

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (BA) NO. 333/2022
Amol Devidas Waghmare and anr...Versus...State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Mr. Tejas Deshpande, Advocate for applicants
Mr. I.J.Damle, APP for non-applicant /State

CORAM : AVINASH G. GHAROTE, J.
DATE : 29/04/2022

1] Heard Mr. Deshpande, learned counsel for the applicant and Mr. Damle, learned APP for non-applicant/ State.

2] The applicants have been arraigned for the offence under Section 5 of the Explosive Substance Act and Sections 5, ((B)1(B) of the Explosive Act and Sections 46, 24(1), 130 and 177 of the Motor Vehicles Act, in Crime No. 122/2022.

3] Mr. Deshpande, learned counsel for the applicants submits that the applicants are the employees of one Rahul Shelke, who was having a license for the use of explosives for the purpose of blasting in agricultural fields for sinking well (pg 9 to 14) and had procured the explosives to be used for this purpose. The applicants are the employees of the said

Rahul Shelke and were merely transporting the explosives when they were apprehended, considering which they are entitled for bail.

4] Learned APP vehemently opposes the application and submits that there is a violation of Section 5 of Explosive Substances Act read with Form LE-10. Further reliance is placed upon the statement of applicants dated 22.3.2022 to contend that they had taken the tractor-trolley on hire from the said Rahul Shelke and therefore, were liable to be prosecuted on the ground that they were carrying the explosives without a license, in view of which it is contended that the application needs to be rejected.

5] It is not disputed that on 23.3.2022 the applicants were found driving two tractors loaded with explosives and when the applicants were questioned about the license, they were unable to show. The statements of the accused which are sought to be relied upon to contend that the tractors were taken on a hire from Rahul Shelke, cannot be relied upon on the ground that they are of an incriminating nature. That apart, even presuming otherwise, there is no contract of hire, nor is there any period of hire or the rent mentioned therein, considering which the theory of hire, prima facie falls to the ground. Section 5 of the Explosive Substances Act, 1908 requires the recording of an opinion that the possession of

explosives under suspicious circumstances were found and were not for a lawful object, which opinion is missing from the record. The two tractors which were seized are claimed to have been released to Rahul Shelke and learned APP makes a fair statement that two tractors were being used for excavating well in the agricultural land. That being the position, it appears to be a case of the said Rahul Shelke having procured the explosive and engaged the services of the applicants for blasting in the well in the agricultural lands on the basis of material available in the case diary as of now, considering which, a case for bail is made out. Hence the following order.

O R D E R

I] The application is allowed.

II] The applicant No.1 Amol Devidas Waghmare and applicant No.2 Gajanan Tulshidas Mule, be released on bail in Crime No. 122/2022 registered by the Police Station Amdapur, Dist. Buldhana, for the offence under Section 5 of the Explosive Substance Act and Sections 5, 9(B)1(B) of the Explosive Act and Sections 46, 24(1), 130 and 177 of the Motor Vehicles Act, on their executing PR bond in the sum of Rs.50,000/- each with two solvent sureties of the like amount.

III] The applicants shall not tamper with the prosecution evidence or try to undue influence the prosecution witnesses directly or indirectly in any manner.

IV] The applicants shall attend the trial before the learned Sessions Court on each and every date and shall ensure that the trial is not protracted on his count.

V] Any violation of the above conditions shall result in cancellation of bail.

JUDGE

Rvjalit