

- (1) Arms Act, 1959**
- (2) Explosive Substances Act, 1908**
- (3) Explosives Act, 1884**

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## **Arms Act, 1959**

- 1. Sanction of DM mandatory for prosecution of accused for offences u/s 3 of Arms Act:** Section 39 of the Arms Act, 1959 provides that no prosecution shall be instituted against any person in respect of any offence under Section 3 of the Arms Act without the previous sanction of the District Magistrate.
  
- 2. Recovery of fire arm, possession thereof & standard of proof required for offence u/s 25 of the Arms Act, 1959:** The first pre-condition for an offence under Section 25 (1) (a) is the element of intention, consciousness or knowledge with which a person possessed the firearm. That possession need not be physical possession but can be constructive, having power and control over the gun. In any disputed question of possession, specific facts admitted or proved will alone establish the existence of the dominion of the person over it necessary to determine whether that person was or was not in possession of the thing in question. See: *Gunwantlal Vs. State of M.P.*, AIR 1972 SC 1756 (Three-Judge Bench)(Para 5)

- 3. Recovery of fire arm, possession thereof & standard of proof required for offence u/s 25 of the Arms Act, 1959:** Where the accused was convicted for offences u/s 307 IPC and also u/s 25(1)(a) of the Arms Act, 1959, setting aside his conviction and sentence, the Hon'ble Supreme Court held thus : "Section 307 IPC--attempt to murder--car driven by accused intercepted by complainant police officer--other inmates fleeing away--scuffle ensuing when complainant tried to apprehend accused--accused alleged to have snatched service revolver of complainant and fired single shot--Pant and vest of complainant both having one bullet hole--Bullet holes are incompatible with case of single shot--Nature of injury suffered by complainant also incompatible with gun shot injury--seizure witnesses turning hostile--prosecution case suffers from lot of discrepancies --conviction of accused liable to be set aside. See: Sumersingh Umedshinh Raput alias Sumersinh Vs. State of Gujarat, AIR 2008 SC 904.
- 4. Conviction of accused for using unlicensed pistol in self defence held proper by Supreme Court:** In the present case, unlicensed pistol was recovered from possession of appellant which he had fired to scare away the people chasing him to apprehend him. FIR was lodged against the accused for the offences under Section 302/34 IPC read with Section 25 of Arms Act, 1959. Supreme Court held that as the pistol was not shown to be licensed and was also used by the appellant/accused, his conviction under Section 27 of the Arms Act, 1959 was justified. See: Mithun singh Vs. State of Punjab, (2001) 4 SCC 193
- 5. Recovery of fire arm made only in presence of police party cannot be disbelieved:** Section 302 IPC read with Section 25 of Arms Act, 1959 Recovery of weapon made by police officer at the pointing of the accused cannot be rejected solely on the ground that no independent

witness had supported the recovery and the recovery was made merely in the presence of the police party. See:

(i) Tejpal Vs. State of UP, 2005 (53) ACC 319 (All) (D.B.)

(ii) Govt. of NCT of Delhi Vs. Sunil, 2001 (42) ACC 223 (SC)

- 6. Compulsory death sentence u/s 27(3) of Arms Act, 1959 declared unconstitutional:** In the case noted below, the Supreme Court has declared that the mandatory death penalty under Section 27(3) of the Arms Act, 1959 is ultra vires the Constitution and void as it is in violation of Articles 13, 14, 21 of the Constitution. See: State of Punjab Vs. Dalbir Singh (2012) SCC 346
- 7. Convict having killed 30 persons granted bail by Patna High Court for offences under Arms Act, Explosive Substances Act and IPC on condition of keeping his mobile phone operative and reporting fortnightly to police station:** In the case noted below, Patna High Court granted bail to the accused who was convicted by the trial court for charges for having killed 30 persons in a carnage in which 21 persons were named in the FIR including the appellant/accused. The appellant has renewed his prayer for grant of bail during the pendency of the Sessions Trial No. 157 of 2017, arising out of Deokund (Uphara) P. S. Case No. 23 of 2000 for offences under sections 147, 148, 149, 341, 307, 302 and 120(B) of the Penal Code, 1860; Sections 27 of the Arms Act, 1959; Section 17 of the Criminal Law Amendment Act; Section 3(II)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; and Section 3 and 4 of the Explosive Substances Act, 1908. At the time of furnishing of the bail bonds, the Trial Court shall require the appellant to furnish an additional affidavit disclosing the mobile telephone no. which he shall keep in operative condition at all times till the trial is concluded. He would also, in such affidavit, give an

undertaking that he shall be getting his presence marked fortnightly before the Officer In Charge of the concerned Police Station who is further directed not to unnecessarily detain the appellant and would endorse his presence in the Police Station promptly on the day he visits him. Before leaving the territorial confines of the State of Bihar, the appellant shall be required to obtain prior permission from the Trial Court. The absence of the appellant from the trial proceedings on two consecutive dates would render the bail granted to the appellant liable to be cancelled. Such conditions shall remain attached with this order till final conclusion of the trial. See: Vinod Kumar Vs. State of Bihar, 2022 SCC OnLine Patna 4451

