

MHST170001972018



**IN THE COURT OF ADDITIONAL SESSIONS JUDGE VADUJ, TALUKA  
KHATAV, DISTRICT SATARA.**

**Sessions Case No: 21/2018**

**State of Maharashtra**

**: Prosecution**

**Vs.**

**Ankush Bhagwan Gore & Ors.**

**: Accused**

**ORDER BELOW EXH.21**

1. The applicants (Accused Nos. 3 and 4) have filed this application under section 227 of the Code of Criminal Procedure for discharge. The offence punishable under sections 304, 337, 338, 286, 427 r/w 34 is registered against the accused.
2. The applicants state that applicant No.3 is an electrical engineer and serves as Dy. General Manager, while accused No.4 is a Civil Engineer working as a Senior Manager at Bothe Windfarm Development Pvt. Ltd. This company is engaged in generating electricity through windmills and supplying it to the Maharashtra State Electricity Distribution Company Ltd. The company installs windmills for this purpose.

3. It is necessary to lay the foundation for the installation of a windmill. Both windfarms had entered into a contract with Amiya Commerce and Construction Company Ltd., which, in turn, contracted with Skyzen Infrabuild Ltd., and Skyzen entered into a contract with M/S Kamal Enterprises to lay the foundation for the windmill's installation. M/S Kamal Enterprises was assigned a fixed-price, turnkey contract that included, among other things, material (except steel cut to dimensions required for the foundations), labour, equipment, machinery, blasting if necessary, and all other forms of excavation, site management, security, permissions, and approvals. M/S Kamal Enterprises utilised its own methods, equipment, labour, supervisors, staff, and materials as it deemed fit to deliver the contract.

4. Kamal Enterprises was responsible for all the work and controlled all activities on the site. Accordingly, a letter of intent was issued by Skyzen to Kamal on 05/12/2012 for laying the foundation.

5. It is further stated that after the installation of 42 windmills, a dispute arose between the partners of Kamal Enterprises. As a result, Skyzen awarded the work of laying the foundations for the remaining windmills to M/s. Aditya Constructions, which was a proprietorship concern of accused No.2 Shekhar Gore. Accordingly, a letter of intent was issued on 05/12/2013. Like Kamal Enterprises, Aditya Constructions was responsible for all the work and was in control of all activities on the site.

6. As per the contract between Skyzen and Aditya, accused Nos. 1, 2, 5, and 6 were duty-bound to purchase materials, except steel, and to employ labour. The most important responsibility entrusted to them was to exercise utmost care and ensure that no untoward incidents occur on the site. Aditya was liable to follow all regulations and comply with laws. The work of procuring explosives for blasting and the use of the same by persons holding valid licenses was assigned to Aditya Constructions. It was the duty of accused Nos. 1, 2, 5, and 6 to ensure that blasting materials were stored in a proper and prescribed manner. The contract between Skyzen and Aditya specified that in case any untoward incident occurred on the site, the entire responsibility and liability would fall on Aditya Constructions, and neither Skyzen nor Bothe Windfarm would be responsible.

7. Accused No.3 and 4 stated that they were posted on the site to ensure the quality and timely completion of work, and to report the same to their superior authorities. They were not responsible for supervising the work, managing the construction site, procuring materials, equipment, labour, or interfering in any ongoing work or operations.

8. It is further stated that the In-charge of Dahiwadi police station registered a crime on 09/01/2015 regarding the blast that occurred on the premises, in which one person died on the spot while two others died *en route* to the hospital. Five other persons were injured. The area where the blast occurred was under the control of M/s Kamal Enterprises or M/s Aditya

Constructions. After completing the investigation, the charge sheet was filed against seven accused on 01/02/2016, and since the matter was exclusively triable by the Sessions Court, it was committed to this Court on 02/07/2018.

9. The applicants have filed this application for discharge on the following grounds-

1. They have not committed any offence as alleged.
2. The accused did not have any involvement in the incident.
3. There is no record indicating the direct or indirect involvement of accused No.3 and 4 in the alleged offence.
4. There is no record to show any direct or indirect connection of the officers of Bothe Windfarm, Amiya Constructions, Skyzen Infrabuild.
5. The F.I.R. does not show any role played by the officers of Bothe windfarm in the alleged offence.
6. The remand application dated 12/01/2015 shows that Ankush Gore and Engineer Rajesh procured the explosives from M/s Jagtap Explosives, Pangari, Taluka Man.
7. The remand application dated 14/01/2015 indicates that on 01/12/2013, 31/01/2014, and 06/02/2014, three receipts were issued in the name of Kamal Enterprises, showing the purchase of explosives from Kalika Explosives, Pune.
8. The prosecution document shows that the blast occurred in the tin shed at the batching plant of M/s Kamal Enterprises, a partnership firm of Ankush Gore and Shekhar Gore.
9. The prosecution documents show that the blast site was under the occupation, care, and control of M/s Kamal Enterprises, and they employed guards.

