

MHNS070004232022

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

State

Vs

Sayyad Wasim Sayyad Hasan
(Accused No.52)**ORDER BELOW EXH. NO. 56**

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, 333, 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] The earlier bail filed by accused bail application No. 645 of 2021 and Bail Appln. No. 86 of 2022 were rejected by this court. The police has filed challan. Hence, there is change in circumstance. The accused has contended that he is permanent resident of Malegaon. He is doing labour work. His family is dependent upon him. There are no criminal antecedents. The second bail application No.86 of 2022 was rejected by this court on the ground that stick has been seized from him. Already this court has released around 30 out of total 66 accused. There is no prima facie evidence in the form of CCTV footage to show that accused has used the weapon. The seizure panchanama prepared by the police is false. The accused was not present on the spot of incident. No injury was caused by the weapon shown to be seized. Investigation is completed, hence no custodial interrogation is necessary. The accused is only earning member of his family. He will not tamper with the prosecution evidence. Investigation is completed and charge-sheet is

filed in the Court. The holy month of Ramjan is already been started. 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.119. It is contended that the offences are serious. It is a preplanned riot. The meetings were arranged. Provocative speech were delivered. The unlawful assembly has vandalized the public property and attacked the police persons with intention to kill. There are eye witnesses of the incident. The accused is seen in the CCTV footage. At the instance of the accused, stick has been seized by panchanama u/sec. 27 of the Indian Evidence Act. All the participants in the unlawful assembly are equally responsible for the riot. The accused has taken active participation in the riot. There is possibility that accused will commit similar kind of offence. The earlier bail application was rejected on merit. Hence, it is prayed that the application be rejected.

4] Heard both sides at length. The advocate Shri. Bafana for the accused submitted that this is second bail application after filing of charge-sheet. The first bail application No.645 of 2021(before charge-sheet was filed) was rejected by this court on 18.12.2021. Cri. B. Appln. No.86 of 2022 was rejected by this court on 15.03.2022. The charge-sheet has been filed on 11.02.2022. The advocate for accused submitted that in the FIR the name of accused is not figured. On the basis of CCTV Footage the police has impleaded the name of 62 persons and other 1000 to 1500 unknown persons. In the additional statement given by the complainant dated 20.11.2021 the name of accused is figured. The accused was arrested on 16.11.2021. The name of accused is figure at Serial No. 52 in the charge-sheet. He submitted that there is no life threatening injury to the witnesses. As charge-sheet is filed the question of tampering would not arise. Identification parade was not conducted.

No eye witness named the accused in his statement. The accused has not circulated any message or distributed pamphlets or delivered speech as per the case of the prosecution. As per the police papers one stick has been recovered at the instance of the accused. The IO has collected the stones, iron rod, stick from the spot of incident where the construction of fly over was going on. There are no allegations that accused were committed robbery. The alleged recovery of stick is shown by the side of furniture shop. This recovery is itself is doubtful. The person who has instigated the mob are released on bail. The persons against whom the prosecution has leveled main charges are also released on bail. He submitted that it is impossible that accused threw the stick at police and took stick lying before police and hide it. He submitted that mere recovery of article is no hurdle in granting the bail. He also prayed the bail on the ground of parity. In support of his submissions, he relied on i) Smti. Biva Baidya & Anr. Vs. State of Meghalaya, 2021 ALL MR (Cri) Journal 71, ii) Snehal Amer Chaus vs. State of Maharashtra 2021 ALL MR (Cri) 4523 iii) Mahesh s/o Arun Dhaware vs. The State of Maharashtra, 2021 ALL MR (Cri) 4255, iv) Shrinivas @ Sinju Ganji vs. The State of Maharashtra, 2021 ALL MR (Cri) 4463, v) Ajay Vishnu Bhoir & Ors. vs. The State of Maharashtra, 2021 ALL MR (Cri) 3979 vi) Sharad vs. State of Maharashtra, 2020 ALL MR (Cri) 2431 vii) Jitendra vs. State of M. P. 2020 ALL SCR (Cri) 749. Relying on the ratio laid in the supra case he prayed for bail.

5] Per contra, APP submitted that previous bail application of the accused was rejected. There is prima faice sufficient material to show participation of the accused in the crime. The accused was member of unlawful assembly. The accused has given the memorandum statement while in the police custody. Stick 5 feet 11 inch was recovered at the instance of the accused. The recovery is sufficient to show his active participation in the riot. There is no change in circumstance.

Considering the role of the accused in the crime and the role of co-accused who have been released on bail are different. Therefore, the accused is not entitled for bail on the ground of parity. The merits and demerits of the case cannot be gone into otherwise it will be mini trial. IO is present. She submitted that the accused is seen in CCTV Footage. Stick has been seized. He has taken active participation in the riot. CDR of accused also shows his location in Huusainseth compound. If the accused is released on bail there is possibility of tampering with the evidence. Hence, he submitted that the bail 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. After filing of charge-sheet the second bail application on the ground of change in circumstance as well as on the ground of parity, bail appln. No. 86 of 2022 was rejected on 15.03.2022.

7] At the instance of the accused the stick has been recovered as per the memorandum statement given by him. Besides that there is CCTV footage which shows the accused has taken active participation in the crime. Prima facie there is sufficient material on record to show that the involvement of accused in the crime. The role of the accused in the crime is different from the role of the co-accused and the prima facie evidence against them who have been released on bail by this court. The successive bail application is tenable. The legal preposition laid down in Sharad's case is not disputed. Already this court has considered the aspect of recovery at the instance of the accused as per memorandum statement given by him. The facts in the case of Mahesh Dhaware's case and in the case of Shrinivas @ Sinu Ganji's case are different from the

facts in the instant case. Therefore, the ratio laid down in the both the cases are not applicable to the case in hand. While applying the principle of parity must focus on the role of the accused, and the reasons cannot be the usage of similar weapons of the accused who was granted bail. In deciding the aspect of parity, the role attached to the accused, their position in relation to the incident and to the victims is of utmost importance. The role attributed by the accused in offence is more severe than the co-accused released on bail. From the accused stick is recovered. As per prosecution during riot constitution material of fly over bridge was used by miscreants to assault police and vandalizing public and private property. Hence, role attributed by the accused is different from co-accused released on bail. 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. Therefore, the ratio laid down in Bhiva Baidy's case, Ajay Bhoir's case, Sahl Chau's case is not applicable to the case in hand. The facts in the case of Jeetendra's case are totally different from the facts in the present case. Hence, the ratio laid down therein is not helpful to the accused. In the result, following order is passed :

ORDER

The application is rejected.

Date 11.04.2022

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