

MHNS070004232022

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

State

Vs

Mohd. Rizwan Mohd. Akbar
(Accused No.46)**ORDER BELOW EXH. NO. 54**

1] This is second application after the charge-sheet has been filed, under section 439 of the Code of Criminal Procedure filed 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.69 of 2022 was filed. The application was rejected on 23.02.2022. The co-accused with identical role has been released on bail, therefore accused prayed for bail on the ground of parity. The accused was not present on the spot of incident. The speech delivered by the accused is not heat speech. The persons who has delivered the speech are enlarged on bail. The name of accused is not figured in the FIR. The co-accused with identical role in the alleged offence are enlarged on bail. Therefore, on the ground of parity the accused is praying for bail. The role attributed to the accused that he has delivered speech. There is no direct evidence against the accused. It is contended that the accused was not on the spot of occurrence of the alleged incident. There is no active participant of the accused in the alleged crime. The band was called by Raza Academy and accused not a member of the said academy. The accused is in custody since 15.11.2021 and maximum investigation of this crime is completed. The accused delivered speech and on that basis he was arrested. The charge-sheet is filed and investigation is over. The accused

is permanent resident of Malegaon. The accused is ready to furnish surety. The accused 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. There are no criminal antecedents. He is ready to co-operate investigating machinery. He will not abscond. He will not tamper with the prosecution evidence. There is no direct or indirect iota of evidence to suggest involvement of accused in this crime. 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.118. The accused has delivered hate speech, circulated pamphlet, inspite of prohibitory order passed by District Magistrate gathered mob. The offence is serious. The accused has taken active participation in the crime. The heat speech was delivered by the accused in Iskas Liabrary. The details of speech is also mentioned in the say. The accused have participated in the riot as per the criminal conspiracy. During investigation black shirt has been seized from the accused, as per the memorandum statement given by him. If the accused is released on bail he will likely to commit similar kind of offence. It is submitted that from the CCTV Footage the active participation of accused in the riot is identified. The public property has been damaged. The accused has violated the orders passed by the District Magistrate, Nashik and disturbed the peace. The accused has pelted stones on the police and vandalized the public property. It is a pre-planned riot. Hence, it is prayed that the application be rejected.

4] Heard both sides at length. Heard advocate Rankawat for the accused. He submitted that the previous bail application 645/2021 was rejected by this court on 18.12.21. Second bail appln. 69 of 2022 after filing of charge-sheet was rejected by this court on 23.02.2022. The allegations against the accused that he has delivered the speech. Besides

that there are no other allegations against the accused that he pelted stones during the incident. The accused was called by the police to specify the mob. The accused was also injured in the incident. Except black shirt nothing was seized from the accused. The name of accused is not figured in the FIR. The role of this accused and role of co-accused Muslim Dande Pahilwan, Mohammad Mustkin are identical. Therefore, he submitted that on the ground of parity the accused is entitled for bail. The bail application of Raheman Shaha was also allowed by this court. The role of the accused is lessor than the role of Raheman Shaha. There is no CCTV footage of pelting of stone by the accused or he has attributed any role in the alleged offence. 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. In support of the submissions, he relied on 1) Asif Iqbal Tanha vs. State of NCT of Delhi, CRL.A.39 of 2021 D/d.15.06.2021 2) Natasha Narwal vs. State of Delhi NCT, CRI.A. 82 of 2021 D/d.15.6.2021 3) Devanganga Kalita vs. State of Delhi NCT, CRI.A. 90 of 2021 D/d.15.6.2021.

5] Per contra, Ld. APP submitted that the accused formed an unlawful assembly. The first application after filing of charge-sheet was rejected on merit, there is no change in circumstance. The role attributed by the accused in the offence is explained by the IO during his argument. The role of the co-accused who are released on bail is different from the role of present accused. Therefore, the accused is not entitled for bail on the ground of parity. I.O. is present. It is submitted that accused has taken active participation in the crime. He attended the meetings, delivered provocative speech. In the rally the accused was aggressive and instigating the mob for pelting of stone. The eye witnesses have named the accused in their statement with the role attributed by him. In the CCTV Footage active participation of the

accused is seen in the riot. He was also accused in CR No. 76 of 2021. The accused has violated the orders of District Magistrate. Hence, it is prayed that application be rejected.

6] Perused the papers placed on record by both the sides. After going through the police papers, I find that the accused was present when the incident was occurred on 12.11.2021 at around 17.30 hours near fly over on Old Agra Road, Malegaon. This court while rejecting the bail application 88 of 2022 has observed that " *The police paper shows that the accused was member of unlawful assembly and in prosecution of the common object of that assembly the act has been committed. The CCTV Footage as per police paper shows the active participant of the accused in the riot. Therefore, I find that the submissions made on behalf of the accused there is no over act or specific allegations with the name of each accused in the FIR is found not convincing. In view of the above facts and circumstances of the present case I find the grounds on which the prosecution opposed the bail are found sufficient to reject the regular bail of the present accused. I find that the possibility of tampering with the prosecution evidence cannot be ruled out.*"

7] While rejecting the above bail application, the role attributed by the accused in the alleged offence has been considered in detail. The presence of the accused on the spot of incident is clearly seen from police papers. I have gone through the bail order of Mohommad Mustkin with his role in the alleged offence. I find that, the accused not only attended the earlier meetings but he has taken active participation in the rally and during the riot. After delivery of speech Mohommad Mustkin was left the spot as per the case of the prosecution. The present accused has been seen by the eye witnesses during the actual incident. In the CCTV footage the role attributed by the accused is also recorded. Hence, the role attributed by the accused in the offence is different from the role attributed by the co-accused who are enlarged on bail. The role

attached by Muslim Dande Pahilwan as observed by the Hon'ble High Court in its order dated 31.03.2022 is only to the extent of distribution of pamphlets. Therefore, above discussion is sufficient to indicate different role attributed by the accused in the offence. In the chart (Exh.c) filed with the bail application shows that the accused was present on the spot of riot under the fly over with the other co-accused involved in the riot. Therefore, on the ground of parity the accused is not entitled for bail. The ratio laid down in Asif Tanha's case is referred in Nakash Narwal's case and both the cases are referred in Devangana Kalita's case by Hon'ble Delhi High Court. All the 3 accused, who have been released on bail by Hon'ble Delhi High Court in the riot have no active role. Keeping in mind, the general principles in the supra case that while granting the bail the court must keep in mind not only the nature of accusation but also severity of the punishment and the nature of evidence in support of the accusation. In the case in hand, besides the statement of eye witnesses, there is CCTV footage as regards to the role attributed by the accused in the crime. Therefore, I find that the ratio laid in supra case on which the advocate for accused is relied is not helpful. So far the co-accused Raheman Shaha who is enlarged on bail is concerned, I find that considering the medical papers of Government JJ Hospital, his condition and the medical advice, on humanitarian grounds he was enlarged on bail. The accused is not having any health issue or the medical ground for his bail. Therefore, the accused is not entitled for the bail on the ground of parity. Considering the above facts and circumstances of the present case, gravity of the offence, I find that the accused is not entitled for regular bail. In the result, following order is passed :

ORDER

The application is rejected.

Date : 11.04.2022

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

