



2025:UHC:11658-DB

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

THE HON'BLE CHIEF JUSTICE MR. G. NARENDAR

AND

THE HON'BLE JUSTICE MR. SUBHASH UPADHYAY

Anticipatory Bail Application.301 of 2025

30th December, 2025

Naveen Parihar

--Applicant

Versus

State of Uttarakhand

--Respondent

Presence:-

Mr. Arvind Vashistha, learned Senior Counsel (through V.C.) assisted by Mr. Gaurav Singh (through V.C.) and Mr. Siddhant Tiwrai, learned counsel for the applicant.

Mr. J. S. Virk, learned Deputy Advocate General along with Mr. Rakesh Joshi, learned Brief Holder for the State of Uttarakhand.

JUDGMENT : (per Mr. G. Narendar C. J.)

Heard learned Senior Counsel for the applicant and learned Deputy Advocate General for the State.

2. The brief facts of the case are that on 06.01.2025 Co-ordinate Bench of this Court had directed the stoppage of all mining activities in Bageshwar District after taking note of the precarious situation created by the mining activities.

3. The instant petitioner was an intervening applicant in IA No.15 of 2025 in the said *Suo Motu* PIL registered by this Court as WPPIL No.174 of 2024. Post



the ban imposed by this court, the Director of the Department of Mines and Geology issued orders prohibiting of all mining activities, including transportation. Consequently, the E-Ravanna portal in respect of Bageshwar District came to be shut down thereby issue of transport permits for transporting material in Bageshwar District were stopped.

4. It so happened that during the course of hearing of said petition, it was brought to the notice of this Court by the petitioner/*Amicus Curiae* and the District Mining Officer (DMO) that the instant petitioner was carrying on rampant transportation of crushed minerals from his site despite this Court calling upon the petitioner and similarly situated persons to produce the documents relating to their ownership of the material and the legal shipment of the material to the crusher site, no documents were placed before this Court.

5. On directions of this Court machineries involved in illegal mining contrary to the SEIAA permission and contrary to the conditions imposed on the consent for operation by the Pollution Control Board were seized and, thereafter, on the direction of this court the DMO inspected the petitioner's premises and seized a register which on a bare perusal reveals transportation being carried out by the petitioner



without obtaining any transport permits and without demonstrating his legal ownership over the material found therein.

6. The DMO seized the register and other documents, sealed the premises and lodged the police complaint. It is on this background that the petitioner is before this court.

7. It is contended by the learned Senior Counsel that the complaint itself is not maintainable in view of the provisions of the Mining Minerals (Development and Regulation) Act, 1957 (for short, "the Act") and would place reliance on Section 22 of the Act to contend that cognizance could not have been taken on a police report.

8. Admittedly, the acts of the petitioner do not merely contravene the provisions of the Act but also, *prima facie*, appears to constitute offences punishable under the BNS 2023, more particularly, the facts as narrated in the complaint would, *prima facie*, appears to constitute offences under Section 223, 318(3) and 336(3) read with Section 340 of the BNS Act.

9. The allegation against the petitioner is that there is no document produced to demonstrate the ownership, which would also constitute an offence of



illegal mining on government property

10. That part, the allegation is that E-Ravanna passes issued in the District Pithoragarh have been blatantly misused for carrying out the transportation in Bageshwar District which is contrary to the rules.

11. Per contra, learned Deputy Advocate General would submit that the petitioner is indulged in the illegal transportation despite being aware of the orders of this Court and the directions issued by the Director and that was the cause of action for the intervention application and the plea that he was not aware of the direction of this court and the directions issued by the competent authority i.e. Director of Mining and Geology are baseless.

12. As regards the contention regarding the maintainability of the complaint, it is no more *res integra*. The Hon'ble Apex Court in the case of *Kanwar Pal Singh Vs. State of U.P.* reported in (2014) 14 SCC 331 has been pleased to hold in paragraph nos.9, 10 and 11 as under:

“9. This Court in Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772: (2014) 5 SCC (Cri) 437] has cited several decisions wherein the challenge to the prosecution on the ground that there can be no multiplicity of offences under different enactments was resolved and answered by relying upon Section 26 of the General Clauses Act, which we would like to reproduce for the sake of convenience:



“26. Provision as to offences punishable under two or more enactments.—Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.”

