

**IN THE COURT OF VIKAS DHULL, SPECIAL
JUDGE (PC ACT) (CBI)-23 (MPs/MLAs CASES)
ROUSE AVENUE COURT COMPLEX, NEW DELHI**

**SC No. 05/2022
CNR No. DLCT-000781-2022**

State Vs. Kishore Samrite
FIR No. 212/2022
PS: Crime Branch,
New Delhi

Under Section 286/506 Indian Penal Code, 1860 &
Section 9 (B) of Explosives Act, 1884
Section 4/5 of Explosive Substances Act, 1908
Section 2 of Prevention of Insults to National Honour Act, 1971

Date on which charge-sheet received

by way of assignment	:	13.12.2022
Date on which order on charge reserved	:	27.09.2023
Date on which order pronounced	:	05.10.2023

ORDER ON CHARGE

1. Vide this order, I shall dispose of the plea of accused Kishore Samrite seeking discharge in the present case for the offence under Section 286/506 Indian Penal Code, 1860 (**hereinafter referred to as IPC**), Section 9 (B) of Explosives Act, 1884, Section 4/5 of Explosive Substances Act, 1908 and Section 2 of Prevention of Insults to National Honour Act, 1971.
2. The brief facts which are relevant for deciding the plea of accused are that on 16.09.2022, a complaint was

made by Sh. Raghubir Lal, IPS, Joint Secretary (Security), Parliament House, New Delhi to Commissioner of Police, New Delhi wherein it was alleged that a parcel addressed to Secretary General, Rajya Sabha containing a bundle of papers/letters, an Indian Flag, Book of Constitution of India and a suspicious item (Super Power 90) had been received through speed post allegedly sent by one Kishore Samrite Ex MLA, Lanji, Distt. Balaghat (Madhya Pradesh). In the said complaint, a request was made to get the suspicious material examined from explosive angle. On receipt of information, the officers of Crime Branch, New Delhi had reached at Rajya Sabha Secretariat, Parliament House, New Delhi where they met Sh. Dayanand, Joint Director (Security), Rajya Sabha Secretariat, Parliament House, who handed over to them a parcel. Thereafter, the said parcel was opened and it was found containing two bundles of papers, an Indian Flag (Cotton), Book of Constitution of India (Bare Act) and a brown colour suspicious substance in one white colour polythene having marking of "Super Power 90 Danger explosive" wrapped in a light green colour polythene with the help of transparent tape. The parcel had 10 pages signed complaint dated 01.08.2022 of alleged Kishore Samrite, Ex MLA, Lanji, District Balaghat (Madhya Pradesh), from which it was made out that Kishore Samrite was showing dissatisfaction with the policies of ruling government and made 70 different demands with a threat to blow off

Parliament House on 30.09.2022, if his demands are not fulfilled.

3. Based upon the complaint, a FIR was registered U/Sec.286/506 IPC r/w Section 9 (B) of Explosives Act, 1884, Section 4/5 of the Explosive Substances Act, 1908 & Section 2 of Prevention of Insults to National Honour Act, 1971. During the course of investigation, postman Sh. Shiv Shankar Sharma was examined and he confirmed the delivery of parcel at Secretariat Rajya Sabha on 16.09.2022. The ownership of mobile number mentioned on the threat letter, recovered from the parcel, was got verified and it was found to have been registered in the name of accused. Thereafter, the accused was arrested from his rented accommodation in Bhopal, Madhya Pradesh and after production before the court in Delhi, he was taken on police remand. During the course of investigation, Sh. Anwar Ali, the owner of fire crackers shop at Lanji was examined and he stated to the police in his statement under Section 161 Cr.P.C. that he is running a licensed fire cracker shop and he knows accused very well being the area MLA. It was further stated by him that few months ago, accused had inquired from him as to from where he can procure explosive material to which he had replied that it was impossible to get explosive material and he declined to help him.
4. Further, specimen signatures and specimen handwriting of accused were also obtained and the same were sent for

comparison with the questioned handwriting and signatures on the parcel and on the threat letter dated 01.08.2022 addressed to the Speaker, Lok Sabha.

