

IN THE HIGH COURT OF ODISHA, CUTTACK

ABLAPL No. 1167 of 2022

An application under section 438 of the Code of Criminal Procedure in connection with Jakhapura P.S. Case No. 06 of 2022 corresponding to C.T. Case No. 102 of 2022 pending in the Court of J.M.F.C., Jajpur Road.

Prasannajit Nayak

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Petitioner

-Versus-

State of Odisha

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Opposite Party

For petitioner:

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Mr.Sidhartha Das
Advocate

For State of Odisha:

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Mr. Ashok Kumar Parija
Advocate General
Mr. Arupananda Das
Addl. Govt. Advocate

सत्यमेव जयते

CORAM:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Order: 21.02.2022

S.K. SAHOO, J. The petitioner has knocked at the portals of this Court for grant of anticipatory bail under section 438 of Code of Criminal Procedure apprehending arrest in connection with Jakhapura P.S. Case No. 06 of 2022 corresponding to C.T. Case No. 102 of 2022 pending in the Court of J.M.F.C., Jajpur Road for

commission of offences under section 379 of the Indian Penal Code read with section 21 of the Mines & Minerals (Development and Regulation) Act, 1957 (hereafter 'M.M.D.R. Act').

2. The case of the prosecution, in short, is that basing on a public complaint received from the villagers regarding theft of morrum by the petitioner, the Tahasildar, Danagadi vide letter No.318 dated 25.01.2022 lodged a written report before the Inspector in-charge of Jakhapura police station stating therein that on receipt of the aforesaid complaint, R.I., Danagadi duly enquired into the matter and reported that the petitioner, who is a resident of Jakhapura is involved in theft of 8000 cum of morrum from the land measuring an area Ac.55.00 of Khata No.419, Plot No.865, kissam Salajangal of mouza- Jakhapura. He requested the Inspector in-charge of Jakhapura to register the F.I.R. against the petitioner and take immediate action.

On the basis of such first information report, Jakhapura P.S. Case No.06 dated 26.01.2022 was registered under section 379 of the Indian Penal Code read with section 21 of the M.M.D.R Act against the petitioner.

3. Mr. Sidhartha Das, learned counsel for the petitioner submitted that due to political rivalry, the case has been falsely instituted and none of the villagers alleged anything against the

petitioner regarding theft of morrum and the petitioner is a local man and there is no chance of his absconding or tampering with the prosecution evidence. Learned counsel urged that the ingredients of the offence under section 21 of the M.M.D.R. Act are not attracted in the factual scenario and moreover, such offence is triable by the Special Court but no Special Court has yet been constituted in the State of Odisha in spite of the provision under section 30-B of the M.M.D.R. Act and a Court can take cognizance of any offence punishable under the M.M.D.R. Act or the rules made thereunder only upon a complaint in writing made by a person authorised in this behalf by the Central Government or the State Government and therefore, the anticipatory bail application may be favourably considered.

4. On such submission being made by the learned counsel for the petitioner, the Registry of this Court was asked to get information as to whether any Special Court has been constituted in the State of Odisha in view of section 30-B of the M.M.D.R. Act and the answer was in negative.

Taking into account the importance of the matter regarding non-constitution of Special Courts in the State of Odisha to try the offences under M.M.D.R. Act, the learned Advocate General was requested to remain present to assist the

Court during the hearing of the anticipatory bail application and he graciously assisted this Court without taking any side and fairly submitted that the State Government has not yet constituted any Special Court in terms of the provisions under section 30-B of the M.M.D.R. Act.

The learned Advocate General submitted on 09.02.2022 that he has obtained instruction that only ten cases under M.M.D.R. Act which relates to the Vigilance Cases are pending in the State of Odisha. When it was pointed out to him that there are number of police cases pending in different police stations for investigation and also in different Courts for trial wherein apart from the offences under various sections of Indian Penal Code, offence under section 21 of the M.M.D.R. Act has been added and the learned Magistrates are also trying such offences even though section 30-B of the M.M.D.R. Act requires the constitution of the Special Courts for speedy trial of the offences for contravention of the provisions of sub-section (1) or sub-section (1-A) of section 4 of the M.M.D.R. Act and the Special Court is the competent Court to try the offence under section 21 of the M.M.D.R. Act along with other connected offences under Indian Penal Code offences in view of the ratio laid down in the case of **Pradeep S. Wodeyar -Vrs.- State of**

Karnataka reported in (2022) 85 Orissa Criminal Reports

(SC) 477, as per order dated 09.02.2022, this Court requested the learned Advocate General to apprise this Court as to how many P.S. Cases have been instituted/pending under section 21 of the M.M.D.R. Act along with the offences under Indian Penal Code, particularly, in some of those districts where such offences are rampant. Simultaneously, this Court also directed the registry to call for a report from the learned District Judges of the State indicating how many P.S. Cases involving offences under M.M.D.R. Act are subjudiced in their respective judgship.