- 8. Bail granted by Orissa High Court for offences under Arms Act and Explosive Substances Act cancelled by Supreme Court:** The two instant appeals have been preferred by the State of Orissa and the de facto informant in FIR No. 180/2016, registered at Paradeep Police Station in Orissa State against the order dated 16.05.2017 of the High Court of Orissa at Cuttack, by which an application for bail filed by the respondent herein in connection with the aforementioned first information has been allowed. During the course of investigation, the police recovered certain weapons as well as the motorcycle used for commission of the murder. According to the State, the investigation records, prima facie revealed that the respondent had paid certain amount of money as advance amount for commission of the murder. The state also relies upon a letter written by the deceased to the inspector, Paradeep Police Station, stating that he feared for his life and the life of his family, inasmuch as the respondent might make an attempt to take their life. According to the state, the said letter might be treated as a dying declaration of the deceased. The learned advocates appearing on behalf of the state as well as the de facto complainant, while taking the

court through the material on record, submitted that the respondent was the kingpin of the conspiracy to murder the deceased and the murder had taken place as per his directions and plan. The preliminary charge-sheet was filed for the offences punishable under Section 302 and 120-B of the Penal Code, 1860 read with Sections 25(1)(B) and 27 of the Arms Act, 1959, as also under Section 3 and 4 of the Explosive Substances Act, 1908. They further brought to the notice of the court that the respondent, being a powerful and rich person, could have gone to any extent to influence the witnesses by intimidating them which prima facie revealed that he was a person who could have taken the law into his hands. He might even abscond in the future, which could delay the process of justice. According to them, the witnesses were already frightened and consequently might not go before the court to depose against the accused, in which event justice might suffer. The Supreme Court cancelled the bail granted to the accused by the Orissa High Court. See: State of Orissa Vs. Mahimananda Mishra, (2018) 10 SCC 516

- 9. Patna High Court granted bail for offence under Arms Act under conditions:** The petitioners seek bail in connection with Muffasil P.S. Case No. 160 of 2021, registered for the offences punishable under Sections 25 (1-(a)(1-b) of the Arms Act, 1959 and Section 30(a) of the Bihar Prohibition and Excise Act, 2016. The prosecution case as emerges from the F.I.R. is that the informant received information that in village Pnasala Simri Tola due to land dispute, there is a fight between two groups. It is further alleged that petitioners and their associates were involved in the fight. When police conducted raid in the house of the petitioners one country-made rifle, one cartridge and 750 ml. of illicit liquor were recovered. Considering the aforesaid facts and circumstances, this application is allowed, directing the petitioners,

above-named, to be enlarged on bail on their furnishing bail bonds in the sum of Rs. 10,000/- (Ten Thousand) each with two sureties of the like amount each to the satisfaction of Ld. Exclusive Special Excise Judge-I, Nawada, in connection with Muffasil P.S. Case No. 160 of 2021, after framing of charge, if not already framed, on the following conditions:

- (i) The petitioners will make themselves available for interrogation by a police officer/court as and when required.
- (ii) The petitioners will undertake that investigation/trial will not hamper on account of their absence or non-cooperation. They must be available to the police or the court whenever their presence is required.
- (iii) The petitioners shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer.
- (iv) In case, it is brought to the notice of the court below that the petitioners have criminal antecedents other than the disclosed one, Ld. court below shall cancel the bail bonds of the petitioners after hearing them and getting satisfied that the petitioners have concealed their criminal antecedents despite their knowledge of the same.
- (v) In case, it is brought to the notice of the court below that statement regarding previous bail petition is wrong, Ld. court below shall cancel the bail bonds of the petitioners.
- (vi) In case, the petitioners repeats offence of similar nature after enlargement on bail, their bail-bonds will be cancelled by the court below. See: Satyander Kumar Vs. State of Bihar, 2023 SCC OnLine Patna 285

