

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 1267 OF 2017

Kishore Vishwanath Prajapati

...Applicant

Versus

The State of Maharashtra & ors.

...Respondents

Mr. Y. R. Mishra i/b. Mr. Upendra Lokegaonkar for the applicant.

Mr. R. M. Pethe, APP for the respondent – State.

Mrs. P. H. Kantharia a/w. Ms. Deepali Patankar for respondent no.2.

PI Chavan, Crime Branch Thane City, Anti Robbery Squad present.

CORAM : PRAKASH D. NAIK, J.

DATE : 4th AUGUST, 2017.

P.C. :

1. This is an application in connection with CR No.II-111/2016 registered with Kasarvadavali Police Station, Thane. The offences were registered under sections 24(1)(a), 24(1)(b) of Atomic Energy Act. The applicant was arrested on 24th December, 2016 and since then he is in custody.

2. The prosecution case is that on 24th November, 2016, one of the informant of the complainant brought one sample piece of iron like metal which was weighing about 32 grams. The informant informed him that there are many more quantities of such metal

available with the persons from whom he has availed the said sample piece. On 24th November, 2016, the sample piece was forward to the Board of Radiations Isotope Technology (BRIT) / Bhabha Atomic Research and Energy Department (BARC) and got confirmation about the said material/metal. On 6th December, 2016, a report was submitted to the Thane Crime Branch by BRIT/BARC, the said report states that the material was Depleted Uranium and used for civilian uses such as counter weights of Aircraft, Shielding in medical radiation therapy and Industrial radiography material equipments, etc. It is alleged that being prescribed material license was required to be obtained from the Department of Atomic Energy if material is beyond 1000 kg. It is the case of the prosecution that on 20th December, 2016, the applicant and the other accused were apprehended while they were in process of selling the Depleted Uranium to the purchaser. The material was seized by the police. The applicant was arrested on 24th December, 2016.

3. Learned advocate for the applicant submitted that the applicant has been in custody from date of arrest and investigation is completed and further detention is not necessary. It is submitted that the offence under section 24 of Atomic Energy Act as alleged by the

prosecution is punishable with maximum imprisonment upto 5 years. It is further submitted that the applicant has been falsely implicated in this case. Although, it is the case of the prosecution that the applicant was found in possession of material on 20th December, 2016. He was arrested on 24th December, 2016. There was no reason for the investigating agency to arrest him after a period of four days. It is further submitted that the applicant is carrying on family business ship breaking, aircraft breaking. The applicant is the Director of Kehav Ispat Pvt. Ltd. which is in the business of trading in Iron NA Steel Etc. It is further submitted that the applicant was illegally detained by the police from 20th December, 2016 till 23rd December, 2016. It is submitted that alleged Depleted Uranium which is found from the custody of the applicant is weighing about 8.861 kg. Which is used for civilian uses such as counter weights of Aircraft, Shielding in medical radiation therapy and Industrial radiography material equipments, etc. Learned advocate for the applicant has placed reliance upon the report issued by the BRIT / BARC dated 6th December, 2016. It is submitted that the Depleted Uranium was not illegally obtained or smuggled. It is submitted that the material was obtained officially from the auction of the scrap of old aircraft which was done by the Indian Airlines through MSTs

(Government of India Enterprises). In the said auction, heap of scrap aircraft was purchased by one Mrs. Punshi, the same was admittedly sold to the applicant in the year 2006. As per the prosecution case, admittedly, the applicant was in possession of the said Uranium from 2006 till it was recovered by the investigating machinery on 20th December, 2016. It is submitted that in the report dated 6th December, 2016 it is stated that the material sold was Depleted Uranium and the same is used for civilian uses. In the report, it is stated that the sample being weighing about 32 grams which analysed by non destructive gamma spectrometry method and the sample was found to be Depleted Uranium. It is further stated that this fact Uranium is byproduct of nuclear fuel reprocessing cycle and are used for civilian uses which include counter weights in aircraft, radiation shielding in medical radiation therapy and industrial radiography equipment, container for transporting radioactive materials etc. Being prescribed material, license is required to be obtained from Department of Atomic Energy (DAE) beyond 1000 kg. It is also stated that clearance is required from Atomic Energy Regulatory Board (AERB), if the quantity exceeds the exempted quantity as notified under AERB directive, from radiation safety view point. It is further submitted that the prosecution case is connoted

