

(2015) 03 RAJ CK 0011

In the Rajasthan High Court

Case No : Criminal Misc. Bail Application Nos. 1129, 704, 883, 995, 1027, 187, 248, 1140, 1885, 2052, 1812, 2586/2015 and 15056/2014

Jagdish and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 436, 439
Explosive Substances Act, 1908 — Section 2, 3, 4, 5, 6
Explosives Act, 1884 — Section 4, 4(d), 5, 6, 6-A
Penal Code, 1860 (IPC) — Section 120-B, 286

Citation : (2015) 4 RLW 3574

Hon'ble Judges : Prashant Kumar Agarwal, J.

Bench : Single Bench

Advocate : S.L. Meena, Kamal Gupta, Rajneesh Gupta, Pankaj Gupta, R.D.S. Naruka, Virendra Dave, Ashvin Garg, Shailendra Balwada, Iqbal Khan, Rahul Tiwari, S.P. Poshwal, Jitendra Pandey and R.P. Vijay, for the Appellant; Prakash Thakuria, Public Prosecutor, Advocates

Final Decision : Dismissed

Judgement

Prashant Kumar Agarwal, J.—Each of the accused-petitioner has moved a separate application for grant of bail under Section 439 Cr.P.C. Although, the aforesaid bail applications arise out of different FIRs registered from time to time at different Police Stations situated in the State of Rajasthan, but as a common question of law has been raised in these applications, they are being decided and disposed of by this common order. The common question of law which has been raised in these applications is whether the substances/articles allegedly recovered from the possession of each of the accused-petitioners is an "explosive" within the meaning of the Explosives Act, 1884 (hereinafter to be referred as "the Act of 1884") or an "explosive substance" within the meaning of the Explosive Substances Act, 1908 (hereinafter to be referred as "the Act of 1908") and another question of law is whether the offence committed by each of

the accused-petitioners is covered under the Act of 1884 or the Act of 1908. It is to be noted that if it is found that the offence so committed is punishable under the provisions of the Act of 1884, the same is to be treated as a bailable offence and the accused-petitioner is entitled to be released on bail as a right, but if it is found that the offence is punishable under the provisions of the Act of 1908, then the accused-petitioner is not entitled to be released on bail without considering the merit of the case.

2. S.B. Criminal Misc. Bail Application No. 1129/2015 filed by the accused-petitioner-Shri Jagdish and S.B. Criminal Misc. Bail Application No. 704/2015 filed by the accused-petitioner-Shri Mangi Lal have arisen out of FIR No. 5/2015 registered at Police Station Sadar, Dausa for the offences under Sections 4 and 5 of the Act of 1908. The prosecution case is that Ammonium Nitrate weighing 93 Kg. and blue coloured safety fuse wire was found in the possession of the accused-petitioner Shri Mangilal without any valid licence or permit when he was carrying them from one place to another by Motorcycle bearing registration No. RJ-29-2M-0354 on 03.01.2015, whereas Ammonium Nitrate weighing 141 Kg. was recovered from the possession of the accused-petitioner-Shri Jagdish on 07.01.2015 without any valid licence or permit. The bail application under Section 439 Cr.P.C. filed by the accused-petitioner-Shri Mangilal was dismissed by the Additional Sessions Judge, Dausa vide order dated 09.01.2015, whereas that filed by the accused-petitioner-Shri Jagdish was dismissed by the same Court vide order dated 13.01.2015.

3. S.B. Criminal Misc. Bail Application No. 883/2015 filed by the accused-petitioner-Shri Sher Singh has arisen from FIR No. 19/2015 registered at Police Station Bayana (District Bharatpur) for the offences under Sections 4 and 5 of the Act of 1908. As per prosecution case on 7.1.2015 green coloured fuse wire measuring 5 ft., four aluminum topies, and three gullas (detonators) alongwith a tractor fitted with compressor and two rods and two sabbals were found in the possession of the accused-petitioner-Shri Sher Singh without any valid licence or permit and he was having the aforesaid substances/articles in his possession for making hole in a hill for mining purposes. The bail application under Section 439 Cr.P.C. filed by the accused-petitioner was dismissed by the Additional Sessions Judge No. 1, Bayana vide order dated 16.01.2015.