**10. Order of CJM, Saharsa, Bihar taking cognizance of offences under Arms Act and IPC quashed by Patna High Court:** This criminal miscellaneous petition under Section 482 of the Cr.P.C. had been filed before the Patna High Court for quashing the order dated 09.07.2014 passed by Chief Judicial Magistrate, Saharsa, in Saharsa Sadar P.S. Case No. 112 of 2005 by which the learned court took cognizance against the petitioner under Sections 109, 419, 420, 467, 468, 471, 120(B) of IPC and under Section 30 of the Arms Act. FIR was instituted on self statement recorded by Officer-in-charge, Saharsa Sadar, Police Station, giving rise to Saharsa Sadar PS Case No. 112 of 2005 dated 26.04.2005 instituted under Sections 109, 419, 420, 467, 468, 471, 120(B) of IPC and under Section 30 of the Arms Act. Learned counsel for the petitioner had relied upon a judgment and order of Hon'ble Apex Court reported in the case of *Madhavrao Jiwajirao Scindia v. Samhabjirao Chandrojirao Angre* since, (1988) 1 SCC 692. In paragraph 31 of its said case, the Supreme Court held that: "The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage." For the reasons as stated above, continuance of the present proceeding against the petitioner will amount to an abuse of the

process of Court, as such in the interest of justice the order taking cognizance dated 09.07.2014 passed by Chief Judicial Magistrate, Saharsa, in Saharsa Sadar P.S. Case No. 112 of 2005 as well as whole criminal proceeding as far as same relates to the petitioner was quashed by the Patna High Court. See: Damodar Kumar Jhunjhunwala Vs. State of Bihar, 2020 SCC OnLine Pat 2634

- 11. Bail application of accused u/s 25(1-A), 26, 35 of Arms Act rejected by Patna High Court:** This application has been filed by the petitioner for grant of anticipatory bail in connection with Cheriya Bariyarpur P.S. Case No. 143/2018 dated 17.08.2018 instituted for the offences under Sections 25(1-A) and 26 read with Section 35 of the Arms Act, 1959, against the petitioner and her husband namely, Chandra Shekhar Verma. The instant prosecution relates with the recovery of 50 (Fifty) rounds of live illegal ammunitions made from the residential house of the accused in course of a search conducted by the C.B.I. in connection with Case No. R.C. 01(S)/2018 of CBI/SCB/Patna, commonly known as 'Muzaffarpur Shelter Home Case', in terms of a search warrant issued by the Special Judge, Muzaffarpur. In the written report made by the Deputy Superintendent of Police, C.B.I., Patna; it has been mentioned that illegal ammunitions i.e. 50 rounds of fire arms cartridges were found/recovered from a Trunk kept inside a locked Bed Room of the petitioner and her husband, and on demand, no record was produced in respect of such illegal ammunitions. In the facts and submissions referred above, specially taking into consideration the fact that in course of a search made by the C.B.I. in connection with Muzaffarpur Shelter Home case 50 (Fifty) rounds of illegal ammunitions along with certain personal and secret documents of the petitioner, i.e. 03 (three) Pass Books of different Bank Accounts of the petitioner and a list of applicants of 'State Child



Protection Society’, which was at the helm of affairs of the petitioner only as a Cabinet Minister of the Government of Bihar, being recovered from the locked bedroom of the house, which being indicative to the fact regarding the joint occupation/control of the petitioner over the place of recovery, and considering the presumption available under the law though rebuttable, as ingrafted under Section 35 of the Arms Act, 1959, in my view, the petitioner does not deserve grant of anticipatory bail, therefore, this application is, accordingly, rejected. See: Manju Verma Vs. State of Bihar, 2018 SCC OnLine Patna 4464

- 12. Bail application of accused u/s 25(1-A), 26, 35 of Arms Act rejected by Patna High Court:** The petitioners seek bail in connection with Mahua P. S. Case No. 719 of 2022, registered for the offences punishable under Sections 419, 420, 467, 468, 471 and 34 of the Penal Code, 1860; Sections 30(a), 32 (i)(ii), 36, 37(C) and 41 of the Bihar Prohibition and Excise Act; and Sections 25(1-b)a, 26 and 35 of the Arms Act, 1959. As per allegation, 2633.31 litres of liquor and some incriminating articles were recovered from different vehicles and the petitioners. Considering the aforesaid facts and circumstances, this application is allowed, directing the petitioners, above-named, to be enlarged on bail on their furnishing bail bonds in the sum of Rs. 10,000/- (Ten Thousand) each with two sureties of the like amount each to the satisfaction of Ld. Exclusive Special Judge (Excise) Court No. II-cum-Additional District and Sessions Judge, Vaishali at Hajipur, in connection with Mahua P. S. Case No. 719 of 2022, on the following conditions:
- (i) The petitioners will make themselves available for interrogation by a police officer/court as and when required.