10. The accused Nos. 3 and 4 were not involved in storing explosives and blasting.
11. The prosecution documents indicate that Ankush Gore and Engineer Rajesh procured the detonators and gelatin.
12. All foundation works were completed 45 days before the blast, which indicates that the accused are not connected to it and had no involvement with the work site of Kamal and Aditya.
13. The allegations against these accused do not meet the elements of section 304 and 427 of the Indian Penal Code.
14. The accused had no intention to cause a blast.
15. The accused were unaware that the explosives were stored illegally on Kamal Enterprises' premises.
16. The blast site was secured by Kamal Enterprises employees.
17. The accused are innocent.

For all these reasons, the accused Nos. 3 and 4 have prayed for discharge.

10. The prosecution has filed a reply at Exh.45 stating that the application is filed to delay the proceedings. The material collected by the Investigating Officer is sufficient to prosecute the current accused, and the evidence on record demonstrates their involvement in the crime. The application is filed to avoid trial. They have the opportunity to defend themselves by cross-examining the witnesses. For these reasons, the prosecution has requested the rejection of the application.

11. Considering the application and reply, the documents on record and arguments of the learned advocate for these

accused, the learned Additional Public Prosecutor, the following points arise for my determination and my findings to them are stated below for the following reasons.

| Sr. No. | Points                                                                       | Findings                        |
|---------|------------------------------------------------------------------------------|---------------------------------|
| (i)     | Are accused Nos. 3 and 4 ...<br>entitled to be discharged from<br>this case? | No.                             |
| (ii)    | What order? ...                                                              | The application is<br>rejected. |

### **REASONS**

#### **As to point Nos. 1 and 2:**

12. At the stage of discharge, the court is only required to determine whether the record discloses a prima facie case or gives rise to a serious suspicion against the accused. A careful examination of evidence or a judgment of guilt is not allowed at this stage. Even if the evidence suggests a strong suspicion of the involvement of accused Nos. 3 and 4, the court must proceed to trial. Proof beyond a reasonable doubt is not the standard at the discharge stage.

13. Accused Nos. 3 and 4 submitted a written argument (Exhibit 121) seeking their discharge in the case. It is submitted that the accused, who are employees of Bothe Windfarm Development Pvt. Ltd. (Accused 3 is a General Manager/Electrical Engineer; Accused 4 is a Senior Manager/Civil Engineer), have been wrongly involved. The explosion occurred in a tin shed owned and possessed by M/S. Kamal Enterprises (or its

subcontractor Aditya Enterprises), which had leased the land from Bothe Windfarm. Bothe Windfarm had contracted the work out through a chain of independent contractors (Amiya Commerce \ Skyzen Infrabuild \ Kamal Enterprises). These accused had no role in day-to-day site management or the storage of explosives. Documents seized show that the explosives were purchased and possessed by M/S. Kamal Enterprises and Aditya Constructions from Kalika Explosives. A licensed professional managed the blasting operations, Radheshyam Teli (Accused No. 7), working for Kalika Explosives.

14. A search of the Bothe Windfarm office yielded no documents linking them to explosive purchases. The wind turbine project was commissioned on December 30, 2014, and all blasting work had been completed at least two months prior. The accused could not have known that unused explosives remained in the leased area after the work was finished. The defence contends the Explosive Substance Act, 1908, is inapplicable as the possession of explosives for the project was lawful and licensed, and there was no "malicious" intent to cause harm. It is submitted that the Investigating Officer failed to proceed against the actual responsible entity, Kalika Explosives, despite the Chief Controller of Explosives having suspended its license following the accident. These accused further assert there is insufficient material to frame charges, as the accused had no knowledge, possession, or control over the explosives. They pray for the accused to be discharged because the allegations are groundless.

15. The learned Additional P.P. filed his written argument (Exhibit 127) and submitted that, the prosecution opposes the discharge application (Exh.21) filed by Accused Nos. 3 and 4 in Session Case No. 21/2018 arising out of C.R. No. 6/2015, Dahiwadi Police Station. The applicants face charges under Sections 304, 337, 338, 286, and 427 of the Indian Penal Code, and Sections 3 and 5 of the Explosives Act .

16. Accused No. 3 (Deputy General Manager – Electrical) and Accused No. 4 (Civil Engineer and Senior Manager) were employees of Bothe Windfarm Development Pvt. Ltd. and were deputed to supervise the site at village Bothe, Taluka Man, District Satara, where windmill development was underway. An explosion occurred on 09/01/2015 at about 9:40 a.m. at Gat No. 493 (“Jangala Shivar”), resulting in 3 deaths and injuries to 5 persons. The prosecution contends that explosives (nitrate mixture and excel) were illegally and dangerously stored in a tin shed at the site without licence or authority. The applicants were in charge of the site, had full knowledge of the hazardous storage, and failed to inform superiors or stop the unlawful activities. Despite such knowledge and the foreseeable risk, they allowed continued storage of explosives. The explosion occurred when accumulated garbage was burnt at the site, triggering the blast .

