

MHNS070004272022

**S.C. No.45 of 2022**

State

Vs

1. Rizwan Khan Mohammad Khan, (A-2)
2. Shaikh Aasif Shaikh Karim, (A-6)
3. Tausif Khan Noor Khan, (A-11)
4. Aftab Ijaz Baig, (A-13)
5. Aasif Ahmed Nihal Ahmed, (A-22)
6. Arbaj Shaikh Sardar, (A-23)
7. Shaikh Gayasuddin Shaikh Shakiluddin. (A-26)

ORDER BELOW EXH.10

1] This is second application under section 439 of the Code of Criminal Procedure filed by accused in C.R.No.74 of 2021 registered with City Police Station, Malegaon under sections 307, 395, 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] The first bail application 646/2021 was rejected on 18.12.2021. The police has filed challan therefore on the ground of change of circumstance the present bail application is filed. The accused also prayed for bail on the ground of parity. The accused have contended that they are falsely involved in this crime. They have no direct or indirect role in the alleged offence. They have been array as an accused on the basis of suspicion. No names are mentioned in the FIR. They are not the member of political group or organization. The some accused are labourer and some are small businessman. They are only earning member of their families. The names of the accused are not mentioned in the memorandum panchanama as well as in statement u/sec. 164, Cr.P.C. Investigation is completed. They are permanent

resident of Malegaon having movable and immovable properties. They are 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. They are ready to co-operate investigating machinery. They will not abscond. They will not tamper with the prosecution evidence. The allegations are general in nature. No specific role is pointed out in FIR. Hence, prayed for bail.

3] The I.O. through Ld. APP Shri. A.N. Pagare for the state resisted the application by filing say at Exh.24. It is contended that accused No.2 and the other co-accused No.31 forcibly taken Rs.1,500/- from the pocket of complainant. Besides that they also made assault on complainant by iron rod. The complainant received life threatening injury in the assault. The co-accused Nos.6,11,22,25 are responsible for the preplanned riot and assault on police. If the accused are released on bail they are likely to tamper with the prosecution evidence and witnesses. The accused are involved in the serious offence. The orders of District Magistrate and police were violated. The stones were pelted, public property were damaged during the band. It is a preplanned riot. The common citizens were also injured during the incident. The statement of eye witnesses u/sec. 164 of Cr.P.C. was recorded. The witness was thereafter threatened. The witnesses are frightened and not coming forward to give statement. Hence, it is prayed that the application be rejected.

4] Heard both sides at length. The advocate for accused submitted that the names of accused who are before the court, their names are not figured in the FIR or in the supplementary statement. The investigation is over. Charge-sheet has been filed. In the supplementary statement of the complainant the name of accused No.2 is figured as he was with co-accused No.31 and taken Rs.1,500/- from the pocket of the

complainant. He submitted that nothing has been recovered from accused No.2. There is no any over act or active participation of other accused who are before the court praying for bail. The supplementary statement of the police persons were recorded after gape of one month. All the statements are stereo type. The injury certificates placed on record are of simple in nature. None of the injured witness has disclosed the name of the accused before the court as an assailant. Identification parade has not been conducted. Up till now no juvenile has been arrested and produced before the J.J.B. He submitted that against the antecedents shown in the chart submitted by the IO cannot be ground to reject the bail. He submitted that already the co-accused Nos.10, 19, 20, and 21 who have identical role with the present accused are enlarged on bail by this court. Therefore, he submitted that on the ground of parity the present accused before the court are entitled for the bail. In the chart submitted by the IO the most of the accused before this court their faces are not seen clearly. No specific role or act has been attributed to attract against the accused. They permanent resident of Malegaon. They are ready to abide the terms and conditions. They are ready to co-operate with the investigating officer. Charge-sheet has been filed so practically investigation is over. Hence, he submitted that on terms and conditions the accused be released on bail.