4. S.B. Criminal Misc. Bail Application No. 995/2015 by accused-petitioner-Shri Kalu Ram has been filed by him in respect of FIR No. 468/2014 registered at Police Station Chaksu (District Jaipur) for the offence under Section 5 of the Act of 1908. As per prosecution case 70 gelatin bars, one super-explosive machine and electric wire alongwith a tractor fitted with compressor were found in the possession of the accused-petitioner without any valid licence or permit. It is further case of the prosecution that the super explosive machine found in the possession of the accused-petitioner was for being used for explosion. The bail application under Section 439 Cr.P.C. filed by the accused-petitioner-Shri Kalu Ram was dismissed by the Additional Sessions Judge No. 19, Sanganer (Jaipur

Metropolitan) vide order dated 24.12.2014.

5. S.B. Criminal Misc. Bail Application No. 1027/2015 has jointly been filed by the accused-petitioner-Shri Mohd. Qureshi and Chand Mohammed in respect of FIR No. 566/2014 registered at Police Station Sadar, Hindan (District Karauli) for the offences under Sections 4 and 5 of the Act of 1908 and Sections 286 and 120-B IPC. As per prosecution case red coloured 75 ft. detonating fuse wire, 13 bundles of green coloured safety fuse wire, 49 detonators and 30 bags of Ammonium Nitrate were recovered from a Pick-Up Jeep bearing registration No. RJ-23-G-1384 registered in the name of accused-petitioner-Shri Mohd. Qureshi and at the time of the recovery both the accused-petitioners were occupant of the aforesaid vehicle and they were not having any valid licence or permit. The bail application under Section 439 Cr.P.C. jointly filed by the accused-petitioners was dismissed by the Additional Sessions Judge No. 1, Hindauncity vide order dated 05.01.2015.

6. S.B. Criminal Misc. Bail Application No. 187/2015 filed by the accused-petitioner-Shri Ramesh, S.B. Criminal Misc. Bail Application No. 15056/2014 jointly filed by the accused-petitioners-Shri Madan Mohan and Harkesh @ Guddu and S.B. Criminal Misc. Bail Application No. 248/2015 filed by the accused-petitioner-Shri Kishanlal @ Kalu Ram are also outcome of the aforesaid FIR No. 566/2014 registered at Police Station Sadar, Hindaun. As per prosecution case accused-petitioner-Shri Ramesh, Shri Madan Mohan and Shri Harkesh were also the occupant of the aforesaid vehicle i.e. RJ-23-G-1384 at the time of the recovery of the aforesaid substances/articles, whereas accused-petitioner-Shri Kishanlal @ Kalu Ram is the owner of the place where the recovered substances/articles were stored. The bail applications filed by these accused-petitioners for grant of bail under Section 439 Cr.P.C. have been dismissed by the same Court vide common order dated 16.12.2014.

7. Accused-petitioner-Shri Sameem has filed S.B. Criminal Misc. Bail Application No. 1140/2015 in respect of FIR No. 437/2014 registered at Police Station Tapukara (District Alwar) for the offences under Sections 4, 5 and 6 of the Act of 1908. As per prosecution case on 31.12.2014 Ammonium Nitrate weighing 180 Kg., total 788 detonators and 500 meter red coloured safety fuse wire was recovered from the possession of the accused-petitioner without any valid licence or permit when he was carrying them as driver of Bolero Jeep bearing registration No. RJ-02-UA-2719. The bail application filed by the accused-petitioner for grant of bail under Section 439 Cr.P.C. was dismissed by the Additional Sessions Judge, Tijara (District Alwar) vide order dated 08.01.2015.

8. Accused-petitioner-Shri Prem Singh has moved S.B. Criminal Misc. Bail Application No. 1885/2015 in respect of FIR No. 280/2012 registered at Police Station Bhiwardi Phase-III (District Alwar) for the offences under Sections 4 and 5 of the Act of 1908. As per prosecution case on 7.6.2012 Ammonium Nitrate total weight 250 Kg, one bundle of safety fuse wire, nine bundles of red coloured detonative fuse and nine high explosive detonative tubes were recovered from a

kachcha house belonging to the accused-petitioner without any valid licence or permit. It is to be noted that the accused-petitioner has been arrested in this case on 30.12.2014. The bail application filed by the accused-petitioner under Section 439 Cr.P.C. has been dismissed by the Additional Sessions Judge, Tijara (District Alwar) vide order dated 15.01.2015.

