

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

CRM-M-54622-2021
Date of Decision:-14.02.2022

ANKIT

... Petitioner

Versus

STATE OF HARYANA

... Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Manoj Kumar Pundhir, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

KARAMJIT SINGH, J. (Oral)

The present petition has been filed by the petitioner under Section 482 Cr.P.C. with a prayer for quashing the impugned order dated 15.9.2021 (Annexure P-9) passed by Judicial Magistrate Ist Class, Kurukshetra, which was affirmed by the Additional Sessions Judge, Kurukshetra vide its order dated 25.11.2021 (Annexure P-11) whereby the application moved by the petitioner for release of his vehicle bearing No.HR-92A-3070 on Superdari was declined.

The counsel for the petitioner has submitted that aforesaid vehicle of petitioner was illegally seized by Mining Department and he approached the Illaqa Magistrate for its release on Superdari but his request

was declined by the said Court vide order dated 15.9.2021. That the petitioner filed revision petition but remained unsuccessful as the same was dismissed by the Court of Additional Sessions Judge, Kurukshetra vide order dated 25.11.2021. The counsel for the petitioner further submitted that FIR has already been registered against the petitioner for indulging in illegal mining which resulted into seizure of the aforesaid vehicle. The counsel for the petitioner further submitted that as the petitioner is facing criminal charges, the provisions of Sections 451 and 457 Cr.P.C. are applicable in the present case and in this situation the Courts below should have released the vehicle on Superdari in the light of the judgment of the Apex Court in **Sunderbhai Ambala Desai vs. State of Gujarat, 2002(10) SCC 283**. The counsel for the petitioner also referred to order dated 15.10.2020 passed in CRM-M-19322-2020 **Irfan vs. State of Haryana and another**, whereby this Court directed that the vehicle stated to be involved in illegal mining, shall be released on Superdari as ordered by the Judicial Magistrate Ist Class and the order of confiscation dated 21.8.2020 was also quashed in the interest of justice having been imposed without any jurisdiction by the Mining Officer during the pendency of the proceedings.

The counsel for the petitioner also placed reliance on **M/s K.C. Stone Crushing Company and Another vs. State of Haryana and Others, 2021(2) RCR (Criminal) 469**, wherein this Court issued the following directions:-

45. The following directions are thus issued to the respondents:
 - (i) The respondents are directed that in future all such cases where a vehicle is seized in terms of **MMDR Act** or Rules framed thereunder and the penalty

imposed is not paid within a reasonable time, either the requisite steps, as per rules, shall be taken for prosecuting the accused or an appropriate application shall be filed for confiscation of the vehicle in terms of Rule 101(10). A period of 3 months can well be said to be a fairly reasonable time so as to enable the authorities concerned to take requisite steps in this direction. Once a 30 of 33 (31) CRM-M-23190-2020 CRM-M-36757-2020 vehicle is ordered to be confiscated, further steps for auctioning the same may be taken immediately instead of retaining the vehicle in the police station where its condition is bound to deteriorate which would be a loss to the State as well as it will not be able to recover much amount from auction of the vehicle on account of deteriorated condition of the vehicle.

- (ii) All those vehicles, including the vehicles of the petitioners in both the cases, which are presently lying seized by respondent authorities for more than three months, pursuant to inspection carried out in terms of Rule 101 of Mining Rules 2012, and in respect of which the authorities have neither lodged any FIR nor instituted any complaint in the Court and have not even initiated confiscation proceedings shall be dealt with under provisions of Rule 101(10) immediately. The Director, Department of Mines and Geology, Haryana shall ensure that the needful in this regard is done within two weeks from today.
- (iii) Upon the respondent authorities either choosing to lodge a FIR/complaint or choosing to move an application under rule 101 (10) of Mining Rules 2012 for confiscation of vehicle, it shall be open to the Court concerned to entertain an application for release of the vehicle on 'superdari' during the pendency of such proceedings if there is likelihood of delay in conclusion of such proceedings. The Court dealing with such application shall decide the

same independently while considering all such pleas as may be raised by the parties. The Court concerned shall, however, endeavour to dispose of such applications at the earliest.

