

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54839 of 2023

Arising Out of PS. Case No.-113 Year-2023 Thana- DURGAWATI District- Kaimur (Bhabua)

DASHRATH YADAV SON OF RAM NARESH YADAV RESIDENT OF
VILLAGE- NARIRPUR, PS- CHANDAULI, DISTRICT- CHANDAULI,
UTTAR PARDESH

... .. Petitioner/s

Versus

1. The State of Bihar
2. PRINCIPAL SECRETARY MINES AND GEOLOGY DEPT. GOVT. OF BIHAR, PATNA
3. THE DISTRICT MINING OFFICER KAIMUR AT BHABHUA BIHAR
4. S.H.O. DURGAWATI DISTRICT KAIMUR AT BHABHUA BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Uday Pratap Singh, Advocate
For the State	:	Mr. Shyameshwar Dayal, A.P.P.
For the Dept. of Mines	:	Mr. Naresh Dixit, Spl. P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

Date : 08-11-2023

Heard learned counsel for the petitioner, learned A.P.P.

for the State and learned counsel for the Department of Mines.

2. The present quashing application has been filed seeking quashing of the order dated 05.07.2023 passed in Durgawati P.S. Case No. 113 of 2023 registered under Sections 56(1) and 56(2) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Amendment Rules, 2021 by the learned Sub-Divisional Judicial Magistrate, Mohaniya (Kaimur) whereby the learned court below has rejected the application filed under Section 451 of the Cr.P.C. seeking release of the truck bearing registration no. UP-53BT-8975.



3. Learned counsel for the petitioner submits that petitioner has been falsely implicated in the present case. It is further submitted that what is not in dispute rather stands admitted is that petitioner had a valid challan for mining sand, the challan was issued on 22nd April, 2023 at 05:44:07 p.m. and the same was valid till 23.04.2023 at 05:44:07 a.m. It is next submitted that in pursuance of the challan, the petitioner was permitted to enter Prahbu Ghat at Rohtas for mining sand in terms of the challan.

4. Learned counsel for the petitioner submits that from perusal of Annexure-3 at page 24 of the quashing application, it would manifest that the same contains the challan in which details are recorded. Learned counsel further submits that in pursuance of the challan dated 22.04.2023, petitioner entered the area i.e. Prabhu Ghat and thereafter after loading the sand he left the area prior to the time of the challan expiring on 23.04.2023. Learned counsel next submits that while he was on his way to his destination i.e. Karamnasa, the vehicle had a flat tyre on account of which he had to wait at the place where the tyre got flat and was looking for a mechanic but since the day was of Eid as such it was difficult to locate any mechanic but after locating the mechanic the flat tyre got repaired. It is submitted that by that time, the vehicle



of the petitioner was seized for the reason that the petitioner was carrying sand in pursuance of a challan which had expired.

5. Learned counsel for the petitioner submits that it absolutely does not stand to reason that on what basis the vehicle was seized when the same had left Prabhu Ghat prior to 05:44:07 a.m. on 23.04.2023. It is further submitted that from perusal of the prosecution case, it would manifest that the same does not even remotely suggest that petitioner was found carrying illegally mined sand. It is next submitted that the only allegation against the petitioner is that he was carrying sand in pursuance of a challan the time of which had expired.

6. Learned counsel appearing for the Department of Mines submits that the challan dated 22nd April, 2023 was valid for 12 hours and within 12 hours, the petitioner had to mine the sand and also had to reach his destination. It is further submitted that since the challan was expiring on 23.04.2023 at 05:44:07 a.m. then the petitioner ought to have ensured that the sand which he was carrying in pursuance of the challan to reach the destination where it was to be unloaded prior to 05:44:07 a.m. on 23 April, 2023. It is thus submitted that since the petitioner was apprehended with sand loaded on the vehicle at 09:00 a.m. as such the presumption is that he was indulging in illegal mining.



7. Learned counsel for the petitioner rebuts the submission of the learned counsel appearing for the Department of Mines. It is further submitted that the learned counsel for the Department of Mines is not aware of the practical problem with which the sand miners are beseeched. It is next submitted that no doubt the challan was issued on 22.04.2023 and was valid for 12 hours but then the persons in whose favour challans are issued enter the area from where the sand is to be mined but then it is not that the sand is loaded on the vehicle within the time specified but the petitioner managed to get the sand loaded on the vehicle and left by 05:44 a.m. and he had to reach Karamnasa which was nearly 80 Kilometers away from the said place which would have taken nearly 2½ to 3 hours to reach as such the petitioner could have reached the destination where the sand was to be unloaded at least by 09:00 a.m. but for the flat tyre on the way he could not reach on time.

8. Learned counsel at the cost of repetition again submits that petitioner has not indulged in illegal mining, he had a valid challan, he had mined the sand and left the area i.e. Parbhu Ghat but on account of having flat tyre, the vehicle came to be seized not on the ground that petitioner was doing any illegal mining but for the reason that the challan had expired. Learned



counsel next submits that petitioner is willing to pay the compounding fee under protest, subject to the condition that in the event of his acquittal in the criminal trial, Department of Mines would return the said amount to the petitioner with statutory bank interest.

9. Learned counsel appearing for the Department of Mines does not dispute the said contention of the learned counsel for the petitioner.

10. Considering the submission made by the learned counsel for the petitioner, the order dated 05.07.2023 passed in Durgawati P.S. Case No. 113 of 2023 whereby application of the petitioner seeking release of the vehicle bearing registration no. UP-53BT-8975 has been rejected, is hereby quashed and the vehicle is directed to be released on the following conditions that petitioner will pay the compounding fee under protest subject to the outcome of the criminal case.

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



(ii) Whenever required by the competent court, the truck shall be produced on petitioner’s expense at the place directed;

(iii) At the time of release of the truck, the authorities shall ensure to take note of the chassis number, engine number and registration number of the truck in presence of the petitioner and obtain his signature and keep the same on record;

(iv)The petitioner shall not alter or change the condition of the truck in any manner during pendency of the case;

(v) The petitioner 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 opposite parties shall be at liberty to move this Court for seeking modification of the order passed by this Court releasing the vehicle.

11. Accordingly, this application stands allowed.

(Satyavrat Verma, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	09.11.2023
Transmission Date	09.11.2023

