

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44936 of 2023

Arising Out of PS. Case No.-116 Year-2022 Thana- NIMCHAKBATHANI District- Gaya

1. POLENDRA YADAV SON OF RAMESHWAR YADAV RESIDENT OF VILLAGE- KHOKHARI, PS- NIMCHAK BATHANI, DISTT- GAYA
2. DINESH PRASAD SON OF SIYA SHARAN PRASAD RESIDENT OF VILLAGE- KHOKHARI, PS- NIMCHAK BATHANI, DISTT- GAYA

... .. Petitioner/s

Versus

1. The State of Bihar
2. THE STATE MINING DEPARTMENT, BIHAR, PATNA BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Manish Kumar No. 2, Advocate
For the Opposite Party/s : Mr. Shyameshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 22-11-2023 1. Heard learned counsel for the petitioners and learned APP for the State along with learned counsel appearing for the Department of Mines.

2. The learned counsel for the petitioners submits that the present quashing application has been filed seeking quashing of the order dated 23.03.2023 passed by the learned Judicial Magistrate 1st Class, Gaya in Nimchak Bathani P.S. Case No. 116 of 2022 whereby application filed on behalf of the petitioners under Section 451 of the Cr.P.C. seeking release of their tractors bearing Registration No. BR-21-GB-9297 Chassis No. TO53443080BH, Engine No. E3498463 and Tractor bearing Registration No. BR-27G-6635 Chassis No.



MEA386A1DJ2187458, Engine No. 5324E66843 has been rejected.

3. The learned counsel for the petitioners submits that the tractors of the petitioners were seized on the allegation that they were found transporting soil illegally from government land. The learned counsel next submits that the offence is compoundable and the petitioners have paid the amount which was demanded by the Department of Mines, it is next submitted that though the petitioners paid the amount, but the said amount was paid little belatedly which was in breach of Section 56(4) of Bihar Minerals (Concession, Prevention of illegal Mining Transportation & Storage) Rules, 2019. It is next submitted that from perusal of the order impugned, it would manifest that even the learned Trial Court refused to release the vehicles in question on the ground that the amount so deposited by the petitioners was deposited after a period of one month in breach of the Rules, thus, dis-entitling the petitioners from getting their vehicles released.

4. The learned counsel appearing on behalf of the Department of Mines does not dispute the submission of the learned counsel for the petitioners that the amount as demanded by the Department of Mines towards compounding fee has been



paid by the petitioners but then submits that the payment was made belatedly i.e. after a period of one month when the amount ought to have been paid within a period of one months

5. The learned counsel for the petitioners rebuts the submission of the learned counsel appearing for the Department of Mines and submits that what is not in dispute rather stands admitted is that petitioners have paid the compounding fee but then whether belated payment shall disentitle the petitioners from seeking release of the tractors in question is an issue which is yet to be decided in the confiscation proceeding, it is next submitted that till date the confiscation proceeding has not started and if the vehicles are not released, the same will get destroyed standing in the police station with passage of time, it is next submitted that in deserving cases, the right of interim custody provided under Section 451 or 457(1) of the Cr.P.C. cannot be denied and if the vehicle is allowed to remain in the police station till the trial is not concluded, it will be rendered waste and thus would be contrary to the decision of the *Hon'ble Supreme Court in the matter of Sunderbhai Ambalal Desai vs. State of Gujarat reported in (2002) 10 SCC 283.*

6. Considering the submissions made by the learned counsel for the petitioners, the order dated 23.03.2023 passed by



the learned Judicial Magistrate 1st Class, Gaya in Nimchak Bathani P.S. Case No. 116 of 2022 whereby application filed on behalf of the petitioners under Section 451 of the Cr.P.C. seeking release of the tractors bearing Registration No. BR-21-GB-9297 Chassis No. TO53443080BH, Engine No. E3498463 and Tractor bearing Registration No. BR-27G-6635 Chassis No. MEA386A1DJ2187458, Engine No. 5324E66843 was rejected, **is hereby quashed** and the tractors are directed to be released on the following conditions:-

(i) the petitioners shall furnish personal bond of Rs. 3,00,000/- with one solvent surety each in the like amount to the satisfaction of the learned trial court, thereafter the aforesaid tractors shall be handed over to the petitioners on proving ownership of the vehicle;

(ii) whenever required by the competent court, the tractors shall be produced on petitioners' expense at the place directed;

(iii) at the time of release of the tractors, the authorities shall ensure to take note of the chassis number, engine number and registration number of the tractors in presence of the petitioners and obtain their signature and keep the same on record;



(iv) the petitioners shall not alter or change the condition of the tractors in any manner during pendency of the case;

(v) the petitioners shall not create any third party right over the said vehicle; and

(vi) in the event, all or any of the aforesaid conditions are found to be violated, the respondent shall be at liberty to move this Court for seeking modification of the order passed by this Court releasing the tractors.

7. Accordingly, the present quashing application stands allowed.

(Satyavrat Verma, J)

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