17. Witness statements, scene of offence panchanama, and other materials establish prima facie involvement and a positive act of omission and commission by the applicants. The prosecution argues that defences based on contractual obligations are matters for trial and cannot justify discharge at the stage of framing



charge. On a prima facie “helicopter view” of the charge-sheet, sufficient and cogent material exists to frame charges against the applicants. Accordingly, the prosecution prays for rejection of the discharge application Exh.21.

18. Before discussing the merits, it is necessary to state the admitted facts. They are as follows.

1. Both the accused are employees of Bothe Windfarm Development Pvt. Ltd.
2. Bothe Windfarm has undertaken the task of installing windmills at various locations in Man and Khatav talukas.
3. Bothe Windfarm entered into a contract with Amia Commerce and Construction Company Limited, which in turn engaged the services of Skyzen Infrabuilt Pvt Ltd.
4. Skyzine Infrabuild further engaged Mrs. Kamal Enterprises for laying the foundation for the installation of the windmill.
5. Due to a dispute in the management of Messrs Kamal Enterprises, Schizen was required to engage the services of Mrs. Aditya Constructions.

19. In light of these admitted facts, the applicants, who are accused Nos. 3 and 4, have claimed discharge on the ground that the contract entered into with Mrs. Kamal Enterprises is a fixed-price, turnkey contract that includes, among other things, materials (except still cut dimensions required for the foundations), labour, equipment, machinery, blasting if necessary, and any other form of excavation, site management, security, required permissions, and approvals. It is further stated that Kamal Enterprises was an independent contractor, which utilised its own methods, equipment, labour, supervisors, staff, and materials as it

deemed appropriate to deliver the contract. The contract price was a lump sum per foundation.

20. It is the case of the applicants that accused no. 3 is an electrical engineer working as deputy general manager, whereas accused No. 4 is a civil engineer and was working as senior manager with Bothe Windfarms Limited. These applicants further stated that they were posted on the site only to work to a certain extent to monitor whether the contractors were continuing quality work in accordance with the standards and schedule, and to report back to their superiors. It is also claimed that it was not their duty to supervise the work or to have any role in managing the construction site, procurement of material, equipment, labour, explosives, or documents. They state that, during the foundation work, they had no say in the operations being performed.

21. Before proceeding further, it is necessary to note that the site belonged to Bothe Windfarms. This company had appointed contractors to carry out their work at the site. It appears that the present accused Nos. 3 and 4 were responsible authorities of Bothe Windfarm on the site. Admittedly, they were supposed to supervise the quality and standards of the work. It is the case of these accused that the blasting and excavation were exclusively the prerogative of the subcontractors, Mrs. Kamal Enterprises and Mrs. Aditya Constructions. It is also the case that the employees of these two companies were negligent in storing the explosives, during site maintenance, and in ensuring cleanliness, which accidentally led to the explosives blasting and resulted in injuries to certain employees and others.

22. It is submitted on behalf of these accused that these 2 accused are not connected with the Kamal Enterprises or Aditya constructions. They were not having any knowledge or possession of the explosives and the mode of their storage on the site. Therefore the essential ingredients of section 304 of the Indian penal code are not satisfied. It is further submitted that the shed in which the explosives were stored was constructed by Kamal Enterprises and its electricity bill is also generated in the name of Kamal Enterprises. It is further submitted based on the Panchnama included in the investigation papers that the explosives were purchased by Kamal Enterprises and Aditya constructions. It is further submitted that nothing was found in the office of Bothe Windfarms. It is further submitted that the persons from whom the explosives were purchased and the persons who were supposed to be handling those explosives were having held licences to that effect. No actual work of excavation or any other aspect was assigned to these applicants accused.

23. In reply learned additional public prosecutor submitted that there was storage of explosives. It is further submitted that knowledge is also one of the ingredients of section 304 of the Indian Penal Code and it is to be presumed. Learned Additional Public Prosecutor submitted that sufficient material to frame charges against the present applicants is available. After framing of the charge, and after conducting the trial the court will conclude who is responsible for the act. Therefore, learned Additional Public Prosecutor prayed for rejection of the application.

