

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

1 ANTICIPATORY BAIL APPLICATION NO.1293 OF 2021

**MOHAMMAD SHAJI KHAN S/O. KHADIR AHMED KHAN
VERSUS
THE STATE OF MAHARASHTRA**

...

Mr. Swapnil S.Rathi, Counsel for the applicant
Mr. S.B.Narwade, APP for the respondent-State

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CORAM : PRAKASH D. NAIK, J.

DATE : 22nd NOVEMBER, 2021

PER COURT:

1] This is an application under Section 438 of Code of Criminal Procedure (for short, 'Cr.PC.') in connection with Crime No.0304 of 2021 registered with Parbhani Rural Police Station, Dist.Parbhani for the offences under Sections 5 and 6 of Explosive Substances Act. The First Information Report (for short, 'FIR') was registered on 6th October, 2021.

2] The case of the prosecution is that on 6th October, 2021, information was received through secret informant that Mohammad Shahaji Ahmed @ Shakir s/o Mohammad Khadir Ahmed Khan (applicant) has stored the explosives unauthorizedly in a godown situated at agricultural field. In pursuant to that, panchas were called and the place was raided. During search, Gelatin sticks were found in

box along with blasting wire, which could cause damage to the life of people. The description of the articles seized is mentioned in the FIR.

3) Apprehending arrest in connection with the aforesaid crime, the applicant had preferred an application for anticipatory bail before the Court of Sessions, which has been rejected vide order dated 21st October, 2021.

4] Learned counsel for the applicant has urged that the offences under Sections 5 and 6 of the Explosive Substances Act are not made out against the applicant. The apprehension expressed by the prosecution in the FIR and the investigation papers is devoid of merits. The applicant is conducting business of explosive substances. Licence has been issued to possess, use to explosives of class 1, 2, 3, 4, 5, 6 or 7. The description of explosive substances has been specifically given under the licence and quantity is specified. The said licence is valid till 31st March, 2024. The quantity, which has been seized from the place of raid is within the permissible limits as prescribed under the licence. The applicant is allowed to possess nitrate mixture of 1900 kg, safety fuse 10,000 meters, electric and ordinary detonators 44000. The applicant has licence to transport explosive in a registered van till 31st March, 2024. The applicant was allowed to purchase and possess the permitted explosives. On 05.07.2021 and 11.08.2021, the

applicant had purchased Super Power 90 – 40 boxes having total quantity of 1000 kg. from Marathwada Explosives, Jintur, Dist. Parbhani. The applicant had purchased Solar AED US 1.5 NP of 8000 quantity. GST invoice shows that Marathwada Explosives have sold the explosives and detonators to applicant and GST invoice contains licence number of applicant's firm. Kishor Shelke is licensed Shot Firer. He is permitted to all lands of phases of blasting in agricultural well. He used to take explosives from applicant to sites where explosives were proposed to be used. The competent authority issued licence to Kishor Shelke by certifying his competency to carry out blasting of explosives. Licence was issued to him on 18.12.2012 and it is valid till 18.12.2022. Provisions of Sections 5 and 6 of Explosive Substances Act are not applicable. The purchase was from licenced firm.

5] Learned APP submitted that the applicant had stored the explosives in a godown, situated in his agricultural field. It was not stored at the registered place. The place where usually the applicant was permitted to store the explosives is not in operation since last two years. There was no reason for the applicant to store the explosives at godown situated in his agricultural field. The panchanama relating to the place, where the applicant was authorized to store the explosives,

was conducted and it was found that no activity is carried out since last two years. The investigation is in progress. Custodial interrogation of the applicant is necessary to find out the real truth and the reason for storage the explosives at the place, where they were found. In the past, one more case was registered against the applicant for violation of the provisions of the Explosive Substances Act. Hence, the application may be rejected.

6] In rejoinder, the learned counsel for the applicant had submitted that the offence, which was registered in the past was alleging that the explosives were transported in a vehicle other than the registered vehicle and not for violation of any other provisions. The applicant was granted bail in the said case.

7] From the documents annexed to this application, it can be seen that the applicant is conducting business relating to the purchase and storage of the explosives and selling it to the authorized person. The licence was issued to the applicant to possess for use, explosives of blast at sr.nos. 1, 2, 3, 4, 5, 6 and 7. The copy of the said licence is annexed with this application, which indicates that it is valid till 31st March, 2024. The licence also mentions, that it is valid for quantity of explosives to refer to such as nitrate mixture of 1,900 kg safety fuse to 10,000 mtrs. Electric and/or Ordinary Detonators 44000 numbers

and Detonator Fuse 10,000 mtrs. The reliance was also placed on the licence to transport the explosives in a routine van bearing registered number, the vehicle in which the applicant was permitted to transport the explosives of the nature stated herein above. It also valid till 31st March, 2024. The applicant has relied upon the invoices, which are relating to purchase of the explosives from Marathwada Explosives. The copy of licence issued to Kishor Dashrath Shelke mentions that he is permitted to conduct blasting operations. From the documents, it is apparent that the quantity, which was seized from the place, where the raid was conducted is lessor than the permissible limit prescribed under the licence issued to the applicant. The contention of the learned counsel for the applicant is that the provisions of Explosive Substances Act cannot be made applicable to the applicant. Learned counsel for the applicant relied upon the definition of explosive substances provided under Section 2 of the said Act, which mentions that the explosive substance shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; any part of any such apparatus, machine or implement. Punishment for the offences is provided under Section 3 of the said Act. The contention of learned counsel for the applicant is that at the

most, the provisions of Explosives Act, 1884 could have been invoked in the light of definition of Explosive reflected in Section 4(d) of the said Act. Without entering into debatable issue, it can be seen from the factual aspect of the matter, that the applicant was issued requisite licences and was permitted to store, possess and transport. The quantity was enumerated in the licence issued to him. The violation at the most is that the explosive was stored in a place, which was not registered godown. It is a breach of conditions of licence. The learned Sessions Judge, while rejecting the application has drawn inferences, which are not supported by any material on record. In these circumstances, the applicant need not be subjected to custodial interrogation. Hence, I pass the following order.

ORDER

- (i) Anticipatory Bail Application No.1293 of 2021 is allowed.
- (ii) In the event of arrest of applicant in connection with CR No.0304 of 2021 registered with Parbhani Rural Police Station, Dist.Parbhani, the applicant be released on bail on his executing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.
- (iii) Applicant shall report Investigating Officer on 29th, 30th November, 2021 and 1st December, 2021 between 11.00 am to 01.00 pm and thereafter, as and when called for, till filing charge-sheet.
- (iv) Application stands disposed of.

(PRAKASH D. NAIK, J.)