

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

ANTICIPATORY BAIL APPLICATION NO.912 OF 2023

VIJAY MORU MHATRE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. S. S. Deshmukh
APP for Respondents: Mr. G. O. Watamwar
...

CORAM : R.M. JOSHI, J

DATE : SEPTEMBER 04, 2023

PER COURT :

1. Applicant apprehends arrest in connection with with C.R. No. 191 of 2023 registered with Nawapur Police Station, Dist. Nandurbar for the offences punishable under Sections 4(B) of Indian Explosive Substance Act and Section 286 of the Indian Penal Code.
2. First information report shows that the Applicant is the registered contractor with Government of India, who has received work order for the development and maintenance of National Highway No. 6 in relation to the work from KM 510 to 650.794. For the purpose of implementation of said work, sub contract was entered into with Aai Saheb Enterprise in relation to the work of crusher plant, drilling and blasting.

FIR shows that information was received about storage of explosive without taking appropriate precautions and safety measures. Police Officers of Nawapur Police Station visited the spot and it was found that in a tin shed explosives were kept. When the inquiry was made to the persons who were present, he introduced himself to be a sub contractor and claims ownership of the said explosive. It is his further contention that he does not have magazine for keeping the said explosive, therefore, he kept the said explosive in the tin shed provided by company. On the basis of these averments, offence came be registered.

3. Learned Counsel for the Applicant submits that Applicant has entered into sub contract for the purpose of drilling and blasting work. It is his contention that offence punishable under Section 4 of the Explosive Act does not get attracted for the reason that he being not in possession and control over the said explosive. It is submitted that *mens rea* is absent for the commission of alleged crime.

4. Learned APP opposed the said contention by relying upon the lease deed between owner of the

property and present Applicant. It is contended that present Applicant is responsible for the activities happened in the said property. By referring to the contract between Applicant and sub contractor, it is submitted that it is responsibility of the Applicant to ensure that the explosives are kept in safely in magazine. It is his contention that the Applicant was in possession and supervision of the said explosives and hence, provisions of Explosive Act are applicable against him.

5. Perusal of the FIR clearly shows that the sub contractor has claimed ownership and possession of the said explosive. Agreement between Applicant and sub contractor does not indicate any control or supervision of the Applicant over the actual explosives and its use. In order to attract offence punishable under Section 4 of the Explosive Act the possession and control over the explosive would be absolutely essential. For the purpose of attracting criminal vicarious liability, there has to be specific provision of law or material to indicate commission of offence on account of custody and control over the explosive

substance. From FIR itself it is clear that the sub contractor claims ownership and custody of the same and merely because contract is entered into, the control over the explosives cannot be deemed to be with present Applicant.

6. *Prima facie* facts of the case are not sufficient to fasten liability of commission of offence under the provisions of Section 4 of the Explosive Act against present Applicant. In any case, nothing is to be recovered at his instance. Even otherwise, he cannot be kept behind bars by way of pre-trial sentence. For want of his custodial interrogation, application deserves to be allowed. Hence, application stands allowed by confirming order dated 19th June, 2023.

(R.M. JOSHI, J.)

Malani