

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.781 of 2023

Arising Out of PS. Case No.-229 Year-2022 Thana- NAWADA MUFFASIL District- Nawada

INDU PRABHA BHARTI W/O INDRAJEET KUMAR R/O VILL.-
TULLAPUR, NAROMURAR, P.S- WARISALIGANJ, DISTT.- NALANDA.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Dept. of Mines Government of Bihar, Patna. BIHAR
2. THE DISTRICT MAGISTRATE, NAWADA NAWADA, BIHAR.
3. THE SUPERINTENDENT OF POLICE, NAWADA NAWADA, BIHAR
4. THE OFFICER IN-CHARGE NAWADA MUFASSIL P.S NAWADA MUFASSIL P.S., BIHAR
5. THE MINES INSPECTOR, NAWADA NAWADA, BIHAR.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar
For the Respondent/s : Mr.Gyan Prakash Ojha
For Mines Department : Mr. Naresh Dixit

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 3 19-09-2023 1. Heard learned Counsel for the petitioner, learned Counsel for the State and learned Counsel for the Mines Department.
2. The present writ application has been filed by the petitioner for release of the J.C.B., bearing registration no. BR 01GH/3927 in favour of the petitioner, which was seized in connection with Nawada Mufassil Police Station Case No. 229 of 2022, registered for the offences punishable under Sections 379/411 of the Indian Penal



Code, Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957, and Section 15 of the Environment Protection Act, 1986.

3. The brief facts, giving rise to the present writ application, is that the Mines Inspector, Nawada, on the basis of secret information regarding the illegal transportation, storage and extraction of sand, raided in village Rustampur, near the bank of the river and saw that two trucks and one J.C.B. were engaged in the illegal mining of sand and on seeing the police party, all the persons engaged in illegal mining of sand, along with the drivers of the said vehicles fled away, leaving behind their vehicles. The police seized the said three vehicles. It has further been alleged that due to the illegal transportation/extraction/storage of sand by the J.C.B. of the petitioner, the Government incurred a loss of Rs. 4,00,000/-.
4. Learned Counsel for the petitioner submits that the petitioner is the owner of the J.C.B., in question, and the manner in which the J.C.B., in question, has been kept under the open sky, it will lose its road worthiness. However, learned Counsel for the petitioner submits that without prejudice to his right and contention, the



petitioner is ready to pay the amount of fine of Rs. 4,00,000/- imposed upon the J.C.B. of the petitioner in four instalments of Rs. 1,00,000/- each.

5. Learned Counsel for the Mines Department accepts the offer so made by learned Counsel for the petitioner.
6. Having regard learned Counsel for the parties and on finding that the petitioner is the registered owner and the vehicle, in question, which is lying under open sky and would be definitely causing a loss to the petitioner and the vehicle is losing its road worthiness with passing of every day, keeping in view the principles laid down by the Supreme Court in the case of **Sunderbhai Ambalal Desai vs. State of Gujarat**, reported in **(2002) 10 SCC 283**, followed by **General Insurance Council and Others Vs. State of Andhra Pradesh and Others**, reported in **2010 (6) SCC 768**, this Court directs the learned District Court, at Nawada, to release the J.C.B. vehicle in favour of the petitioner after verifying the ownership of the same within a period of three weeks from the date of receipt/production of a copy of this order, subject to the following conditions:-



(i) That the petitioner shall furnish adequate bank guarantee of Rs. 10,00,000/- to the satisfaction of the learned District Court.

(ii) That the petitioner will produce the proof of deposit of Rs. 1,00,000/- at the time of furnishing bank guarantee;

(iii) That the petitioner shall deposit the rest three instalments of Rs. 1,00,000/- each positively by 7th day of November, 2023, December, 2023 and January, 2024, and submit the receipt showing such deposit before the learned District Court.

(iv) That before handing over the J.C.B. vehicle to the petitioner, a detailed and proper *panchnama* of the said vehicle, after taking its photograph, shall be prepared.

(v) That the petitioner shall also furnish an undertaking on oath that he shall not alienate or part with the ownership of the vehicle, in question, till pendency of the trial.

(vi) In case, the petitioner makes default in the payment of any of the instalment, the learned District Court will proceed to encash the bank guarantee submitted by the petitioner and will also issue necessary direction to the Mines Department/Police to seize the vehicle, in question.



(vii) That the petitioner shall also furnish an undertaking that if any confiscation proceeding is initiated, he will co-operate in that proceeding and produce the vehicle, in question, as and when required by the confiscation authority.

7. This application is allowed with the aforesaid observation and direction.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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