- (ii) The petitioners will undertake that investigation/trial will not get hampered on account of their absence or non-cooperation. They must be available to the police or the court whenever their presence is required.
- (iii) The petitioners shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer.
- (iv) In case, it is brought to the notice of the court below that the petitioners have criminal antecedents other than the disclosed one, Ld. court below shall cancel the bail bonds of the petitioners after hearing them and getting satisfied that the petitioners have concealed their criminal antecedents despite their knowledge of the same.
- (v) In case, it is brought to the notice of the court below that statement regarding previous bail petition is wrong, Ld. court below shall cancel the bail bonds of the petitioners.
- (vi) In case, the petitioners repeats offence of similar nature after enlargement on bail, their bail-bonds will be cancelled by the court below. See: Pritam Kumar Vs. State of Bihar, 2023 SCC OnLine Patna 610

**13. Bail application of accused u/s 25(1-A), 26, 35 of Arms Act rejected by Patna High Court:** The petitioner seeks bail in connection with Ara Mufassil P. S. Case No. 104 of 2021, registered for the offences punishable under Sections 25(1-b)a, 26 and 35 of the Arms Act, 1959. The prosecution case as emerges from the FIR is that on 27.04.2021, police received information that some unknown miscreants are committing dacoity at Punjab National Bank, Piraunta. On information, the police rushed to the place of occurrence and found a person falling on

the ground and one desi Katta has been recovered from his possession. It is further alleged that on enquiry from CCTV footage, the police came to know that five persons entered into the Bank and committed dacoity and fed away. Considering the aforesaid facts and circumstances, this application is allowed, directing the petitioner, above-named, to be enlarged on bail on his furnishing bail bonds in the sum of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of Ld. A.C.J.M.-VII, Bhojpur at Ara, in connection with Ara Mufassil P. S. Case No. 104 of 2021, on the following conditions:

- (i) The petitioner will make himself available for interrogation by a police officer/court as and when required.
- (ii) The petitioner will undertake that investigation/trial will not get hamper on account of his absence or non-cooperation. He must be available to the police or the court whenever his presence is required.
- (iii) The petitioner shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer.
- (iv) In case, it is brought to the notice of the court below that the petitioner has criminal antecedents other than the disclosed one, Ld. court below shall cancel the bail bonds of the petitioner after hearing him and getting satisfied that the petitioner has concealed his criminal antecedents despite his knowledge of the same.
- (v) In case, it is brought to the notice of the court below that statement regarding previous bail petition is wrong, Ld. court below shall cancel the bail bonds of the petitioner. See: Satyajeet Kumar Vs. State of Bihar, 2023 SCC OnLine Patna 401

- 14. Supreme Court granted bail for offence u/s 25, Arms Act:** The High Court, by its order dated 11-2-2020, dismissed the revision filed by the petitioner against his conviction under the provisions of Section 25 of the Arms Act 1959 in the absence of the petitioner on the ground that he had not remained present on the four out of the previous six occasions. In the meantime, we direct that the petitioner shall be released on bail, subject to such terms and conditions as may be imposed by the Judicial Magistrate, First Class Rohtak in connection with Criminal Case No. 85-2 of 2013 arising out of FIR No. 45 dated 14 February 2013 registered at PS Urban Estate, Rohtak, Haryana. See: Praveen Vs. State of Haryana, 2020 SCC OnLine SC 960
- 15. Anticipatory bail refused to accused u/s 27 of Arms Act:** The petitioner seeks bail in anticipation of his arrest in connection with Parbatta P.S. Case No. 214 of 2020, dated 02.06.2020, instituted for the offences under Sections 307 of the Penal Code, 1860; Section 27 of the Arms Act, 1959; and Sections 3 and 4 for Prevention of Witch (Daain) Practices Act, 1999. The petitioner is none else but the brother-in-law of the informant who is alleged to have abused and intimidated the informant of having practiced black magic on his son. He is also alleged to have fired at the informant leading to injuries on her chest. The informant has suffered gun shot injuries but there is no exit wound. Apart from this, the ground taken by the petitioner that there has been a delay of 18 days in lodging the F.I.R. but without any explanation for such delay, is not correct. There is a reasonable explanation of the informant having been hospitalized for her treatment, causing delay in the lodging the F.I.R. It has also been brought to the notice of this Court that during the course of treatment, the Begusarai police had recorded her statement in which she has given the explanation for delay in filing of the F.I.R.

