

MHNS070004272022



S.C. No.45 of 2022

State

Vs

Rijwaz Khand Moommad Khan(A-2)

ORDER BELOW EXH.134

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] Perused application and say (Exh.139).

3] Heard both the sides. Advocate for accused submitted that the main accused Mohommad Isuf Mohommad Iliyas in the present CR had been granted interim anticipatory bail by Hon'ble High Court. He submitted that the allegations in the FIR shows that Moommad Issuf has organized the rally, he gathered mob, delivered provocative speech, as a result of which the incident of riot took place. He submitted that the accused have prayed before the court for regular bail. Since last 7 months they are behind the bar. There is no progress in the investigation. Nothing is recovered from the accused. The parents need hospitalization for the treatment. Except the accused, no other person in the family is earning member. He is friend of Mohommad Issuf. The allegations against him is of delivery of speech. He is not involved in other two CR of assaulting on the police persons, damaging public

property registered in connection with the incident. Some of the co-accused are released on bail. Therefore, on the ground of parity he prayed that accused be enlarged on regular bail by imposing terms and conditions even by order of attendance to the concerned police station.

4] APP submitted that this is second bail application after filing of charge-sheet. First bail application was rejected on merit. There is no change in circumstance. Due to vacation interim protection was granted to Usuf Iliyas. Even that cannot be change in circumstance to consider his bail application. Final order has not been passed by Hon'ble High Court. Hence, it can not be said that it is a change in circumstance. Therefore, he submitted that the application is not tenable. Hence, be rejected.

5] The first bail application (Exh.10) after filing of charge-sheet has been rejected on merit by this court. I have gone through the papers placed on record with Exh.139, 141. On page 2 of the charge-sheet, I find that alongwith Zahid Kachchi the name of Rizwan Khan is also stated by the complainant. Therefore, there is prima facie case against the accused. I have also gone through the charge-sheet. While rejecting the first bail application, the role of the present accused has been considered on merit. The change in circumstance on which the present application is filed is the interim protection granted to accused named Mohammad Issuf by Hon'ble High Court in anticipatory bail application No.1254 of 2022. I find that the Hon'ble High Court has granted interim protection to the accused. Therefore, I am of the opinion that no change in circumstance is made out to consider the application on merit. Considering facts and circumstance of the present case, I find that no change in circumstance is made out. The accused failed to made out the ground of parity. The ratio laid down in Nanah s/o Navhan Kha vs. State of U.P. I find that considering facts and circumstance of the

present case and the ratio laid down in supra case is not applicable to the case in hand. I find no merit in the application. In the result, following order is passed :

ORDER

The application is rejected.

Date : 04.06.2022

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