5. The Handwriting Expert on comparing the questioned handwriting and signatures with the specimen handwriting and signature of accused vide his report dated 23.11.2022, had opined that both the specimen and questioned handwriting and signatures were written by the same person. Further, the alleged explosive material sent alongwith the parcel was also sent to the CFSL, New Delhi for their opinion and vide report dated 23.11.2022, it was opined by the expert of the CFSL, New Delhi, on the basis of Physio-Chemical Examination, that the material found could be used as an “explosive”.
6. During the course of investigation, an official from post office, Lanji, Madhya Pradesh i.e. Smt.Savita Khandwahe was also examined under Section 161 Cr.P.C. and she confirmed in her statement that a parcel was booked on 12.09.2022 from their post office by accused and since accused happens to be the area MLA and keeps on getting letters posted from their post office, therefore, she is known to accused.
7. The Investigating Officer had also examined one Sh.Dinesh Patel, who was working as a part time computer operator (Typist) alongwith accused. In his statement under Section 161 Cr.P.C., Sh.Dinesh Patel admitted of having typed the threat letter dated 01.08.2022 addressed

to the Hon'ble Speaker, Lok Sabha. He also admitted of getting the annexures photocopied. The Investigating Officer had also examined Sh.Tarun Padihar, who was working with the Rajya Sabha Secretariat, Parliament House, New Delhi and received the alleged parcel on 16.09.2022 at about 4 - 4.30 p.m. He stated in his statement that after opening the parcel, it was found containing some objectionable articles i.e. one book of the Constitution, One Indian Flag, Two bundles of papers and one suspected material wrapped in a polythene. It also came during the course of investigation that similar parcel was also sent by accused to the Hon'ble Supreme Court of India on 19.09.2022 for which separate FIR No. 215/2022 was registered at PS Criminal Branch.

8. The investigating Officer had also obtained the consent of the District Magistrate, New Delhi under Section 7 of the Explosive Substances Act, 1908. Accordingly, after completion of investigation, accused was charge sheeted for the offence under Section 286/506 IPC, Section 9(B) of the Explosives Act, 1884, Section 4/5 of the Explosive Substances Act, 1908 and Section 2 of Prevention of Insults to National Honor Act, 1971.
9. The chargesheet was filed before the court of Ld.ACMM-04, RADDC, New Delhi and accused was supplied with the copy of chargesheet and other documents under Section 207 Cr.P.C. Thereafter, the matter was committed to the court of Ld.Principal District & Sessions Judge, RADDC,

New Delhi, who had assigned this case to this court.

10.I have heard Sh.Manish Rawat, Ld.Addl.PP for State and Sh.Manish Kumar Chaudhary, Ld.counsel for accused on the point of charge and have carefully perused the chargesheet and other material filed on record.

Arguments on behalf of State

11.It was submitted by Ld.Addl.PP for State that in the present case from the chargesheet and the documents filed alongwith it, prima facie offence under the Explosives Act, 1884, Explosive Substances Act, 1908, Prevention of Insults to National Honour Act, 1971 and under section 286/506 IPC are made out against accused.

12.It was submitted by Ld.Addl.PP for State that there is material on record to prima facie show that accused had sent a parcel to the Ld.Speaker, Lok Sabha, New Delhi containing a threat letter dated 01.08.2022 alongwith explosive material and in threat letter dated 01.08.2022, accused had threatened to blow up the Parliament House by dynamite in case his demands are not met.

13.It was further submitted that intention of accused to cause explosion is made out not only from the threat letter dated 01.08.2022 but also from the statement of Anwar Ali from whom accused had tried to procure explosive material.

