

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2605 of 2018

Arising Out of PS. Case No.-307 Year-2018 Thana- AMARPUR District- Banka

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1. Dhanajay Sah, Son of Sri Rajendra Sah,
 2. Ritesh Sah, Son of Sri Rajendra Sah,
- Both Sons of Resident of Village- Janki Prasad Lane,
Mundichak, P.S.- Tilkamanjhi, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Mines & Geology, Govt. of Bihar, Patna-1.
3. Mines Commissioner, Department of Mines & Geology, Govt. of Bihar, Patna-1.
4. District Magistrate, Banka.
5. Mines Development Officer, Banka.
6. Mines Inspector, Banka.
7. Police Superintendent, Banka.
8. Station House Officer, Amarpur Police Station, Banka.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vivekanand Vivek
For the Respondent/s : Mr. Gyan Prakash Ojha

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 06-11-2018 Heard learned counsel for the petitioners and learned
counsel representing the State.

The present application has been filed for setting aside the order dated 24.08.2018 passed by learned C.J.M., Banka in Amarpur P. S. Case No. 307 of 2018 by which the learned C.J.M., Banka has been pleased to refuse to release the seized sand loaded on the trucks as well as for quashing of the first information report in view of the payment of penalty amount of Rs. 32,150/- each truck in excess of chargeable penalty.



So far as the plea as to quashing of the first information report is concerned, at this stage when the case is pending for investigation, this Court is not inclined to go into that aspect of the matter leaving it for the petitioner to move this Court if the occasion so arises after completion of investigation and the order taking cognizance is passed.

As far as the question of release of the seized sand loaded on the trucks are concerned, this Court finds that in the first information report the allegations are that when the trucks were weighed, they were found carrying excess load of sand.

Learned counsel for the petitioners submits that they are transporters and loaded the sand under the valid purchase receipts issued by the seller of the sand which have been brought on the record vide Annexure-1 series to the present writ application. Learned counsel also submits that the petitioners have deposited a sum of Rs. 32,150/- each truck on 28.06.2018 towards alleged revenue loss.

Learned counsel for the State is present and submits that the FIR has been allegedly lodged in the facts and circumstances of the case as also the seizure of the sand has been sought to be justified.

Having heard learned counsel for the petitioners and



learned counsel representing the State, in the given facts and circumstances where this Court prima facie finds that there are invoices in form of Annexure-1 series to this writ application to show that these are the sand which were purchased under a valid receipt issued by the seller of the sand and that the petitioners have deposited Rs. 32,150/- each truck on 28.06.2018 with respect to the excess load of sand and a statement to that effect has been made in the writ application, this Court is of the opinion that no purpose will be served by keeping the sand with loaded trucks in seized condition. The trucks loaded with sand shall be released on the petitioners showing the documents of ownership and registration with respect to the trucks in their names with two sureties to the extent of the value of the vehicles indicated in the insurance documents before the court below with an affidavit and undertaking in the following terms:

(i) That the vehicles bearing Engine Number and Chasis number are not and shall not be involved in carrying sand which will be result of illegal mining in future;

(ii) that the petitioners shall not create any third party right or interest in respect of the vehicles and for that reason he will not enter into sale and shall not create any encumbrance in favour of any other party;



(iii) the petitioners shall produce the vehicles as and when required by the competent court/authority and shall abide by the order of the confiscation if any passed by the competent authority.

The court below shall order for release of the sand loaded with trucks in question within one week from the date of submission of the surety bond and the undertakings.

In case the vehicles are found involved in similar offence in future, the order granting provisional release of the vehicles in the present case shall also be withdrawn.

This application stands disposed off.

(Rajeev Ranjan Prasad, J)

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