The learned Advocate General has furnished the lists of cases pending in different police stations in the districts of Keonjhar, Sundargarh and Mayurbhanj, from which it appears that total number of cases registered in the aforesaid districts under the M.M.D.R. Act along with the offences under the Indian Penal Code are 195, 251 and 99 respectively.

The learned District Judges of the State have also furnished their respective reports indicating the numbers of cases subjudiced under the M.M.D.R. Act, the details are given below:

Sl. No.	Name of the districts	Nos. of cases pending
1.	Angul	122
2.	Balasore	76

3.	Boudh	16
4.	Balangir	07
5.	Bhadrak	Nil
6.	Bargarh	Nil
7.	Cuttack	60
8.	Dhenkanal	77
9.	Deogarh	13
10.	Ganjam	Nil
11.	Gajapati	Nil
12.	Jharsuguda	14
13.	Jagatsinghpur	06
14.	Jajpur	154
15.	Keonjhar	44
16.	Khurda	29
17.	Kandhamal	Nil
18.	Kalahandi	06
19.	Kendrapara	Nil
20.	Koraput	Nil
21.	Mayurbhanj	99
22.	Malkangiri सत्यमेव जयते	Nil
23.	Nayagarh	16
24.	Nuapada	Nil
25.	Nabarangpur	Nil
26.	Puri	66
27.	Rayagada	03
28.	Sundargarh	116
29.	Sambalpur	19
30.	Sonepur	Nil

5. M.M.D.R. Act, 1957 is the Central Act which governs the development and regulation of mines and minerals in terms of the powers vested in the Central Government. The provisions of the M.M.D.R. Act extend to the whole of India. State Governments have to regulate the mines and minerals in terms of the M.M.D.R. Act. Prior to the comprehensive amendment made in the M.M.D.R. Act in 2015, there have been amendments several times over the years, notably in 1972, 1986, 1994 and 1999. The salient features of M.M.D.R. Amendment Bill 2015 are as follows:-

(i) Removal of discretion; auction to be sole method of allotment: The amendment seeks to bring in utmost transparency by introducing auction mechanism for the grant of mineral concessions. The tenure of mineral leases has been increased from the existing 30 years to 50 years. There is no provision for renewal of leases.

(ii) Impetus to the mining sector: The mining industry has been aggrieved due to the second and subsequent renewals remaining pending. In fact, this has led to closure of a large number of mines. The Bill addresses this issue also. The Bill provides that mining leases would be deemed to be extended from the date of their last renewal to 31st March, 2030 (in the case of captive

mines) and till 31st March, 2020 (for the merchant miners) or till the completion of the renewal already granted, if any, or a period of fifty years from the date of grant of such leave, whichever is later.

(iii) Safeguarding interest of affected persons: There is provision to establish District Mineral Foundation in the districts affected by mining related activities.

(iv) Encouraging exploration and investment: The Bill proposes to set up a National Mineral Exploration Trust created out of contributions from the mining lease holders, in order to have a dedicated fund for encouraging exploration in the country. Transfer of mineral concessions granted through auction will be permitted in order to encourage private investors.

(v) Simplification of procedures and removal of delay: The amendment removes the need for "previous approval" from the Central Government for grant of mineral concessions in case of important minerals like iron ore, bauxite, manganese etc. thereby making the process quicker and simpler. Similarly, the State Governments will devise a system for filling of a mining plan obviating the need for prior approval of the Mining Plans by the Central Government. The Central Government will have revision

powers in case State Governments fail to decide issues within the prescribed time.

(vi) Stronger provisions for checking illegal mining: In order to address the serious problem of illegal mining, the penal provisions have been made further stringent by prescribing higher penalties up to 5 lakh rupees per hectare and imprisonment up to 5 years. *State Governments will now be able to set up Special Courts for trial of offenses under the Act."*

Section 30-B of the M.M.D.R. Act which was inserted by Act 10 of 2015 (w.e.f. 12.01.2015) reads as follows:-

"30-B. Constitution of Special Courts.-(1)

The State Government may, for the purposes of providing speedy trial of offences for contravention of the provisions of sub-section (1) or sub-section (1-A) of section 4, constitute, by notification, as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.

(2) A Special Court shall consist of a Judge who shall be appointed by the State Government with the concurrence of the High Court.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is or has been a District and Sessions Judge.

(4) Any person aggrieved by the order of the Special Court may prefer an appeal to the High Court within a period of sixty days from the date of such order.”

