(2013) 10 RAJ CK 0100

In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail Application No. 7766 of 2013

Jakaria Khan APPELLANT

Vs

State of Rajasthan RESPONDENT

Date of Decision : 15-10-2013

Acts Referred:

Citation : (2014) 3 RLW 2591

Hon'ble Judges : Prashant Kumar Agarwal, J

Bench : Single Bench

Advocate : Mahendra Goyal, for the Appellant; J.R. Bijarniya, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar Agarwal, J.—Heard learned counsel for the parties. Apprehending his arrest the accused-petitioner has moved this application for grant of anticipatory bail u/s 438 Cr.P.C. in respect of FIR No. 106/2012 registered at Police Station Chaupanki (District Alwar) for the offences u/s 4, 5 of the Explosive Substances Act, 1908 (hereinafter to be referred as ''the Act of 1908''). The allegation against the petitioner is that he sold or otherwise supplied explosive Ammonium Nitrate to co-accused-Shri Sahun without any licence or authority. The application filed by the petitioner for grant of anticipatory bail u/s 438 Cr.P.C. has been dismissed by the Additional Sessions Judge, Tijara (District Alwar) vide order dated 25.07.2013.

2. Brief relevant facts for the disposal of this application are that FIR No. 106/2012 came to be registered on 30.12.2012 at Police Station Chaupanki (District Alwar) for the aforesaid offences with the averments that huge quantity of explosives including Ammonium Nitrate were recovered from two shops situated at village Udhanwas within the jurisdiction of the aforesaid Police Station and the same were seized as no valid licence or permit was found to possess or store the same. During the course of investigation it was found that the shops from where the recovery was made were in the possession of co-accused-Shri

Sahun and two other persons and the Ammonium Nitrate so recovered was sold by M/s. Deepak Fertilizers on 17.10.2012, 20.10.2012 and 18.11.2012 to M/s. Mewat Enterprises of which the present petitioner claims to be sole proprietor. During the course of interrogation co-accused-Shri Sahun claimed that he obtained/purchased the recovered Ammonium Nitrate from petitioner through his driver-Shri Nazeer and he also identified the house of petitioner where transaction regarding supply of the recovered Ammonium Nitrate allegedly took place between the petitioner and the co-accused-Shri Sahun. Although, in the FIR name of petitioner did not appear as an accused, but on the basis of evidence collected during investigation his name was also added as an accused. It is to be noted that after investigation charge-sheet for the aforesaid offences has already been filed against as many as four accused including Shri Sahun whereas investigation was kept pending against as many as six persons including the petitioner u/s 173(8) Cr.P.C. In these circumstances, apprehending his arrest the present application for grant of anticipatory bail u/s 438 Cr.P.C. has been filed.

3. In support of the application, learned counsel for the petitioner has raised the following grounds:-

(i) It is an admitted fact that initially Ammonium Nitrate was not declared as an explosive under the provisions of the Explosives Act, 1884 (hereinafter to be referred as ''the Act of 1884'') or the Explosives Rules, 2008 or the Act of 1908 and it has been so declared under the provisions of Ammonium Nitrate Rules, 2012 (hereinafter to be referred as ''the Rules of 2012'') which came into force w.e.f. 11.7.2012.

(ii) Licence has been issued in favour of the petitioner under the provisions of the Explosives Rules 2008 (hereinafter to be referred as ''the Rules of 2008'') initially on 26.7.2001 for the period ending on 31.3.2003 and subsequently on 5.1.2012 for a period upto 31.3.2016 for certain category of explosives i.e. nitrate mixture, safety fuse, detonating fuse, detonators and, therefore, on the day on which the Rules of 2012 came into effect, the petitioner was an existing licence holder within the meaning of proviso to the Rule 5 of the said Rules.

(iii) Although, on the enforcement of the Rules of 2012 no person was entitled to undertake manufacture, conversion etc. of even Ammonium Nitrate unless authorised or licenced under the said Rules but facility was given to the existing licence-holders to apply for grant of licence within six months from the date on which the Rules of 2012 came into force and a further period of one and half year was prescribed within which the provisions of the said Rules were to be complied with and the petitioner being an existing licence-holder under the provisions of Rules of 2008 applied for grant of licence on 7.1.2013 i.e. within the period of six months as prescribed under the proviso and, therefore, he was entitled to sell Ammonium Nitrate to any one without obtaining licence atleast for a period of six months.

