IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (S.J.) No. 486 of 2009

[Against the judgment and order of conviction and sentence dated 07.05.2009/11.05.2009 respectively passed by learned 5th Additional Sessions Judge (FTC), Jamtara in Sessions Trial No.31 of 2005]

Nasim Mian, son of Dakhlu Mian, resident of village-Vithra, P.S.-Jamtara, District-Jamtara … … Appellant

Versus

The State of Jharkhand …. Respondent

For the Appellants : Mr. A.K. Kashyap, Sr. Advocate
For the Resp.-State : Mr. Tarun Kumar, A.P.P.

PRESENT
CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA
JUDGMENT

CAV On 02/09 /2026 **Pronounced On 06/11/2026**

1. Heard Mr. A.K. Kashyap, learned senior counsel for the appellant and learned A.P.P.

2. Instant criminal appeal is directed against the judgment and order of conviction and sentence dated 07.05.2009/11.05.2009 respectively passed by learned 5th Additional Sessions Judge (FTC), Jamtara in Sessions Trial No.31 of 2005, whereby and whereunder the appellant has been held guilty for the offence under sections 4 and 5 of Explosive Substance Act and sentenced to undergo R.I. for 5 years along with fine of Rs.5,000/- with default stipulation.

Factual Matrix:-

3. Factual matrix giving rise to this appeal is that on 02.03.2000 at about 19:10 hours, when the informant, S.I. Rajesh Kumar along with other

police personnels were on patrolling duty and as they reached at Subash Chowk, Karmtanr, a person started fleeing away seeing the police and took shelter in the hotel of Shiveshwar Mondal. Upon chase, the police caught him and on inquiry, he disclosed his name as Nasim Mian and he is wanted accused in G.R. No.57 of 1983 under sections 4 and 5 of Explosive Substance Act. It is further alleged that upon his search in presence of two witnesses, 494 pieces of detonators, two bundles of fuse wire was recovered and in this regard, the accused could not produce any valid paper. Thereafter, the informant seized all the above incriminating explosive substance and prepared a written information to officer-in-charge, police station, Jamtara alleging the above facts.

4. On the basis of above information, Jamtara, P.S. Case No.27 of 200 was registered under sections 4/5 of Explosive Substance Act. After completion of investigation, charge-sheet was submitted against the appellant and he was sent up for trial.
5. After taking cognizance, the case was committed to the court of Sessions where S.T. No.31 of 2005 was registered.
6. The present appellant has denied the charges leveled against him and claimed to be tried.
7. In course of trial, altogether 8 witnesses were examined by the prosecution, namely:-

P.W.1-Ranjeet Kumar Yadav

P.W.2-Ayodhya Mondal

P.W.3-Nitai Rajwar

P.W.-4-Shivjor Ram

P.W.5-Ram Pravesh Tiwary

P.W.6-Hawaldar Ramcharitra Paswan

P.W.7-Gayanender Nath Mishra

P.W.8-S.I. Rajesh Kumar (Informant)

8. Apart from oral testimony of the witnesses, following documentary evidences have been adduced by the prosecution.

Ext.1-Fardbeyan

Ext.1/1-Endorsement on *fardbeyan*

Ext.2-Formal FIR

Ext.3-Seizure List

Ext.4-FSL report

Ext.5-Sanction Letter

9. On the other hand, no oral or documentary evidence has been adduced by the defence.

10. The case of defence is denial from the occurrence and false implication.

11. Learned trial court after evaluating the evidence available on record held the appellant guilty for the aforesaid offence and sentenced him as stated above, which has been assailed in this appeal.