Section 30-B of the M.M.D.R. Act empowers the State Government to constitute as many Special Courts as may be necessary, by notification, to provide speedy trial of the offences for contravention of the provisions of sub-section (1) or sub-section (1-A) of section 4 of the M.M.D.R. Act. Section 4 of the M.M.D.R. Act deals with the aspect of prospecting or mining operation to be under licence or lease. Both the aforesaid sub-sections of section 4 are quoted here-in-below:

4. Prospecting or mining operations to be under licence or lease.-(1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder:

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with terms and conditions of a prospecting licence or mining

lease granted before the commencement of this Act which is in force at such commencement:

Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, the Atomic Minerals Directorate for Exploration and Research of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government company within the meaning of clause (45) of section 2 of the Companies Act, 2013 (18 of 2013), and any other entities including private entities that may be notified for this purpose, subject to such conditions as may be specified by the Central Government;

★ Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union territory of Goa, Daman and Diu.

(1-A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.”

During hearing of the case, the learned Advocate General made a positive statement that the State Government is not against setting up of Special Courts in terms of section 30-B of the M.M.D.R. Act for trial of the offences in certain specified districts of the State where such crimes are frequently reported and is prepared to take effective steps in that regard, however he emphasized on the word 'may' appearing in the section. According to him, the legislature by using such word 'may' has given discretion on the State Government to establish the Special Courts and therefore, it should not be construed as mandatory.

In the case of **State of Bombay -Vrs.- K. P. Krishnan reported in A.I.R. 1960 S.C. 1223**, the Hon'ble Supreme Court was concerned with the 'discretion' conferred on the Government by section 12(5) of the Industrial Disputes Act, 1947 to refer industrial disputes for adjudication. The Court held that though the word used in this connection is 'may', that power is coupled with duty, because of which the word 'may' must mean 'shall'. This shows that when a power is coupled with duty, its exercise almost ceases to be discretionary and it becomes mandatory.

In the case of **State of Uttar Pradesh -Vrs.- Jogendra Singh reported in A.I.R. 1963 S.C. 1618**, it is held

that when a discretion is conferred upon a public authority, which is coupled with an obligation, the word 'may', which denotes discretion, should be construed to mean a command. The Court further held that the legislature uses the word 'may' out of deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed, but the word 'may' in such a situation is capable of meaning 'must'.

Law is well settled that mere use of word 'may' or 'shall' is not conclusive. The question whether a particular provision of a statute is directory or mandatory cannot be resolved by laying down any general rule of universal application. Such controversy has to be decided by ascertaining the intention of the Legislature and not by looking at the language in which the provision is clothed and for finding out the legislative intent, the Court must examine the scheme of the Act, purpose and object underlying the provision, consequences likely to ensue or inconvenience likely to result if the provision is read one way or the other and many more considerations relevant to the issue.

(Ref: Bachahan Devi and Ors. -Vrs.- Nagar Nigam, Gorakhpur : (2008) 12 Supreme Court Cases 372).

State of Odisha is endowed with vast resources of a variety of minerals and occupies a prominent place in the

country as a mineral rich State. Currently, Odisha is endowed with about one third of the estimated national mineral resources. Abundant reserves of high grade Iron ore, Bauxite, Chromite, Manganese ore along with other minerals such as, coal, limestone, dolomite, tin, nickel, vanadium, lead, graphite, gold, gemstone, diamond, dimension and decorative stones etc. are extensively available in the State of Odisha. Occupying an important position on the country's map, the rich minerals reserves of Odisha constitute 28% iron ore, 24% Coal, 59% Bauxite and 98% Chromite of India's total deposits. This has opened up immense possibilities for locating mineral based industries for manufacture of Steel, Ferroalloys, Cement, Alumina/Aluminium, Refractories and Thermal Power etc. along with setting up other auxiliary and ancillary downstream industries. Apart from supporting thousands of jobs, the mining industries provide raw materials, minerals and metals critical to our economy. They provide the foundations for modern living, innovation, engineering and achievements. As per the reports available in the website, there are 243 numbers of various mines existing in the State of Odisha as on 4th March 2020. The rich minerals wealth of the State of Odisha is attributed to its favourable geographical set up. Mined materials are needed to

construct roads and hospitals, to build automobiles and houses, to make computers and satellites, to generate electricity and to provide many other goods and services that consumers enjoy. In addition, mining is economical important for any State and the country.

The list submitted by the learned Advocate General relating to the number of cases reported under the M.M.D.R. Act in three different districts, namely, Keonjhar, Sundargarh and Mayurbhanj indicates that it is increasing from time to time. The reports submitted by learned District Judges as indicated show about the pendency of the cases under the M.M.D.R. Act in most of the districts. It is also reported that the trials under the M.M.D.R. Act cases are being conducted by the learned Magistrates.

