

MHNS070004272022

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

State

Vs

Mohammad Zahid Anees Ahmad

@ Kachchi,(A-31)

**ORDER BELOW EXH.143**

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 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] Read the application and say (Exh.144).

3] Heard both the sides. Advocate for accused submitted that accused was arrested on 30.11.2021. This is his first regular bail application. There are no criminal antecedents. In the FIR, the name of the accused is figured. No specific role has been mentioned in the FIR. He submitted that it is not possible that 4 to 5 persons can put hand in the pocket of the police person and took the amount. He drew my attention to the statement of the prosecution witnesses and submitted that except the complainant no other witness has stated the name of the accused. The amount was recovered from the brother of the accused. He submitted that it is improbable to commit offence u/sec. 395 when the police in large number were present on the spot. They were firing at the mob. He submitted that no 65B certificate is annexed in support of the CCTV footage. Nothing has been recovered from the accused. As per medical certificate there is no injury on the neck. There is no progress in the investigation. Co-accused has been released on bail. He submitted that the police has applied section 143 of IPC and therefore at the time

of bail the role can not be distinguished to reject the bail. On the ground of parity he prayed that accused is entitled for the bail. He then drew my attention to the memorandum statement in the recovery panchanama and submitted that the place where the article has been kept is not mentioned in the memorandum statement. Therefore, it has no evidential value. He submitted that in the reply, the grounds are taken in respect of the incident shown in CR No. 74 of 2021 and CR No. 76 of 2021. Considering the number of accused the trial will take its own time. Accused No.14 is in jail since last 7 months. He submitted that attendance can be ordered on any terms and conditions, he be enlarged on bail.

4] Complainant has received injury on the vital parts. Knowledge is important and not the nature of injury to attract section 307 of IPC. The accused has active role in the crime. He has been identified by complainant and the other police persons. The amount and the iron rod has been recovered from the accused. The bail application of co accused having identical role has been rejected. There is a prima facie case against the accused. Therefore, it is submitted that the application be rejected.

5] This is first bail application after filing of charge sheet by accused Zahid Kachchi. I have gone through the complaint, supplementary statement of complainant. I find that complainant named the accused with his specific role in the offence. In the supplementary statement, the complainant has identified the accused Zahid Kachchi. I have gone through the statement of other witnesses with the injury certificate of Pintya Pawara. The other prosecution witnesses who have on bandobast duty, in their statement has stated the incident during which the complainant, police constable Pawara was dragged in Dudh Bazar Lane. He was assaulted and forcibly the amount was taken out from his pocket. Prima facie it corroborates the statement of the complainant. Further, at the instance of the accused rod had been

recovered. So prima facie there is sufficient material to connect the accused with the crime under which he has been booked.

6] The role of co-accused who have been released on bail is materially different from the role attributed by accused. Therefore, on the ground of parity, the accused is not entitled for bail. The ratio laid down in Arun Kumar Vs. Police Inspector Colva, 2022 ALL MR (Cri.) 1019 is not applicable to the case in hand.

7] Considering the facts and circumstances of the present case, the role attributed by the accused in the incident, the possibility of committing similar kind of offence cannot be ruled out. The act committed by the accused is anti social, causing disturbance to the peace and creating law and order problem in the society. Therefore, the ratio laid down in Ajay Vishnu Bhoir and Anr vs. State of Maharashtra, 2021 All MR (Cri.) 3979 on which the advocate for accused is relied on is not helpful.

8] In the present case there are eye witnesses of the incident of dacoity. The complainant has specifically named the accused and the act committed by him. Therefore, the ratio laid down in Mahesh Arun Bhaware vs. State of Maharashtra, 2021 ALL MR (Cri) 4255 is not applicable to the case in hand. Considering the role attributed by the accused in the crime, I find that on the ground of parity the accused is not entitled for bail. Hence, the ratio laid down in Smti Bhiva Vaidya and Anr. Vs. State of Meghalay, 2021 ALL MR (Cri) 71 is not applicable to the case in hand.

9] The Hon'ble High Court in Ranjit Kalyan and Anr vs. State of Gova, 2021 ALL MR 3981 has passed order in the writ jurisdiction under article 226 of the Constitution regarding the two FIRs in respect of the same incident. Hence, I find that the ratio laid down therein is not applicable for the bail application pending before this court. Considering facts and circumstances of the present case, prima facie, I find there is sufficient material on record against the accused to show his active

participation and involvement in the crime. If he is enlarged on bail, there is a possibility of tampering with the witnesses. Considering the gravity of the offence, I find that the accused is not entitled for the bail. In the result, following order is passed.

**ORDER**

The application is rejected.

Date : 04.06.2022

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