9. The accused-petitioner-Kalicharan has filed S.B. Criminal Misc. Bail Application No. 2052/2015, whereas accused-petitioners-Shri Mahavir and Pappu @ Pramod have jointly filed S.B. Criminal Misc. Bail Application No. 1812/2015 in respect of FIR 18/2015 registered at Police Station Badi (District Dholpur) for the offences under Sections 4,5 and 7 of the Act of 1908, Section 9B of the Act of 1884 and Section 120-B IPC. As per prosecution case on 07.01.2015, 70 bags of Ammonium Nitrate were recovered from a truck bearing registration No. RJ-11-GA-4367, 48 bags of Ammonium Nitrate were recovered from a Pick-up Jeep bearing registration No. RJ-11-GA-6750 and 200 bags of Ammonium Nitrate were recovered from a nearby house. It is also the case of the prosecution that apart from aforesaid substance, 196 bundles of detonator fuse wire, 3000 gelatin bars packed in 15 boxes and total 26400 aluminum detonator fuse contained in 53 packets were also recovered. It is also the case of the prosecution that accused-petitioners-Shri Mahavir and Pappu were occupant of the aforesaid truck, whereas accused-petitioner-Shri Kalicharan was having authority to look after the aforesaid Pick-up. According to the prosecution the petitioners were not having any valid licence or permit for the same. The bail applications filed by the accused-petitioners for grant of bail under Section 439 Cr.P.C. were dismissed by the Additional Sessions Judge, Badi (District Dholpur) vide common order dated 04.02.2015.

10. Accused-petitioners-Shri Tola Ram and Ram Vilas have jointly filed S.B. Criminal Misc. Bail Application No. 2586/2015 in respect of FIR No. 69/2015 registered at Police Station Anantpura, Kota for the offence under Section 5 of the Act of 1908. As per prosecution case, 87 detonators contained in nine cartons alongwith a tractor bearing registration No. RJ-20-R-1588 fitted with a compressor were found in the joint possession of the petitioners without any valid licence or permit on 25.02.2015. The application jointly filed by the accused-petitioners for grant of bail under Section 439 Cr.P.C. has been dismissed by the Sessions Judge, Kota vide order dated 28.02.2015.

11. In support of the applications, it was jointly submitted by the learned counsel for the accused-petitioners as below:-

(1) The word "explosive" has been defined under clause (d) of Section 4 of the Act of 1884, whereas the words "explosive substance" have been defined under clause (a) of Section 2 of the Act of 1908 and thus, it is clear that "explosive" and "explosive substance" are separate and distinct substance and are not interchangeable. The substances/articles allegedly recovered from the possession of each of the accused-petitioner can at the most come within the four-corners of "explosive" as defined under clause (d) of Section 4 of the Act of 1884 and the

maximum sentence provided under Section 9-B of the Act of 1884 is two years for having in possession an "explosive" without any valid licence or permit and, therefore, the offence allegedly committed by each of the accused-petitioners is a bailable offence and each of them is entitled to be released on bail as a right as per provisions of Section 436 Cr.P.C.

(2) Ammonium Nitrate was not even an "explosive" within the meaning of clause (d) of Section 4 of the Act of 1884 and no licence or permit was required to deal in it before the Ammonium Nitrate Rules, 2012 came into force with effect from 11.7.2012. As per the aforesaid Rules of 2012, the same were made by the Central Government in exercise of powers conferred upon it by Sections 5 and 7 of the Act of 1884 and this fact alone is clear indication of the fact that the ammonium nitrate is at the most an "explosive" within the meaning of clause (d) of Section 4 of the Act of 1884.

(3) Even if for the sake of arguments it is admitted that the substances/articles allegedly recovered from the possession of each of the accused-petitioners is an "explosive substance" within the meaning of clause (a) of Section 2 of the Act of 1908, mere possession of the same is not an offence within the meaning of the Act of 1908 as it is clear that unless the act of an accused is covered under the circumstances as provided under Sections 3, 4 and 5, the same is not punishable under the provisions of the Act of 1908.

(4) The decision of Chandra Prakash Vs. State of Rajasthan reported in 2014 AIR (SCW) 3055 relied upon on behalf of the prosecution is not applicable in the facts and circumstances of the present bail applications as the legal question raised here was neither in issue nor considered and decided in the aforesaid case by the Hon"ble Supreme Court.