At this juncture, it would be profitable to discuss the two decisions of the Hon'ble Supreme Court placed by the learned Advocate General, i.e. **Kanwar Pal Singh -Vrs.- State of Uttar Pradesh and another reported in (2020) 14 Supreme Court Cases 331** and **Jayant and others -Vrs.- State of Madhya Pradesh reported in (2021) 2 Supreme Court cases 670.**

In the case of **Kanwar Pal Singh** (supra), the order of the Allahabad High Court in dismissing petition under section 482 of Cr.P.C. to quash the criminal prosecution, inter alia, for commission of offences under sections 4 and 21 of the M.M.D.R. Act was under challenge. The contention was raised that as per section 22 of the M.M.D.R. Act, no Court can take cognizance of offences under the M.M.D.R. Act except on a complaint in writing by a person authorized by the Central or State Government. The State police not being authorized could not have filed the charge sheet/complaint. The Hon'ble Supreme Court relied upon the decision of the Hon'ble Supreme Court in the case of **State (NCT of Delhi) -Vrs.-Sanjay reported in (2014) 9 Supreme Court Cases 772** and other decisions and held as follows :

"15. We would again advert to the decision in **Sanjay (supra)** which had overruled the decision of the Calcutta High Court in **Seema Sarkar -Vrs.- State: (1995) 1 Cal LT 95** wherein the High Court held the proceedings to be invalid and illegal as the Magistrate had taken cognizance on the basis of a charge sheet submitted by the police under section 21(2) of the M.M.D.R. Act and section 379 of the Indian Penal Code, observing that the cognizance was one that cannot be split or divided. The High Court had further observed that as the complaint

was not made in terms of section 22 of the M.M.D.R. Act, 1957, the cognizance was bad and contrary to law. We have already noted the decision of the Delhi High Court which had directed that the F.I.R. should not be treated as registered under section 379 of the Indian Penal Code but only under section 21 of the M.M.D.R. Act, 1957. These decisions of the Calcutta High Court and the Delhi High Court were reversed and set aside by this Court in **Sanjay (supra)** after referring to section 26 of the General Clauses Act and the meaning of the expression 'same offence', to observe that the offence under section 21 read with section 4 of the M.M.D.R. Act, 1957 and section 379 of the Indian Penal Code are different and distinct. The aforesaid reasoning compels us to reject the contention of the Appellant that the action as impugned in the F.I.R. is a mere violation of section 4 which is an offence cognizable only under section 21 of the M.M.D.R. Act, 1957 and not under any other law. There is no bar on the Court from taking cognizance of the offence under section 379 of the Indian Penal Code. *We would also observe that the violation of section 4 being a cognizable offence, the police could have always investigated the same, there being no bar under the M.M.D.R. Act, 1957, unlike section 13(3)(iv) of the TOHO Act.*

16. In view of the aforesaid discussion, we would uphold the order of the High Court refusing to set aside the prosecution and cognizance of the offence taken by the learned Magistrate under section 379 IPC and sections 3 and 4 of the Prevention of Damage to Public Property Act. *We would, however, clarify that prosecution and cognizance under section 21 read with section 4 of the MMDR Act, 1957 will not be valid and justified in the absence of the authorisation.* Further, our observations in deciding and answering the legal issue before us should not be treated as findings on the factual allegations made in the complaint. The trial Court would independently apply its mind to the factual allegations and decide the charge in accordance with law. In light of the aforesaid observations, the appeal is partly allowed, as we have upheld the prosecution and cognizance of the offence under section 379 IPC and sections 3 and 4 of the Prevention of Damage to Public Property Act."

In the case of **Jayant and others** (supra), where the common judgment and order passed by Madhya Pradesh High Court in dismissing the applications under sections 482 of Cr.P.C. to quash the first information reports registered for the offences, inter alia, under sections 4/21 of the M.M.D.R. Act was challenged, the Hon'ble Supreme Court held as follows:-

"21.1. That the learned Magistrate can in exercise of powers under Section 156(3) of the Code order/direct the In-charge/SHO of the police station concerned to lodge/register crime case/F.I.R. even for the offences under the M.M.D.R. Act and the Rules made thereunder and at this stage the bar under Section 22 of the M.M.D.R. Act shall not be attracted.

21.2. The bar under Section 22 of the M.M.D.R. Act shall be attracted only when the learned Magistrate takes cognizance of the offences under the M.M.D.R. Act and the Rules made thereunder and orders issuance of process/summons for the offences under the M.M.D.R. Act and the Rules made thereunder.

21.3. For commission of the offence under I.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 Authorised Officer for taking cognizance in respect of violation of various provisions of the M.M.D.R. Act and the Rules made thereunder.

