of prohibitory orders of District Magistrate. Mainoddin Kadir was not present for the meetings held prior to riot. As per prosecution case Mustikin Dignity after deliver of speech left the spot. So, the role of co-accused Mustikin Dignity and Mainoddin Abdul Kadir is different from the accused. I find that besides the police persons there are other eye witnesses of the incident, hence the possibility of tampering with prosecution evidence cannot be ruled out. Considering the facts and circumstances of the present case, I find that the accused is not entitled for regular bail on the ground of parity. In the result, following order is passed :

ORDER

The application is rejected.

Date : 11.04.2022

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