that the alleged material was initially recovered from one unknown person which appears to be some informant of the police machinery. It is submitted that the police have not disclosed the person from whom initially uranium sample was recovered. It is submitted that considering the fact quantity is below 1000 kg., hence license is not required. He relied upon the decision of Supreme Court in the case **Sanjay Chandra V/s. Central Bureau of Investigation**,¹. Reliance is also placed upon the judgment of the Rajasthan High Court in the case of **Jagdish Singh v/s. State of Rajasthan**². In the decision of Apex Court the Supreme Court has considered the issue of custody of the accused and the parameter to be considered for grant of bail. In the second decision, the Rajasthan High Court had granted bail to the accused who was involved in the similar crime and he was found in possession of the material for which provisions of Atomic Energy Act was made applicable. The said accused was granted bail by the said High Court considering the fact that the offence is punishable with imprisonment of five years and the accused was in custody from the date of arrest.

4. Learned APP strongly opposed the application for bail. It is

¹ AIR (2012) 1 SCC 40

² Criminal Appeal No.219 of 2016

submitted that the applicant is involved in serious crime. Reliance is placed on notification dated 28th April, 2016 which is clarified by notification dated 30th June, 2017. It is submitted even for possession of lesser quantity, licence is required and the material which is recovered from the accused was a prescribed substance. It is submitted that it is dangerous to possess such material since it is hazardous to the health of the citizens. It is further submitted that such material can be utilised for manufacturing of bomb etc. It is submitted that statement of various persons were recorded wherein it is disclosed that the attempts have been made by the accused / applicant to sell the said material to various persons. It is further submitted that the applicant was aware that he is required to obtained permission from the concerned authorities to possess such material. The applicant had carried out test in respect of the material in private laboratory in the year 2016 and therefore he ought to have surrendered the said material to the concerned authority. It is further submitted that although the offence is punishable for imprisonment upto five years, gravity of the offence may be considered and bail may not be granted.

5. I have perused the documents on record. It is pertinent to note

that the applicant is arrested on 24th December, 2016. The investigation is completed and the chargesheet has been filed. It is admitted position that the maximum punishment which is awarded for the offence under section 24 of Atomic Energy Act is five years. The applicant had purchased the subject material from one Mrs. Punshi who had purchased same in official auction by the Indian Airlines through MSTS (Government of India Enterprises) in the year 2006. It is the prosecution case is that the applicant has been in possession of the said material since 2006 till it is recovered by the police. It is not the case of the prosecution at any point of time that the applicant had tried to misuse the same. The report of BARC /BIRT dated 6th December 2016 indicates that it is Depleted Uranium and being used genrally for civilian purposes stipulated therein. It is true that the prosecution has relied upon the subsequent notification which states that the licence is reuired. However, what can be considered is that the maximum punishment prescribed under Atomic Energy Act is five years and the applicant is in custody for seven months. The statement of various persons are recorded. It appears that trial may not be concluded in short span of time. The applicant has been in business of scrap since beginning which is the family business and the source of uranium is the auction sale conducted by

the Government of India Undertaking and the alleged material was not obtained by illegal method from any illegal source.

6. Taking into consideration all the documents, case of bail is made out. Hence, I pass following order;

:: ORDER ::

- (i) Bail Application No.1267 of 2017 is allowed.
- (ii) The applicant is directed to be released on bail in connection with C.R. No.II-111/2016 registered with Kasarvadavali Police Station, Thane on furnishing P. R. Bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only.) with one or more sureties in the like amount.
- (iii) The applicant is directed to report the concerned police station once in a month on the first Saturday of the month between 11.00 am to 1.00 pm till further orders.
- (iv) The applicant is permitted to furnish cash security in the sum of Rs.30,000/- (Rupees Thirty Thousand only.) in lieu of sureties for a period four weeks from today.

- (v) The applicant shall not tamper with the evidence and / or prosecution witnesses.
- (vi) The applicant shall attend the trial Court on date of hearing of the case.
- (vii) Application stands disposed of.

[PRAKASH D. NAIK, J.]