14.It was further submitted that there is a prima facie material on record to show that threat letter dated 01.08.2022 was got typed by accused and the signatures appearing on the

threat letter dated 01.08.2022 are that of accused as per report of handwriting expert

15.It was further submitted that the explosive material, which was sent alongwith the parcel had been opined to be an “explosive” by the CFSL, New Delhi Therefore, there was prima facie material to show that accused by sending the parcel having explosive material, had made an attempt to cause explosion and, therefore, offence under Section 4 of the Explosive Substances Act, 1908 is made out.

16.It was further submitted that as per Section 4 of the Explosive Substances Act, 1908 whether explosion takes place or not is immaterial and what is required to be seen is the intention of accused to do an act by which he intended to cause explosion and in the present case, the act of accused in sending the parcel having the explosive material to the Parliament House with the threat to blow up prima facie, demonstrates that accused made an attempt as defined in Section 4 of the Explosive Substances Act, 1908.

17.It was further submitted that since accused was found in possession of the explosive material without any license, therefore, offence under Section 5 of the Explosive Substances Act, 1908 and Section 9(B) of the Explosives Act, 1884 is also prima facie made out against accused.

18.It was further submitted that the act of accused in sending National Flag and the copy of Constitution of India alongwith the explosive material shows dis-respect to the

National Flag and the Constitution of India and, therefore, prima facie offence under Section 2 of the Prevention of Insults to National Honour Act, 1971 is also made out against accused.

19.It was further submitted that offence under Section 506 IPC is also made out as the accused by sending the threat letter dated 01.08.2022 alongwith explosive material, had caused criminal intimidation. Accordingly, a prayer was made to frame an appropriate charge against accused.

Arguments on behalf of Accused

20.On the other hand, it was submitted by Ld.counsel for accused that no charge is made out against accused for any of the offences mentioned in the chargesheet.

21.It was submitted that from the chargesheet and the documents filed alongwith it, there is no material brought on record to show that the alleged explosive material can be used for causing any kind of explosion or any attempt was made by accused by using any kind of remote device to cause an explosion.

22.It was further submitted that even the CFSL, New Delhi is silent on the aspect that the alleged explosive material by itself could have caused any kind of explosion.

23.It was further submitted that accused had not sent any kind of explosive material to the Lok Sabha as it is not possible to send the explosive material through highly secured Parliament House, which is equipped with latest gadgets,

which can detect even the small quantity of explosive material.

24.It was further submitted that even the CFSL, New Delhi has not opined that the alleged substance recovered from the parcel was an “explosive substance” and merely, it was opined that the alleged substance can be used as an explosive. Therefore, no offence under the Explosive Substances Act, 1908 is made out against accused.

25.It was further submitted that even no offence of possession is made out against accused under Section 5 of the Explosive Substances Act, 1908 or Section 9(B) of the Explosives Act, 1884 as there is nothing on record to show that accused was found in possession of any explosive material in his office or at his residence in Madhya Pradesh.

26.It was further submitted that even the offence under Section 2 of the Prevention of Insults to National Honour Act, 1971 is not made out as no act of showing dis-respect to the National Flag and the Constitution of India had been done by accused as per Section 2 of the aforementioned Act.

27.It was further submitted that even the offence under Section 506 of the IPC is not made out as there is no material on record to show that any alarm was caused to any person on reading the alleged threat letter dated 01.08.2022 sent by accused.

28.It was further submitted that even the offence under

Section 286 IPC is not made out against accused as there is no material on record to show that any rash or negligent act was done by accused while dealing with the explosive substance which could have endangered human life or he had failed to take necessary precautions with explosive substance in his possession to prevent such dangers as is sufficient to guard against any probable danger to human life from that substance. It was submitted that there is no prima facie material on record to show that accused had committed any of the alleged offences mentioned in the chargesheet. Accordingly, it was submitted that accused be discharged for the aforementioned offences in the present case.