21.4. That in respect of violation of various provisions of the M.M.D.R. Act and the Rules made thereunder, when a Magistrate passes an order under Section 156(3) of the Code and directs the In-charge/SHO of the police station concerned to register/lodge the crime case/F.I.R. in respect of the violation of various

provisions of the Act and the Rules made thereunder and thereafter after investigation the In-charge of the police station/investigating officer concerned submits a report, the same can be sent to the Magistrate concerned as well as to the Authorised Officer concerned as mentioned in Section 22 of the M.M.D.R. Act and thereafter the Authorised Officer concerned may file the complaint before the learned Magistrate along with the report submitted by the investigating officer concerned and thereafter it will be open for the learned Magistrate to take cognizance after following due procedure, issue process/summons in respect of the violations of the various provisions of the M.M.D.R. Act and the Rules made thereunder and at that stage, it can be said that cognizance has been taken by the learned Magistrate.

21.5. In a case where the violator is permitted to compound the offences on payment of penalty as per sub-section (1) of Section 23-A, considering sub-section (2) of Section 23-A of the M.M.D.R. Act, there shall not be any proceedings or further proceedings against the offender in respect of the offences punishable under the M.M.D.R. Act or any Rules made thereunder so compounded. However, the bar under sub-section (2) of section 23-A shall not affect any proceedings for the offences under

I.P.C., such as, Sections 379 and 414 I.P.C. and the same shall be proceeded with further.

22. In view of the above and for the reasons stated above, the appeals filed by the violators/private appellants are partly allowed, to the extent quashing the proceedings for the offences under the M.M.D.R. Act-Sections 4/21 of the M.M.D.R. Act only.”

Both the decisions i.e. **Kanwar Pal Singh** (supra) and **Jayant and others** (supra) were considered by a three Judge Bench decision in the case of **Pradeep S. Wodeyar** (supra). In that case, the dismissal order passed by the learned Single Judge of the High Court of Karnataka in the two petitions instituted by the two appellants to quash the criminal proceeding initiated against them for offences, inter alia, under sections 21 and 23 read with sections 4(1) and 4(1-A) of the M.M.D.R. Act was under challenge. The following contentions were raised by the learned counsel for the appellants in that case-

(i) The order of the Special Judge taking cognizance is contrary to law. Cognizance, it is well settled, has to be taken of the offences and not of the offender. Yet the Special Judge has acted illegally, without application of mind in taking cognizance of the Accused;

(ii) A-1 (Pradeep S. Wodeyar) cannot be held vicariously liable since:

(a) He was not in-charge of the affairs of the company at the relevant time during the allegedly illegal transactions;

(b) He was in Indonesia and hence cannot be held personally responsible;

(iii) The Special Court constituted Under Section 30-B of the M.M.D.R. Act has jurisdiction only to try offences for contravention of section (4)(1) or section 4(1-A) of the M.M.D.R. Act, punishable under section 21(1). This power of the Special Court does not extend to taking cognizance (and conducting trial) of offences punishable under the Indian Penal Code;

(iv) Section 193 Code of Criminal Procedure bars the Court of Session from taking cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by the Magistrate under the Code. The only exception is if it has been otherwise expressly provided by the Code of Criminal Procedure or by any other law for the time being in force. There is no specific provision in the M.M.D.R. Act or the Code empowering the Court of Session to take cognizance without an order of committal by the Magistrate; and

(v) Section 22 of the M.M.D.R. Act stipulates that no Court shall take cognizance of any offence punishable under the Act or any Rules made under it except upon a written complaint made by a person authorized in this behalf by the Central Government or the State Government. There was no authorization for the Inspector of the Lokayukta Police and hence there has been a violation of the provisions of Section 22.

The Hon'ble Supreme Court analyzing the contentions raised by the respective parties held as follows:-

"34. Section 193 Code of Criminal Procedure states that the Sessions Court shall not take cognizance of an offence as a Court of original jurisdiction unless the Magistrate commits the case to it. The only exception is if it is expressly provided otherwise by the Code or the statute. Neither the Code nor the M.M.D.R. Act provide that the Special Court could directly take cognizance of the offences. Therefore, the Sessions Court did not have the authority to take cognizance. Section 209 Code of Criminal Procedure provides the Magistrate the power to commit the case. In **Dharam Pal -Vrs.- State of Haryana : (2014) 3 SCC 306**, a Constitution Bench while discussing whether the committing Court was required under section

209 to take cognizance of the offence before committing the case to the Court of Session, held that the Magistrate could either commit the case before or after taking cognizance. In this case, the Special Court has directly taken cognizance. It now needs to be determined if this irregularity in the cognizance order vitiates the entire proceedings for the order to be quashed and set aside.

