

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.7082 of 2022**

Arising Out of PS. Case No.-16 Year-2021 Thana- PIRPAINTI District- Bhagalpur

NITYA NAND SINGH Son of Mahendra Singh (M/s Siway Enterprises),  
Resident of Village - Trimuhan, P.S. - Kahalgaon, District - Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

**Appearance :**

|                          |   |                                                                    |
|--------------------------|---|--------------------------------------------------------------------|
| For the Petitioner       | : | Mr. S.D. Sanjay, Sr. Advocate<br>Mr. Vishwanand Upadhyay, Advocate |
| For the Mines Department | : | Mr. Naresh Dixit, Special P.P. Mines                               |
| For the State            | : | Mr. Shyameshwar Dayal                                              |

**CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN**  
**C.A.V. ORDER**

9      08-05-2023                      Heard learned senior counsel for petitioner, learned Special  
P.P. for the Mines Department learned APP for the State.

2. The petitioner apprehends his arrest in Pirpainti P.S. Case No. 16/2021 dated 20.01.2021 instituted for offences punishable under Sections 378, 379 and 411 of IPC and Rule 39 (2) (3), 43 and 56 of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rule 2019.

3. As per the FIR, it is alleged that pre-paid transporting challans and registered etc. were called for from the petitioner to ascertain as to whether the licence were carrying on the storage and transportation of stone minerals according to the Rule or not, but the petitioner did not submit the transportation challans and registers consequently a team was constituted to make enquiry by the department and it was found that the petitioner has illegally stored



and dispatched 27,059 tons of stone materials between the period 2017 to September 2020 and thus licences were violating the provisions of Bihar Minor Minerals Concession Rules 1972 and Bihar Mineral Rules 2019.

4. Learned Counsel for the petitioner submits that petitioner is innocent, has committed no offence and has falsely been implicated in present case. He submits that the petitioner is a proprietor of M/s Shivay Enterprises, which is engaged in the business of extracting mines and licence had duly been given to the petitioner for storage and transportation of stone chips (Minor Mineral) through Railway from the goods sides of Piparpainti Railway tracks. He further submits that the petitioner has already been granted stokes license under form "L" in the year 2017 under rule 49 of BMMC Rule 1972 and after coming of new Bihar Minerals (Concession, Prevention of illegal mining, Transpiration and storage) rules, 2019. The was again granted stockist licence in form "K" bearing license, No. 43/2019 which was renewed UP to 31st December 2020.

5. He further submits that the above said Rule 2019 is a complete code in itself and has provided the procedure for the proceeding initiated for trail of any offence. Rule 39 (2)(3), 43 and 56 of the above said rules defines the offence and Punishment and Rule 61 clearly provides that "No Court inferior to that of a Magistrate of the first class try any offence punishable under these



rules and no court shall take cognizance of any offence under these rules, except upon a written complaint made in writing by the competent officer of Dy. Director of Mines or Additional Director of Mines or Director of Mines or any other officer empowered by the Government. He further submits that in the present case no complaint has been filed by any competent officer before a competent court rather the police has lodged Pirpanti P.S. Case No. 16 of 2021 and is investigating the case who has no jurisdiction to investigate a case where offence alleged to be committed under the above said rule.

6. He further submits that so far as Sections 378, 379 & 411 of India Penal Code is concerned no prima facie case is being made out as no ingredients of the above said section are being fulfilled and so far as rule 56 of the above said rule is concerned, it is stated that petitioner is simply a stockist licensee under rule 39 and 18 concerned with storing and dispensing of his stocked minerals with a valid prepaid mining e-challan issued by the respondents. He used to purchase stone minerals from the State of West Bengal under a valid challan issued by the lessee of that State after payment of the price which includes royalties and other taxes and his job is only to stock the said mineral at his licence hold area and to sell the same to the local purchaser or supplier with a valid prepared challan and thus the petitioner is not liable to pay any royalty again for the disposal of his stored stone minerals.



7. He further submits that the rule 56(1) of above said rule provides that whoever is found to be extracting or remounting minor minerals or on whose behalf such extraction or removal is being made be an agent, a manager, an employee or a contractor or a sub-lease, an employee or a contractor or a sub-lessee, otherwise that in accordance with these Rules, shall be presumed to be party to the illegal removal of the minor mineral and every such person shall be punishable with simple imprisonment which may extend up to two years or with fine, which may extend up to rupees five lakhs or with both.

8. He lastly submits that in view of the above facts and circumstances, it is manifestly evident that no prima facie case under Sections 378, 379 or 411 of the Indian Penal Code and the Rule 39(2) (3), 43 and 56 of the Bihar Mineral Rules, 2019 is being made out against the petitioner and the above said police case has been instituted against the petitioner without having any jurisdiction.

9. Learned Spl. PP for the Mines Department vehemently opposing the prayer for anticipatory bail by submitted that the petitioner is engaged in transportation and selling of stone chips since the year 2017 up till September 2020 and in these periods, the petitioner has altogether transported 27059.00 ton of stone chips on the strength of the stockiest licence issued in his name. From perusal of Letter No. 1482 dated 20.11.2021, which has been sent by the Mines Development Officer, Bhagalpur to the SHO, Pirpainti



Bhagalpur, for the purpose of calculating the amount of loss caused by the petitioner in terms of rupees, wherein it has been stated that in the year 2019-20, about 24,491.00 ton of stone were transported and in the year 2020-21, about 2568.00 ton of stone were transported by the petitioner without any valid prepaid transportation challan. From perusal of the aforesaid letter, it is also evident that total stone chips transported without any Prepaid Transportation causing a loss Challan of Rs. 3,41,44,750.00/-. Due to the aforesaid activities of the petitioner, the State of Bihar has suffered huge loss of revenue.

10. He lastly submits that the petitioner has violated the BMMC Rule and Bihar Mineral Rules and caused a huge loss of revenue to the State of Bihar by storing and transporting the stone chips without any valid prepaid transportation challan and in such situation, the petitioner does not deserve the privilege of Anticipatory Bail.

11. Considering the facts and circumstances of the case, submissions made on behalf of parties and considering the nature of allegation and nature of offence coupled with the fact that petitioner was granted licence for the storing of minor minerals and there is no any specific allegation of mining of stones in State of Bihar against the petitioner, and the fact that the alleged violation of the said Rule is punishable with simple imprisonment which may extend up to two years or with fine, which may extend up to rupees five lakhs or with both, I am



inclined to grant the privilege of anticipatory Bail to the petitioner.

12. Considering the aforesaid facts and circumstances, let the above named petitioner, be released on bail, in the event of his arrest or surrender before the learned Court below within a period of six weeks from today, on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of the learned Court below where the case is pending/successor Court in connection with Pirpainti P.S. Case No. 16 of 2021, subject to the condition as laid down under Section 438 (2) of the Cr.P.C.

13. Accordingly, this application stands disposed of.

**(Anjani Kumar Sharan, J)**

Trivedi/-

|   |  |   |  |
|---|--|---|--|
| U |  | T |  |
|---|--|---|--|