12. On the other hand, learned Public Prosecutor inviting attention of this Court towards the statement of objects and reasons for the enactment of the Act of 1884 as well as the Act of 1908, submitted that the Act of 1884 is mainly a regulatory Act providing for issuance of licence for possession, use, manufacturing, storing etc. of explosives and explosive substances, whereas the Act of 1908 is punitive in nature and it provides for punishment of offences in the circumstances as mentioned in the Act itself. It was further submitted that although the Acts of 1884 and 1908 has been separately enacted by the legislature at different times and even after enactment of the Act of 1908, the Act of 1884 was not repealed, but it is clear that the expression "explosive" as defined under clause (d) of Section 4 of the Act of 1884 and the expression "explosive substance" as defined under clause (a) of Section 2 of the Act of 1908 are inter-changeable and the substances included in the expression "explosive substances" are in addition to the substances as included under the expression "explosive" as defined under clause (d) of Section 4 of the Act of 1884 and if any of the substances/articles coming within the four-corners of either "explosive" or "explosive substance" is found in the circumstances as mentioned under the provisions of the Act of 1908, the same would be liable to be punished under the

provisions of that Act. It was further submitted that mere possession of an explosive/explosive substance without authority or licence may be punishable under Section 9-B of the Act of 1884, but if such possession is in the special circumstances as mentioned under the provisions of the Act of 1908, the same is punishable under the provisions of that Act and not under the provisions of the Act of 1884.

13. In support of his submissions, learned Public Prosecutor relied upon the case of Chandra Prakash Vs. State of Rajasthan reported in 2014 AIR (SCW) 3055.

14. I have considered the submissions made on behalf of the parties and the material made available on record as well as the evidence collected during investigation which has been produced before me by way of case diaries as well as the relevant legal provisions and the case law.

15. As per the long title and preamble of the Act of 1884, this Act has been enacted to regulate the manufacture, possession, use, sale, transport, import and export of explosives. It is now settled that the long title and preamble of an Act is a part of it and is admissible as an aid to its construction. The long title with or without preamble is a good guide regarding the object, scope or purpose of the Act. Similarly, according to the statement of objects and reasons, the object of enactment of the Act of 1884 is to provide a comprehensive law regulating the manufacture, keeping, sale, conveyance and the importance of explosives. The Act of 1884 was substantially amended by way of Amendment Act No. 32 of 1978. By this amendment the definition of explosive as given under clause (d) of Section 4 was enlarged. According to clause (d) of Section 4, "explosive" means gunpowder, nitroglycerine, nitroglycol, gun-cotton, di-nitro-toluene, trinitro-toluene, picric acid, di-nitro-phenol, tri-nitro-resorcinol (styphnic acid), cyclo-trimethylenetrinitramine, penta-erythritol-tetranitrate, tetraP, nitroguanidine, lead azide, lead styphnate, fulminate of mercury or any other metal, diazo-dinitrophenol, coloured fires or any other substance whether a single chemical compound or a mixture of substances, whether solid or liquid or gaseous used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect; and includes fog-signals, fireworks, fuses, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions and every adaptation or preparation of an explosive as defined in this clause;" Thus, the definition of expression "explosive" is exhaustive. It is well settled that if definition of a word or expression used in a statute is in the form of means and includes, the definition is exhaustive. Section 5 of the Act of 1884 provides that the Central Government may make Rules to regulate or prohibit, except under and in accordance with the conditions of a licence granted as provided by those rules, the manufacture, possession, use, sale, transport, import and export of explosives, or any specified class of explosives. Sub-section (2) of Section 5 of the Act further provides on what matters the Central Government is empowered to make Rules for the purposes of this Act. Section 6 empowers the Central Government to prohibit either absolutely or subject to conditions, the

manufacture, possession or importation of any explosive which is of so dangerous a character that, in the opinion of the Central Government, it is expedient for the public safety to issue notification. Similarly, Section 6-A, 6-B and 6-C further provide for prohibition of manufacture etc. of explosives in certain circumstances and grant and refusal of licences. The aforesaid provisions also indicative of the fact that the Act of 1884 is mainly regulatory in nature. Section 9-B provides for punishment for certain offences. According to clause (b) of sub-section (2) of this section, if a person in contravention of the rules made under Section 5 or of the conditions of a licence granted under the Rules possesses, uses, sells or transports any explosive shall be punishable with imprisonment of a term which may extend to two years or with fine which may extend to three thousand rupees or with both. The Central Government in exercise of its powers conferred by Sections 5 and 7 of the Act of 1884 has made the Explosives Rules 2008 which has come into force w.e.f.31.12.2008. As per Rule 7 of the Rules, no person shall manufacture, import, export, transport, possess for sell or use an explosive except as authorised or licenced under the Rules. Thus, possession of an explosive for sell or use is prohibited in absence of an authorisation or a licence and mere possession of an explosive for that purpose is punishable as provided under Section 9-B of the Act of 1884.