Taking into account the fact that the informant has suffered gun-shot injuries, which is alleged to have been caused by the petitioner, I am not inclined to grant anticipatory bail to the petitioner. The prayer for anticipatory bail is rejected. The provisional anticipatory bail granted to the petitioner stands withdrawn. 10. However, if the petitioner surrenders before the court below and seeks bail, it shall be considered on its own merits, without being prejudiced by the fact that the present petition on his behalf has not been entertained by this Court. See: Sikandar Mandal Vs. State of Bihar, 2021 SCC OnLine Patna 3699

- 16. Recording of cogent reasons imperative for grant of bail u/s 439 CrPC:** In the present case, bail application involving offences under Section 302, 307 IPC, under Section 27 of Arms Act and offence under Explosives Act, 1884 was under consideration of the court. The Supreme Court held that grant of bail under Section 439 CrPC though being a discretionary order, but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course and, thus, order for bail bereft of any cogent reasons cannot be sustained. Therefore, prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case and, thus, serious nature of accusations and facts having a bearing in the case cannot be ignored, particularly, when the accusations may not be false, frivolous or vexatious in nature but supported by adequate material brought on record so as to enable a court to arrive at prima facie conclusion. See: Brijmani Devi Vs. Pappu Kumar, (2022) 4 SCC 497

## **Explosive Substances Act, 1908**

- 1. Ingredients required to be proved for conviction u/s 4 of Explosive Substances Act, 1908:** Section 4 of the Explosive Substances Act, 1908 comprises two parts, the first part speaks the possession with an intention to cause an explosion in order to endanger life or to cause serious injury to property while Sub-section-2 deals with possession with intent by means thereof to endanger life or cause serious injury to property or enable any other person by means thereof, to endanger life or to cause serious injury to property in India. When the evidences have been gone through, the PW-1 the police personnel, PW-2 the arms constable-cum-seizure list witness, PW-3 the Hawaldar-cum-seizure list witness, PW-4 the informant and PW-5 the I.O., they have not substantiated the ingredients of Section 4 by way of stating that such illegal possession was with an intention to explode in order to cause injury to the life or property. On the other hand, the evidence is with regard to possession without license. After all, it is the burden upon the prosecution to substantiate its case. As stated above, save and except possession of explosive substance without license nothing more, at least by way of exploring much more, that the possession was with an ulterior motive to cause explosion in order to harm life and property, should have been. Lacking on that score, did not justify the finding. On the other hand, from the evidence, it is crystal clear that there happens to be no cross examination at the end of the appellant in order to discredit the factum of recovery of 50 detonators without license and in likewise manner, challenging their status over seizure list. That being so, the recovery is not genuinely controverted. Because of the fact that prosecution has not been able to substantiate the ingredients of Section 4 of the Act, on account thereof, the conviction and sentence recorded by the learned lower Court with regard thereto is hereby set aside. The sole question

now remains that once possession of 50 detonators without license is found duly substantiated, then under what provision of law the appellant is to be proceeded with and the answer is, the detonator is an explosive as defined under Section 4(d) of the Explosive Substances Act and as per Section 5, license was required to possess which the appellant was deficient one and in the aforesaid background, the appellant is to be convicted in accordance with Section 9(B)(b) of the Explosive Act. Accordingly, appellant is found and held guilty for an offence punishable under Section 9(B)(b) of the Explosive Substances Act. The Section prescribes maximum sentence of two years with fine which may extent to Rs. 3,000/- or with both. From the record, it is evident that the appellant happens to be under custody since 09.03.2016. That being so, even if sentenced to maximum period that will be within period of custody and so, no sentence of fine is inflicted against him, however, sentenced as period already undergone. See: Vikas Kumar Vs. State of Bihar, 2019 SCC OnLine Patna 1126

**2. Ingredients to be proved for conviction for offence u/s 5 of Explosive Substances Act:** In order to bring home the offence under section 5 of the Explosive Substances Act, the prosecution has to prove following ingredients:

- (i) that the substance in question is explosive substance;
- (ii) that the accused makes or knowingly has in his possession or under his control any explosive substance;
- (iii) that he does so under such circumstances as to give rise to a reasonable suspicion that he is not doing so for a lawful object. See: Mohammad Usman Mohammad Hussain Maniyar Vs. State of Maharashtra, AIR 1981 SC 1062

- 3. Sanction of DM mandatory for prosecution of offences u/s Explosive Substances Act, 1908:** Section 7 of the Explosive Substances Act, 1908 provides that no court shall proceed to the trial of any person for an offence under the Explosive Substances Act except with the consent of the Central Government. In the case noted below, it has been held by the Hon'ble Supreme Court that since the Central Government has delegated the power of according sanction under Section 7 of the said Act to the State Governments through DMs for prosecution of accused for offences under the Explosive Substances Act, sanction granted by DM under Section 7 of the Act would be a valid sanction. But the ADM has no power to grant sanction under Section 7 of the Act for prosecution of accused for any offence under the Explosive Substances Act, 1908 as the State Government cannot further delegate the said power of sanction to ADM. In the present case, the ADM had granted the sanction for prosecution under Section 7 of the Act and for that reason, the Supreme Court quashed the entire proceedings under the Act against the accused. See: Hari Chand Aggarwal Vs. Batala Engineering Company Ltd., AIR 1969 SC 483.
  
