



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Thursday, the Eighteenth day of May Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL OP(MD) No.24030 of 2016

MR.VIJAYAKANNAN

... PETITIONER / ACCUSED NO.1

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE,
CBCID, TRICHY.
(CR.NO.1/2016)

... RESPONDENT / COMPLAINANT

For Petitioner : MR.VEERA KATHIRAVAN, SENIOR COUNSEL FOR
M/S.PANDI.THENNAVAN Advocate

For Respondent : MR.P.KANDASAMY Govt. Advocate (Crl. Side)

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

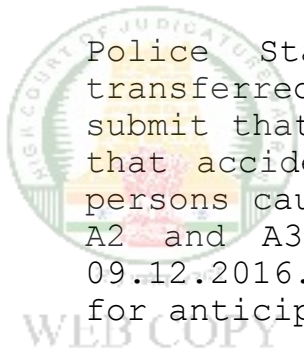
ORDER : The Court Made the following order :-

Orders Reserved on 07.03.2017

The petitioner/A1 apprehends arrest at the hands of the respondent police for the alleged offences punishable under Section 304(ii) of IPC., r/w. Section 9A(1), 9(B)(1)(b) of Indian Explosive Act, 1864 and Sections 3, 4(b) and 5 of Explosive Substances Act, 1908, in Crime No.1 of 2016, on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution is that on 01.12.2016, the Village Administrative Officer of Thenparanadu Village, has given a complaint to the respondent Police stating that on 01.12.2016 at about 7.30 hours, there was an explosion in the Factory, viz., 'Vetrivel Explosive Private Limited'. Due to explosion, the building scattered into pieces and several workers died in the incident and their bodies were scattered into pieces and several persons injured.

3. Mr. Veera Kathiravan, the learned Senior Counsel appearing for the petitioner would submit that the alleged occurrence of blasting of an Explosive Factory had taken place on 01.12.2016, at about 7.30 hrs. and it was reported to the respondent by the Village Administrative Officer, on the same day at 10.00 hrs. Initially, the case was registered on the file of the Uppiliapuram

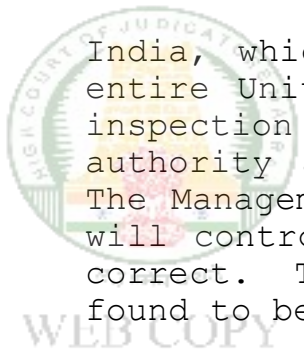


Police Station and subsequently, the investigation has been transferred to the file of CBCID. Continuing further, he would submit that blasting of the Explosive Factory is an accident and in that accident, 19 persons died; 5 persons seriously injured and 8 persons caused with simple injuries. Pursuant to the investigation, A2 and A3 were arrested on 03.12.2016 and A4 was arrested on 09.12.2016. A1 in this case is not yet arrested and he is seeking for anticipatory bail.

4. Adding further, the learned Senior Counsel would submit that the Factory is in existence for the past 16 years. PESO is called Petroleum Explosives Safety Organization, a National Organization, which is giving a certificate / licence to the Factory. The explosion had taken place only in PETN-II and in all other godown and manufacturing unit, there was no explosion. Furthermore, all the explosives substances are manufactured in highly modern scientific instrument and there were big PIT formed, for the specific purpose that, if explosion takes place, the bottom will rock and all the unit go down for 25 feet. So, the other unit will not have any effect because of that. In case of any explosion, it will not affect neighboring / auxiliary unit. The unit have to be maintained in a particular temperature. The staff have to go inside the Unit with wet dresses. In case, if any person goes inside without wet cloth or without taking precaution of their own, there is every possibility of increasing the temperature. No manual person is required for manufacturing the explosive substances because the machines are manufacturing the explosives substances. If any units become more temperature, the Thermostat will automatically cut-off like heater or any other thing and the entire unit will be struck-off and once again, the entire process have to be re-done by a person of technical nature and then only, it will work. So, there cannot be an explosion because of increase in the temperature because automatic thermostat is available.