- (iv) While considering release of vehicle on "superdari", the Court may choose to impose any such strict conditions as deemed fit. The Court concerned may even direct the applicant to deposit in Court an amount equal to the penalty imposed by the authorities concerned or part thereof, in addition to any other condition.

The State counsel while opposing the present petition contended that there is no illegality or infirmity in the impugned orders. However, the fact regarding registration of FIR has been admitted by the State counsel. It is further contended that the Mining Department has already directed the petitioner to deposit the compensation amount through seizure order and till the deposit of the same, no ground is made to release the vehicle on Superdari.

I have considered the submissions made by the counsel for the parties.

The vehicle in question was seized by the Mining Department as it was stated to be involved in illegal mining. Admittedly FIR No.387 dated 8.9.2021 under Section 379 IPC and Section 21(4) of the Mining Act was later on registered with regard to aforesaid allegations of illegal mining. So provisions of Sections 451/457 Cr.P.C. are applicable in the present case and the Magistrate has got power to release the vehicle in question on Superdari to its registered owner in the light of the law laid down in **Sunderbhai Ambala Desai's** case (supra).

Reference to Rule 104 of the Haryana Minor Mineral Concessions Stocking, Transportation of Mineral and Prevention of Illegal Mining Rules, 2012 (for short “the 2012 Rules”) is also important in the facts and circumstances of the present case. Rule 104 of the 2012 Rules reads as under:-

“104. Consequences of illegal or unauthorized mining.- Any act of illegal or unauthorized mining shall be liable to the following:-

- (i) for a first time violation, the said mineral shall be liable to be seized along with the impounding of all such tools, equipment, vehicles or any other things used for such unauthorized operation, which may be released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral extracted and, in addition, a fine which shall not be less than Ten Thousand rupees;
- (ii) for a second time violation, the said mineral shall be liable to be seized along with the impounding of all such tools, equipment, vehicles or any other things used for such unauthorized operation for a minimum period of seven days, which may released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral extracted and, in addition, a fine which shall not be less than fifteen thousand rupees;
- (iii) wherever a person is found to be indulging in such offence for the third time or more, the officer concerned shall register an FIR and handover all such tools, equipment, vehicles or any other things used for such unauthorised operation to the Police. Any such offence shall entail (a) confiscation of all such tools, equipment, vehicles or any other thing used for such unauthorised operation

for a period of minimum thirty days or more, and (b) pecuniary penalty and punishment for the offence as provided under Section 21 of the Mines & Minerals (Development & Regulation) Act, 1957.”

A perusal of the aforesaid Rule makes it clear that confiscation of vehicle, tools equipment etc. is only to be done if the same is found to be indulging in such offence for the third time or more. It is not the case of the respondents that the petitioner was found indulging in illegal mining for the third time or more.

Further Section 21 (4A) of the Mines & Minerals (Development & Regulation) Act, 1957 (in short ‘the 1957 Act’) reads as follows:-

Section 21(4A) “Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.”

As per the said provisions of law, the vehicle was liable to be confiscated by an order of a Court competent to take cognizance of an offence under Section 21(1) of the 1957 Act. Admittedly, till date no such order of confiscation has been passed in the present case by a Court of competent jurisdiction.

In view of the statutory provisions discussed above, I am of the considered opinion that the vehicle in question stated to be seized for the first time could be released on Superdari during the pendency of confiscation proceedings as well as the criminal trial subject to the conditions as are envisaged under the various provisions of law.

In the light of the above, the present petition is allowed and the impugned orders dated 15.9.2021 (Annexure P-9) and dated 25.11.2021 (Annexure P-11) are hereby set aside and the matter is remitted back to the Court of concerned Judicial Magistrate Ist Class, Kurukshetra to decide the matter afresh in accordance with law within a period of **‘one month’** from the date of receipt of copy of this order. It is further made clear that no order regarding confiscation of vehicle in question be passed till the disposal of Superdari application of the petitioner regarding release of vehicle in question.

14.02.2022
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No