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**(1967) 12 BOM CK 0018**

**In the Bombay High Court**

**Case No : Criminal Application No. 1201 of 1967**

Mahamed Hussain Kakroddin Maniyar and Others

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision : 13-12-1967**

**Acts Referred:**

Arms Act, 1959 — Section 25, 30  
Criminal Procedure Code, 1898 (CrPC) — Section 497, 498  
Drugs and Cosmetics Act, 1940 — Section 18  
Explosive Substances Act, 1908 — Section 5  
Poisons Act, 1919 — Section 6

**Citation :** AIR 1968 Bom 344 : (1968) 70 BOMLR 247 : (1968) CriLJ 1231 : (1968) MhLj 505

**Hon'ble Judges :** J.L. Nain, J

**Bench :** Single Bench

**Advocate :** A.A. Peerbhoy and A.A. Omer, for the Appellant; V.H. Gumaste, Govt. Pleader, for the Respondent

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## **Judgement**

(1) This is an application for bail under the provisions of Section 498 of the Code of Criminal Procedure. The petitioners are charged by the Sholapur Police with offences u/s 120-B I. P. C. Section 5 of the Explosive Substances Act, Sections 30 and 25 of the Arms Act, Section 5 of Explosives Act. Section 6 of Poisons Act. Section 82 of the Prohibition Act and Section 18(c) of the Drugs and Cosmetics Act.

(2) According to the Police, the petitioner No. 1 is the father of petitioners Nos. 2, 3 and 4 and they are all the proprietors of two firms by name of "Hazi M. F. Maniyar and Sons" and "M. M. Maniyar". According to the Police, all the petitioners look after the said two businesses and that the said two businesses have two godowns wherein goods of these firms are stored. According to the petitioners, however, "Hazi M. F. Maniyar and Sons" is the partnership firm in which only petitioners Nos. 1 and 2 are partners under a deed of partnership, copy of which they have produced. According to the petitioners, the petitioners

Nos. 3 and 4 have nothing to do with the said firm. The business of the said firm is carried on at 383, East Mangalwar Peth as shop with two godowns, one at 615, East Mangalwar and another at 986, Shukrawar Peth. According to the petitioners, the petitioner No. 3 is the sole proprietor of "M. M. Maniyar" and that he carries on the said business at 389, East Mangalwar Peth, as the sole proprietor thereof and that the petitioner No. 4 is a minor and is not connected with any of these two firms.

(3) According to the prosecution on 11th September 1967 a search was taken of the shop of "Hazi M. F. Maniyar and Sons" when a highly explosive and prohibited mixture of potassium chlorate and sulphur was unauthorisedly sold to a bogus customer in the shop. Thereafter the shop of "Hazi M. F. Maniyar and Sons" and the godowns were searched on several days and considerable quantities of black crystalline gunpowder, light yellow coloured gunpowder (prohibited mixture of potassium chlorate and sulphur), black gunpowder, potassium chlorate (contaminated) sulphur-powder, special gelatine, highly explosive Diwali crackers prohibited by law. 510 grams of potassium cyanide, a quantity of unlicensed drugs detonators, percussion caps containing prohibited mixture of chlorate and red arsenic sulphide and french polish were secured.

(4) The shop of the business carried on under the name of "M.M. Maniyar" was searched on 16th September 1967 and certain items of goods described as luxury goods and a quantity of licensed ammunition was found. The godown of the said business was also searched and nothing incriminating was found therefrom.

(5) It is not in dispute that from the shop and godown of which the petitioners Nos. 1 and 2 claim to be the owners large quantities of gunpowder, prohibited mixture of potassium chlorate and sulphur used as highly explosive gunpowder, potassium chlorate, sulphur gelatine, potassium cyanide (a deadly poison), unlicensed drugs, detonators and percussion caps have been seized. It is also not in dispute that the petitioner Nos. 1 and 2 are licensed arms and drug merchants and hold some valid and subsisting licences for potassium chlorate, arms, ammunition, gunpowder, and drugs. It is further not in dispute that quantities of these materials seized from the possession of shop and godowns claimed to be the property of the petitioners Nos. 1 and 2 are larger than those permitted by their licences, and some of these quantities are stored in unlicensed premises.

(6) The petitioner Nos. 4 was arrested on 15th September 1967. On the same day, he made a statement and at his instance three tin boxes containing 2,500 detonators in card board containers were recovered. They had been concealed by him in the compound of the residential bungalow of the petitioners of burying them.