- 4. Sanction u/s 7 of Explosive Substances Act granted by DM after considering material in case diary produced before him by police held to be valid:** Where the District Magistrate had granted sanction for prosecution under Section 7 of the Explosive Substances Act, 1908 after considering the material in the police diary produced before him and the document of sanction was proved by the competent person, it has been held by the Supreme Court that the sanction granted by the DM cannot be said to be invalid. See: Chandra Prakash Vs. State of Rajasthan, 2014 (86) ACC 836 (SC)



5. **Penalty for offence u/s 5 of Explosive Substances Act:** An offence under Section 5 of the Act for making or possessing explosives under suspicious circumstances is punishable with imprisonment upto **5 years** to which fine may be added.
  
6. **Offence u/s 5 of Explosive Substances Act is triable by Magistrate First Class:** An offence under Section 5 of the Act for making or possessing explosives under suspicious circumstances is punishable with imprisonment upto **5 years** to which fine may be added. Therefore, offence under Section 5 of the Act is triable by Magistrate First Class. See: 2007 Criminal Law Journal (NOC) 562 (Kerala)
  
7. **Convict having killed 30 persons granted bail by Patna High Court for offences under Arms Act, Explosive Substances Act and IPC on condition of keeping his mobile phone operative and reporting fortnightly to police station:** In the case noted below, Patna High Court granted bail to the accused who was convicted by the trial court for charges for having killed 30 persons in a carnage in which 21 persons were named in the FIR including the appellant/accused. The appellant has renewed his prayer for grant of bail during the pendency of the Sessions Trial No. 157 of 2017, arising out of Deokund (Uphara) P. S. Case No. 23 of 2000 for offences under sections 147, 148, 149, 341, 307, 302 and 120(B) of the Penal Code, 1860; Sections 27 of the Arms Act, 1959; Section 17 of the Criminal Law Amendment Act; Section 3(II)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; and Section 3 and 4 of the Explosive Substances Act, 1908. At the time of furnishing of the bail bonds, the Trial Court shall require the appellant to furnish an additional affidavit disclosing the mobile telephone no. which he shall keep in operative condition at all times till the trial is concluded. He would also, in such affidavit, give an

undertaking that he shall be getting his presence marked fortnightly before the Officer In Charge of the concerned Police Station who is further directed not to unnecessarily detain the appellant and would endorse his presence in the Police Station promptly on the day he visits him. Before leaving the territorial confines of the State of Bihar, the appellant shall be required to obtain prior permission from the Trial Court. The absence of the appellant from the trial proceedings on two consecutive dates would render the bail granted to the appellant liable to be cancelled. Such conditions shall remain attached with this order till final conclusion of the trial. See: Vinod Kumar Vs. State of Bihar, 2022 SCC OnLine Patna 4451

- 8. Bail granted by Orissa High Court for offences under Arms Act and Explosive Substances Act cancelled by Supreme Court:** The two instant appeals have been preferred by the State of Orissa and the de facto informant in FIR No. 180/2016, registered at Paradeep Police Station in Orissa State against the order dated 16.05.2017 of the High Court of Orissa at Cuttack, by which an application for bail filed by the respondent herein in connection with the aforementioned first information has been allowed. During the course of investigation, the police recovered certain weapons as well as the motorcycle used for commission of the murder. According to the State, the investigation records, prima facie revealed that the respondent had paid certain amount of money as advance amount for commission of the murder. The state also relies upon a letter written by the deceased to the inspector, Paradeep Police Station, stating that he feared for his life and the life of his family, inasmuch as the respondent might make an attempt to take their life. According to the state, the said letter might be treated as a dying declaration of the deceased. The learned advocates appearing on behalf of the state as well as the de facto complainant, while taking the

court through the material on record, submitted that the respondent was the kingpin of the conspiracy to murder the deceased and the murder had taken place as per his directions and plan. The preliminary charge-sheet was filed for the offences punishable under Section 302 and 120-B of the Penal Code, 1860 read with Sections 25(1)(B) and 27 of the Arms Act, 1959, as also under Section 3 and 4 of the Explosive Substances Act, 1908. They further brought to the notice of the court that the respondent, being a powerful and rich person, could have gone to any extent to influence the witnesses by intimidating them which prima facie revealed that he was a person who could have taken the law into his hands. He might even abscond in the future, which could delay the process of justice. According to them, the witnesses were already frightened and consequently might not go before the court to depose against the accused, in which event justice might suffer. The Supreme Court cancelled the bail granted to the accused by the Orissa High Court. See: State of Orissa Vs. Mahimananda Mishra, (2018) 10 SCC 516