Reasoning

29.I have considered the rival submissions of respective counsels and have carefully perused the chargesheet and the material brought on record.

30.The law with regard to discharge of accused in criminal trial can be succinctly summarized as follows by referring to following judgments of the Hon'ble Supreme Court of India:

(i) **Sajjan Kumar Vs. CBI Criminal Appeal of 2010 (Arising out of SLP NO. 6374/10 date of Judgment 20.09.2010)**

(ii) **Union of India Vs. Prafulla Kumar samal (1979)3 SCC4**

(iii)**Dilawar Balu Kurane Vs. State of Maharashtra(2002) 2 SCC 135**

(a) The court while considering the question of framing the charge under the Criminal procedure Code

has undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(b) Where the materials placed before the court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(c) The court can not act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there can not be a roving enquiry into the pros and cons of the matter and weigh the evidence as if court was conducting a trial.

(d) The Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence.

(e) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused.

31. In the light of aforesaid law, chargesheet and the documents filed alongwith it have to be evaluated to find out as to whether there exists any prima facie case or strong suspicion to frame charge against accused or not?

32. In the present case, there is prima facie material on record to show that threat letter dated 01.08.2022 was sent by accused through speed post addressed to Speaker, Lok Sabha, New Delhi. There is a statement of Sh.Dinesh Patel on record under Section 161 Cr.P.C. wherein he had stated

that he was working as a part time computer operator (Typist) of accused and he admitted that he had typed the threat letter dated 01.08.2022 and thereafter, he had handed over the same to accused. The posting of parcel on 12.09.2022 through speed post stands prima facie affirmed by the statement under Section 161 Cr.P.C. of Smt.Savita Khandwahe, an official of Post Office, Lanji, Madhya Pradesh. The receipt of parcel in the Rajya Sabha Secretariat, having the alleged threat letter dated 01.08.2022, has been prima facie established in the light of statement of Sh.Dayanand recorded under Section 161 Cr.P.C., who was working as Joint Director (Security), Rajya Sabha Secretariat, Parliament House, New Delhi.

33.Further, the other prima facie material to show that parcel having the threat letter dated 01.08.2022 was signed and posted by accused is the report of the handwriting expert dated 23.11.2022, wherein the handwriting expert after comparing the specimen handwriting and signatures of accused with the questioned signatures appearing on the threat letter dated 01.08.2022 and handwriting appearing in the address mentioned on the parcel, had opined that the questioned handwriting was indeed written by accused. Therefore, from the aforesaid material, it is prima facie established on record that accused had indeed sent the parcel to Lok Sabha, New Delhi containing the threat letter dated 01.08.2022 and the alleged explosive material. The alleged explosive material was sent to the CFSL, New

Delhi and as per report dated 23.11.2022, it was opined that the material can be used as an “explosive”.

34. Now, the next question arises is whether by sending explosive material, an attempt under Section 4(a) of the Explosive Substances Act, 1908 to cause explosion was made by accused or not?

35. It is an admitted case of the prosecution that no explosion had taken place. There is also no material on record to show that accused had made an attempt remotely to cause an explosion. Even the CFSL report had not opined that explosive material could have caused any kind of explosion by itself. Accused could have been charged for the attempt to cause explosion using the explosive material if he had done an act which could have caused an explosion like attempt to cause an explosion using a remote control device or using a timer circuit. However, in the present case, no such act was done by accused which can be called as an attempt to cause explosion. Therefore, there is no material on record to show that accused by sending the alleged explosive material in the parcel had made an attempt to cause explosion but due to some intervening circumstances, explosion could not take place. Therefore, offence under Section 4(a) of the Explosive Substances Act, 1908 which punishes for an attempt to cause explosion is not prima facie made out.