Submissions on behalf of appellant:-

12. Assailing the impugned judgment, learned counsel for the appellant has submitted that the seizure list witnesses i.e. P.W.2 and P.W.3 have been

declared hostile by the prosecution and they have not supported the recovery from the possession of the appellant and had stated that on the next day, the police had taken their thumb impression on a plain paper. It is further submitted that the Investigation Officer of this case has not been examined by the prosecution, which caused serious prejudice to the appellant. It is further submitted that the appellant was arrested from the hotel situated at Subash Chowk, but no independent witness has been examined in this case, which casts a serious shadow of doubt over the veracity of its case. It is further submitted that it is highly improbable to carry the alleged articles in a small bag as mentioned in the seizure list, which also falsify the prosecution case and the same fact has also not been properly appreciated by the learned trial court. It is further submitted that the appellant was in the business of selling fish and when the police party demanded fish free of cost, which was refused by the appellant, then, they falsely implicated him in this case on the basis of planted recovery. There are many contradictions in the statements of witnesses and they are not reliable and trustworthy in the eye of law. Hence, the impugned judgment and order of conviction and sentence of the appellant is liable to be set aside, allowing this appeal.

Submission on behalf of State:-

13. On the other hand, learned A.P.P. has opposed the aforesaid contentions raised on behalf of the appellant and submitted that there is no substance in the points of arguments raised by the appellant. Learned trial court

has very wisely and aptly considered the overall factual aspects of the case, which has been proved by the prosecution witnesses. Therefore, there is no illegality or infirmity in the impugned judgment and order of conviction and sentence of the appellant calling for any interference in this appeal, which is devoid of merits and fit to be dismissed

Analysis, Reasons and Decision:-

14. I have gone through the record of the case along with the impugned judgment and order in the light of the contentions raised on behalf of both side.

15. The only point for determination in this appeal is that "**as to whether the impugned judgment and order of conviction and sentence of the appellant passed by learned trial court suffers from any error of law calling for any interference in this appeal?**"

16. Before adjudicating the above point, it is necessary to take brief resume of oral as well as documentary evidence adduced by the prosecution to substantiate the charges leveled against the appellant.

The most important witness of this case is the informant **Rajesh Kumar**, who has been examined as **P.W.8**. According to his evidence, on date of occurrence, he was appointed as Karmatar Police Camp. He further states that he along with other police personnels was on patrolling duty and as they reached at Subash Chawk, a person started fleeing away seeing the police party and entered into a hotel of Ayodhya Mondal. Upon chase, he was apprehended and disclosed his

name as Naim Mian. From his possession, one bag containing 494 detonators and fuse wire were recovered and relating to which, no valid document has been produced by him. He further states that the alleged materials were seized and seizure list was prepared in presence of independent witnesses and he has proved the seizure list as Ext.3. He further states that he made a written information and sent it to officer-in-charge, Jamtara, which has been marked as Ext.1.

P.W.1-Ranjit Kumar Yadav is the member of police patrolling team. According to his evidence, on the date of occurrence, he along with other police personnels were on patrolling duty and as they reached at Subash Chawk, a person started fleeing away seeing the police party and entered into a hotel. Thereafter, he was caught from the said hotel. From the possession of the apprehended accused, one bag containing about 494-495 pieces of detonator and fuse were recovered and he failed to show any valid paper for having such contraband material.

P.W.2-Ayodhy Mondal and P.W.3-Nitai Rajwar have been declared hostile by the prosecution and have stated that nothing has been seized in their presence rather they put their thumb impression on a blank paper on the next day at police station.

P.W.4-Shivjor Ram is the second Investigating Officer of this case. According to his evidence, on the date of incident, S.I. Rajesh Kumar has made a written information which this witness identified and

the same is marked as Ext.1. He has also proved the Formal FIR marked Ext.2. He further states that he has sent the detonators and fuse wire for forensic test. Thereafter, he was transferred.

In his cross-examination, he admits that nothing has been recovered in his presence and no seizure list was prepared. There is nothing else in his cross-examination to cast doubt in his above testimony.