- 9. Bail granted by High Court for offences u/s Explosive Substances Act, UAPA and IPC on ground that trial is likely to take time not interfered with by Supreme Court:** In the present case, respondent/accused was granted bail in case under Section 143, 147, 148, 120-B, 341, 427, 323, 324, 326 and 506 part II, 201, 202, 153-A, 212, 307, 149 IPC and Section 3 of the Explosive Substances Act, 1908 and Sections 16, 18, 18-B, 19 and 20 of the Unlawful Activities (Prevention) Act, 1967. While passing impugned order of bail, though the High Court had not determined the likelihood of the respondent being guilty or not, or whether rigours of Section 43-D(5) of the UAPA are alien to him, but it exercised its power to grant bail owing to the long period of incarceration and the unlikelihood of the trial being completed anytime

in the near future. Reasons assigned by the High Court held apparently traceable back to Article 21 of the Constitution, of course without addressing the statutory embargo created by Section 43-D(5) of the UAPA. Resultantly, impugned order granting bail by the High Court was held by the Supreme Court as justified and the same declined to be interfered with by the Supreme Court. See: Union of India Vs. K.A. Najeeb, (2021) 3 SCC 713

## **Explosives Act, 1884**

- 1. Punishment for offences under Explosives Act, 1884: Section 9-B** of the Act provides for different types of penalties for breaching different provisions of the Explosives Act, 1884. Section 9-C of the Act provides for punishment for offences by companies committed under the Explosives Act, 1884.
- 2. Conviction u/s 27 of Arms Act & u/s 4, 5, 9-B of Explosives Act, 1884 upheld by Supreme Court:** Abu Salem Abdul Kayyum Ansari has a history - and not a palatable one at all. He has been a part of the crime syndicate as is obvious from the facts of the two criminal appeals before us. Criminal Appeal No. 679/2015 emanates from threatening a party in a civil dispute relating to a property and extracting money, which under threat was conceded by the litigating party, i.e., Jain brothers. On failure to make the payment of some instalments of the threat money, one of the Jain brothers, i.e., Pradeep Jain, was murdered on 07.03.1995. As a result the crime was registered at D.N. Nagar Police Station under Sections 302, 307, 452, 506(ii) read with Section 120 -B of the Penal Code, 1860 (hereinafter referred to as the 'IPC'), read with Sections 5, 27 of the Arms Act, 1959 (hereinafter referred to as the 'Arms Act') read with Sections 3(2)(i), 3(2)(ii), 3(5) and 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as the 'TADA'). The second Criminal Appeal No. 180/2018, deals with the factual scenario where the very foundation of the civil society of our country was threatened and disrupted by causing bomb explosions at vital Government installations, public and crowded places in Mumbai and its suburbs (commonly known as the 'Bombay Bomb Blasts'). Loss of life and loss of properties in enormous amount was the result. The appellant was alleged to have stored, distributed and transported illegally

smuggled AK-56 rifles, hand grenades as well as boxes of magazines from the godown in Gujarat to Mumbai in a Maruti van which had specially crafted secret cavities and all this was done after conspiratorial meetings relating to the blasts. In order to evade the penal consequences of his actions, the appellant left Mumbai and later entered Portugal under an assumed name on a Pakistani passport, which reflects from where the conspiracy and support may have emanated. The Ministry of Justice, Portugal by its order dated 28.03.2003, admitted the appellant's extradition for offences such as, inter alia, Section 120-B read with Section 302 of the IPC and Section 3(2) of the TADA. The ministerial order, however, declined extradition for offences such as Sections 201, 212, 324, 326, and 427 of the IPC, Sections 3(4), 5 and 6 of the TADA, Sections 4 and 5 of the Explosive Substances Act, 1908 (hereinafter referred to the 'Explosive Substances Act'), Section 9-B of the Explosive Act, 1984 and Sections 25(1-A) and (1-B) of the Arms Act. However, the appellant filed Criminal Appeal Nos. 415-416 of 2012 before the Supreme Court of India challenging the order of the Designated Court, Mumbai dated 08.11.2011, which had dismissed the applications filed by the appellant for stay of all further proceedings in view of the order dated 14.09.2011 passed by the Court of Appeals, Lisbon treating the extradition order dated 28.03.2003 as having been withdrawn. The abovementioned appeals were still pending when the Central Bureau of Investigation (for short 'CBI') filed an application for clarification/modification of the judgment and order dated 10.09.2010 of the Supreme Court of India and prayed for permission to withdraw certain charges levelled against the appellant. It was the submission of the CBI that in the interest of comity of courts and united fight at international level against global terrorism, the Government of India was making further efforts through diplomatic talks and the additional

