

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.737 of 2022

Arising Out of PS. Case No.-128 Year-2021 Thana- SRINAGAR District- West Champaran

1. Md. Jiyaal Haq Ansari @ Md. Jiyaal Haq son of Nejamuddin Ansari R/O Village- Malahi Tola, Ward No.-01, Balua Rampur, P.S.- Bairiya, District- West Champaran.
2. Tahiyat Alam son of Nejamuddin Ansari R/O Village- Malahi Tola, Ward No.-01, Balua Rampur, P.S.- Bairiya, District- West Champaran.

... .. Petitioners

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar, Patna
2. The Mines Commissioner Cum Principal Secretary, Mines and Geology Deptt. Govt. of Bihar
3. The District Magistrate, West Champaran at Bettiah
4. The Superintendent of Police, West Champaran at Bettiah
5. The Mineral Development Officer, West Champaran
6. The Officer Incharge of Srinagar P.S. West Champaran

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Anis Akhtar, Advocate Mr. Asif Kalim, Advocate
For the Respondent/s	:	Mr. Ajeet Kumar, AC to G.A.7
For the Department of Mines:	:	Mr. Brij Bihari Tiwary, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 16-08-2022 This application has been filed seeking a direction to the respondent authorities to release Mahindra 415 DI Tractor in favour of petitioner No. 1 bearing Registration No. BR22GA 2342, as well as release of one JCB bearing Registration No. BR01GK 2492 in favour of petitioner no. 2. Both these two vehicles were seized in connection with Srinagar P.S. Case No. 128/2021 registered under Section 379 of the Indian Penal Code and Section 4, 21 of Mines and Minerals (Development and Regulation) Act, 1957 as well as Rule 11, 56 and 41 of Bihar



Mineral (Concession and Prevention of Illegal Mining, Transportation and Storage) Rules, 2019.

Learned counsel for the petitioners submits that for the release of Tractor and JCB in question the petitioners have already deposited the compounding amount. A specific statement has been made in paragraph 8 & 9 of the writ application in this regard. It is his submission that even though the compounding amount has been deposited on 14.03.2022 the Investigating Officer reported to the learned court below on 26.03.2022 that a proposal has been sent to the District Collector for confiscation of the said vehicles. It is for this reason, it is stated that when an application for release of the tractor and trailer was filed vide Annexure '6' to the writ application, the learned Judicial Magistrate, 1st Class, Bettiah, West Champaran made an endorsement thereon rejecting the said application without going into the merit of the case.

In paragraph '14' of the writ application, it is stated that till date the petitioners have not received any notice with regard to the initiation of the confiscation proceeding.

A counter affidavit has been filed on behalf of the respondents. In paragraph '9' of the counter affidavit, it is stated that petitioner nos. 1 & 2 have deposited the penalty and



compounding amount along with a fine of Rs. 30,350/- on 14.03.2022 and Rs. 4,00,000/- on 28.03.2022 respectively. In paragraph '10' of the counter affidavit, it is stated that the facts regarding deposit of the penalty and compounding amount of both the vehicles have been informed to the S.H.O. of Srinagar Police Station.

The counter affidavit nowhere says that any confiscation proceeding has been initiated against the vehicles in question.

Learned counsel for the Department of Mines has reiterated the statement made in paragraph '9' and '10' of the counter affidavit.

In the given facts and circumstances of the case, this Court is of the considered opinion that the learned Judicial Magistrate, 1st Class, West Champaran at Bettiah is not justified in rejecting the application for release of the vehicles that too by making an endorsement on the petition itself. This is a wrong practice adopted by the learned Judicial Magistrate and this Court expects that henceforth he will refrain from passing order by way of an endorsement on the petition itself. Every order of the court must be duly recorded in the order-sheets drawn in accordance with the rules and procedures of the civil court not



in the manner it has been done in the present case.

In the nature of the stand taken in the counter affidavit, this Court directs that the vehicles in question shall be released forthwith in favour of their respective owners subject to satisfaction of the ownership of the vehicles and submission of surety bond (not in cash or in form of bank guarantee) to the extent of the value of the vehicles which will be assessed by the Mines Development Officer, West Champaran, Bettiah within a period of seven (7) days from the date of receipt/production of a copy of this order.

The petitioners shall also furnish an undertaking that they will not deal with the vehicles or part with the possession in favour of any third person and as and when required they will produce the vehicles before the competent court.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

