

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc.Petition No. 297 of 2018**

- State Of Chhattisgarh Through- The Station House Officer, Police Station Utai, District- Durg (C.G.), District : Durg, Chhattisgarh

---- Petitioner**Versus**

1. Ramesh Kumar Jangde S/o.- Kanhaiya Jangde Aged About 45 Years R/o.- Kasaridih, Durg, Police Station And District- Durg (C.G.), District : Durg, Chhattisgarh
2. Jitendra Kumar Yadav S/o Late Narayan Lal Aged About 36 Years R/o.- Village Khamhariya, Police Station Utai, District- Durg (C.G.), District : Durg, Chhattisgarh
3. Mohammad Raja S/o.- Late Mushi Raja Aged About 51 Years R/o.- Kasaridih, Durg, Police Station And District- Durg (C.G.), District : Durg, Chhattisgarh

---- Respondent,

For Petitioner/State	:	Shri R.K. Pandey, Panel Lawyer
For Respondents	:	Shri Ayaz Naved, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma
Order on Board

17/9/2018

1. Heard on I.A.No.1/2018, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application and the law laid down by the Hon'ble Apex Court in the matter of State of Haryana Vs. Chandra Mani & Ors., (1996) 3 SCC 132, delay of 56 days in filing the petition is condoned.
3. Also heard on the application for grant of leave to appeal filed under

Section 378 (3) Cr.P.C.

4. The instant Cr.M.P. has been filed against the judgment dated 1st September, 2017 passed by the First Additional Sessions Judge, Durg, District Durg (CG) in ST No. 140/2010, wherein the said Court has acquitted the respondents of the charges under Section 9(B) of the Explosive Act, 1884 and Section 5 of the Explosive Substances Act, 1908 for possessing gun powder to the tune of 100 kg and 400 pieces of safety fuse and ammonium nitrate measuring 500 kg.

5. The trial Court has elaborately discussed all the issues regarding commission of offence and evaluated the evidence adduced by the prosecution at length. As per the trial Court, sample of gun powder was collected from only 2 bags out of 71 bags. It means, 69 bags were left for taking samples. When 69 bags have been left by the prosecution for taking sample it was not established that the article found in the said bags was gun powder. Only samples from 2 bags were taken and quantity in said 2 bags was 2 kg. The trial Court found that the respondent is a licensee and as per licence he is authorized to possess 500 kg of gun powder at a time. In the present case, only sample of 2 kg was taken for examination and therefore, it is not established that the respondent was in possession of more than 500 kg of gun powder.

6. Pieces of safety fuse in 400 Nos. were seized from the respondents and one piece is measuring to 7.32 meters, in all, it was 2928 meters. Looking to the licence of the respondent, the trial Court opined that the respondent is having licence for possessing 30,000 meters of safety fuse at a time and quantity seized from the possession of the respondent is within

his licence limit, therefore, offence regarding gun powder and safety fuse was not established.

7. It is alleged by the prosecution that 200 kg of ammonium nitrate was seized from the vehicle of the respondent and 300 kg of ammonium nitrate was seized from his godown, in all, 500 kg was seized.

8. S.K. Bhole, who is Deputy Explosive Controller in the office of Explosive Controller, Raipur (CG) deposed as DW2 before the trial Court. As per version of this witness, up to 21.7.2011, ammonium nitrate was not included under the Rules made under the Explosive Substances Act 1884. In the present case, date of offence is 25.5.2010 and as per version of Deputy Explosive Controller, ammonium nitrate was not mentioned as explosive before 21.7.2011. As the said article was not included in explosive, the trial Court opined that the charge framed against the respondents is not substantiated and therefore, recorded a finding of acquittal.

9. On overall assessment of the entire evidence, this Court has no reason to interfere with the finding recorded by the trial Court. Accordingly, the prayer for leave to appeal is rejected.

10. Consequently, Cr.M.P. stands dismissed.

Sd/

(Ram Prasanna Sharma)

Judge