24. The learned Advocate for the accused relied upon the judgment in *Francis Xavier Selinao v. State through the Public Prosecutor, Criminal Appeal No. 62 of 2005*, decided by the Hon'ble Bombay High Court, Bench at Goa. I have perused the said judgment. In that case, the order of conviction was under challenge before the Hon'ble Court. Upon appreciation of the entire evidence on record, the Hon'ble Court held that the accused were entitled to acquittal. The Hon'ble Court primarily examined the issue of possession of arms by the accused.

25. In the present matter, the trial has not yet commenced. While considering an application for discharge, the Court cannot conduct a mini-trial or undertake a detailed appreciation of evidence. Further, in the present case, the issue is not confined merely to possession of explosives but extends to the obligations arising from various agreements, particularly concerning supervision and security of storage of explosives.

26. This Court is presently seized of a discharge application and not an appeal against conviction. Therefore, with due respect to the ratio laid down in the above judgment, the same does not apply to the present case, as the factual matrix and the stage of proceedings are materially different.

27. Learned advocate for accused Nos. 3 and 4 submitted that the principle of vicarious liability is not available in the criminal matter without specific provision. The basic offence is storage and mishandling of the explosives and the knowledge is not concerned. It is further submitted that these accused did not

order the explosives not they were supposed to store the same. It is further submitted that site cleaning is not the work of these accused.

28. This Court is presently seized of a discharge application and not an appeal against conviction. Therefore, with due respect to the ratio laid down in the above judgment, the same does not apply to the present case, as the factual matrix and the stage of proceedings are materially different.

29. After considering the rival submissions and the material placed on record along with the chargesheet, it appears that the authority of the present accused Nos. 3 and 4 and scope of their responsibility is a matter of proof. Whether they were supposed to only to maintain the quality and standard of the work and the time limits prescribed is also a matter of evidence and at this stage no prima facie inference can be drawn in that regard in favour of these accused. Prima facie maintaining the quality and standard of the work includes the process in which the work is conducted. Prima facie it appears that the explosives were stored in the site belonging to the company of which the accused Nos. 3 and 4 are the employee's.

30. In this matter it is also necessary for the prosecution to prove the terms and conditions of the contract entered into by Bothe Windfarm, Skyzen, Kamal Enterprises and Aditya constructions. Therefore the scope of the work allotted to these contractors and subcontractors would be determined only after recording the evidence of the prosecution. At this stage if the

accused Nos. 3 and 4 are discharged without giving appropriate opportunity to the prosecution to prove these aspects of the matter, the prosecution would be seriously prejudiced.

31. So far as the ingredients of section 304 are concerned the foundational requirements are,

1. Death of a human being must have occurred.
2. Such death must have been caused by an act of the accused, either by commission or omission.

As far as part II of section 304 is concerned the essential ingredients are,

1. With the knowledge that the act is likely to cause death,
2. But without any intention to cause death or such bodily injury as is likely to cause death.

32. In the present matter prima facie the death of victim's occurred in proximity with the incident. The submissions on behalf of these accused that there was no intention or knowledge on their part which will attract criminal liability to them is not prima facie admissible can not be considered. These accused were connected to the site. They were supposed to monitor the quality and standard of the work. Prima facie the explosives were brought for excavation and therefore prima facie it appears that the accused were supposed to monitor the entire process including safety of the workers and storage of hazardous materials like explosives. Prima facie there is no question of application of principle of vicarious liability.

33. The learned Advocate for the accused relied upon the judgment in Francis Xavier Selinao v. State through the Public Prosecutor, Criminal Appeal No. 62 of 2005, decided by the Hon'ble Bombay High Court, Bench at Goa. I have perused the said judgment. In that case, the order of conviction was under challenge before the Hon'ble Court. Upon appreciation of the entire evidence on record, the Hon'ble Court held that the accused were entitled to acquittal. The Hon'ble Court primarily examined the issue of possession of arms by the accused.

34. In the present matter, the trial has not yet commenced. While considering an application for discharge, the Court cannot conduct a mini-trial or undertake a detailed appreciation of evidence. Further, in the present case, the issue is not confined merely to possession of explosives but extends to the obligations arising from various agreements, particularly concerning supervision and security of storage of explosives.

35. Given the above discussion, I have concluded that, there is sufficient prima facie material against these applicants to framed charge under section 304 of the Indian Penal Code. Discharge at this stage will disable the prosecution from leading evidence. If they are made to face trial, they will have ample opportunity to raise their defence by cross-examining the prosecution witnesses and presenting their side while recording their statement under section 313 of the Code of Criminal Procedure. Moreover discharging these accused at this stage will adversely affect the case of the prosecution. Therefore I am not entitled to accept the prayer of discharge. The application

deserves to be rejected. Accordingly I answer Point No.1 in the negative and pass the following order for Point No. 2.

**Order**

The application at exhibit 21 is rejected.

Date:20/01/2026

(Vidyadhar B.Kakatkar)  
Additional Sessions Judge,  
Vaduj