

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21081 of 2020

Arising Out of PS. Case No.-10 Year-2020 Thana- DHURAIYA District- Banka

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1. RAMESH KUMAR YADAV Son of Bachhan Mandal Resident of Village - Bhikha, P.S.- Bounsi, Distt.- Banka.
 2. Prince Kumar Son of Gopal Yadav Resident of Village - Arajai Olapur, P.S.- Sanhoula, Distt.- Bhagalpur.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR Bihar
2. The State of Bihar through the Secretary Department of Bihar Mines and Mineral, Bihar, Patna. Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Ranjan Kumar Jha
	:	Mr.Sanjeev Kumar
	:	Mr.Miritunjay Kumar Mishra
For the Opposite Party/s	:	Mrs.Meena Singh (APP)

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 11-09-2020

Heard learned counsel for the parties.

2. These two petitioners are seeking anticipatory bail in connection with Dhoraiya P.S. Case No. 10 of 2020 registered on 10.01.2020. Following are the offences, which have been allegedly committed by these petitioners, based on the allegation made in the F.I.R.:-

(i) Section 379 and 411 of the Indian Penal Code.

(ii) Rule 56 of Bihar Minerals (Concession, Prevention of illegal mining, Transportation and Storage) Rule, 2019 (Hereinafter referred to as the Rules of 2019).



(iii) Section 21 of the M.M.D.R. Act, 1957 and,
(iv) Section 25 of the Environment (Protection) Act, 1986.

3. The Rules of 2019 have been framed by the State Government in exercise of power conferred under Section 15 read with Section 23C and Section 26 of the M.M.D.R. Act. The F.I.R. has been registered on the basis of a written report made by the Mining Development Officer-cum-Mining Inspector, Banka.

4. The occurrence is said to have taken place on 10.01.2020, in the broad daylight at 3.55 P.M., when two mini HYVA vehicles loaded with sand were intercepted by the Mining Inspector of the area and other police personnel. The drivers of the vehicle did not show any paper in support of carriage of huge quantity of sand in the said two trucks. Both the drivers were arrested on the spot. Each of the vehicles was found loaded with 300 CFT of sand.

5. The petitioners are indisputably registered owners of the said vehicles. It is the petitioners' case, as disclosed in the present application seeking anticipatory bail, that at the relevant point of time, their drivers were running the vehicle without their permission and the petitioners did not have any role to play. Only because they are owners of the vehicles, they have fallen victim of



circumstances. It is their case that since they were not found involved in commission of the alleged offence directly, their implication is not justified.

6. I have heard Mr. Ranjan Kumar Jha, learned counsel for the petitioner and Mr. Naresh Dikshit, learned counsel appearing on behalf of the Mines and Mineral Department, Government of Bihar. Learned Addl. Public Prosecutor has also assisted the Court.

7. Mr. Ranjan Kumar Jha, learned counsel for the petitioner's, apart from what has been stated in the application as their defence has argued that no prosecution for an offence under the Rules of 2019 can be launched without a written complaint filed by Mining Officer before a competent Court and lodging of an F.I.R. would not be maintainable in respect of violation of any of the provisions of the said Rules. He has relied on Rule 61 of the Rules of 2019 in support of his contention that no Court can take cognizance of any offence under the Rules except upon a written complaint made in writing by the Competent Officer, Deputy Director of Mines or Addl. Director of Mines or Director of Mines or any other officer empowered by the Government. He has submitted that since the M.M.D.R. Act and the Rules framed thereunder are special provisions, such provision shall have privacy over general provisions



under the Indian Penal Code. According to him, if any allegation constitutes an offence punishable under the provision of Act and the Rules, no offence under Section 379 or 411 of the Indian Penal Code can be said to be made out. He has relied on this Court's decision in case of (i) ***Santosh Kumar Sharma v. State of Bihar*** reported in **2019 (2) PLJR 21** and (ii) ***Mithilesh Kumar Singh v. State of Bihar*** rendered on 26.08.2019 in Cr. Misc. No. 540 of 2019.

8. Mr. Naresh Dikshit, learned counsel appearing on behalf of Mines And Minerals Department has, on the other hand, resisted the contention on behalf of the petitioners and has submitted that illegal extraction of sand has become a great menace in the State, which is being carried out in planned and organized manner. He has submitted that the allegations made in the F.I.R. do disclose commission of offence punishable under Sections 379 and 411 of Indian Penal Code. He has referred to an order of this Court dated 21.07.2020 passed in Cr. Misc. No. 17410 of 2020 to submit that a coordinate Bench of this Court, taking serious note of the national loss, which is being caused by such illegal activities, constituting offences in the nature of economic offence, has refused to grant privilege of anticipatory bail. Relevant portion of the said order reads thus:-

“Having regard to the facts and circumstances of this case wherein



admittedly the petitioner is the owner of the tractor which has been found involved in loading of sand which are being extracted illegally, this Court having noticed the submissions that the petitioner is involved in causing loss to the nation and such offences are in the nature of economic offence, this Court is not inclined to grant privilege of pre-arrest bail to the petitioner. His prayer is, thus, refused.”

