

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.12716 of 2023**

Arising Out of PS. Case No.-425 Year-2022 Thana- NATHNAGAR District- Bhagalpur

Mithilesh Kumar Mishra, S/o Late Kusheshwar Mishra, R/o Village- Ambaie
Shalehpur, P.S.- Habibpur, Distt- Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar & Anr.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Bijoy Kant Mishra, Advocate
For the State	:	Mr. Navin Kumar Pandey, APP
For Dept. of Mines	:	Mr. Naresh Dixit, Advocate
		Mr. Brij Bihari Tiwary, Advocate

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER**

3 23-05-2023 Heard learned counsel appearing on behalf of the petitioner, learned Additional Public Prosecutor appearing on behalf of the State and learned counsel appearing on behalf of the Mines Department.

Let the defect(s), as pointed out by the office, if any, be removed within a period of four weeks from today.

The accused/petitioner is named in the F.I.R. and apprehending his arrest in connection with Nathnagar (Madhusudanpur) P.S. Case No. 425 of 2022 (G.R. No. 2610 of 2022) registered for the offences punishable under Sections 379, 411/34 of the Indian Penal Code and 11/39/56 BMMC Rule 2019.

The allegation against petitioner is to involve in



activities of illegal mining of sand and business activities arises thereof.

It is submitted by learned counsel appearing on behalf of the petitioner that the land in issue where illegal sand kept stored is not belongs to this petitioner and moreover, the allegation as raised regarding violation of Mining Act/Rules is bailable in nature and as such the provision of section 379 of Indian Penal Code appears only to aggravate the allegation without having any connecting evidence. While concluding the arguments, it is submitted that petitioner found involved in one more criminal case, where he is on bail.

Learned counsel Mr. Naresh Dixit appearing on behalf of Mines Department, Govt. of Bihar, relied upon the report of Hon'ble the Supreme Court in the matter of *Kanwar Pal Singh Vs. The State of Uttar Pradesh and Another* as passed in Criminal Appeal No. 1920 of 2019 dated 18th December, 2019, and submitted that as per the ratio of said report, case under Section 379 of IPC is made out against petitioner.

Considering the aforesaid facts and circumstances and by taking note of the fact, as land in issue, where illegal sand was kept stored, *prima facie* not belongs to this petitioner, accordingly, above named petitioner, in the event of his arrest or



surrender before the court below within a period of four weeks, is directed to be released on bail, furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Bhagalpur/concerned Court, where the case is pending in connection with Nathnagar (Madhusudanpur) P.S. Case No. 425 of 2022 (G.R. No. 2610 of 2022), subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

(Chandra Shekhar Jha, J)

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