

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

263 (1)

CRM-M-36379-2021 (O&M)

NARESH KUMAR

... Petitioner

Versus

STATE OF HARYANA & OTHERS

... Respondents

W I T H

263 (2)

CRM-M-46854-2021 (O&M)
Date of Decision: 19.05.2022

SOMBIR SINGH

... Petitioner

Versus

STATE OF HARYANA & OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Sandeep Sharma, Advocate
for the petitioner(s).

Mr. Viney Phogat, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

The instant two petition bearing CRM-M-36379 of 2021 titled as 'Naresh Kumar Vs. State of Haryana and others' and CRM-M-46854 of 2021 titled as 'Sombir Singh Vs. State of Haryana and others' are being decided through a common order as the point in issue in both petitions is similar.

Instant petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973, wherein a challenge has been raised to the order dated 05.07.2021 passed by the Judicial Magistrate Ist Class, Charkhi Dadri in

FIR No.156 dated 28.06.2021 under Section 379 of the Indian Penal Code, 1860 and Section 21 of The Mines and Minerals (Development and Regulation) Act, 1957, registered at Police Station Sadar Dadri, District Charkhi Dadri (in the matter of Sombir Vs. State of Haryana); and in Challan under Rule 101 and 104 of the Mining Rule 2012 and Section 21 (A)-4 of The Mines and Minerals (Development and Regulation) Act, 1957 at police Station Sadar Dadri (in the matter of Naresh Kumar Vs. State of Haryana), whereby the Judicial Magistrate Ist Class, Charkhi Dadri, while allowing the applications moved by the respective registered owners of the vehicles in question, has directed the vehicles to be released on payment of 50% of the penalty amount calculated by the respondent-Department.

Learned counsel contends that the condition so imposed by the trial Court is highly onerous and that the penalty assessed by the respondent-Department is Rs.2,00,000/- in the matter of CRM-M-36379-2021 (Naresh Kumar Vs. State of Haryana and others) and Rs.4,00,000/- in CRM-M-46854-2021 (Sombir Singh Vs. State of Haryana and others). It is contended that the petitioners are earning their livelihood through operations of the alleged transport vehicles and that they were carrying the material so loaded, and were not indulged in the business of illegal mining. As a Transporter, they had only received the fare for the material loaded on their vehicles, and being the operators of the said transport vehicles, the penalty so assessed for the material, allegedly mined illegally, could not be fastened upon the petitioners. It is contended that instead of taking action against the consigner and consignee of the material, the vehicles pertaining to the petitioners have been confiscated in reality, on account of impositions

of conditions that are onerous and difficult on the part of the petitioners to discharge.

Reply on behalf of the respondent No.4 has been filed, as per which, the seized vehicles were carrying minerals without any transit pass having been issued by the Mines and Geology Department and as such, the vehicles in questions have been seized in compliance of the provisions of The Mines and Minerals (Development and Regulation) Act, 1957 and the rules framed thereunder. It is contended that the owners of the said vehicles alongwith other persons had conspired together to commit theft of mineral dust and that the petitioners have confessed during the investigation that the vehicles in questions were over-loaded with mineral dust without any transit pass.

I have considered the arguments advanced by the learned counsel for the respective parties.

Apparently, the vehicles were ordered to be released on deposit of 50% of the penalty amount so assessed by the Mines and Geology Department, which has been assessed at the rate of Rs.2,00,000/- and Rs.4,00,000/- respectively. The amount thus requires to be deposited for the purpose of release of the said vehicles was Rs.1,00,000/- and Rs.2,00,000/- respectively on each of the vehicles. The object behind imposing strict conditions is to cause deterrence to the accused so that they do not indulge in any other similar event. A condition, so imposed which is harsh and onerous is likely to defeat the very object of extending the benefit of the release of the vehicles in question and it would rather defeat the object. The same renders operation of the order futile if in case the conditions imposed

thereunder cannot be satisfied by the concerned person.

After hearing learned counsel for the parties and taking into consideration their economic conditions, as also the possibility expressed by the counsel that they may not have been consciously involved in carrying out any illegal activity and may also be the victims of circumstances at the behest of certain unscrupulous elements, I deem it appropriate to modify the order dated 05.07.2021 passed by the Judicial Magistrate Ist Class, Charkhi Dadri only to the extent of conditions so imposed upon the petitioners allowing the release of the vehicles on supurdari to the petitioners on deposit of the 50% of the amount of penalty calculated by the respondent-Department. Hence, instead of the payment of 50% of the penalty amount, so imposed, the petitioners are now required to deposit 1/3rd (i.e. 33%) of the penalty amount so calculated by the respondent-Department. Upon doing so, the vehicles in question shall be released in favour of the registered owners. Apart from above modification, rest of the conditions as imposed in the impugned order shall remain the same.

The present petitions are disposed of, accordingly.

**(VINOD S. BHARDWAJ)
JUDGE**

19.05.2022
rajender

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No