

MHNS070002142022

SC No. 44 of 2022

State
Vs
Nasir Khan Kasam Khan (A-60)**ORDER BELOW EXH. NO.131**

1] This is third bail application after filing of charge-sheet 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, first 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 The same was withdrawn on 25.3.2022 as he intend to move bail application on the ground of parity and on merit.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 second bail application in S.C. No. 44 of 2022 (Exh.53). The said application was rejected on 11.04.2022. Thereafter, the accused has filed this third application for bail. The 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, but in the supplementary statement recorded on 20.01.2022 his name was array. The IO in the chart shown the presence of the accused in Hussainseth compound only. The Hon'ble High Court has granted anticipatory bail to Muslim Dand Pahilwan who was present in the Hussainseth compound. As per the statement made by the IO the incident of pelting of stones

took place under the fly over on old agra road where there was no CCTV cameras. Accepting the submissions of IO this court as well as Hon'ble High court released some accused on bail. The names of co-accused Mustkin Dignity, Raheman Shaha, Danesh and Muslim Dande Pahilwan are stated by the witnesses. But they are released on bail. Therefore, the principle of parity is applicable. Even otherwise there is no sufficient and cogent evidence to connect the accused with the crime. The IO in the chart produced on record, a confusion was created and it was wrongly mentioned that some police witnesses in their statement stated that he was present on the spot. Accused was not present on the spot at the time of incident. 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 cooperate 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.-132. 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. The role of the accused is identical with the role of Raheman Shaha and Mustkin Dignity. The presence of accused in Hussainseth compound is not disputed during the course of arguments. He submitted that the witnesses have also taken the name of the persons who are released on bail by this court. The copy of the bail orders are filed at Exh.-E. The role of co-accused who are released on bail and the role of accused is identical. The IO has made mis-statement before the court hearing other sister bail applications, on the basis of which the bail application came to be rejected. He submitted that in para 7 and 9 of the application he has given the details and clarify the position. He submitted that accused is 50 years old. Holy festival of Ramzan is going on. He submitted that there is no bar to file successive application. The presence of the accused as per the statement of witnesses is only in Hussainseth compound. Therefore, he submitted that on the ground of parity the accused is entitled for bail. He drew my attention to the statements of witnesses placed on record with Exh. F. 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. In support of his above arguments he relied on i) Nanha S/o Nabhan Kha vs. State of U.P. 1992 STPL 6683 Allahabad, ii) Gandhi vs. State of A.P. 1991 STPL 7058 AP, Andhra Pradesh High Court, iii) Shobha Ram vs. State of U.P. 1991 STPL 6512 Allahabad. iv) Dilip @ Dinesh Shivabhai Patil vs. State of Gujarat, Misc. Appln. NO. 6181 of 2012.

5] The advocate for accused in reply submitted that the second bail application was filed on the ground of parity by withdrawing the bail application before the High Court. The Hon'ble High Court has granted the permission to file the application. He submitted that there can not be distinction between the two accused while considering the ground of parity. He submitted that this is the legal change to file the third application.

6] Per contra, Ld. APP submitted that after filing of charge-sheet this is third bail application. He submitted that successive bail application is tenable only on the ground of change circumstances. He submitter earlier bail application was rejected on merit on 11.04.2022. Present application is filed on 18.04.2022. Hence, according to him there is no change in circumstance. He submitted that the court has considered the role by some of the police witnesses of the accused in the offence. As no change in circumstance is made out, the application be rejected.

7] Perused the FIR and the papers placed on record by both sides. After going through the police papers, I find that, as per prosecution before occurrence of the incident of stone pelting on 11.12.2021 some meetings were held regarding the band called on that day. I have gone through the chart (Exh.-C). In the chart, it has been shown that the accused is present in the Hussainseth compound, he has gathered the mob and also join the mob. Further, in the chart, the accused shown to be participant in the criminal conspiracy by the organiser. I have gone through the order dated 11.04.2022 with annexure A, E, F placed on record with this application. The accused as per the statement given by the police witnesses was not only present for the meetings held prior to 12.11.21 but on 12.11.21 he gathered the mob and was also part of the said mob after it was turned into unlawful

assembly. I have gone through the orders placed on record of the co-accused. I find that the bail orders (Exh-E) were passed considering the submissions made by the IO in the open court regarding the role of each accused, revealed during further investigation. In the earlier orders the role of present accused is distinguish from the role of co-accused Mustkin Dignity, Muslim Dande Pahilwan, Mainoddin Abdul Kadir. Muslim Dande Pahilwan was released on bail so far the reliance placed on the pamphlets/circular. So far issued by the applicant is concerned, the learned APP has tendered the English translation of said pamphlet. A perusal of the same does not show that there was any inflammatory statement made or instigation for any violence. He was 74 years old. Hence, he was released on bail. Co-accused Raheman Shaha was released on bail on medical ground considering the papers. So far Mustkin Dignity is concerned, the IO in the chart shown his role to the extent of participation in the band and rally at Hussainseth compound and at Shahid Tower only. The accused Nasir Kirana as per the statement of the witnesses has attended the meetings held prior to 12.11.2021. He was also noticed with the organisers at Hussainseth compound with other co-accused. He was also noticed in the mob pelting stones on the persons. This fact is also clear from perusal of the chart (Exh.-C). Hence, considering the role attributed by the accused he is not entitled for bail on the ground of parity. As there is no legal change to file this application the ratio laid down in case of Gandhi's is not applicable to the case in hand.

8] The legal proposition that successive bail application is maintainable is not disputed. In the present case, the application has not been moved on the ground of further development and on the different consideration. I have also considered the argument advanced on behalf of accused that there cannot be distinction between the two accused so far parity is concerned with the papers placed on record. I find the role

of present accused is different from the role and grounds on which the co-accused enlarged on bail. Therefore, the ratio laid down in Nanha's case on which advocate for accused is relied on is not helpful. The ratio laid down in Shobharam's case that there could be no parity in rejection of bail application of co-accused is not disputed. The Hon'ble High Court of Gujarat has granted the bail to Dilip @ Dinesh Patel on different consideration, hence the ratio laid down therein is not helpful to the case in hand. 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 : 22.04.2022

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