16. As per the long title and preamble of the Act of 1908, this Act has been enacted to further amend the law relating to explosive substances. As per the statement of objects and reasons of the Act it was enacted for the reasons that the existing laws were found to be inadequate as they do not provide any penalty for making or possessing explosive substances with unlawful intent and they also do not provide such severe penalties as are requisite in some circumstances. The Act of 1908 was enacted to supplement the Act of 1884 and to provide for the punishment of any person who causes an explosion likely to endanger life or property. It further makes the manufacture or possession of explosive substances for any purpose other than a lawful object a substantive offence and throws on the person who makes or is in possession of any explosive substances the onus of proving that the making or possession was lawful. It also provides adequately for the punishment both of principal and accessories. Thus, the Act of 1908 is mainly punitive in nature and it provides for the punishment if the offence is committed in the circumstances as mentioned in the Act.

17. The expression "explosive substance" has been defined under clause (a) of Section 2 of the Act of 1908. It is as below:-

The expression "explosive substance" shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement. 18. Thus, the definition of the expression "explosive substance" is inclusive. It is well settled that where in a statute the word defined is declared to include such and such, the definition is

extensive. As the Act of 1908 has been enacted to further amend the law relating to explosive substances and it is supplementary to the Act of 1884, it is to be held that the expression "explosive" as defined under the Act of 1884 and the expression "explosive substance" as defined under the Act of 1908 are not separate and distinct and are inter-changeable and any substance/article/thing coming into the purview of expression "explosive" as defined under clause (d) of Section 4 of the Act of 1884 is dealt with by a person in the circumstances as provided under the provisions of the Act of 1908, it shall be punishable accordingly.

19. In the case of Mohammad Usman Mohammad Hussain Maniyar and Others Vs. State of Maharashtra, , Hon"ble Supreme Court in Para 11 held that "explosive substance" as defined in Section 2 of the Act 1908 has a broader and more comprehensive meaning than the term "explosive". "Explosive substance" includes "explosive".

20. In the case of Chandra Prakash Vs. State of Rajasthan reported in 2014 AIR (SCW) 3055, Hon"ble Supreme Court on the basis of evidence made available on record found that apart from ammonium nitrate some other articles and substances were also seized from the possession of the accused-appellant and it was held by the Hon"ble Court that Section 2 of the Act of 1908 is a deeming provision which states that explosive substance would include any materials for making any explosive substance. Similarly, Section 4(d) of the Act of 1884 has broader spectrum which includes coloured fires or any other substances, whether single chemical compound or a mixture of substances.

21. Thus, the expression "explosive substance" as defined under clause (a) of Section 2 of the Act of 1908 includes not only the substances/articles/things specifically mentioned in it, but those substances/articles/things also which are covered under clause (d) of Section 4 of the Act of 1884.

22. A close look at Section 5 of the Act of 1908 shows that initial burden is on the prosecution to show that an explosive substance was knowingly found in the possession or under the control of the accused and such possession or control was under such circumstances as to give rise to a reasonable suspicion that such possession or control of such explosive substance was not for a lawful object. Once the above mentioned burden is discharged by the prosecution, it is for the accused to show that the explosive substance found in his possession or under his control was for a lawful object. Thus, although mere possession of or control over an explosive substance is not punishable under Section 5 of the Act of 1908, but if the possession or control is under such circumstances as mentioned in the provision, the same is punishable with imprisonment for a term which may extend to ten years and with fine.

23. Although, under clause (b) of Section 4 of the Act of 1908 possession of or control over any explosive substance is punishable, but for the applicability of this provision, it is further required that such possession or control must be

unlawful and malicious and with intent by means thereof to endanger life or cause serious injury to property or to enable any other person by means thereof to endanger life or cause serious injury to property. Thus, the intention of the accused is the most essential part for the offence to be made out under this provision.

24. Section 6 of the Act of 1908 provides for punishment for abettors. According to this provision any person who by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any offence under the Act shall be punished with the punishment provided for the offence. Thus, if a person provides premises for storage of any explosive substance, he shall be deemed to have committed an offence under the provisions of the Act of 1908 and shall be punished with the sentence as provided for the substantive offence.