(7) It is not disputed that all the petitioners live together.

(8) The petitioner No. 4 was arrested on 15th September 1967 and the petitioners Nos. 1, 2 and 3 were arrested on 21st September 1967. They made

an application for bail to the learned First Class Magistrate, Sholapur, which application was rejected on 14th October 1967. They then applied for bail to the Sessions Court at Sholapur. This application was rejected on 27th October 1967. They made the present application for bail on 8th November 1967 and filed some affidavits in support of it on or about 30th November 1967.

(9) The application for bail before me has been vehemently opposed by Mr. Gumaste on behalf of the opponents. Mr. T. S. Bendre the investigating officer, has made an affidavit wherein it is alleged that on 17th September 1867 two days after the raids on the shops and godowns of the petitioners serious communal riots involving murder of one police constable and injuries to a number of police officers and men and members of the public took place at Sholapur. M. Baksubhai and Jainuddin, who are said to be close friends of the petitioners are, according to Bendre, main conspirators in the murder case of the said police constable. Bendre also states that about 11 murders have been committed by a gang of "Dervishes" of Sholapur by securing potassium cyanide from the shop of the petitioners through one lady and by administering the said poison to the victims. Bendre further states that in the current year, four explosions caused by explosive substances have taken place killing two persons in the District of Sholapur. Bendre states that it is suspected that these explosive substances were supplied by the petitioners. He further states that the petitioners have near relations in Pakistan. According to Bendre, the security of the public in general is likely to be endangered if the petitioners are released on bail. He further states that the licensed articles secured from the petitioners were kept for anti-national purposes. He states that the prosecution is still in search of more explosive substances suspected to have been concealed by petitioners and the work of recovery of this material will be hampered if the petitioners are released on bail. He further suspects that the petitioners Nos. 2 and 3 being young persons are likely to jump bail and run away to Pakistan to start life afresh.

(10) Petitioners Nos. 1, 3 and 4 and wives of petitioners Nos. 1 and 3 have made affidavits in reply to the affidavit to Bendre. The petitioner No. 1 has denied all connexion with M. Bakshubai and Jainuddin and with murders and communal riots and cases of poisoning. He has denied all connection with any acts of sabotage and anti-national acts. He has stated that the only relation of his in Pakistan is the son of a step-uncle who had been separated from the father of petitioner No. 1 about 40 years back and that the son has gone to Pakistan about 18 years back and settled there and that the petitioners have no connection whatsoever with the said person. He has also stated that the investigation is complete.

(11) Mr. Peerbhoy for the petitioners has cited before me several judgments of Indian High Courts on the question of principles in granting bail. I do not consider it necessary to refer to the said judgments. The principles in granting bail to persons accused of offences are quite well settled. In connection with non-bailable offences (not punishable with death or imprisonment for life) In the

matter of granting bail in connection with non-bailable offences (not punishable with death or imprisonment for life), one of the considerations is the danger of the accused absconding one of the considerations is considering this danger the Court has to consider the weight of the evidence against the accused, the nature and gravity of the charge and severity of the degree of punishment that might follow. Another consideration is the danger of witnesses being tampered with or of evidence being suborned. In considering these matters the character, means and standing of accused persons have to be taken into consideration. At the same time, the court has to see that there is no punitive detention and that opportunity is given as far as possible to the accused persons to prepare their defence.

(12) Now, in this case the offence u/s of the Explosive Substances Act is punishable with imprisonment for 14 years and is a serious offence. The petitioners are charged with a number of other offences. It appears that there is considerable weight of evidence against them. The petitioners have relations in Pakistan Danger of absconding cannot be ruled out. As against this, there is nothing against their character, antecedents and standing. The danger of absconding can be overcome by ordering the petitioners to report to the Police daily so that in case of any attempt at absconding the Police can follow them close on their heels. With regard to tampering with witnesses and suborning evidence. I am informed that the investigation is mainly over and report has been submitted for necessary sanction to the Central Government. Mr. Gumaste assures me that he will write to the authorities to expedite the sanction as well as the trial. The only danger that survives is that the Police are searching for further hidden stocks of explosives and there may be a danger of Police being hampered in this search.