9. In order to answer the submissions made on behalf of the petitioners that the allegations in the F.I.R. do not constitute offence punishable under Section 379 and 411 of the Indian Penal Code and therefore, the registration of F.I.R. is not maintainable, the definition of theft underlying Section 378 of the Indian Penal Code needs to be looked into. Section 378 of the I.P.C. defines theft whereas Section 379 of the I.P.C. provides for punishment of theft. Section 411 of the I.P.C. provides punishment for dishonestly receiving stolen property. Stolen property has been defined under Section 410 of the I.P.C. as the property, the possession whereof has been transferred by theft or by extortion or by robbery and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed. Section 378 reads as under:-



“378. Theft.—Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person’s consent, moves that property in order to such taking, is said to commit theft.”

10. It is not the case of these petitioners that the sand recovered by the Mining Officer and the police officials were not illegally extracted. It is an admitted fact that neither the petitioners nor their drivers possessed any licence, lease or authority issued by an authorized officer to extract sand from river beds.

11. Sand is a minor mineral within the meaning of Section 2(e) of the M.M.D.R. Act. This is not in dispute that the sand so seized by the Mining Officer and the police personnel was illegally extracted from river bed and not from any private land. The minor minerals in the nature of sand are natural resources, public property and national assets. In this context whether unauthorized extraction of sand from river beds by unauthorized persons would constitute theft within the meaning of Section 378 of the Act or not is the question which has been raised by Mr. Jha, learned counsel for the petitioners.

12. While dealing with the said question, one cannot lose sight of the doctrine of public trust as taken note of by the Supreme Court in case of *M.C. Mehta v. Kamal Nath* reported in



(1997) 1 SCC 388 (SC). The Court has ruled that the doctrine of public trust is founded on the idea that certain common properties such as rivers, seashore, forest and air are held by the Government in trusteeship for the free and unimpeded use of the general public. Explaining the doctrine of public trust under the English common law, the Supreme Court, in case of **M.C. Mehta** (supra), held that these resources, which are suitable for general public, were deemed to be held in trust by the crown for the benefit of the public. The Supreme Court summed up the doctrine in case of **M.C. Mehta** (supra) in paragraph 34 as under:-

“34. Our legal system- based on English common law- includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyments. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.”

13. The said doctrine as discussed in case of **M.C. Mehta** (supra) has been invoked in subsequent Supreme Court's decision, in case of **State (NCT of Delhi) v. Sanjay**, reported in (2014) 9 SCC 772, while dealing with identical question as raised on



behalf of the petitioners by Mr. Ranjan Kumar Jha. The answer to his contention directly lies in the decision in case of ***Sanjay*** (supra) in paragraph 69 to 73 which reads as under:-

“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 eco-system of the rivers and safety of bridges. It also weakens river beds, 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 ground water 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 authorized 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 authorized officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist 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 sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitute an offence under Indian Penal Code.

71. However, there may be situation where a person without any lease or licence or any authority enters into river and extracts sands, gravels 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 laible to be punished for committing such offence under Sections 378 and 379 of the Indian Penal Code.

72. From a close reading of the provisions of 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, gravels and other minerals from the river, which is the property of the State, out of 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 person. In other words, in a case where there is a theft of sand and gravels from the Government land, the police can register a case, investigate the same and submit a final report under Section 173, Cr.P.C. before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190 (1)(d) of the Code of Criminal Procedure.

73. After giving our thoughtful consideration in the matter, in the light of relevant provisions of the Act vis-à-vis the Code of Criminal Procedure and the Indian Penal Code, we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the river beds without consent, which is the property of the State, is a distinct offence under the IPC. Hence, for the commission of offence under Section 378 Cr.P.C., on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without



awaiting the receipt of complaint that may be filed by the authorized officer for taking cognizance in respect of violation of various provisions of the MMRD Act. Consequently the contrary view taken by the different High Courts cannot be sustained in law and, therefore, overruled. Consequently, these criminal appeals are disposed of with a direction to the concerned Magistrates to proceed accordingly.”

(Underlined for emphasis)

14. In case of ***Sanjay*** (supra) the Supreme Court has taken serious note of the adverse consequences of unregulated illegal extractions of sand in paragraphs 33, 34 and 35, which read thus:-

“33. The mining of aggregates in rivers has led to severe damage to river, including pollution and changes in levels of pH. Removing sediment from rivers causes the river to cut its channel through the bed of the valley floor, or channel incision, both upstream and downstream of the extraction site. This leads to coarsening of bed material and lateral channel instability. It can change the riverbed itself. The removal of more than 12 million tonnes of sand a year from the Vembanad Lake catchment in India has led to the lowering of the riverbed by 7 to 15 centimetres a year. Incision can also cause the alluvial aquifer to drain to a lower level, resulting in a loss of aquifer storage. It can also increase flood frequency and intensity by reducing flood regulation capacity. However,



lowering the water table is most threatening to water supply exacerbating drought occurrence and severity as tributaries of major rivers dry up when sand mining reaches certain thresholds. Illegal sand mining also causes erosion. Damming and mining have reduced sediment delivery from rivers to many coastal areas, leading to accelerated beach erosion.