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44. It needs to be determined if condoning the irregularity of the cognizance order under Section 465 would lead to a 'failure of justice'. In our considered opinion, it would not lead to a failure of justice for the following reasons:

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(iii) Objective of the M.M.D.R. Act: The appellants are accused of the commission of offences under the M.M.D.R. Act involving the export and transportation of minerals without permit. Offences under the M.M.D.R. Act are environmental crimes. These crimes impact upon society at large. These offences cause a detriment to and affect the well-being of the entire community. Environmental crime is not confined within geographical or State limits. The impact of environmental crime transcends borders and time. Environmental crime may or may not have an immediately identifiable human

victim but there can be no mistaking its consequence for the entire bio-system of which human beings are an intrinsic, but not the only element. Environmental crime is in essence a planetary crime, it affects every component of the natural systems with which the planet has been endowed. They constitute our heritage; a heritage which is held in trust by the present for the future. Illegal mining denudes the ecosystem of valuable resources. The destruction of the natural environment has serious consequences for the present and the future. The M.M.D.R. Act must hence be construed in this perspective. At one level, illegal mining deprives the State of its revenues. But the law is not merely a revenue yielding or regulating measure. The essence of the law is to protect human kind and every species whose existence depends on natural resources from the destruction which is caused by rapacious and unregulated mining. The offences which have been taken into account by Parliament while enacting sub-sections (1) and (1-A) of Section 4 intrinsically affect the environment which, in turn, affects the existence of communities who depend on the environment and of every species to whom it provides nurture and sustenance. It is because of the wide-ranging impact of such offences on the life of the community and on the well-being of not only the present, but of the

succeeding generations, that principles such as the precautionary principle, the public trust doctrine and the concept of sustainable development have gained a sure jurisprudential foundation. In environmental crime, there may be no single, immediate victim. The act which predicates the offence is a crime against humanity. These crimes might not be perceived in the present to have immediate, foreseeable or quantifiable repercussions but there is no mistaking that they impact the life of future generations;

(iv) The Preamble of the Act at the time of its enactment indicated that it is an "Act for regulation of mines and the development of minerals". This was substituted by Act 38 of 1999 to emphasise that the "Act provides for the development and regulation of mines and minerals". The amendment to the Preamble is indicative of the intent of the legislature that development and regulation must proceed hand-in-hand, and in order to reduce the increasing magnitude of environmental crime, development needs to be regulated and sustainable. Thus, when Parliament amended the M.M.D.R. Act to include Section 30-B in 2015 for the constitution of Special Courts which would be deemed to be Courts of Session conferred with all requisite powers, the object and purpose of the legislative

provision must be borne in mind. The ultimate object of the provision is to ensure that violators are punished by a speedy process of trial before a Court duly constituted in that behalf.

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54. The Appellant had raised a contention that even if the Special Judge had the power to take cognizance of the offence, he could only have taken cognizance of offences under the M.M.D.R. Act and could not have taken cognizance (and conduct trial) of the offences under the provisions of Indian Penal Code. For this purpose, the counsel for the appellant referred to Section 30-B(1) of the M.M.D.R. Act which states that the State Government may for providing speedy trial of offences under Section 4(1) or Section 4(1-A) of the M.M.D.R. Act constitute Special Courts.

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56. In the case before us, the Special Judge took cognizance and issued summons against the appellants for offences under Sections 409, 420 read with Section 120B I.P.C.; Sections 21 and 23 read with Sections 4(1), 4(1-A) of the M.M.D.R. Act; and Rule 165 read with Rule 144 of the Karnataka Forest Rules, 1969. According to the First Schedule of the Cr.P.C., the offences under Sections 409 and 420 are triable by the Magistrate of the First Class. Section 209 Cr.P.C.

states that if it appears to the Magistrate that the offence is triable exclusively by the Court of Session, then he shall commit the case to the Court of Session. Section 2(hc) of the M.M.D.R. Act states that a Special Court constituted under Section 30-B(1) of the Act is deemed to be the Court of Session. A Special Court designated under the M.M.D.R. Act is a Court of Session which is exclusively vested with the power to try offences under the Act. While the offences under Sections 409 and 420 I.P.C. are triable by the Judicial Magistrate First Class, the issue is whether the offences under the I.P.C. can be tried jointly with the offences under the M.M.D.R. Act by the Special Court.

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60. Therefore, on a combined reading of Sections 4 and 5 of Cr.P.C. along with Section 30-C of the M.M.D.R. Act, it is apparent that the procedure prescribed under the Code shall be applicable to proceedings before the Special Court unless the M.M.D.R. Act provides anything to the contrary. These provisions incorporate the principle of express repeal i.e., unless any provision of the Cr.P.C. is expressly repealed by the provisions of the M.M.D.R. Act, the procedure prescribed under the Cr.P.C. would apply to the proceedings before the Special Court. Provisions of the PC Act, POCSO Act and

NIA Act which expressly provide that the Special Court may try offences under the statute along with other offences is only clarificatory. It is settled law that while contextually interpreting a provision, reference to other statutes which are *pari materia* can be made **[Harshad Mehta v. State of Maharashtra, (2010) 8 SCC 257]**. However, since the provisions in the similar statute on combined trial are only clarificatory, the reference to external aids offers no support to the argument of the appellant.