36. Even the offence under Section 4(b) of the Explosive Substances Act, 1908 is not made out as there is no

material on record to show that accused had made or had in his possession or under his control any explosive substance with intention to endanger life or cause serious injury to property. By sending the alleged explosive material through parcel, accused could not have intended to endanger life or property as alleged explosive material was incapable of causing any kind of explosion by itself. Therefore, offence under Section 4(b) of the Explosive Substances Act, 1908 is also not made out.

37. However, prima facie, there is material on record to show that offence under Section 5 of the Explosive Substances Act, 1908 is made out against accused. Section 5 of the Explosive Substances Act, 1908 provides as under:--

5. Punishment for making or possessing explosives under suspicious circumstances.—Any person who makes or knowingly has in his possession or under his control any explosive substance or special category explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punished,—

(a) in the case of any explosive substance, with imprisonment for a term which may extend to ten years, and shall also be liable to fine;

(b) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.]

38. From the aforesaid provision, it can be made out that for an offence under Section 5 of the Explosive Substances Act, 1908, it is required to be shown that explosive

substance was in the possession or under the control of accused and such possession or control of the accused should give rise to a reasonable suspicion that it was not for a lawful object.

39. In the present case, sending of explosive material in a parcel by accused addressed to the Hon'ble Speaker, Lok Sabha, New Delhi shall be deemed to be in the control or in possession of accused till the time it is received by the recipient i.e. Lok Sabha, New Delhi. The parcel in transit is deemed to be in possession and control of the sender because in case, it is not delivered, then it is returned to the sender, who had sent the same. Therefore, till the time, parcel is in transit, the control and possession is that of the sender and in the present case, it was that of accused. The material on record to show that accused had knowingly sent the parcel containing the explosive material is the statement of Anwar Ali, who was having a licensed fire cracker shop in Lanji, Madhya Pradesh. As per the statement of Anwar Ali under Section 161 Cr.P.C., accused had made inquiry from him to provide him the explosive material. This statement of Anwar Ali shows that accused was knowingly trying to procure explosive material so that same could be sent in a parcel to Lok Sabha, New Delhi. The purpose of sending the explosive material through parcel was not for the lawful object but was done with the intention to unlawfully make Government of India accede to the demands made in the threat letter dated 01.08.2022

by threatening to blow up the Parliament House with a dynamite, in case his demands are not met. Therefore, use of explosive material through parcel was made by accused for unlawful object. Further, the consent of District Magistrate, New Delhi under Section 7 of the Explosive Substances Act, 1908 has also been placed on record. Hence, there is prima facie material to show that accused has committed the offence u/s 5 of the Explosive Substances Act, 1908.

40. Further, there is prima facie material on record to charge accused for the offence under Section 9(B)(b) of the Explosives Act, 1884. As per Section 9(B)(b) of the Explosives Act, 1884, if any person in contravention of rules made under Section 5 of the Explosive Act, 1884 or conditions of a license granted under the said rules, possesses, uses, sells or transports any explosive, then he shall be punished with imprisonment for two years or with fine which may extend to three thousand rupees or both.

41. The Explosive Rules, 2008, which were made pursuant to powers granted under Section 5 of the Explosives Act, 1884 provides under Chapter III Rule 10 (4) regarding **“Restriction on delivery”**. As per Rule 10 (4)(a) of the Explosive Rules, 2008, no person shall deliver or despatch any explosive to any other person, who is not a holder of licence to possess explosives or who is entitled to possess explosives without a licence.

42. In the present case, accused had despatched explosive material in a parcel to Lok Sabha, New Delhi in contravention of Rule 10(4)(a) of the Explosive Rules, 2008 as Lok Sabha was not holder of the licence to possess the explosive or was entitled to possess the explosive without a licence. Therefore, accused has prima facie committed an offence under Section 9(B)(b) of the Explosives Act, 1884.

43. Further, in the opinion of this court, there is no prima facie material on record to show that accused had committed an offence under Section 2 of the Prevention of Insults to National Honour Act, 1971 by sending the National Flag and book of Constitution of India in the parcel.

