

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12684 of 2023

=====

Aliranjana Kumar son of Late Satish Sharma, resident of Village-Hajipur,
Dhangawan, Police Station-Kako and District-Jehanabad, Bihar-804408.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Mines and Geology, Government of Bihar, Patna.
2. The District Magistrate, Jehanabad.
3. The Superintendent of Police, Jehanabad.
4. The Mineral Development Officer, Jehanabad.
5. The Mines Inspector, Jehanabad.
6. Officer-in-Charge of Bhelawar O.P. of Kako Police Station, District-Jehanabad.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Avinash Chandra, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha (GA-7)
		Mr. Ajeet Kumar, AC to GA-7
For the Mines	:	Mr. Naresh Dikshit, Advocate
		Mr. Utsav Anand, Advocate
		Mr. Brij Bihari Tiwari, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 12-10-2023

Heard Mr. Avinash Chandra, learned counsel
appearing on behalf of the petitioner and Mr. Naresh Dikshit,
learned spl. P.P. for the Mines.

2. The petitioner claimed to be the owner of J.C.B.
bearing registration No. BR25-GA-4401, Engine No.
H00337153, Chassis No. RAJ3DXS4C03135304K has filed the



present writ petition seeking a direction upon the respondent authorities to release the vehicle, in question, which has been seized by respondent no. 4 on 21.07.2023 with false allegation of illegal mining of soil.

3. He further sought a direction upon the respondent authorities to release the J.C.B. because the vehicle was not indulge in mining works, whereas it was indulge in levelling up of agricultural land of a farmer with his permission.

4. The facts of the case leading to the filing of the present writ petition is that on 21.07.2023 while the petitioner was engaged in levelling of agricultural field owned by a farmer namely Satendra Narayan Singh in a nearby village Narayanpur, Khata No. 177, Plot No. 80 and Thana No. 440, with the help of his J.C.B. In the meanwhile, the respondent no. 5, the Mines Inspector, Jehanabad arrived there and seized the J.C.B with an allegation that the vehicle, in question, is indulged in illegal mining of soil without a valid mining chalan and handover it to the custody of Bhelawar O.P. of Kako Police Station *vide* letter no. Camp01/Khanan dated 21.07.2023 (Annexure-P-1).

5. Learned counsel for the petitioner while assailing the impugned seizure has categorically denied the allegation that the J.C.B in question was indulge in any mining or excavating



of the soil, rather the same was being used for levelling up the agricultural land of farmer and in support of the aforesaid assertion, he has also brought on record the application filed by the farmer Satendra Narayan Singh, which is part of the writ petition and marked as Annexure-P-3. The farmer of the land has admitted the fact that in his field, the levelling work was being done on his permission and thus, he produced all the papers relating to ownership of his land and requested to release the J.C.B. vehicle. In the aforesaid backdrop, the learned counsel for the petitioner submits that as the vehicle was not used for any commercial purpose, there was no need to take any chalan from the office concerned. The petitioner further questioned the inspection report which, though, *prima facie* suggests that the vehicle in question was found indulge in illegal mining, but surprisingly the Tractor which is said to be used for the purpose of transportation of soil, has never been seized nor even name of the driver of the J.C.B., who has admitted this fact that the J.C.B, in question, was indulge in the illegal mining and excavating the soil, has been disclosed, which falsifies the entire inspection itself.

6. A counter affidavit has been filed on behalf of the respondent nos. 4 & 5.



7. Mr. Dikshit, learned spl.p.p for the Mines while refuting the aforesaid contentions, vehemently submitted that from the inspection's report and the seizure, it is manifestly appeared that the said J.C.B was cutting the soil and loading on the Tractor, present at the site and the driver of the J.C.B admitted this fact that the soil was being excavated for the commercial purposes and there was traces and marks of Tractor's movements. At the time of seizure, few photographs were also taken, which clearly depicts that the said J.C.B. was excavating the soil and loading on the Tractor as stated in the inspection's report.

8. He further drew the attention of this Court to ***Section 56 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019***, and submits that if the petitioner is ready to pay the penalty, the offence which is allegedly have done by the petitioner shall be compounded. It is also submitted that the penalty has been duly calculated, which comes to Rs. 4,35,250/- and if the petitioner is ready to deposit the same, the vehicle shall be released and the offence shall be compounded.

9. 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 excavation of soil, though the same has been denied by the petitioner. A hard fact has been placed before this Court that the 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 given his bona fide undertaking that he will fully co-operate in the proceeding.

10. It would be worth noting 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) while directing for provisional release of the vehicle 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.”

11. 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. BR25-GA-4401, 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.

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

13. The Confiscating Officer while fixing the bond for release of the vehicle, in question, shall take into consideration the value of the vehicle as mentioned in the last insurance policy of the vehicle.

14. 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.

15. 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.

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

17. Interlocutory Application, if any, stands disposed of.

(Harish Kumar, J)

shoaib/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.10.2023.
Transmission Date	NA