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62. Since there is no express provision that excludes the application of section 220 Code of Criminal Procedure, it needs to be examined if the M.M.D.R. Act has by necessary implication excluded the application of section 220 Code of Criminal Procedure. In this context, it needs to be determined if section 30-B of the M.M.D.R. Act while establishing the Special Court for offences under section 4 of the M.M.D.R. Act, by necessary implication excludes the application of section 220 Code of Criminal Procedure.

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66. Section 30-B of the M.M.D.R. Act provides for the constitution of the Special Court for 'speedy trial of offences for contravention of the provisions' of Section 4 of the Act. Does the fact that the Special Court has jurisdiction to try

offences under the M.M.D.R. Act oust the jurisdiction of the Special Court to try offences under any other law (in this case the I.P.C.). As has been noted above, the provisions of the Code may be held to be impliedly repealed, only if there is a 'direct conflict' between the provisions such that it is not possible to harmoniously interpret the provisions. It thus needs to be analysed whether Section 30-B of the M.M.D.R. Act and Section 220 Cr.P.C. can be harmoniously construed.

67. The Judicial Magistrate First Class is invested with the authority to try offences under Sections 409 and 420 I.P.C. On the other hand, the Sessions Judge is appointed as a Special Judge for the purposes of the M.M.D.R. Act. If the offences under the M.M.D.R. Act and the I.P.C. are tried together by the Special Judge, there arises no anomaly, for it is not a case where a Judge placed lower in the hierarchy has been artificially vested with the power to try the offences under both the M.M.D.R. Act and the Code. Additionally, if the offences are tried separately by different *fora* though they arise out of the same transaction, there would be a multiplicity of proceedings and wastage of judicial time, and may result in contradictory judgments. It is a settled principle of law that a construction that permits hardship,

inconvenience, injustice, absurdity and anomaly must be avoided. Section 30-B of the M.M.D.R. Act and Section 220 Cr.P.C. can be harmoniously construed and such a construction furthers justice. Therefore, Section 30-B cannot be held to impliedly repeal the application of Section 220 Cr.P.C. to the proceedings before the Special Court.

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75. The Special Judge, it must be noted, took cognizance on the basis of a report submitted under section 173 Cr.P.C. and not on the basis of a private complaint. Therefore, the case is squarely covered by the decision in **Afroz Mohammed Hasanfatta** (supra). The Special Judge took note of the F.I.R., the witness statements, and connected documents before taking cognizance of the offence. In this backdrop, it would be far-fetched to fault the order of the Special Judge on the ground that it does not adduce detailed reasons for taking cognizance or that it does not indicate that an application of mind. In the facts of this case, therefore, the order taking cognizance is not erroneous.

76. Section 22 of the M.M.D.R. Act stipulates that no Court shall take cognizance of any offence punishable under this Act or Rules, except upon a complaint made in writing by a

person authorised on that behalf by the Central or the State Government. It has been contended by the Appellant that before the Special Court (Sessions Court) took cognizance of the offence, no complaint was filed by the authorised person.

77. In State (NCT of Delhi) -Vrs.- Sanjay : (2014) 59 OCR (SC) 522, the principal question which was formulated for the decision of a two-Judge Bench was whether the Magistrate has the power to take cognizance of the offence upon a police report without a complaint from the authorised person under Section 22 of the M.M.D.R. Act. Justice M.Y. Eqbal, delivering the judgment for the two-Judge Bench, held that Section 22 only bars the prosecution and cognizance of offences for contravention of Section 4 of the M.M.D.R. Act without a written complaint and not for offences under the provisions of the Indian Penal Code. The Court also noted the object and policy underlying the M.M.D.R. Act in the context of environmental protection. The Court observed:

62. Sub-section (1-A) of Section 4 of the M.M.D.R. Act puts a restriction in transporting and storing any mineral otherwise than in accordance with the provisions of the Act and the Rules made thereunder. In other words, no person will do mining activity without a valid lease or licence. Section 21 is a penal provision according to which if a person

contravenes the provisions of sub-section (1-A) of Section 4, he shall be prosecuted and punished in the manner and procedure provided in the Act. Sub-section (6) has been inserted in Section 4 by amendment making the offence cognizable notwithstanding anything contained in the Code of Criminal Procedure, 1973. Section 22 of the Act puts a restriction on the Court to take cognizance of any offence punishable under the Act or any Rule made thereunder except upon a complaint made by a person authorised in this behalf. It is very important to note that Section 21 does not begin with a non-obstante clause. Instead of the words "notwithstanding anything contained in any law for the time being in force no court shall take cognizance....", the Section begins with the words "no Court shall take cognizance of any offence."