P.W.5-Ram Pravesh Tiwary was also a member of the patrolling party. According to his evidence, he states that while he was on patrolling duty along with other police personnels and as they reached at Subash Chawk, one person seeing the police party fled away from there and entered into a hotel. They followed and apprehended him and from his possession, one bag containing many detonators and fuse wire were recovered. Thereafter, the contraband materials were seized and seizure list was prepared.

P.W.6-Hawaldar Ramcharitra Paswan was also a member of patrolling party and has reiterated the same prosecution story as narrated by P.W.5 Ram Pravesh Tiwary. There is nothing in his cross-examination, which creates doubt in his testimony.

P.W.7-Gayendra Nath Mishra was posted at Assistant in Meso Office, Jamtara. He has identified the writing and signature of the then District Magistrate on sanction letter marked Ext.5.

17. From the aforesaid discussion of ocular testimony of witnesses. It appears that the seizure list witnesses i.e. P.W.2 Ayodhya Mondal and P.W.3 Nitai Rajwar have been declared hostile and expressed their no knowledge about any recovery from the possession of the appellant in their presence. It further appears that the seizure list (Ext.3) also goes to show that the place of seizure is the hotel of Shiveshwar Mondal and the seized materials are described as 494 pieces detonators kept in a cream color bag containing pink strips, two white bundles, one 43 1/2 *haath* length and another containing 34 *haath* length and 10 bundles blue color fuse, the length of five bundles was 20 *haath* and the rest 5 bundles measuring length 21 *haath*. It further transpires that in the FSL report (Ext.4), the seized materials were sent in two packets marked 'A' and 'B' containing detonators and fuse, it reveals that 'A' contained 10 aluminum coil (each length 3 to 7 cm x 0.6 cm). The paper packet marked 'B' contained following articles (i) one coil safety fuse(length 9 meters) having blackish powder substance, (ii) one coil white plastic cover detonating fuse (length 2.25 meters) having white powdery substance. It further transpires that the prosecution case as depicted in the FIR is that the present appellant was carrying these articles in a cream color bag and seeing the police personnels, he started fleeing away and he was chased and apprehended, when he has affected his entrance in the hotel of Shivshwar Mondal. It is inherently impossible that the person having such a long strips of detonators and fuse will be

able to flee away seeing the police party. It also appears that one of the seizure list witnesses, P.W.2 Ayodhya Mondal, who is the worker of the said hotel, has stated that when the accused was sitting in the hotel and asked for his food. In the meantime, the police arrived and apprehended him but nothing was recovered from his possession. Another seizure list witness i.e. P.W.3 Nitai Rajwar has also stated that the seizure memo was prepared in the police station in the next day morning and nothing was recovered rather his thumb impression was obtained by the police. Therefore, the above story as projected by the prosecution clearly indicates it to be false and suppression of some material facts relating to the alleged crime. Moreover, the entire case of the prosecution solely rests upon the testimony of the informant and the official witnesses, without any corroboration from local, independent witness. The seized materials have not been proved beyond reasonable doubt that it was seized from the possession of the appellant.

18. In view of the above discussion and reasons, I find that learned trial court has not taken into consideration the very objects seized in this case and the manner in which the appellant was apprehended along with alleged explosive substance. Therefore, the impugned judgment is based upon non-consideration of the evidence available on record in proper manner and the impugned judgment appears to be illegal and erroneous. Hence, the judgment and order of conviction and sentence dated 07.05.2009/11.05.2009 respectively passed by learned 5th Additional

Sessions Judge (FTC), Jamtara in Sessions Trial No.31 of 2005 is, hereby, set aside and the appellant is acquitted from the charges leveled against him. This appeal is **allowed**

19. The appellant is on bail. He is discharged from liability of his bail bond and sureties are also discharged.

20. Pending I.A(s), if any, is also disposed of accordingly.

21. Let a copy of this judgment along with Trial Court Record be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand, Ranchi

Dated:-06 /11 /2026

***Pappu*/-N.A.F.R.**

Uploaded on 06 /11 /2026