(iv) The petitioner sold the recovered Ammonium Nitrate to M/s. Madina Trading

Company vide Invoice No. 067 dated 30.8.2012, Invoice No. 110 dated 4.12.2012 and Invoice No. 177 dated 31.12.2012. The last sale i.e. vide Invoice No. 177 dated 31.12.2012 was made on the basis of a written order dated 30.12.2012 placed by M/s. Madina Trading Company. If M/s. Madina Trading Company further sold or otherwise supplied the Ammonium Nitrate sold by the petitioner to any other person without any licence or authority, the petitioner cannot be held responsible for it. M/s. Madina Trading Company was an authorised dealer under the provisions of the Central Sales Tax Act, 1956 to trade, among others, in chemicals also and, therefore, the petitioner was legally entitled to sell and M/s. Madina Trading Company was entitled to purchase Ammonium Nitrate from the petitioner.

(v) As the petitioner was entitled to apply for grant of licence under the provisions of the Rules of 2012 upto 10.1.2013 and in the meanwhile he was entitled to sale, purchase, store etc. even Ammonium Nitrate without holding a licence and the recovery being made on 30.12.2012 i.e. before expiry of grace period of six months, no offence can be said to have been committed by the petitioner. Petitioner has already applied for grant of licence to possess for sale Ammonium Nitrate on 7.1.2013 i.e. before expiry of prescribed period of six months.

4. On the other hand, learned Public Prosecutor controverting the submissions made on behalf of the petitioner submitted that as the petitioner was having licence issued under the provisions of Rules of 2008 only to possess for use certain category of explosives and not for sale of the same, he was not entitled to deal in Ammonium Nitrate in any manner as soon as the Rules of 2012 came into force w.e.f. 11.7.2012. The petitioner cannot come within the category of existing licence holder to sell any explosive substance including the Ammonium Nitrate. Otherwise also, the application was not made by the petitioner for grant of licence to possess for sale of Ammonium Nitrate within the grace period of six months as provided in proviso to Rule 5 of the said Rules and at the most it can be said that a letter dated 7.3.2013 was sent by the petitioner to the competent authority for approval of drawings showing site and construction details of the store house for possession and sale of Ammonium Nitrate but mere submission of such drawings and that also after expiry of prescribed period of six months can not amount an application for grant of licence for possession and sale of requisite quantity of Ammonium Nitrate. The claim of the petitioner that he sold the recovered Ammonium Nitrate to M/s. Madina Trading Company vide Invoice No. 177 dated 31.12.2012 is false by the reason that the recovery has already been made on 30.12.2012 showing that fabricated invoice has been prepared to escape from the liability.

5. I have considered the submissions made on behalf of the respective parties and the material made available for my perusal as well as the evidence collected during investigation which has been placed on record by way of copy of the charge-sheet and also the relevant legal provisions.

6. As soon as the Rules of 2012 came into force w.e.f. 11.7.2012 and Ammonium Nitrate was also declared as an explosive within the meaning of Act of 1884, the petitioner was not entitled to deal in it in any manner including sale thereof as he cannot be held to be an existing licence holder within the meaning of proviso to Rule 5 of the aforesaid Rules. Rule 4 provides that no person shall undertake manufacture, conversion, stevedoring, import, export, transport or possess for sale or use Ammonium Nitrate except as authorised or licenced under these Rules. Thus, with the enforcement of aforesaid rules even possession for sale or use of Ammonium Nitrate was completely prohibited unless a licence is granted by the competent authority. Rule 5 provides that no licence shall be granted unless all the relevant provisions laid down under the Rules and all conditions contained in the licence forms under Part-2 of Schedule-II annexed to the rules are complied with. The proviso to this rule provides that all the existing manufactures, converters, users, transporters, stevedores, sellers, possessors, importers and exporters shall apply for license within six months and shall comply with the provisions of these rules within a period of one and half year from the date of publication of these rules. It is thus clear that the existing licence holders were granted a grace period of six months to apply for licence under the provisions of the Rules of 2012. The petitioner claims that he being an existing licence holder under the provisions of Rules of 2008 was entitled to apply for licence under the Rules of 2012 within a period of six months and during this grace period, he was entitled to deal in any manner even in Ammonium Nitrate. Although, a grace period of six months has been granted to the existing licence holders to apply for grant of licence under the provisions of the aforesaid Rules but as the petitioner was holding a licence to possess for use only certain category of explosives vide licence dated 5.1.2012, he was not entitled to sell Ammonium Nitrate as soon as the aforesaid Rules came into force w.e.f. 11.7.2012. In my opinion a person having licence under the provisions of Rules of 2008 only for a limited purpose of possession for use at the most was entitled to possess for use Ammonium Nitrate for a period of six months without obtaining licence under the Rules of 2012 but he cannot be held to be entitled to possess for sale Ammonium Nitrate on the strength of a licence issued under the provisions of Rules of 2008. The licence dated 5.1.2012 upon which reliance has been placed by the learned counsel for the petitioner clearly shows that it was issued under clause (c) of Part I of Schedule-IV of Rules of 2008 to possess for use of explosive of Class 1, 2, 3, 4, 5, 6 and 7 in a magazine. A perusal of Rules of 2008 shows that different category of licences are issued for different purposes and in the case of petitioner licence to possess for use only of aforesaid class of explosives was issued. Although, before 11.7.2012, Ammonium Nitrate not being an explosive, the petitioner was entitled to deal in it in any manner including sale thereof without holding a licence but as soon as the Ammonium Nitrate was declared as an explosive w.e.f. the aforesaid date, the petitioner cannot claim that he atleast for a period of six months was entitled to sell Ammonium Nitrate without obtaining licence under the provisions of Rules of 2012. The things would have been different if the petitioner was holding licence

