

In the Court of Addl. Sessions Judge-I, Koderma.

B.P. No. 679/2022
(CNR JHKD01003250-2022)

28.11.2022

This bail petition dated 11.10.2022 has been filed on behalf of accused petitioners namely **(i) Mukesh Kumar Barnwal** and **(ii) Vicky Kumar** (who are in judicial custody since 25.09.2022) in connection with Domchanch P.S. Case No. 115/2022, u/ss. 4/5 of Explosive substance Act, pending in the Court of Sri P.K. Verma, learned Judicial Magistrate First Class (JMFC), Koderma.

The L.C.R, as called for, has been received.

I have heard Shri Prakash Ram, learned counsel for the petitioners and Shri P. K. Mandal, learned Addl. P.P for the State and perused the case record.

On a tip off that on a 3-wheeler (Tempo) No. JH 12L 9244)), ammonium nitrate was being regularly carried from Karakhut to Telaiya and it was being sold there for several days. On this information, the said tempo was seized by the police at about 5.50 P.M. Before that, on being given signal to stop, the tempo driver started fleeing away from there by leaving his tempo, but he was caught by a police after a chase. The driver of the tempo disclosed his name as Md. Irfan. Regarding the loaded material on tempo, he disclosed that it was a fertilizer. On inspection of the tempo in presence of its driver, however, it was found that four bags of "Low Density porous Prilled Ammonium Nitrate" written on those bags, were recovered totalling about 200 Kg (each bag of about 50 Kg in weight). It was found that it was the explosive ammonium nitrate. The driver failed to produce any document regarding the same. It was accordingly, seized by making a seizure list along with the tempo. The driver was duly arrested.

The arrested driver disclosed that he was transporting the seized material on the instruction of one Subhash Mehta from the Magazine of one Mukesh Barnwal (**petitioner No. 1**) by Vicky Kumar (**petitioner No. 2**) who

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got it loaded on the tempo and it was being taken to Telaiya. He further disclosed that from Telaiya, one Subhash Kumar takes the explosive on another vehicle to Dehri {(Dehri-On-Sone, District – Rohtas (Bihar)) and few days back on 15.09.2022, the said Subhash Kumar Mehta had sent the same explosive to Sone-Dehri (Bihar) and that there an FIR has already been registered against Subhash Mehta.

It was submitted on behalf of the petitioners that they are innocent and have committed no offence and have been falsely implicated in this case only on the disclosure of the arrested driver. It was also submitted that the petitioners have neither been arrested from the spot, nor has any incriminating material been recovered from their possession. Regarding the petitioner Mukesh Kumar Barnwal, it was submitted that he is a businessman having valid licence for dealing in ammonium nitrate and that he has not sold any such material to Subhash Mehta. Regarding the petitioner Vicky Kumar, it was submitted that he is his nephew (son of his Saarthoo) and that he also sits/remains at the shop of Mukesh Kumar Barnwal. It was further submitted that signatures of Vicky Kumar were forcibly obtained by the police on a blank paper, which were converted into alleged confessional statement of Vicky. It was also submitted that the petitioners are in judicial custody for more than two months. Thus, it was submitted that they are entitled to bail.

Learned Addl. P.P. for the State has vehemently opposed the instant petition by submitting that both the petitioners and other co-accused of the case are actively involved in illegal business of explosives and to earn unlawful gain at higher rate, the petitioner Mukesh Kumar Barnwal is using his licence illegally and by manipulating his Stock Register and other records, he is supplying explosive to unauthorized persons, including the said Subhash Kumar.

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I have considered the submissions made on behalf of both the parties and have perused the case record.

It appears that during investigation of the case, Vicky Kumar was arrested on the same day and his confessional statement was also recorded on the same day i.e. on 24.09.2022 at about 8.45 O' clock in the night. He has disclosed about the modus operandi and the manner in which explosives are being illegally supplied from the Magazine of petitioner No.1 Mukesh Kumar Barnwal in the garb of valid licence for the same. He is admittedly working with Mukesh Kumar. He has disclosed that on instruction of the petitioner Mukesh Kumar, he (Vicky Kumar) used to supply the explosive ammonium nitrate to a private person namely Md. Kalimuddhin of Deoghar (who has allegedly got valid licence for the purchae of explosives). He has further disclosed that Md. Kalimuddhin used to charge Rs. 1000/- per bag from them as the papers of sale of explosive used to be shown in his name. He has further disclosed that thereby, Mukesh used to get huge illegal income and that 10 days ago, the petitioner Mukesh Kumar Barnwal had sold 10 bags of illegal ammonium nitrate without issuing any valid receipt, to said Subhash Mehta and the said sale of 10 bags explosive had been shown in the Stock Register to have been transferred in the name of said Md. Kalimuddhin. The said Vicky Kumar also admitted that the seized material had been released by him from the Magazine of the petitioner Mukesh Kumar Barnwal on his instruction and the same was being sent on the seized tempo to the said Subhash Kumar and the entry regarding the same in the stock register has also been made in the name of said Kalimuddhin.

The said co-accused Subhash Mehta who was also arrested on the same night and his confessional statement was also recorded in the same night, has also admitted therein

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that the petitioner Mukesh Kumar Barnwal used to illegally supply him the explosives from his Magazine without any valid paper and that he used to get it transported to Dehri (Bihar) for its illegal sale and that on 15.09.2022 also he had taken 10 bags of the explosive at Dehri and that the seized explosive was also to be supplied to him in the same manner.

The petitioners are allegedly the traders of illegal explosives and they are doing so by manipulating papers, documents and records including the Stock Register. The seized explosive was also being illegally transported from the Magazine of the petitioner No. 1 Mukesh Kumar Barnwal to the co-accused Subhash Kumar, though in the stock register, the transfers of explosives were being shown in the name of an authorized dealer of Deoghar District i.e. the said Md. Kalimuddhin. Allegations against the petitioners are very serious. They are allegedly supplying huge explosive to private persons illegally for their illegal monetary gain and are putting the general public and the entire system at great loss of damage and injuries. Such explosives are likely to be used for extremists and terrorists activities and the same may reach to the hands of professional criminals and the enemies of the country.

Regard being had to the facts and circumstances of the case discussed above, I am not inclined to enlarge the petitioners on bail. The instant bail petition accordingly, stands **dismissed**.

(Dictated)

(Ghulam Haidar)
Addl. Sessions Judge-I
Koderma