5. Continuing his argument, the learned Senior Counsel would submit that the residential colony area is less than 1 km away. There is not even a single accident taken place for all the 16 years and there is not even a single person affected residing from the neighboring villages. Not even a single person injured, except the persons, who are working inside the factory, in PETN-II alone. Only the PETN-II met with an accident and there are injuries. The Deputy Manager Production is a qualified and technical person approved by the Chief Controller of Explosives, who is A2/Rajagopal and he is recognized as a competent person, under Rule 11 of Explosives Rules, in respect of the manufacturing of PETN and he is having licence upto 04.09.2018. The factory is deputing only a qualified person under the Explosives Rules to handle the Unit and once we hand over the unit to the technical person, it is his responsibility, like driving licence. A3 / S.S.Anand, who was Senior Manager (Production) and incharge of 'Slurry Explosives Unit' and he was also arrested, which is other Unit.

6. He would also submit that the Petroleum and Explosives Safety Organization (PESO), which is a only highest body of Union of



India, which gives certification, Regulation, Inspection about the entire Unit. Three months before the accident, there was an inspection and entire things were verified by the competent authority and issued 8 licences and all the licences are intact. The Management cannot make excess billing because the software used will control it. Inspection made in August 2016 found everything correct. The company is export oriented unit. Even export bills are found to be correct.

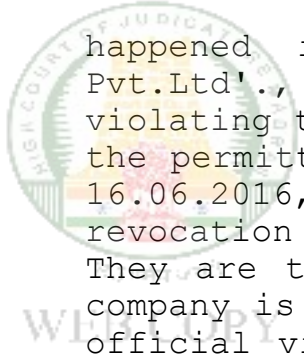
7. In the FIR, the offences inclusively under Section 9A (1), 9(B) (1) (b) of Indian Explosive Act, 1864 and Sections 3, 4(b) and 5 of Explosive Substances Act, 1908. Under Section 9(b) (1) (b) of Indian Explosive Act, 1864, the maximum penalty is two years. Explosives Substances Act will not applicable to this case for the simple reason, the Explosives Substances Act will be useful for the prosecution only in case of unlawful utilization of explosives. Here, the Factory is having a valid licence and the accident had taken place, when there is a valid licence and supervised by the competent officials, the Explosives Substances Act, will not be attracted. If at all the negligence on the part of the Management or supervisor, then Sections 284, 285 and 286 of IPC., is the competent Act, under which, they can be prosecuted. Section 304 and 304(a) IPC., is dealing with causing death and admittedly, when explosives taken place in the Factory, for the human error, nobody can be held responsible.

8. Already A2 to A4 were taken into Police custody and custodial interrogation was over and therefore, there is no more required for investigation and during their custody, there is not even single whisper that the petitioner tampered the record or threatened the witnesses and the petitioner not hindrance to the investigation. He also submitted that the explosion is not possible by mechanism and it is possible only by human error. There is no other explosion in other unit. In case of explosion, the unit has been designed to go automatically inside the earth and the earth will absorb all the shocks to avoid damages to other unit, which is a safety measure.

9. Mr.T.Arul, the learned counsel appearing for the intervenor would submit that an attempt has been made, as if the explosives happened in the Factory is an accident, but it is a case of negligence and due to the negligence, there was an explosion in the Factory and in the explosion, 19 workers had died and their bodies are blown into smitheries. Here is a case, the factory has been put up behind the intervenor backyard, within 500 meters or 1000 meters, where they pollute the entire bore-wells in the five villages of Thalugai Panchayat. The Total Dissolved Solid [TDS] level of the water goes to an extent of 14,000 / mg/l, which is an enormous figure. The intervenor is a villager and a farmer and when TDS level goes to an extent of more than beyond the prescribed level, the intervenor is an affected person and have the right to intervene.

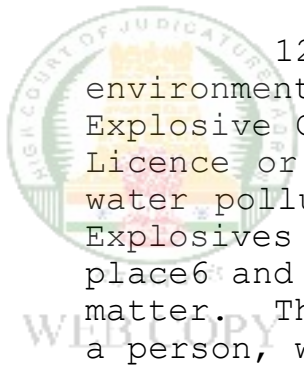
<https://hcservices.ecourts.gov.in/hcservices/>

