

(2006) 09 MP CK 0081

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No's. 2411 and 2784 of 2006

Vijay Maheshwari

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Explosive Substances Act, 1908 — Section 4, 5

Citation : (2006) 4 MPLJ 223

Hon'ble Judges : A.K. Gohil, J

Bench : Single Bench

Advocate : Raju Sharma and Pooran Kulshrestha in Misc. Cri. Case No. 2411/06 and Dharmendra Risheshwar in Misc. Cri. Case No. 2784/06, for the Appellant; Mukund Bharadwaj, Public Prosecutor for State, for the Respondent

Judgement

Abhay Gohil, J.

This order shall govern the disposal of both the Misc. Cri. Cases No. 2411/06 and 2784/06, which are second repeat application u/s 439 of the Code of Criminal Procedure in Crime No. 23/2006 registered at Police Station Kumbhraj, District Guna for the offence under sections 4 and 5 of the Explosive Substances Act, 1908 (hereinafter referred to as the "Act of 1908"). Earlier applications were dismissed as withdrawn.

As per prosecution story, on 15-1-2006 police received information through the informer that at village Goreyakheda, Police Station Kumbhraj, near the well of Harbhajan some gelatine rods and aluminium detonators are lying. On the basis of the aforesaid information police searched the aforesaid place, which was a hut in an agricultural field and recovered 6 boxes of gelatine rods and 1200 aluminium detonators. Initially the crime was registered against Harbhajan and Roop Singh but thereafter after 20 days on the basis of the statement of Niranjana Singh (PW. 2) and Murari (PW. 3) petitioner Vijay Maheshwari was made accused and after investigation charge-sheet was filed.

I have heard Shri Raju Sharma and Shri Pooran Kulshrestha, Learned Counsel appearing for petitioner Vijay Maheshwari, and Shri Dharmendra Rishishwar, Learned Counsel appearing for petitioner Harbhajan, and Shri Mukund Bharadwaj learned Public Prosecutor appearing for the respondent-State.

It is submitted that petitioners Vijay Maheshwari and Harbhajan are in custody w.c.f. 7-3-2006 and 8-2-2006 respectively. It is further submitted that recovery was from open place and the hut does not belong to Harbhajan. The submission on behalf of Vijay Maheshwari is that he is engaged in the business of digging the tubewells and he was using the explosive substances for the purpose of digging the tubewells, but the seized material does not belong to him. Learned Counsel for the parties have submitted that they have not committed any breach of the provision of sections 4 and 5 of the Explosive Substances Act and as per prosecution case the case will not fall under these provisions of law. It was further submitted that during this period trial has begun against the accused persons and the prosecution has examined as many as 4 witnesses. Babulal (PW 1), who was the witness of recovery of explosive substances has stated that the police has taken his signatures on the search and seizure memo but has not recorded his statement. In the cross-examination he has stated that Harbhajan is not having any tractor. He does not know, who is the owner of the hut. He has also denied that the said land belongs to Roop Singh. Material witnesses Niranjan Singh (PW 2), Murari (PW 3) and Shrikrishna (PW 4) have not supported the prosecution and they were declared hostile and in cross-examination they have also denied the prosecution case.

It is true that section 4 of the Act of 1908 provides punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property and the punishment is upto life imprisonment or with imprisonment of either description for a term which may extend to 10 years and also with fine. Section 5 provides punishment for making or possessing explosive under suspicious circumstances and the maximum sentence under this section is also upto rigorous imprisonment for life or with rigorous imprisonment for a term which may extend to 10 years with fine.

To prove the offence u/s 4 of the Explosive Substances Act prima facie it is necessary for the prosecution to show that, the attempt was made to cause explosion, or for making or keeping explosive with intent to endanger life or property and to prove the offence u/s 5 it is necessary for the prosecution to prima facie show that it is a case for making or possessing explosive under suspicious circumstances. Since the trial is going on, it will not be proper at this stage to record any opinion that whether any offence under the aforesaid section is made out against the petitioners or not, but certainly the prima facie either the evidence collected through the statements of the witnesses can be considered or if the witnesses have been examined, their evidence can be considered. It was argued that it was the Niranjan Singh and Murari, those who have stated against the petitioners that the material belongs to them but since the aforesaid

witnesses have not supported the prosecution, therefore statements in the Court can be considered at this stage for considering this bail application.

After hearing the Learned Counsel for the parties and on perusal of record and considering the evidence of the witnesses examined upto now and looking to this fact that petitioners Vijay Maheshwari and Harbhajan are in custody w.e.f. 7-3-2006 and 8-2-2006 respectively and also considering this fact that at this stage it is a case of pre-trial bail and three material witnesses have not supported the prosecution case, but without expressing any opinion on the merits of the case, I allow both the applications. Both petitioners Vijay Maheshwari and Harbhajan be released on bail on their furnishing personal bond for a sum of Rs. 50,000/- (Rupees Fifty thousand) each with one solvent surety each in the like amount to the satisfaction of the trial Court on the following conditions:

- (i) that, till completion of the trial the petitioners shall regularly appear before the trial Court;
- (ii) that, they shall not involve in inducing, threatening or otherwise pressurising the prosecution witnesses;
- (iii) that, they shall not leave the boundaries of jurisdiction of this Bench without prior permission of this Court.

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