charges framed against the appellant might come as an impediment in furthering such diplomatic talks. The application of the CBI was allowed by the Supreme Court of India in terms of its order dated 05.08.2013 to the extent of withdrawal of additional charges under Sections 3 (3), 5 and 6 of the TADA, Sections 4(b) and 5 of the Explosive Substances Act, Sections 25(1-A), (1-B)(a) read with Section 387 of the Arms Act, as well as Section 9 -B of the Explosives Act, 1884. The Court observed that the offences for which the appellant was extradited to India are grave enough to award the appellant with maximum punishment and, therefore, it would not be detrimental to any of the parties. This Court also held that the ministerial order dated 28.03.2003 stands valid and effective in the eyes of law and that the Portugal Courts had categorically stated that the Portuguese law does not provide for any specific consequence for violation of the “principle of speciality”. Thus, the findings of the Portugal Courts may not be construed as a direction to the Union of India to return the appellant to Portugal but shall serve as a legal basis for the Government of Portugal to seek return of the appellant through political or diplomatic channels, which had not been done till that date according to the then learned Attorney General. The Court also recorded the then Attorney General's assurance that they were in the process of withdrawing other charges pending in various States against the appellant, which were claimed to be in violation of the extradition order. Thus, what the Government of India sought to do was to bring the legal process fully in conformity with the extradition order of Portugal albeit belatedly and the consequences of the termination of the appellant's extradition attained finality. This showed that the Government of India was conscious of its sovereign assurance and sought to do everything to abide by its assurance at that stage. See: Abu

Salem Abdul Kayyum Ansari vs. State of Maharashtra, 2022 SCC OnLine SC 852 (Paras 2, 3, 9, 19)

- 3. Recording of cogent reasons imperative for grant of bail u/s 439 CrPC:** In the present case, bail application involving offences under Section 302, 307 IPC, under Section 27 of Arms Act and offence under Explosives Act, 1884 was under consideration of the court. The Supreme Court held that grant of bail under Section 439 CrPC though being a discretionary order, but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course and, thus, order for bail bereft of any cogent reasons cannot be sustained. Therefore, prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case and, thus, serious nature of accusations and facts having a bearing in the case cannot be ignored, particularly, when the accusations may not be false, frivolous or vexatious in nature but supported by adequate material brought on record so as to enable a court to arrive at prima facie conclusion. See: Brijmani Devi Vs. Pappu Kumar, (2022) 4 SCC 497
- 4. Supreme Court upheld conviction under Explosives Act, 1884:** An explosion occurred in appellant's factory at Matkuria, PS Dhanbad, on April 28, 1960. As a result of the explosion, Kashi Bhokta, Gobardhan Bhokta and Mohan Bour died. On that day, the appellant who manufactures fireworks had allowed minors under 16 years of age, viz., Kashi Bhokta, Guhi Bhokta Gobardhan and Subhas Chamar to work in the manufacture of fireworks, thus contravening Rule 16 of the Explosives Rules, 1940 (now Explosive Rules, 2008) hereinafter referred to as the Rules made under the Act, and had thereby committed an offence punishable under Section 5 (3) (a) of the Act. The High Court,



disagreeing with the Magistrate who tried the case, held that "the three minor boys, Kashi, Guhi and Subhas, were employed and Gobardhan, in any event, was allowed to enter the premises licensed under the Rules for manufacture of explosives" in contravention of Rule 16, and convicted the appellant as already stated. The Supreme Court while deciding the appeal held thus: "In this case, the prosecution has not proved that the four minors were employed in any of the activities mentioned in clause (a) or clause (b) of Section 5 (3) of the Act, nor has it proved that any manufacture of fireworks was done on April 28, 1960. It follows that the contravention of Rule 16 on the facts found can only come under clause (c) of Section 5 (3) of the Explosives Act. We may mention that the learned counsel for the appellant challenged the findings of fact made by the High Court, but, in our opinion, they are not vitiated in any manner. In the result, the appeal is partly allowed. The conviction is altered to one under clause (c) of Section 5 (3) of the Act and the appellant is sentenced to pay a fine of Rs. 1,000 and in default to undergo rigorous imprisonment for a period of three months. Fine, if paid in excess, shall be refunded." See: Mohd. Usman Vs State of Bihar, AIR 1968 SC 1273 (Three-Judge Bench)

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