10. He would further submit that a Resolution has been passed by the Panchyat in the month of August and the explosion



happened in December. The Factory viz., 'Vetrivel Explosives Pvt.Ltd'., has manufactured cartridges of 250 grams and 500 grams, violating the Explosives Act and Rules framed thereunder, as against the permitted cartridges of 125 grams. He also submitted that on 16.06.2016, a show cause notice has been issued to the Factory, for revocation of license and unfortunately, the matter is kept pending. They are treating the industrial workers, as can and fodder. The company is concerned only about money. Even prior to the accident, official visited the company and found 5000 Kgs explosives stored, violating the approved explosives limit of 2000 Kilograms, which is so abnormal, which is more than 200% and therefore, a show-cause was issued and is pending. After explosion an investigation has been conducted and the same would reveal that 1500 Kgs explosives stored in the Factory, it is more than 200 times. Therefore, the learned counsel for the intervenor strongly object to grant the relief, as sought for by the petitioner. He would further submit that subsequent to the explosion in the Factory, the Chief Controller of Explosives, Nagpur, Maharashtra, has suspended the license granted to the 'Vetrivel Explosives Pvt.Ltd.,' to manufacture explosives and the District Revenue Officer, Tiruchirappalli has also withdrawn the 'No Objection Certificate' granted to the 'Vetrivel Explosives Pvt.Ltd'. He also submitted that A1 in this case, in order to meet out the bulk order from Indonesia, directed the other accused persons to increase the production, which may be the reasons for the explosion and the 1st accused is still absconding and not co-operating with the investigation. Unless the A1 is interrogated, the truth will never come.

11. In reply, the learned Senior Counsel appearing for the petitioner would submit that the intervenor is a rival business. On 16.06.2016, PESO has made an inspection and pointed out certain remarks and the intervenor is relying upon the remarks, as if the cause of accident. After 16.06.2016 negative report, there was subsequent development that is every remarks were complied with after that the chief controller revoked the order. Whether the ongoing investigation, if at all, if any or any other possibility of commission of further crime or tampering of records are the points for consideration in bail application. The Chief Explosive Controller at Nagpur is seized off the matter with regard to finality. Neither the intervenor nor the prosecution say that these persons can influence either directly or indirectly after the commission of the crime, affecting the investigation or the witnesses. Till a charge sheet is filed or final report is taken as cognizance, the presumption is that a person is a bonafide person and he is not guilty, under the criminal law. The Act under which the case is registered is Sections 3 to 5 of Explosive Substances Act. The Act is very clear saying that a person willfully violates the provision of the law. It is not their case that the petitioner involved in an offence that knowingly fully well that the crime is with malicious intention. It is not even their case that the petitioner is involved in by invoking Explosive Substances Act. The allegation that there was excessive stock in PETN II is concerned, that once the unit is burst, nobody can guess what is the quantity was and therefore, the allegation cannot be countenanced.



12. Whether a person, who claims that pollution or environment is affected, can oppose the bail application in Explosive Case. It is a case of explosion or Explosives Act under Licence or violation. Whether the person claiming that because of water pollution, the petitioner should not be released on bail in the Explosives Substances Act. Admittedly, an explosion had taken place and the Government has appointed the CBCID to investigate the matter. The entire investigation is more or less completed, whether a person, who is claiming as agriculturist is entitled to oppose the bail application, in a case of allegation of pollution and the allegation of pollution is not the subject matter of this case. In respect of contamination or pollution of water is concerned, four samples of water have been collected from the bore-wells of the private individuals. The two samples collected from the inside unit is within the norms and the TDS level is very less and therefore, the argument advanced by the intervener has no legs to stand

