

IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr. Misc. No. 21534 of 2020

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Rupan Mandal, son of Late Bharat Mandal, resident of village-Fulkiya, NH 80, P.S.-Ghogha, District-Bhagalpur.

... .. Petitioner

Versus

The State of Bihar through the Secretary, Department of Bihar Mines and Minerals, Bihar, Patna.

.. ... Opposite Party

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With

Cr. Misc. No. 21599 of 2020

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1. Sanoj Kumar Yadav, son of Shiv Kumar Yadav, resident of village-Simrabagan, P.S.-Katihar, District-Katihar.

2. Jitendra Singh, son of Lal Mohar Singh, resident of village-Kunwa Singh Colony Chas, P.S.-Chas, District-Bokaro (Jharkhand).

... .. Petitioners

Versus

The State of Bihar through the Secretary, Department of Bihar Mines and Minerals, Bihar, Patna.

.. ... Opposite Party

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Appearance :

(In both cases)

For the Petitioner : Mr. Ranjan Kumar Jha, Advocate
 Mr. Sanjeev Kumar @ Deepak Sahay, Advocate
 Mr. Vikas Kumar, Advocate
 Mr. Mritunjay Kumar Mishra, Advocate

For the Respondent Mines Deptt: Mr. Naresh Dikshit, Advocate

For the Respondent State:

(In Cr. Misc. No. 21534 of 2020) : Mr. Shailendra Kumar Singh, APP

(In Cr. Misc. No. 21599 of 2020) : Mr. Yogendra Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

7. 22-09-2020 Noticing visible surge in number of cases involving illegal extraction of sand, evincibly, in a well knit organized manner by a group of people, this Court had desired presence of the Principal Secretary, Mines and Minerals Department,



Government of Bihar, and the Director General of Police, Bihar, *on-line*, to have their view. Accordingly, Mrs. Harjot Kaur, Principal Secretary, Mines and Minerals Department, Government of Bihar, and the Additional Director General of Police (Headquarters) joined the hearing of virtual court proceedings of these two cases. They have informed this Court that the menace is being duly taken care of by the Department and the police personnel with right earnest and effective steps have been taken to curb it, which have been very fruitful.

2. This Court, for the present, need not comment, in view of the statement made by the Principal Secretary.

3. Heard learned counsel for the parties.

4. There is one petitioner in Cr. Misc. No. 21534 of 2020, who is seeking anticipatory bail in connection with Dhoraiya P.S. Case No.173 of 2019, registered for the offences under Sections 379 and 411 of the Indian Penal Code, Section 4/40 of the B.M.M.C. Rules, 1972 and 3/6/8 of Bihar Minerals Illegal Transportation Mining and Storage Rule, 2003, Section 15 of the Forest and Environment Protection Act, 1986, Section 15 of the Forest and Environment Protection Act, 1986, Section 21 of M.M.D.R. Act, 1957.

5. The F.I.R. was registered on the basis of written report made by the Mining Development Officer-cum-Mining



Inspector, with the allegation that one Hyva vehicle, loaded with illegally extracted sand, was seized by him in the morning at 7 AM on 08.09.2019. The Driver of the vehicle had managed to flee away and in course of search, the Mining Officer did not find any document to justify extraction and carriage of the sand. The Hyva vehicle and the sand was accordingly seized.

6. There are two petitioners in Cr. Misc. No. 21599 of 2020, who are seeking anticipatory bail in connection with Dhoraiya P.S. Case No. 34 of 2020, registered for the offences under Sections 379 and 411 of the Indian Penal Code, Section 56 of Bihar Minerals (Concession Prevention of Illegal Mining, Transportation & Storage) Rules, 2019, Section 21 of M.M.D.R. Act, 1957 and Section 15 of the Forest and Environment Protection Act, 1986.

7. It is alleged in the F.I.R. that at 2.30 PM on 31.01.2020, the Mining Development Officer-cum-Mining Inspector had intercepted a truck, loaded with 300 Cft. of sand. There was no paper, no licence, no authority to extract or transport sand.

8. Petitioner No. 1 of Cr. Misc. No. 212599 of 2020 is, admittedly, registered owner of the vehicle in question, whereas petitioner No.2 is the driver of the vehicle.

9. In both the cases, plea has been taken that the



petitioners are ready to deposit amount equivalent to value of the sand seized by the mining officials.

10. Mr. Ranjan Kumar Jha, learned counsel appearing on behalf of the petitioners, has submitted that no offence can be said to be made out punishable under Section 379 or 411 of the Indian Penal Code in the light of this Court's decisions in case of *Santosh Kumar Sharma v. State of Bihar* reported in 2019 (2) PLJR 21 and *Mithilesh Kumar Singh v. State of Bihar* (Cr. Misc. No. 540 of 2019) disposed of on 26.08.2019. He has submitted that a prosecution under the provisions of MMDR Act and Rules framed thereunder can be launched on the basis of a complaint filed by mining official and not otherwise. He has accordingly contended that since the F.I.R. itself is not maintainable, the petitioners deserve privilege of anticipatory bail.

11. This is to be noted that, in similar circumstance, similar submissions had been advanced by Mr. Ranjan Kumar Jha, learned counsel for the petitioners, in Cr. Misc. No. 21081 of 2020 (*Ramesh Kumar Yadav and another vs. The State of Bihar and another*). In that case also, two mini Hyva vehicles, loaded with sand, were intercepted by the mining officials of the same area at 3.55 PM. The Court, noticing Supreme Court's decision in case of *State (NCT of Delhi) v. Sanjay*, reported in



(2014) 9 SCC 772, and distinguishing the decision of this Court in case of *Santosh Kumar Sharma* (supra) and *Mithilesh Kumar Singh* (supra), dismissed the application seeking anticipatory bail. Following observations of this Court in the order dated 11.09.2020 passed in case of *Ramesh Kumar Yadav* (supra) may be aptly noted at this stage : -

“ 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.”

12. The Supreme Court, in case of *Sanjay* (supra) has clearly laid down the law in paragraph 69 and 70, which directly answer the points raised on behalf of the petitioners as to whether illegal mining of sand will constitute an offence, which read 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.”

13. The Supreme Court has taken serious note of the adverse consequences of unauthorized and illegal extraction of sand in paragraphs, 33, 34 and 35, which read as under : -

“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.”

14. Further, in a recent order dated 12.08.2020 passed in Cr. Misc. No. 21609 of 2020 (*Sekh Israile and another vs. The State of Bihar and another*), this Court, while rejecting an application for anticipatory bail, has 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.”



15. I must quote the observations made in the order dated 11.09.2020 passed in case of *Ramesh Kumar Yadav* (supra), in paragraph 16 : -

“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.”

16. There is no dispute that the petitioners do not hold any kind of licence, permission, grant of authority to extract and transport sand.

17. Considering the gravity and magnitude of crime, being committed by the offenders, I am not inclined to grant the petitioners privilege of anticipatory bail.

18. These applications are accordingly rejected.

19. 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)

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