(13) But at the same time there are several factors to be taken into consideration on behalf of the petitioners. The petitioners are all the male members of the family and they have all been locked up. There is no one to carry on their businesses and their businesses are at a stand-still. They must be given an opportunity to prepare their defence and instruct their lawyers. They are admitted to be holding a large number of licences under which some of the materials secured from them could be legally possessed by them. They must collate the licences and collect other evidence. They have already spent three months in detention. If there is any danger of the petitioners hampering the work of the Police. I think the situation can be met by granting liberty to the prosecution to apply for cancellation of the bail in case they find that the petitioners are either tampering with evidence or inciting communal riots or engaging in any other illegal activities.

(14) The petitioners Nos. 1 and 2 are the principal persons charged with these offences. They are admittedly partners in the firm which owns the shop and the godowns from which large quantities of explosives and other material has been secured. But for a charge u/s 120-B I. P. C. the petitioner No. 3 would not come

in at all. The petitioner No. 4 is a callow youth of 17. He may have been assisting his elders, namely, his father and brothers in the business and is more likely to have acted under their instructions as well as domination rather than on his own volition. It has been stated on behalf of the petitioner No. 1 that he is aged and infirm, but I am not satisfied on the material placed before me that there is any imminent danger to his health. I am assured that he is receiving medical attention.

(15) After I had completed the hearing of his bail application. I had fixed it on 5-12-1967 for orders. On that day Mr. Gumaste made an application that I should defer passing my order as he had received information that a theft had taken place in the office of the Drugs Inspector at Sholapur in respect of drugs seized from the possession of the petitioners. Accordingly I adjourned the matter for orders and permitted the parties to make further affidavits with regard to the alleged theft. Thereafter the opponents have filed two affidavits, one of P. N. Wadnerkar, Drugs Inspector, Sholapur and the other of S. K. Atre, Sub-Inspector of Police, Sadar Bazar, Sholapur. It appears from the said affidavits that a clerk by name V. M. Lakshetty in the office of the Drugs Inspector has been arrested on the charge of trying to tamper with a Godrej Steel Cupboard in the office of the Drugs Inspector and setting a duplicate key of the said cupboard made. Nothing has been found to be stolen. Atre has stated in his affidavit, in the room where the cupboard was placed he found two persons standing outside the room looking into the room. These persons, according to him, were relations of the first petitioner. He states that he has learnt that these persons were friendly with Lakshetty. In reply to the aforesaid allegations Abdul Majeed Yakub Saheb Adke, a relation of the petitioners, has made an affidavit in which he denied the connection of the petitioners with Lakshetty or his alleged friends. The petitioners are all in custody. Nothing has been lost from the cupboard where drugs seized from the possession of the petitioners were kept. These drugs appears to have been chemically analysed and a report in connection with them has already been made. I attach no importance to this incident as having a bearing on the matter of bail being granted to the petitioners.

(16) Mr. Peerbhoy has cited before me a judgment of Mr. Justice H. R. Gokhale in Criminal Appln. No. 943 of 1964 (Bom) where in respect of offences under the Explosive Substances Act the accused were released on bail in the sum of Rs. 40,000 each with one surety for the like amount on certain conditions. I am afraid, each case must be decided on its own facts. In the judgment cited by Mr. Peerbhoy the charge-sheet itself made an allegation of rashness and negligence against the accused. It is also mentioned that the accused poured water over the explosive substances with a view to preventing the same from exploding. The report of the Inspector of Explosives was that there had been an explosion on account of accident. The owner of the place where the explosion took place was himself along with some members of his family killed in one of the explosions. The accused had a licence to store and manufacture explosives and to prepare crackers. The facts of this case are totally different.

(17) I am of the opinion that in the circumstances of the case, the petitioners Nos. 1 and 2 be released on furnishing bail in the sum of Rs. 1,00,000 each with two sureties of Rs. 50,000 each and that the petitioner No. 3 be released on furnishing bail in the sum of Rs. 50,000 with one surety in like amount and that petitioner No. 4 be released on furnishing bail in the sum of Rs. 25,000 with one surety in like amount. I order accordingly.

(18) The said bail is granted to the petitioners on the condition that each of them will report once every day to the Police Officer in charge of Jail Road Police Station, Sholapur and further that none of the petitioners will leave the municipal limits of the town of Sholapur, except with the permission in writing of the learned Sessions Judge at Sholapur or the officer in charge of the said Police Station. If after this order is effective and the petitioners are released on bail, there are good reasons for the apprehensions of the Police authorities that the petitioners are tampering with witnesses, suborning evidence or engaging in subversive or anti-national activities or fomenting communal trouble, they will be at liberty to make an application to the Sessions Court for cancellation of the bail of the petitioners.

(19) Bail granted.