13. Mr.P.Kandasamy, the learned Government Advocate (crl.side) appearing for the respondent would submit that there are totally 4 accused in this case and A2 to A4 were arrested and A1 is still absconding and the investigation is still pending. A1 filed anticipatory bail application in CrI.O.P(MD)No.24030 of 2016. A2 and A4 arrested on 03.12.2016 and A3 was arrested on 09.12.2016. A1 is the owner of the Factory; A2 is the Director; A3 is the Senior Production Manager and A4 is the Deputy Production Manager. Continuing further he would submit that there was an explosion on 01.12.2016 at 07.30 hrs, in the PETN II Unit in 'Vetrivel Explosive Private Ltd', and the complainant is VAO and he saw a large pit at the place, where PETN-II Unit was located. The building was torn into pieces by heavy explosion. Several workers / labourers died and pieces of human bodies were found scattered and several others were injured. On investigation, it is revealed that 19 workers died in the explosion and 18 workers sustained injuries. According to the investigating agency, the cause of explosion is that, the accused persons, in order to increase the scale of production to meet out the bulk order received from Indonesia, started production suddenly as against 3 PETN Units were utilized for producing excess PETN against 2 PETN Units, which were earlier functioning. Meanwhile unskilled labours of other PETN Units were also utilized in the 3 PETN Units. As per the norms 400 Kgs of manufactured explosives of PETN can only be stored in the PETN II Unit, but, 1300 Kgs was stored on date of occurrence, which was beyond the storage capacity of the unit. Further, as per the norms, only 4 workers can be accommodated in the PETN II Unit, but more than 13 persons have been employed. A1 in this case employed unskilled labours in PETN Unit-II, where the accident took place and this clearly reveals the liability and the act of negligence of accused A1 to A4. They have violated the Factory Rules. They have capacity to dump 400 Kgs but deposited 1300 Kgs and permitted person is only 4, but more than 13 person have been employed. The Log Book maintained by the Factory shows the day-to-day affairs and on the date of explosion, from the log book it would reveal that there was a stock of 1300 Kgs. He would further submit that the Chief Controller of Explosives is the Licensing Authority, Nagpur and they have to give



a report and their role is vital. There are totally 4 units and the explosion happened in PETN II alone.

14. I have heard the learned counsel appearing for the petitioner, learned counsel appearing for the intervener and the learned Government Advocate (crl.side) appearing for the respondent. I have also perused the materials available on record.

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15. Admittedly, the petitioner is the Managing Director of 'Vetrivel Explosive Private Limited' and a competent person have been appointed to take part in the day-to-day affairs of the above said Unit. VAO is the defacto complainant in this case. There was an explosion on 01.12.2016 at 17.30 Hrs in the PETN II Unit in 'Vetrivel Explosive Private Limited'. The said Factory is having a valid licence for manufacturing the explosives even on the date of occurrence. According to the learned Senior Counsel for the petitioner, the alleged explosion has taken place only due to human error and there is no other explosion in other Unit and the explosion is not possible by mechanism and in case of explosion, the unit has been designed to go automatically inside the earth and the earth will absorb all the shocks to avoid damages to other Unit, which is a safety measure. The allegation of Pollution, as contended by the intervener in this case, is not the subject matter of the case.

16. According to the prosecution, the cause of explosion is, 1300 Kgs of manufactured explosives was stored in the Unit, against the norms of 400 grams, on the date of occurrence, which was beyond the storage capacity of the Unit and also employed more than 13 persons against the norms of 4 workers in the PETN II Unit and also A1 has employed un-skilled labours in the PETN II Unit. The co-accused, who were arrested in this case, were taken into police custody and custodial interrogation was already over. Hence, the custodial interrogation of this petitioner is not required in this case. It is further stated that compensation were also given to the deceased family member and injured persons. The investigation in this case should have been completed, since the occurrence took place on 01.12.2016 and remaining accused were arrested and taken on Police custody and custodial interrogation was already over.

17. Considering facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioner, with certain conditions. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, before the learned Judicial Magistrate No.VI, Trichy on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that the petitioner shall report before the Respondent Police daily at 10.30 a.m., until further orders. The petitioner shall comply with the condition stipulated under Section 438 Cr.P.C., scrupulously.



18. The petitioner shall appear before the concerned Magistrate within a period of 15 days from the date on which the order copy is made ready, failing which, the petition for anticipatory bail stands dismissed.

sd/-
18/05/2017

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE JUDICIAL MAGISTRATE NO.VI, TRICHY.
 - 2 THE CHIEF JUDICIAL MAGISTRATE, TRICHY DISTRICT.
 - 3 THE INSPECTOR OF POLICE,
CBCID, TRICHY.
 - 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +2. CC to M/S.PANDI.THENNAVAN Advocate SR.Nos.22270 & 22412

ORDER
IN
CRL OP(MD) No.24030 of 2016
Date :18/05/2017

MKV-MSA-SAR 4/19.5.2017/7P-7C