25. So far as ammonium nitrate is concerned, it was neither an explosive nor an explosive substance before the Ammonium Nitrate Rules, 2012 came into force w.e.f.11.7.2012. The Central Government in exercise of powers conferred upon it by Sections 5 and 7 of the Act of 1884 has made these rules. Rule 4 provides that no person shall undertake manufacture, conversion, storage, import, export, transport or possess for sale or use ammonium nitrate except as authorised or licenced under these Rules. Various provisions of these Rules in clear terms show that the same are also regulating in nature. Although, these Rules have also been framed by the Central Government under Sections 5 and 7 of the Act of 1884 and prima facie it may appear that the ammonium nitrate is an "explosive" within the meaning of clause (d) of Section 4 of the Act of 1884 but as already held each and every substance/article/thing as mentioned in this clause is also an "explosive substance" within the meaning of clause (a) of Section 2 of the Act of 1908 if it is dealt with by any person in the circumstances as provided in the provisions of the Act of 1908, it is to be held that ammonium nitrate is also an "explosive substance" if a person deals in it in the manner as provided in the provisions of the Act of 1908 and it is also punishable in the same manner as is any other explosive.

26. Thus, the questions raised in these applications are answered as below:-

1. An explosive (including Ammonium Nitrate) as defined under clause (d) of Section 4 of the Explosives Act, 1884 is to be treated as an explosive substance as defined under clause (a) of Section 2 of the Explosives Substances Act, 1908, if the same dealt with by a person in manner and circumstances as mentioned in the provisions of the Act of 1908.

2. In the aforesaid condition, the offence committed by the accused is a non bailable offence and he is not entitled to be released on as of right and merit of the case is required to be considered.

27. After answering the question raised in these bail applications in the aforesaid

manner each application is required to be individually considered on merit.

1. S.B. Criminal Misc. Bail Application No. 1129/2015 (Jagdish Vs. State of Rajasthan) (FIR No. 5/2015, PS Sadar, Dausa registered on 3.1.2015)

28. As per prosecution case during investigation ammonium nitrate total weight 141 Kg. was recovered at the instance of the accused-petitioner from his residential house without any valid licence or permit and the petitioner could not account for the purpose for which he was having it in his possession.

29. As huge quantity of an explosive was found in the possession of the petitioner without licence or permit and he failed to account for the purpose for which he was with the incriminating substance, there is prima facie reasonable suspicion that the petitioner had it for an unlawful object and at this stage of the proceedings it cannot be said that he was having it for a lawful purpose and, therefore, looking to the gravity of the offence, but without expressing any final opinion on the merit and demerit of the case, I am not inclined to grant benefit of bail to the petitioner at this stage of the proceedings.

30. Consequently, the bail application of petitioner-Jagdish is dismissed.

2. S.B. Criminal Misc. Bail Application No. 704/2015 (Mangilal Vs. State of Rajasthan) (FIR No. 5/2015, PS Sadar, Dausa registered on 3.1.2015)

31. As per prosecution case ammonium nitrate total weight 93 Kg. and blue coloured safety fuse wire was found in the possession of the petitioner without any valid licence or permit when he was carrying it on motorcycle bearing registration No. RJ-29-2M-0354. The further case of the prosecution is that the petitioner tried to fled away when he was intervened by the police party during "Naka-bandi".

32. As huge quantity of an explosive was found in the possession of the petitioner without any valid licence or permit and he failed to account for the purpose for which he was with it and on the other hand he tried to fled away from the place of recovery, there is prima facie reasonable suspicion that the petitioner had it for a unlawful purpose and at this stage of the proceedings it cannot be said that he was having it for a lawful purpose and, therefore, looking to the gravity of the offence, but without expressing any final opinion on the merit and demerit of the case I am not inclined to grant benefit of bail to the petitioner at this stage of the proceedings.

33. Consequently, the bail application of petitioner-Mangilal is dismissed.

3. S.B. Criminal Misc. Bail Application No. 883/2015 (Sher Singh Vs. State of Rajasthan) (FIR No. 19/2015, PS Bayana, District Bharatpur, registered on 7.1.2015)

34. As per prosecution case the accused-petitioner was found in possession of a green coloured safety fuse wire measuring about 5 ft., five aluminium toppies and three detonators without any valid licence or permit alongwith two iron rods

and two iron sabbals and a tractor without any registration number fitted with compressor in working condition near the base of a hill. It is further case of the prosecution that the petitioner was having the aforesaid substances/articles to make hole in the nearby hill for the purpose of mining.

35. As the explosives alongwith a tractor fitted with compressor and iron rods and sabbals were found in the possession of the petitioner near the base of a hill there is prima facie reasonable suspicion that the petitioner had them for an unlawful object and at this stage of the proceedings it cannot be said that he was having them for a lawful purpose and, therefore, looking to the gravity of the offence, but without expressing any final opinion on the merit and demerit of the case, I am not inclined to grant benefit of bail to the petitioner at this stage of the proceedings.