34. The report also dealt with the astonishing impact of sand mining on the economy. It states that the tourism may be affected through beach erosion. Fishing, both traditional and commercial — can be affected through destruction of benthic fauna. Agriculture could be affected through loss of agricultural land from river erosion and the lowering of the water table. The insurance sector is affected through exacerbation of the impact of extreme events such as floods, droughts and storm surges through decreased protection of beach fronts. The erosion of coastal areas and beaches affects houses and infrastructure. A decrease in bed load or channel shortening can cause downstream erosion including bank erosion and the undercutting or undermining of engineering structures such as bridges, side protection walls and structures for water supply.

35. Sand is often removed from beaches to build hotels, roads and other tourism-related infrastructure. In some locations, continued construction is likely to lead to an unsustainable situation and destruction of the main natural attraction for visitors — beaches themselves. Mining from, within or near a



riverbed has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, instream roughness of the bed, flow velocity, discharge capacity, sediment transportation capacity, turbidity, temperature, etc. Alteration or modification of the above attributes may cause hazardous impact on ecological equilibrium of riverine regime. This may also cause adverse impact on instream biota and riparian habitats. This disturbance may also cause changes in channel configuration and flow-paths."

15. Recently, in an order passed on 12.08.2020 in Cr. Misc. No. 21609 of 2020, the Court has noted with concern the exponential rise in registration of cases of illegal extraction/theft in the State of Bihar and while rejecting a prayer for anticipatory bail, this Court observed as under:-

"In the background of above-noted admitted facts, this Court is required to consider whether the petitioners deserve anticipatory bail in the wake of exponential rise in registration of cases of illegal extraction/ theft of sand, which is an important mineral for the State of Bihar and significant for the State exchequer. This Court has experienced numerous cases coming up of similar nature which creates an impression that sand smugglers are active in the State of Bihar who are thriving in connivance with the persons who have been given responsibility to check it. It has been argued on behalf of the State of Bihar that illegal extraction of sand causes



huge loss to the State exchequer to the tune of Rs. 600 crores to 700 crores per year.

This Court cannot lose sight of the fact that illegal sand mining causes erosion which leads to shifting of villages on the river bank. It also causes ecological imbalance.

Since this Court is of the, prima facie, view that offence of such nature can be committed only under a well design strategy involving group of sand smugglers which has far reaching delirious effect on the society, I am not inclined to grant the petitioners privilege of anticipatory bail. Their custodial interrogation may be required by the police for unearthing the larger conspiracy. The Court is further of the view that grant of anticipatory bail may adversely affect the investigation, there being chance of the petitioners tampering with the evidence. Their release on bail may hamper probe.”

16. It is clear from the F.I.R. that the illegal sand was being carried in huge quantity in broad daylight at 3.55 P.M. This shows insolence and audacity of the offenders, as if, they were enjoying protection of ‘invisible’, without any threat of being apprehended. This shows the magnitude of power and influence, which these offenders, consider to wield. Such offences, in my opinion, have serious consequences, which cannot be successfully committed without a well-knit network. The petitioners have not stated the other purpose, for which, they are possessing the two



vehicles. Further, their custodial interrogation may be required for unearthing the larger conspiracy of theft and plundering of sand in the State of Bihar and other basis.

17. This Court's decision in case of ***Mithilesh Kumar Singh*** (supra) as relied on by Mr. Jha in support of his contention, in fact is an answer to his submission. This court has held in paragraph 43 of the said decision relying on Supreme Court's decision in case of ***State (NCT of Delhi) v. Sanjay*** that in case a person without any lease or any authority extracts minerals in a clandestine manner with an intent to remove dishonestly from the possession of State, the ingredients of the offence punishable under Section 379 of the I.P.C. would be attached.

The petitioners admittedly did not have any valid licence or lease or authority to extract sand.

For the same reason, this Court's decision in case of ***Santosh Kumar Sharma*** (supra) shall not apply in the facts and circumstances of the present case.

18. In the above noted circumstances, considering in totality the gravity of the crime, I am not inclined to grant these petitioners privilege of anticipatory bail.

19. This application is accordingly rejected.



20. The petitioners are directed to surrender before the Court below within a period of eight weeks from today and seek regular bail, if so advised. If they do so, their application for regular bail shall be considered by the learned Court below on its own merit without being prejudiced by rejection of present application for grant of anticipatory bail.

(Chakradhari Sharan Singh, J)

AKASH/-

AFR/NAFR	NAFR
CAV DATE	N/A
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