

MHNS070004272022

S.C. No.45 of 2022

State

Vs

1. Shaikh Nasir Shaikh Mehboob,(A-32)
2. Waseem Akhtar Mohammad Saleem,(A-33)
3. Altaf Anwar Shah,(A-34)
4. Mohammad Ismail Mohammad Israil,(A-35)
5. Mohammad Rafique Mohammad Yunus,(A-36)
6. Shaikh Sabir Shaikh Mustafa,(A-37)
7. Javeed Khan Ataullah Khan.(A-38)

ORDER BELOW EXH.18

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, 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] After the charge-sheet has been filed on the ground of change in circumstance the present bail application has been filed. The accused also prayed for bail on the ground of parity. Their earlier bail application 49 of 2022 was rejected on 23.02.2022. The accused have contended that they are Innocent and not committed offence. No names are mentioned in the FIR. The accused persons are labourer and only earning member of their families and others are dependents upon them. 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. They are ready to furnish sureties. 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. Nothing is seized from the possession of accused. 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.29. It is contended that accused Nos.32 to 38 are members of unlawful assembly and part of the criminal conspiracy to commit riot. The accused have used the persons addicted to Alpraolam Tablets during the riots to attack on the police persons. The accused have damaged the public property and the government property. 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. Nothing is recovered from the accused. The investigation is over. Charge-sheet has been filed. 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. Uptill 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. 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. The role of each accused and the recovery mentioned in the tabular form submitted in the court. 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. I find that, the policed has filed challan in the court on 11.02.2022. Thereafter, the bail application 49 of 2022 filed by all the accused before this court was decided. Therefore, I find that the ground of change in circumstance on account of filing of charge-sheet is not available to the present accused.

7] The second ground on which the accused prayed for bail is on the ground of parity. I find that from accused No.33 iron pipe has been seized, from accused No.37 wooden stick has been seized and rest of the accused are named by the co-accused No.48 and 52 in the memorandum statement as they were accompanied with them. That apart I find that in the CR No.75 of 2021 the role attributed by the

present accused and their active participant in the riot. Therefore, on the ground of parity the accused are not entitled for bail. The offence is antisocial. Not only that it also disturbed the public peace and disturbed the law and order. If the accused are released on bail there are possibility of tampering with the witnesses and committing similar kind of offence. Therefore, I find that the accused are not entitled for bail. In the result, following order is passed :

ORDER

The application is rejected.

Date : 29.03.2022

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