

MHNS070004272022



S.C. No.45 of 2022

State

Vs

Shaikh Fayyaz Shaikh Muzammil(A-4)

ORDER BELOW EXH.184

1] This is third 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.185).

3] Heard both sides at length on V.C. The advocate for accused submitted that already in respect of the alleged fact the offence has been registered with Killa Police Station. Accused is in jail since last 11 months. The Hon'ble High Court has released all other co-accused against whom there are allegations of taking active participation in crime. Nothing is recovered from the accused. 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 is permanent resident of Malegaon. He is ready to abide the terms and conditions. He is 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.

4] Per contra, Ld. APP submitted that this is third bail application. There is no change in circumstances. The accused was member of unlawful assembly. There is CCTV footage of the incident. He submitted that earlier applications of the accused were rejected by this court on merit. The accused has taken active part in the riot. The offence is serious. Hence, it is submitted that considering gravity of the offence application be rejected.

5] Perused the FIR and the papers placed on record. I have gone through the documents placed on record on behalf of the accused. I have gone through the objections raised by the prosecution for the bail. I find that the all other co accused in the present crime are released on bail by Hon'ble High Court. Considering the allegations against the present accused with the other co-accused who have been released on bail, I find that on the ground of parity the accused is entitled for bail. I find that the accused has made out the change in circumstance to consider the present bail application. Hence, I find that on the ground of parity the accused is entitled for bail. He is permanent resident of Malegaon. His presence can be secured by imposing terms and conditions. In the result, following order is passed :

ORDER

1. The application is allowed.
2. The accused be released on PB and SB of Rs.15,000/- (Rs. Fifteen Thousands only) 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 his detail address alongwith the photo ID.
- e. The accused shall furnish his detail address with mobile number alongwith photo ID proof as well as the address, mobile number and photo IDs of his three close relatives.

Date : 13.10.2022
nha/-

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