5] Per contra, Ld. APP submitted that, this is second bail application. There is no change in circumstances. They are also accused in CR No.75 of 2021. They were present on the spot of occurrence. There is prima facie sufficient evidence against the accused. The accused were member of unlawful assembly, hence they are equally liable for the offences. Considering the number of persons in the mob, it is difficult to name each and every person with the FIR immediately after the incident. He submitted that on the basis of the CCTV Footage, the eye witnesses of the incident, the name of other persons involved in the riot

are revealed and accordingly they have been arrayed as an accused. He submitted that identification parade is not mandatory. He submitted that the presence of the accused is seen in the CCTV Footage. However, the electronic media has its own restrictions and limitations. Therefore, due to range issue the faces are not clearly seen in the CCTV Footage. He submitted that though charge-sheet is filed but till the investigation is in progress. It is further submitted that what the witness has been seen is stated by him. Therefore, their statements cannot be leveled as stereo type statement. The investigation regarding child with conflict in Law is in progress. The witnesses who have given statement u/sec. 164, Cr.P.C. have been threatened. I.O. is present. He submitted that the investigation is in progress. Considering the number of persons participated in the riot, the identification role is in progress. Prior to the riot a video clip has been viral on You Tube which is sufficient to indicate that it is a preplanned riot. The police were made target. Injury certificates of the police persons are placed on record. It is submitted that after the riot due to law and order situation, bandobast, there is delay in recording the supplementary statement of witnesses. He submitted that besides 395, 307, 333 of IPC, the offence has been registered against the accused. He placed on record chart with names of the accused before this court with his participation in the crime, number of eye witnesses, seized articles, CCTV footage, CDR and the other incidents in detail. He has also submitted in detail the role of each of the accused and the other details as mentioned in the chart placed on record. He submitted that the offence is serious. 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 in Dudh Bazar area, Old Agra Road at Malegaon. The first bail application No. 646/2021 was

rejected on merit on 18.12.2021. Thereafter, the charge-sheet has been filed and the case has been committed to this court. In view of the ratio laid down in Laxman Hatti vs. State of Maharashtra, the bail application after filing of charge-sheet is tenable on the ground of change in circumstances.

7] I find that, in the supplementary statement of the complainant he has identified accused No.2 as a person who has forcibly taken Rs.1,500/- from his pocket. He also identified that the accused No.2 was with the co-accused No.31 Kachhi. Therefore, I find there is a prima-facie evidence against the accused No.2 to point out his active participation and role in the crime. The offence committed by accused No.2 is only antisocial but it also disturbed the public peace creating issue of law and order. Considering the active role attributed by the accused No.2, the possibility of tampering with the witnesses cannot be ruled out. Further, there is also possibility that he will commit the similar kind of offence. Therefore, I find that accused No.2 is not entitled for the bail.

8] So far the other accused before this court for bail is concerned, I have gone through the role attributed to them with the objections raised by the prosecution for the bail. The IO in the open court submitted that the presence of the accused during the riot is not seen in the CCTV Footage as the area is large and the entire area is not covered by CCTV Footage. Now the investigation is over. Already this court has released some of the co-accused on regular bail having the identical role in the offence. Considering the ratio laid down in Amit Vijay Redlan vs. State of Maharashtra and Vishal Sadharam Ridhlan vs. State of Maharashtra, I find that the accused (except accused No.2) all other accused who are before this court are entitled for regular bail on the ground of parity. Hence, further detention of the accused

considering his role in the offence, allegations against him is not justified. The accused persons are permanent resident of Malegaon. Their presence can be secured by imposing terms and conditions. Considering the papers placed on record, charge-sheet has been filed and the role of the accused as per the prosecution case, I find that the accused are entitled for regular bail. In the result, following order is passed :

ORDER

1. The application is partly allowed.
2. The accused Nos.6,11,13,22,23 and 26 be released on PB and SB of Rs.15,000/- (Rs. Fifteen Thousands only) each on following terms and conditions :-
 - a. The accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with facts of accusation, so as to dissuade them from disclosing such facts to the Court or to any Police Officer.
 - b. The accused will not tamper with the prosecution witnesses and evidence in any manner.
 - c. They shall not involve in any antisocial activity or commit any other offence.
 - d. The accused shall furnish their detail address along-with the photo ID.
 - e. The accused shall furnish their detail address with mobile number along-with photo ID proof as well as the address, mobile number and photo IDs of their three close relatives.

Date : 29.03.2022

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