36. Consequently, the bail application of petitioner-Sher Singh is dismissed.

4. S.B. Criminal Misc. Bail Application No. 995/2015 (Kaluram Vs. State of Rajasthan) (FIR No. 468/2014, PS Chaksu, registered on 16.12.2014)

37. As per prosecution case 70 gelatin bars, one super explosive machine and electric wire alongwith a tractor without any registration number fitted with compressor were found in the possession of the accused-petitioner near a mine and the petitioner was not having any valid licence or permit.

38. As huge quantity of explosive was found in the possession of the petitioner without any valid licence or permit and he failed to account for the purpose for which he was with the same near a mine alongwith a tractor without registration number fitted with compressor, there is prima facie reasonable suspicion that the petitioner had it for an unlawful object and at this stage of the proceedings it cannot be said that he was having it for a lawful purpose and, therefore, looking to the gravity of the offence, but without expressing any final opinion on the merit and demerit of the case, I am not inclined to grant benefit of bail to the petitioner at this stage of the proceedings.

39. Consequently, the bail application of petitioner-Kalu Ram is dismissed.

5. S.B. Criminal Misc. Bail Application No. 1027/2015 (Mohammad Qureshi and anr. Vs. State of Rajasthan)

6. S.B. Criminal Misc. Bail Application No. 187/2015 (Ramesh Vs. State of Rajasthan)

7. S.B. Criminal Misc. Bail Application No. 15056/2014 (Madan Mohan and another Vs. State of Rajasthan)

40. All these applications relate to FIR No. 566/2014, registered at Police Station Sadar, Hindaun dated 5.12.2014.

41. It is the case of the prosecution that 750 ft. red coloured detonating fuse wire, 13 bundles of green coloured safety fuse wire, 49 detonators and 30 bags

of ammonium nitrate were recovered from the joint possession of the accused-petitioners without any valid licence or permit and all were occupants of the two vehicles from which the recovery of the aforesaid substances/articles was made.

42. As huge quantity of explosive was recovered from the joint possession of the petitioners and they failed to account for the purpose for which they were with the incriminating substances/articles, there is prima facie reasonable suspicion that they had them for an unlawful object and at this stage of the proceedings it cannot be said that they were having them for a lawful purpose and, therefore, looking to the gravity of the offence, but without expressing any final opinion on the merit and demerit of the case, I am not inclined to grant benefit of bail to the petitioner at this stage of the proceedings.

43. Consequently, all these three bail applications of the petitioners are dismissed.

8. S.B. Criminal Misc. Bail Application No. 248/2015 (Kishanlal @ Kaluram Vs. State of Rajasthan) (FIR No. 566/2014, PS Sadar, Hindaun registered on 5.12.2014)

44. It is an admitted fact that no recovery of any explosive/explosive substance was made from the possession of the accused-petitioner and he has been involved in the case on the basis of information provided by the co-accused and therefore, without expressing any final opinion on the merit and demerit of the case, I am inclined to enlarge the petitioner on bail under Section 439 Cr.P.C.

45. Consequently, the bail application filed under Section 439 Cr.P.C. is allowed.

46. It is ordered that the accused-petitioner-Kishan Lal @ Kalu Ram son of Shri Laxmi Narayan, in FIR No. 566/2014, registered at Police Station Sadar, Hindaun, District Karauli, shall be released on bail; provided he furnishes a personal bond of Rs. 50,000/- (Rupees Fifty thousand only) and two surety bonds of Rs. 25,000/- (Rupees Twenty Five thousand only) each to the satisfaction of the learned trial court with the stipulation to appear before that Court on all dates of hearing and as and when called upon to do so.

9. S.B. Criminal Misc. Bail Application No. 1140/2015 (Sameem Vs. State of Rajasthan) (FIR No. 437/2014, PS Tapukara, District Alwar registered on 31.12.2014)

47. As per prosecution case ammonium nitrate total weight 180 Kg., 788 detonators and red coloured safety fuse wire measuring 500 meter was recovered from a Bolero Jeep bearing registration No. RJ-02-UA-2729 and at the time of recovery the accused-petitioner was driver of the same and he tried to fled away when intervened by the police party. It is also the case of the prosecution that the petitioner was not having any valid licence or permit to possess or to transport the recovered substances/articles and he failed to account for the purpose for which he was having them in his possession or was transporting the same.

48. As huge quantity of explosive was found in the possession of the petitioner without any valid licence or permit and he failed to account for the purpose for which he was with the incriminating substances, there is prima facie reasonable suspicion that he had them for an unlawful object and at this stage of the proceedings it cannot be said that he was having them for a lawful purpose and, therefore, looking to the gravity of the offence, but without expressing any final opinion on the merit and demerit of the case, I am not inclined to grant benefit of bail to the petitioner at this stage of the proceedings.

