

MHNS070004272022

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

State

Vs

1. Ziyaur Rahman Javeed Ahmed. (A-29)
2. Ansari Ammar Shafeeque Ahmed.(A-30)

ORDER BELOW EXH. NO.19

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] After filing of charge-sheet on the ground of change in circumstance the present bail application has been filed. On the ground of parity also the accused prayed for bail. The accused have contended that they are innocent and have not committed offence. Nothing has been seized from the accused. The accused are labourer. They are only earning member of their families and others are dependent upon them. They are permanent resident of Malegaon having movable and immovable property. They are ready to furnish sureties. 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.30. It is contended that the accused prepared clip and uploaded on Malegaon-1 You Tube Channel to create enmity between two communities. 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 pre planned riot. The common citizens were also injured during the incident. 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 already in respect of the alleged fact the offence has been registered with Killa Police Station. After the accused are released from the same offence the present crime they have been arrested. Besides the announcement and uploading of the clip on You Tube Channel there are no other allegations against the accused. Both accused are in jail since last four months. There are no criminal antecedents. He submitted that already the co-accused having more role in the alleged riot are released on bail by this court. He submitted that therefore on the ground of parity the accused be released on bail. The police has filed charge-sheet. Hence, no purpose will be served by further detention of the accused. The accused persons are 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. It is submitted that the

investigation is in progress. The accused have uploaded the clips one day prior to the riot which is sufficient to show that it is preplanned riot. The IO in the tabular form has mentioned that the accused prepared a clip and uploaded on You Tube. Thereby they have participated in the conspiracy. 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. 649/2021 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 have gone through the objections raised by the prosecution for the bail. The IO in the open court submitted that the presence of the accused prepared clip and published it on You Tube Channel Malegaon-1. I find that besides this there are no other allegations against the accused No.29 and 30 before this court as per the role of both the accused mentioned in the tabular form submitted by the IO. Already the co-accused are released by this court on the bail. Though the role of the other co-accused who have been released on bail are different from the role of the present accused, however, considering the allegations against accused, I find that they are not so grievous in nature to deny bail to them. Now the investigation is over. Hence, further detention of the accused considering his role in the offence, allegations against him is not justified. They 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 allowed.
2. The accused Nos. 29 and 30 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 alongwith the photo ID.
 - e. The accused shall furnish their detail address with mobile number alongwith 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.