44. Section 2 of the Prevention of Insults to National Honour Act, 1971 provides as under:--

2. Insults to Indian National Flag and Constitution of India.—Whoever in any public place or in any other place within public view burns, mutilates, defaces, defiles, disfigures, destroys, tramples upon or otherwise [shows disrespect to or] brings into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Explanation 1.—Comments expressing disapprobation or criticism of the Constitution or of the Indian National Flag or of any measures of the Government with a view to obtain an amendment of the Constitution of India or an alteration of the Indian National Flag by lawful means do not constitute an offence under this section.

Explanation 2.—The expression “Indian National Flag” includes any picture, painting, drawing or photograph, or other visible representation of the Indian National

Flag, or of any part or parts thereof, made of any substance or represented on any substance.

Explanation 3.—The expression “public place” means any place intended for use by, or accessible to, the public and Includes any public conveyance.

[Explanation 4.—The disrespect to the Indian National Flag means and includes—

(a) a gross affront or indignity offered to the Indian National Flag; or

(b) dipping the Indian National Flag in salute to any person or thing; or

(c) flying the Indian National Flag at half-mast except on occasions on which the Indian National Flag is flown at half-mast on public buildings in accordance with the instructions issued by the Government; or

(d) using the Indian National Flag as a drapery in any form whatsoever except in State funerals or armed forces or other para-military forces funerals; or

[(e) using the Indian National Flag,—

(i) as a portion of costume, uniform or accessory of any description which is worn below the waist of any person; or

(ii) by embroidering or printing it on cushions, handkerchiefs, napkins, undergarments or any dress material; or]

(f) putting any kind of inscription upon the Indian National Flag; or

(g) using the Indian National Flag as a receptacle for receiving, delivering or carrying anything except flower petals before the Indian National Flag is unfurled as part of celebrations on special occasions including the Republic Day or the Independence day; or

(h) using the Indian National Flag as covering for a statue or a monument or a speaker’s desk or a speaker’s platform; or

(i) allowing the Indian National Flag to touch the ground or the floor or trail in water intentionally; or

(j) draping the Indian National Flag over the hood, top and sides or back or on a vehicle, train, boat or an aircraft or any other similar object; or

(k) using the Indian National Flag as a covering for a building; or

(l) intentionally displaying the Indian National Flag with the “saffron” down.]

45. In the present case, there is no material on record to show that accused had done any act within public view i.e. burns, mutilates, defaces, difiles, disfigures, destroys, tramples with regard to National Flag and Constitution of India. Further, the meaning of disrespect to National Flag has been explained in Explanation 4 of Section 2 of the Prevention of Insults to National Honour Act, 1971 and the act of sending National Flag in a parcel do not constitute any disrespect to the Indian National Flag. Therefore, offence under Section 2 of the Prevention of Insults to National Honour Act, 1971 is not made out against accused.

46. As far as Section 506 IPC is concerned, there is no material on record to show that by the alleged threat letter dated 01.08.2022, any alarm was caused to any official of the Lok Sabha Secretariat. Therefore, offence under Section 506 IPC is also not made out against accused.

47. As far as offence under Section 286 IPC is concerned, there is no material on record to show that accused had

dealt with any explosive material in a rash and a negligent manner so as to endanger life or property. Therefore, this offence is also not prima facie made out against accused.

48. From the aforesaid discussion, accused is discharged for the offence under Section 286/506 IPC, under Section 4 of the Explosive Substances Act, 1908 and under Section 2 of the Prevention of Insults to National Honour Act, 1971. **However, there is prima facie material on record to frame charge against accused for the offence under Section 5 of the Explosive Substances Act, 1908 and 9(B)(b) of the Explosives Act, 1884.**

Announced in the open court
Dated: 05.10.2023

(Vikas Dhull)
Special Judge (PC Act) (CBI)-23
(MPs/MLAs Cases), RADC
New Delhi