49. Consequently, the bail application of petitioner-Sameem is dismissed.

10. S.B. Criminal Misc. Bail Application No. 1885/2015 (Prem Singh Vs. State of Rajasthan) (FIR No. 280/2012, PS Bhiwadi Phase-III, District Alwar registered on 7.6.2012)

50. As per prosecution case ammonium nitrate total weight 250 Kg., one bundle of safety fuse wire, 9 bundles of red coloured detonative fuse and 9 high explosive detonators were recovered from a "kachcha" house allegedly belonging to the accused-petitioner and the petitioner was not having any valid licence or permit at the time of the recovery.

51. It is an admitted fact that at the time of alleged recovery the accused-petitioner was not present and no reliable documentary evidence has been made available on record to show that the kachcha house from which the recovery was made belonged to the petitioner and also looking to the fact that the ammonium nitrate was recovered on a date previous to the date on which the Ammonium Nitrate Rules, 2012 came into force and, therefore, without expressing any final opinion on the merit and demerit of the case, I find it a fit case in which benefit of bail is to be granted to the petitioner under Section 439 Cr.P.C.

52. Consequently, the bail application filed under Section 439 Cr.P.C. is allowed.

53. It is ordered that the accused-petitioner-Prem Singh son of Shri Harnam @ Ovtar Singh, in FIR No. 280/2012, registered at Police Station Bhiwadi Phase-III, District Alwar, shall be released on bail; provided he furnishes a personal bond of Rs. 50,000/- (Rupees Fifty thousand only) and two surety bonds of Rs. 25,000/- (Rupees Twenty Five thousand only) each to the satisfaction of the learned trial court with the stipulation to appear before that Court on all dates of hearing and as and when called upon to do so.

11. S.B. Criminal Misc. Bail Application No. 2052/2015 (Kalicharan Vs. State of Rajasthan)

12. S.B. Criminal Misc. Bail Application No. 1812/2015 (Mahavir and another Vs. State of Rajasthan) (FIR No. 18/2015, PS Badi, District Dholpur dated 07.01.2015)

54. As per prosecution case 318 bags of ammonium nitrate, 196 bundles of detonators fuse wire, total 3000 gelatin bars and 26400 aluminium detonator

fuse were jointly recovered from a truck bearing registration No. RJ-11-GA-4367, Pick-up bearing registration No. RJ-11-GA6750 and from a nearby residential house. It is further case of the prosecution that the registration certificate of the aforesaid jeep stands in the name of wife of the accused-petitioner-Shri Kalicharan and he under power of attorney was care-taker of the same. It is also the case of the prosecution that accused-petitioner Mahaveer was driver and the accused-petitioner-Pappu was Khalasi of the aforesaid truck. It is further case of the prosecution that the petitioners were not having any valid licence or permit for the same.

55. As the petitioners were found in possession of huge quantity of explosive without any valid licence or permit and they failed to account for the purpose for which they were with the incriminating substances, there is prima facie reasonable suspicion that they had them for an unlawful object and at this of the proceedings it cannot be said that they were having them for a lawful purpose and therefore, looking to the gravity of the offence, but without expressing any final opinion on the merit and demerit of the case, I am not inclined to grant benefit of bail to the petitioners at this stage of the proceedings.

56. Consequently, both these two bail applications are dismissed.

13. S.B. Criminal Misc. Bail Application No. 2586/2015 (Tola Ram and another Vs. State of Rajasthan) (FIR No. 69/2015, PS Anantpura, Kota dated 25.02.2015)

57. As per prosecution case 87 detonators alongwith a tractor fitted with compressor to make hole in a hill for the purpose of mining were found in the joint possession of the petitioners without any valid licence or permit and they failed to account for the purpose for which they were having them in their possession.

58. As huge quantity of explosive was found in the joint possession of the petitioners without any valid licence or permit alongwith a tractor fitted with compressor with a purpose to make hole in a hill for mining and they failed to account for the purpose for which they were with the incriminating substance, there is prima facie reasonable suspicion that they had them for an unlawful object and at this stage of the proceedings it cannot be said that they were having them for lawful purpose and, therefore, looking to the gravity of the offence, but without expressing any final opinion on the merit and demerit of the case, I am not inclined to grant benefit of bail to the petitioner at this stage of the proceedings.

59. Consequently, the bail application of petitioners is dismissed.