Section 26 of the General Clauses Act permits prosecution for “different offences” but bars prosecution and punishment twice for the “same offence” under two or more enactments. The expression “same offence” has been interpreted by this Court in numerous decisions viz. *Maqbool Hussain v. State of Bombay* [*Maqbool Hussain v. State of Bombay*, (1953) 1 SCC 736 : AIR 1953 SC 325 : 1953 Cri LJ 1432] with reference to the provisions of the Sea Customs Act and the Foreign Exchange Regulation Act, 1947; *Om Parkash Gupta v. State of U.P.* [*Om Parkash Gupta v. State of U.P.*, AIR 1957 SC 458 : 1957 Cri LJ 575] and *State of M.P. v. Veereshwar Rao Agnihotri* [*State of M.P. v. Veereshwar Rao Agnihotri*, AIR 1957 SC 592 : 1957 Cri LJ 892] with reference to Section 409 IPC and Section 5(2) of the Prevention of Corruption Act; *T.S. Baliah v. CIT* [*T.S. Baliah v. CIT*, AIR 1969 SC 701] with reference to Section 52 of the Income Tax Act, 1922 and Section 177 IPC; *Collector of Customs v. Vasantraj Bhagwanji Bhatia* [*Collector of Customs v. Vasantraj Bhagwanji Bhatia*, (1988) 3 SCC 467 : 1988 SCC (Cri) 679] , with reference to the provisions of the Customs Act, 1962 and the provisions of the Gold (Control) Act, 1968; *State of Bihar v. Murad Ali Khan* [*State of Bihar v. Murad Ali Khan*, (1988) 4 SCC 655 : 1989 SCC (Cri) 27] with reference to the provisions of Sections 447, 429 and 379 IPC and the provisions of the Wildlife (Protection) Act, 1972; *Avtar Singh v. State of Punjab* [*Avtar Singh v. State of Punjab*, AIR 1965 SC 666 : (1965) 1 Cri LJ 605] with reference to Section 39 of the Electricity Act, 1910 and the provisions of theft under IPC and *ICAI v. Vimal Kumar Surana* [*ICAI v. Vimal Kumar Surana*, (2011) 1 SCC 534 : (2011) 1 SCC (Cri) 442] with reference to the provisions of the Chartered Accountants Act, 1949 and offences under Sections 419, 468, 471 and 472 IPC.

10. Elucidating on the provisions of Section 4 read with Sections 21 and 22 of the MMDR Act, 1957 and the offence under Section 379 IPC, it was observed in *Sanjay* [*State (NCT of Delhi) v. Sanjay*, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437] : (SCC pp. 811-12, paras 69-72)

“69. Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the riverbed. The Court shall



take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the ecosystem of the rivers and safety of bridges. It also weakens riverbeds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the groundwater levels.

70. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorised under the Act shall exercise all the powers including making a complaint before the jurisdictional Magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorised officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist the Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person is sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitutes an offence under the Penal Code.

71. However, there may be a situation where a person without any lease or licence or any authority enters into river and extracts sand, gravel and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is liable to be punished for committing such offence under Sections 378 and 379 of the Penal Code.

72. From a close reading of the provisions of the MMDR Act and the offence defined under Section 378 IPC, it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravel and other minerals from the river, which is the property of the State, out of the State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission of an



offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such persons. In other words, in a case where there is a theft of sand and gravel from the government land, the police can register a case, investigate the same and submit a final report under Section 173 CrPC before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(d) CrPC.”

(emphasis supplied)

11. As noticed above, in the written submissions the appellant has relied upon *Belsund Sugar Co. Ltd. [Belsund Sugar Co. Ltd. v. State of Bihar, (1999) 9 SCC 620]*, *Sharat Babu Digumarti [Sharat Babu Digumarti v. State (NCT of Delhi), (2017) 2 SCC 18 : (2017) 1 SCC (Cri) 628]* and *Suresh Nanda [Suresh Nanda v. CBI, (2008) 3 SCC 674 : (2008) 2 SCC (Cri) 121]* to contend that where there is a special Act dealing with a special subject, resort cannot be taken to a general Act. The said submission has no force in view of the ratio in *Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772: (2014) 5 SCC (Cri) 437]* as quoted above which specifically refers to Section 26 of the General Clauses Act and states that the offence under Section 4 read with Section 21 of the MMDR Act, 1957 is different from the offence punishable under Section 379 IPC. Thus, they are two “different” and not the “same offence”. It would be relevant to state here that the Delhi High Court in its decision in *Sanjay v. State [Sanjay v. State, 2009 SCC OnLine Del 525 : (2009) 109 DRJ 594]*, which was impugned in *Sanjay [State (NCT of Delhi) v. Sanjay, (2014) 9 SCC 772 : (2014) 5 SCC (Cri) 437]*, had accepted an identical argument to hold that once an offence is punishable under Section 21 of the MMDR Act, 1957, the offence would not be punishable under Section 379 IPC. This reasoning was rejected by this Court and the judgment of the Delhi High Court was reversed. The contention relying on the same reasoning before us, therefore, must be rejected.”

13. In that view the submission regarding the maintainability of the complaint is required to be rejected and are, accordingly, rejected.

14. Learned Deputy Advocate General would



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submit that the final report has been filed in the Court on 24.08.2025. In that view, we are of the considered opinion that it would be appropriate to grant relief for a limited period with liberty to the petitioner to approach the jurisdictional Court for grant of bail. In that view, the petition is allowed and the petitioner shall be enlarged on bail if arrested by the police.

15. The relief granted is limited to a period of 15 days. The petitioner shall approach the jurisdictional Court within stipulated period of 15 days and seek appropriate relief before the Court. If such an application is filed the Court below shall expeditiously consider and dispose of the same strictly in accordance with law.

16. It is made clear that the observations made hereinabove are for the purpose of disposal of the instant petition and the Trial Court shall not be influenced by the observations made hereinabove.

17. The petition stands ordered accordingly.

(G. NARENDAR, C.J.)

(SUBHASH UPADHYAY, J.)

Dated: 30.12.2025

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