

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6588 of 2023

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Mritunjay Kumar Son of Mundrika Sharma Resident of Village- Khalkochak,
P.S- Makhdumpur, District- Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Mines and Minerals Department, Government of Bihar, Patna.
2. The Mines Commissioner, Bihar, Patna.
3. The Director, Bihar State Mining Corporation Ltd, Patna.
4. The District Magistrate Cum Collector, Gaya.
5. The Superintendent of Police Gaya.
6. The Mining Development officer, Gaya.
7. The Inspector Mining, Gaya.
8. The Incharge cum SHO Belaganj, Police Station, Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rama Kant Sharma, Sr. Advocate Mr. Rajesh Kumar, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha, GA-7
For the Mines	:	Mr. Ajit Kumar, Spl. P. P.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 15-09-2023

Heard Mr. Rama Kant Sharma, learned senior counsel
duly assisted by Mr. Rajesh Kumar, learned counsel appearing
on behalf of the petitioner and Mr. Ajit Kumar, learned Spl. P.P.
for the mines and the learned counsel for the State are present.

2. The petitioner, who is owner of the truck bearing
Registration No. BR25GA 3207, having its old Registration No.
HR3A 4444, preferred the present writ application seeking
direction upon the respondent authorities to release the
aforenoted truck in his favour, which was seized in connection



with Belaganj P.S. Case No. 346 of 2021 dated 08.10.2021 registered under Sections 379 and 411 of the Indian Penal Code and Section 21 Mines and Minerals (Development and Regulation Act) 1957 and Rule 56 of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) (Amendment) Rules 2021.

3. It is the case of the petitioner that the truck, in question, was seized by the officials of Mining Department with the SHO Belaganj Police Station on suspicion that the sand kept on the flank of road was unloaded by the truck, in question. The driver and cleaner were allegedly fled away after noticing the officials of the Mining Department and the petitioner has been made accused only in the capacity of the owner of the truck. Learned counsel for the petitioner further submits that he filed a petition for release of the truck, in question, in the court of learned Additional Chief Judicial Magistrate – II, Gaya on 23.10.2021 and thereafter, a report was sought for from the concerned police station and finally the report was submitted by the police on 09.12.2021 awaiting the response from the department. In the meantime, the petitioner deposited the required fee/fine in term of amended provision of Rule 56 (2) of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) (Amendment) Rules 2021, despite



the fact the truck in question has not been released.

4. In support of the aforesaid averment, the petitioner has brought Letter No. 3297 dated 24.12.2021 showing the payment of the fine/penalty. Learned senior counsel for the petitioner next submitted that in stead of any order for release of the truck, the respondent authorities has initiated a confiscation proceeding vide Confiscation Case No. 18 of 2022 on 09.03.2022 on the recommendation of Senior Superintendent of Police for confiscation of truck bearing Registration No. BR25GA 3207. In the aforesaid situation, the petitioner having found no way out, approached before this Court.

5. Per contra learned Spl. P.P. for mines submitted that the story as stated by the petitioner is contrary to the allegation levelled in the FIR as the petitioner was apprehended while unloading the sand and, moreover, the fine has been deposited belatedly contrary to the Rule 56(4) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules 2019. He vehemently submitted that in case of seizure of the property or vehicle, the offender is under statutory obligation to ensure the payment of fine within a period of one month, however, in the present case, the fine has been deposited beyond the statutory period and, as such, the authorities have initiated the confiscation proceeding. He lastly submits that as



the proceeding has already initiated the District Magistrate, Gaya is the competent authority to consider the grievance of the petitioner for release of the vehicle and for passing appropriate order in this matter.

6. Learned counsel for the State also reiterates the submissions made on behalf of the learned Spl. P. P. for mines.

7. This Court has carefully considered the submissions made on behalf of the parties. The vehicle, in question, of the petitioner has been allegedly seized during the illegal unloading of the sand, though the same has been denied by the petitioner. A hard fact has been placed before this Court that vehicle is lying unattended under the open sky facing the vagaries of the weather, as a result of which the condition is fast deteriorating and in case of its non release, on any appropriate condition, it may get damaged and become junk. Furthermore, the petitioner has also shown his bona fide and deposited the fine though, belatedly beyond the statutory period.

8. It would be worth mentioning here that while dealing with similar matter, the learned co-ordinate Bench of this Court in the case of Ram Chhavila Kumar Vs. State of Bihar and Ors. (CWJC No. 1064 of 2023) has rightly taken note of the observations made by the Hon'ble Supreme Court in the case of *Sunder Bhai Ambalal Vs. State of Gujarat* reported in



[(2002) 10 SCC 283] which reads as follows:

“17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.”

9. This Court is of the opinion that since the matter is pending adjudication before the statutory authority no observation is required on the merit of this case. However, taking note of the aforesaid facts that the vehicle is lying in open, uncared for, expose to vagaries of whether, resulting into fast deterioration of its condition and turning it to a junk and obsolete, which would certainly benefit none, rather it would lead to losses, this Court deems fit and proper to order for provisional release of the vehicle, bearing Registration No. BR25GA-3207, subject to furnishing of supporting papers of ownership and security as deem fit and proper by the authorized officer and the release obviously would be subject to final outcome of the confiscation proceeding.

10. It is further directed that the petitioner will ensure his appearance in confiscation case pending before the Collector – cum – District Magistrate, Gaya on the date fixed in the case and shall fully co-operate in the said proceeding.

11. The Confiscating Officer while fixing the bond for



release of the vehicle, in question, shall take into account the consideration the value of the vehicle as mentioned in the last insurance policy of the vehicle.

12. The petitioner will also give his undertaking that he will not create any third party right and to produce the vehicle in the confiscation case as and when required/directed.

13. It is made clear that the provisional release of the vehicle as directed hereinabove, by the Confiscating Officer shall be effected within a period of two weeks from the date of receipt/production of a copy of this order.

14. In view thereof, the present writ application stands allowed.

(Harish Kumar, J)

shivank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.09.2023.
Transmission Date	NA