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70. There cannot be any dispute with regard to restrictions imposed under the M.M.D.R. 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.

In view of the above discussion, the Court held:

- (i) The ingredients constituting an offence under the M.M.D.R. Act and the ingredients of the offences under the Indian Penal Code are distinct; and
- (ii) For the commission of an offence under the Indian Penal Code, on receipt of a police report, the Magistrate having jurisdiction can take cognizance without awaiting a complaint by the authorized officer. A complaint is required in terms of Section 22 only for taking cognizance in respect of a violation of the provisions of the M.M.D.R. Act.

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85. In view of the discussion above, we summarize our findings below:

(i) The Special Court does not have, in the absence of a specific provision to that effect, the power to take cognizance of an offence under the M.M.D.R. Act without the case being committed to it by the Magistrate under Section 209 Cr.P.C. The order of the Special Judge dated 30 December 2015 taking cognizance is therefore irregular;

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(vi) The Special Court has the power to take cognizance of offences under M.M.D.R. Act and conduct a joint trial with other offences if permissible under Section 220 Cr.P.C. There is no express provision in the M.M.D.R. Act which indicates that Section 220 Cr.P.C. does not apply to proceedings under the M.M.D.R. Act;

(vii) Section 30-B of the M.M.D.R. Act does not impliedly repeal Section 220 Cr.P.C. Both the provisions can be read harmoniously and such an interpretation furthers justice and prevents hardship since it prevents a multiplicity of proceedings;

(viii) Since cognizance was taken by the Special Judge based on a police report and not a private complaint, it is not obligatory for the Special Judge to issue a fully reasoned order if it otherwise appears that the Special Judge has applied his mind to the material."

6. Adverting to the contentions raised by the learned Advocate General and in view of the aforesaid recent decision of the Hon'ble Supreme Court in the case of **Pradeep S. Wodeyar** (supra), since the Special Court has got the power to take cognizance of the offences under the M.M.D.R. Act along with the connected offences under Indian Penal Code on the basis of a report submitted by police under section 173 of Cr.P.C. and to conduct joint trial of all such offences if permissible under section 220 of Cr.P.C., taking into account the purpose of amendment made in the M.M.D.R. Act in the year 2015, particularly making stronger provision for checking illegal mining and further fact that the penal provision has been made more stringent by prescribing higher penalties up to rupees five lakh per hectare and imprisonment up to five years and taking into the importance of mines in the State of Odisha, the revenue generated from it, the increasing numbers of crimes reported under the M.M.D.R. Act particularly in some districts like Mayurbhanj, Sundargarh and Keonjhar as per the list submitted by the learned Advocate General, so also in some other districts as reported by the learned District Judges and the positive statement made by the learned Advocate General that the State Government is not against constitution of Special Courts under

section 30-B of the M.M.D.R. Act and since the power of the State Government to establish such Courts for providing speedy trial of the offences is coupled with duty, this Court expects the State Government to take necessary effective steps in that regard at an earliest in consonance with the provision under section 30-B of the M.M.D.R. Act for constitution of Special Courts for speedy trial of offences for contravention of the provisions of sub-section (1) or sub-section (1-A) of section 4 of the M.M.D.R. Act so also the other connected offences as held by the Hon'ble Supreme Court in the case of **Pradeep S. Wodeyar** (supra).

7. Coming to the anticipatory bail application of the petitioner, Mr. Arupananda Das, the learned Addl. Govt. Advocate produced the written instruction from the Inspector in-charge of Jakhapura police station and submitted that the petitioner has got as many as seven criminal antecedents apart from the case in hand. The list furnished by the learned counsel for the State indicates that out of those seven cases, two cases are of the year 2015, one case is of the year 2016, two cases are of the year 2018 and also two cases are of the year 2020.

In view of the criminal proclivity of the petitioner and the nature of accusation against the petitioner, I am not inclined

to grant anticipatory bail to him. Accordingly, the anticipatory bail application stands rejected. The interim protection order dated 09.02.2022 which was extended further on 15.02.2022 stands vacated.

8. Before parting, I feel it appropriate to express my unreserved and deep appreciation for the learned Advocate General as he immediately agreed to argue the matter and rendered ample valuable assistance by doing very laborious work and showed all fairness during his enlightened argument which helped in arriving at a just decision.

A free copy of the order be handed over to the learned Advocate General for compliance.

Issue urgent certified copy as per Rules.

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S.K. Sahoo, J.

Odisha High Court, Cuttack
The 21st February 2022/PKSahoo

