

Rakesh Bindal vs The State Of Madhya Pradesh on 5 December, 2022

Author: Anil Verma

Bench: Anil Verma

1
IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE ANIL VERMA
ON THE 5th OF DECEMBER, 2022
MISC. CRIMINAL CASE No. 57166 of 2022

BETWEEN: -
RAKESH BINDAL S/O DWARKADHISH BINDAL, AGED
ABOUT 45 YEARS, OCCUPATION: BUSINESS
INDUSTRIAL AREA DEWAS ROAD, NAGJHIRI NEAR
PANCHAYAT PRESS UJJAIN (MADHYA PRADESH)

(BY SHRI MANU MAHESHWARI - ADVOCATE)

AND
THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH POLICE STATION NAGJHIRI DISTT.
UJJAIN (MADHYA PRADESH)

(BY SHRI VIRAJJ GODHHA - PANEL LAWYER)

This application coming on for admission this day, the following:

ORDER

This is the first anticipatory bail application filed under Section 438 of the Code of Criminal Procedure, 1973. The applicant is apprehending his arrest in connection with Crime No.362/2022 registered at P.S. - Nagjhiri, Ujjain (M.P.) for commission of offence punishable under Section 285, 304 & 308 of IPC.

As per the prosecution story, on 16.9.2022 three Merg intimations were registered as a result of death due to fire accident in industrial area. Present applicant operates Poha Factory of Bindal Process Industrial Area as owner and co-accused Rakesh Bindal is the manager of the said factory. As per the inspection, at the time of accident the site/part of the factory that caught fire, was covered from three sides along with the top with a thick plastic sheet and that there was no space for

outflow/exit of any air. There was no reasonable technology for fast cooling down of the heavy electric motors and there was no sufficient means to tackle sudden fire. Flammable raw material was spread across the accident spot and the road to and from the work place was not smooth and suitable. Present applicant and the co-accused Sagar yadav had complete knowledge of the workers in the factory and they also had the knowledge that the way the factory was operating, would certainly catch fire and the workers may die. They are equally responsible for the above incident. Accordingly offence has been registered against them.

Learned counsel for the applicant contended that the applicant is innocent and he has been falsely implicated in this matter. The factory which happens to be the place of accident, operates with all due permissions and approvals of the authorities and owner of the unit has obtained the license to work a factory in accordance with the provisions of Factories Act, 1948 and the M.P. Factories Rules, 1962 and Food Safety and Standards Act, 2006. The business unit happens to be one regular import-export unit and the area where accident took place was covered from three sides and the top was covered and the area does have proper scope for outflow of air. All the safety measures were duly taken by the applicant and its Manager. The fire safety measures were installed and have regularly been inspected and serviced by the professionals. The ISO and other service certificates were duly issued. In absence of essential ingredient of mens-rea, no offence under Section 304 and 308 of IPC is made out. It is only an accident. Applicant is owner of the said factory. He is a permanent resident of District Ujjain and there is no apprehension of his fleeing away from the court of justice. Hence, he prays that the applicant be released on anticipatory bail. In support of his contention, learned counsel for the applicant has placed reliance upon the judgment of the Apex Court in the case of Shamsher Khan Vs. State (NCT of Delhi) reported in (2000) 8 SCC 568, wherein it has been held that:-

"10. Appellant was convicted under Sec. 304 and 308 of IPC. Both the offences relate to commission and attempt to commit culpable homicide respectively. So culpable homicide is the common factor in both Courts. Section 299 of the Penal Code, 1860 defines culpable homicide, which has three alternative requirements. They are:-

1. Doing an act with the intention of causing death of a person, or
2. doing an act with the intention of causing such bodily injury as is likely to cause such death, or
3. doing an act with the knowledge that he is likely by such act to cause death of another person.

11. Learned counsel for the respondent State made an endeavour to bring the case within the ambit of the third alternative, as the case cannot possibly be brought under any of the other two. The act proved to have been committed by the appellant alongwith Babu Khan in this case is manufacture of explosive substances like bombs.

Hence what is to be established is, the above act must have been done with the knowledge that such act by itself was likely to cause death. If some other act had intervened which the offender did not do consciously which triggered the explosions that could not be counted as the act for that offender. No evidence had been let in by the prosecution to show that mere manufacture of such bombs is likely to cause death of any person, nor any evidence for showing that appellant had the knowledge that by manufacturing bombs death would possibly be caused to any human being without any other act being done."

Per-contra, learned GA for respondent/State opposes the anticipatory bail application and prays for its rejection.

Perused the case diary as well as the impugned order of the court below. Considering all the facts and circumstances of the case, arguments advanced by both the parties, nature and gravity of allegation and from perusal of the case diary and various documents filed by the applicant, it appears that the said factory operates with all due permissions and approvals of the authorities and service approval has been issued by the concerned authorities prior to the accident. It is also alleged that applicant has proved all the safety measures for proper conduction of the factory. As per the spot inspection report prepared by the Joint Director, Industrial Health and Safety, Ujjain, the accident has occurred due to the short circuit in a motor and 4 fire extinguishers, 3 boring and water tank having capacity of 15000 litre water were available at the time of accident. Prima facie there is no connecting evidence available regarding the mens-rea of the applicant. In view of the law laid down by the Apex Court in the case of Shamsher Khan (supra), prima facie appears that it may be offence under Section 285 & 304-A of IPC.

Applicant is the owner of said Poha Mill and permanent resident of District Ujjain. Investigation is almost over. Co-accused Sagar yadav has been enlarged on anticipatory bail by this court by order dated 23.11.2022 passed in M.Cr.C. No. 48844 of 2022 in similar circumstances. Therefore, in view of the above, I deem it proper to release the applicant on anticipatory bail on the ground of parity.

Accordingly, without commenting on the merits of the case, the application is allowed. It is directed that in the event of applicant's arrest, the applicant be released on anticipatory bail upon his furnishing a personal bond in the sum of Rs.75,000/- with one solvent surety in the like amount to the satisfaction of the arresting officer. The applicant is further directed to appear before the investigating officer within a period of 2 weeks from today and he shall assist in the investigation process on all the dates, as may be fixed by the Investigating Officer from time to time. Applicant shall abide by the conditions enumerated u/S. 438(2) of Cr.P.C.

With the aforesaid, the application stands disposed of. C.C. as per rules.

(ANIL VERMA) JUDGE BDJ