under the provisions of Rules of 2008 to possess for sale certain class of explosives. In view of the above, the petitioner cannot be treated to be an existing licence holder within the meaning of proviso to Rule 5 of Rules of 2012 entitled to apply for licence within a period of six months from the date of publication of the said Rules. The petitioner is to be treated a new person desirous of obtaining licence to possess for sale Ammonium Nitrate for the first time and unless licence to sell Ammonium Nitrate was obtained by him in accordance with the procedure provided under Rules of 2012 he was not entitled to sell the same as soon as the rules came into force. Otherwise also, from the material made available on record it cannot be said that the petitioner applied for grant of licence to possess for sale the Ammonium Nitrate within the prescribed period of six months. The letter (Annexure-10) upon which reliance has been made by the learned counsel for the petitioner shows that a letter dated 7.3.2013 was sent by the petitioner to the competent authority for approval of drawings in respect of site and construction of the store house for possession and sale of 200 M.T. Ammonium Nitrate. The letter further shows that the drawings sent by the petitioner were approved by the concerned authority and petitioner was allowed to undertake construction in accordance with the approved drawings. It was further referred in the letter that on completion of construction of the store house, application in Form-A-3 duly filled and signed alongwith the required documents shall be submitted by the petitioner for issuance of licence in Form No. P-3 of the Rules for possession and sale of requisite quantity. It is thus clear that till the letter (Annexure 10) was issued by the competent authority, application for grant of licence to possess for sale Ammonium Nitrate was not submitted by the petitioner. As no steps were taken by the petitioner to apply for grant of licence to possess for sale Ammonium Nitrate within the grace period of six months as prescribed under proviso to Rule 5 of the Rules of 2012, the petitioner is not entitled to claim that no offence was committed by him even if he sold the recovered Ammonium Nitrate to anyone without obtaining licence. Rule 30 of the aforesaid Rules provides that a person desiring to obtain a licence shall obtain prior approval from the authority empowered to grant such licence by submitting documents mentioned in Rule 33 whereas Rule 31 provides that after construction of premises as per plan approved under Rule 30, the applicant shall apply for grant of licence alongwith documents stated in Rule 33 to the authority empowered to grant such licence. One of the documents required to be submitted alongwith the application for grant of licence is six sets of the approved drawings. It is thus clear that unless drawings are approved, application for grant of licence can not be made. In the present case as the drawings were approved vide letter Annexure-10, there is no question of application being made by the petitioner within the prescribed period of six months. No material has been produced by the petitioner in support of his claim to have applied for licence on 7.1.2013. This claim of the petitioner is also doubtful that he sold the recovered Ammonium Nitrate to M/s. Madina Trading Company vide Invoice No. 177 dated 31/12/2012 on the basis of an order placed by it on 30.12.2012 and it has been stood falsified by the reason that the recovery was made on 30.12.2012. How a recovery can be made on 30.12.2012 of a substance from some other place which substance the petitioner claims to have been supplied on 31.12.2012. It is not the case of the petitioner that the recovered Ammonium Nitrate was supplied on a date previous to the recovery but the Invoice was prepared on a subsequent date. The false and doubtful claim made by the petitioner strengthens the prosecution claim that the recovered Ammonium Nitrate was supplied by the petitioner to co-accused-Shri Sahun some days prior to the date of recovery. It is further pertinent to note that during investigation co-accused-Shri Sahun identified the house of petitioner where transaction of supply of the recovered Ammonium Nitrate was took place between the petitioner and the co-accused. Otherwise also, no licence was issued in favour of M/s. Madina Trading Company to purchase and sale any explosive under the provisions of Rules of 2008 and, therefore, the petitioner could not have sold or otherwise supplied Ammonium Nitrate to it.

7. In view of the reasons already recorded and the facts and circumstances of the case and more particularly looking to the quantity of the recovered Ammonium Nitrate and the gravity of the offence and the sentence prescribed for the offences under Sections 4, 5 and 6 of the Explosive Substances Act, 1908, but without expressing any final opinion on the merit and demerit of the case, I do not find it a fit case in which benefit of anticipatory bail is to be granted to the petitioner u/s 438 Cr.P.C. Consequently, the anticipatory bail application filed by the petitioner u/s 438 Cr.P.C. is, hereby, dismissed.

