
(1967) 01 GAU CK 0012
In the Gauhati High Court

Masha Angami and Another

APPELLANT

Vs

Government of Manipur

RESPONDENT

Date of Decision : 12-01-1967

Acts Referred:

Explosive Substances Act, 1908 — Section 2, 5

Citation : AIR 1968 Guw 23 : (1968) CriLJ 187

Hon'ble Judges : C. Jagannadhacharyulu, J.C.

Bench : Single Bench

Judgement

C. Jagannadhacharyulu, J.C.

1. This is an application filed by the accused in F.I.R. Case No. 58(6)66 of Kangpokpi Police Station u/s 498 of the Criminal Procedure Code to enlarge the petitioners on bail.

2. The case of the prosecution is that 32? Kg. of gun-powder were seized on 13.6.1966 from Vehicle No. MNS 4691 by the Officer in charge of Kangpokpi Police Station when the first petitioner of Kohima was bringing the same from Imphal for causing danger to human life and property, that the first petitioner pointed out the second petitioner as his supplier and that the petitioners are liable to be punished u/s 5 of the Explosive Substances Act (Act 6 of 1908).

3. The first petitioner was arrested on 13.6.1966 and the second petitioner was arrested on 14.9.1966. The petitioners moved the Committing Magistrate's Court, the Sessions Court and this Court previously for bail. But, bail was refused.

4. The contention of the learned Counsel for the petitioners is that the offence, even if it is true, falls u/s 6(3) of the radian Explosives Act 4 of 1884, that it is a boilable offence and that, therefore, the petitioners are entitled to bail. Indian Explosives Act 4 of 1884 was enacted to regulate the manufacture, possession, sale, transport and importation of explosives. Section 4(1)(a) of the said Act defines "explosive" as sun-powder, nitro-glycerin, dynamite, gun-cotton, blasting powder, fulminate of mercury or of other metal, coloured fire and every other

substance, whether similar to those above-mentioned or not, used or manufactured with a view to produce a practical effect by explosion, or a pyrotechnic effect etc. Section 6(3) of the said Act lays down that any person who manufactures, possesses or imports an explosive in contravention of a notification issued u/s 6 shall be punishable with imprisonment for a term which may extend to 3 years or with a fine which may extend to Rs. 5,000 or with both etc.

5. But, the Explosive Substances Act 9 of 1908 was enacted to amend the law relating to explosive substances. Section 2 of the Act defines "Explosive substance" as deeming to include any material for making any explosive substance etc. Section 5 of the said Act runs as follows:

Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with imprisonment for a term which may extend to fourteen years, to which fine may be added, or with imprisonment for a term which may extend to 5 years to which fine may be added.

6. Gun-powder is also an explosive substance within the meaning of Section 2 of the Explosive Substances Act (Act 6 of 1908). The case of the prosecution is that, when the driver of the vehicle questioned the first petitioner about a bag carried by the first petitioner in the vehicle, the first petitioner told him that it contained rice. So, the first petitioner appears to have made a false representation about the material, if the case of the prosecution is true. Also the Court has to take judicial notice of the fact that Kohima in Nagaland is a disturbed area. So it cannot be said at this stage that the first petitioner was in possession of 32? Kg. of sun-powder with him for any lawful purpose. There is prima facie reasonable suspicion that the first petitioner had Run-powder with him for an unlawful object. As such, the punishment for the offence may extend to 14 years u/s 5 of the Explosive Substances Act 6 of 1908. and it is a non-boilable offence,

7. The decision reported in Rajani Kanta Mandal Vs. The State of Bihar, relied on by the learned Counsel for the petitioners has no application to the facts of this case. It was held in that case that to substantiate a charge u/s 5 of the Explosive Substances Act, it is not sufficient to prove merely that the accused was in conscious possession of an explosive substance and that the prosecution has to prove further that incriminating objects were recovered from the possession of the accused in the circumstances giving rise to a reasonable suspicion that he had taken them in his possession not for a lawful object. But, in the present case, as already pointed out, there is prima facie reasonable suspicion that the first petitioner was in possession of the gun-powder for an unlawful object. As such, the first petitioner is not entitled to bail.

8. So far as the second petitioner is concerned, it is said that the only evidence against him is that the first petitioner pointed out the second petitioner as the person who supplied the gun-powder to him. The learned Sessions Judge, Manipur, states in, his order dated 4.11.1966 that the second petitioner should be detained in the Jail until an identification parade is held. But, there is no "reason why the identification parade was not held soon. He is, therefore, directed to be released on bail. But, he must execute a bond for Rs. 2,000 with two sureties for a like sum to the satisfaction of the Sub-Divisional Magistrate, Imphal West, Manipur. The second petitioner should live in Imphal and report himself every day to the Sub-Divisional Magistrate, Imphal West, Manipur. He should not tamper with any evidence. If the second petitioner violates any one of these conditions the bail shall be cancelled.

9. In the result, the bail for the first petitioner is refused. Bail is granted to the second petitioner under the above conditions.