

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No. 597 OF 2023**

1.Binod Sao
2.Raju Sao @ Rajendra Prasad Sao @ Raju Saw @ Rajendra
Prasad Saw.
3.Suresh Kumar Sao
4.Birju Sao @ Birju Saw
5.Ganesh Yadav
6.Mahesh Yadav
7.Indar Sao @ Indradeo Sao **Appellants**
Versus
The State of Jharkhand **Respondent**

**CORAM :HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SUBHASH CHAND**

For the Appellants : Mr. Randhir Kumar, Advocate
For the Respondent : Mr. Pankaj Kumar Mishra, APP

Order No. 02 : Dated 30th June, 2023

The instant appeal has been filed under Section 21(4) of the National Investigating Agency Act, 2008 for setting aside the order dated 28th March, 2023 passed in A.B.P. No. 150 of 2023 by learned Additional Sessions Judge-I, Koderma in connection with Koderma P.S. Case No. 32 of 2023 registered under Sections 3, 4 and 5 of the Explosive Substance Act pending in the Court of learned Chief Judicial Magistrate, Koderma, whereby and whereunder, the appellants' prayer for anticipatory bail has been rejected.

2. The prosecution story in brief is that the appellants along with others were found to be involved in illegal mining of blue stones on an area of 15 acres of land, over which 25-30 wells about 600 feet each had been dug. It is further alleged that from the place of occurrence 32

generator sets, 22 compressor machines, 11 machines for water removal/suction, 14 air machines and 25 suction pipes etc. were recovered. It is alleged that 155 pieces of power gel and 165 pieces of electric detonators were also recovered from the place of occurrence.

3. Learned counsel for the appellants has submitted that even accepting the entire prosecution case to be correct then also no case is made out under Sections 3,4 and 5 of the Explosive Substance Act. Such submission has been made on the basis of meaning of the definition of the Explosive Substance, as per the definition contained in Section 4(d) of the Explosives Act. It has been contended that the recovery of power gel and electric detonators can only be construed to be the explosive and not the explosive substance.

4. This Court while hearing the matter on 11th May, 2023 in Cr. Appeal (DB) No. 520 of 2023 had called for the case diary as also the criminal antecedent, referring to the same, learned Additional Public Prosecutor, appearing for the respondent-State has submitted that there is active involvement of the appellants in carrying out the illegal mining by using the spot. The complicity of the appellants has also been corroborated from the statement recorded under Section 161 Cr.P.C. It has been submitted that other recovered articles from the spot has been dismantled.

5. In response to the submission made on behalf of respondent-State that other materials have been dismantled, learned counsel for the appellants has submitted that the aforesaid recovery is part of another case which was instituted under the Indian Forest Act, as such, the same has got no bearing with instant case in which the appellants are now seeking prayer for anticipatory bail.

6. This Court has heard learned counsel for the parties and gone through the contents of the F.I.R., impugned order and the case diary.

7. It is evident from the F.I.R. that the case has been instituted under Sections 3, 4 and 5 of the Explosive Substance Act, 1908. The reason behind inserting the aforesaid provision is the recovery of 155 pieces of power gel and 165 pieces of electric detonators. The fact that the power gel and electric detonators are not coming under the fold of the Explosive Substance Act within the meaning of Section 4(d) of the Explosive Act has not been disputed by the respondent-State.

8. Learned counsel for the appellants has submitted that co-accused person, namely, Narayan Saw, has been granted anticipatory bail by this Court vide order dated 19th May, 2023 in Cr. Appeal (DB) No. 520 of 2023 and the case

of the appellants falls on similar footing, as such prayer has been made that they may also be granted anticipatory bail.

9. Learned counsel for the appellants has served copy of order passed in Cr. Appeal (DB) No. 520 of 2023 to this Court as also to learned A.P.P. appearing for the State.

10. Learned A.P.P., after going through the aforesaid order, has fair enough to submit that the allegation which has been leveled against the present appellants are similar to that of appellant in Cr. Appeal (DB) No. 520 of 2023.

11. This Court, considering the fact that co-accused has been granted anticipatory bail by this Court as also taking into consideration the fact that no criminal antecedent, except the case pertaining to same issue, which has been instituted by the forest official and even accepting the F.I.R. in entirety, which has been instituted under Section 3,4 and 5 of the Explosive Substance Act, which carries maximum punishment of seven years, deems it fit and proper to interfere with order dated 28th March, 2023 passed by learned Additional Sessions Judge-I, Koderma in A.B.P. No. 150 of 2023.

12. Accordingly, order dated 28th March, 2023 passed by learned Additional Sessions Judge, Koderma in A.B.P. No. 150 of 2023 is hereby quashed and set aside.

13. In view thereof, the instant appeal stands allowed.

14. In consequence thereof, the appellants, above named, are directed to be released on bail on furnishing bail bond of Rs. 25,000/- [Twenty Five Thousand] with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Koderma in connection with Koderma P.S. Case No. 32 of 2023, subject to conditions as laid down under Section 438(2) Cr.P.C.

15. Accordingly, the instant appeal stands disposed of.

(Sujit Narayan Prasad, J.)

(Subhash Chand, J.)

Alankar/