IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.69916 of 2021

Arising Out of PS. Case No.-16 Year-2021 Thana- PIRPAINTI District- Bhagalpur

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ASHOK KUMAR TULSYAN Son of Late Sitaram Tulsyan Director of M/s CTS Industries Ltd., Resident of 69 A.A. Purana Das Road, P.O. Sarat Bose Road, P.S. Lake, District - Kolkata (West Bengal).

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Mines Development Officer, Bhagalpur.

... ... Opposite Parties.

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Appearance :

For the Petitioner	:	Mr. S.D. Sanjay, Senior Advocate
		Mr. Mohit Agarwal, Advocate
For the Mines Department	:	Mr. Naresh Dixit, Special P.P. Mines
For the State	:	Mr. Satya Nand Shukla, APP

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

CAV ORDER

9 08-05-2023 Heard Mr. S.D. Sanjay, learned senior counsel assisted by Mr. Mohit Agrawal and Ms. Priya Gupta, learned Advocates on behalf of petitioner, Mr. Naresh Dikshit, learned Spl. P.P. for the Mines Department and learned APP for the State.

2. The petitioner apprehends his arrest in Pirpainti P.S. Case No. 16 of 2021 dated 20.01.2021, arising out of G.R. No. 348/2021, instituted for offences punishable under Sections 378, 379 and 411 of IPC and Rule 39 (2) (3), 43 and 56 of Bihar Mineral (Concession, Prevention of Illegal Mining, Transportation & Storage) Rule 2019 (hereinafter referred to as the Miner Mineral Rules, 2019).

3. The prosecution case, in brief, is that the petitioner

was asked to furnish pre-paid challan, registers etc. for the period 2017 to 2020 for the purpose of transportation of minor minerals i.e. stone from Pirpainti Rail Road Siding to other places, which was not submitted and, accordingly, a team found that the petitioner, having License under Bihar Miner Minerals Concession Rule 49(1), has violated the Miner Mineral Rules, 2019. It is further alleged that during the period from 2017 to September, 2020, the petitioner has dispatched Stone Chips to the tune of 5,15,139.10 Metric Tonnes out of which the petitioner dispatched to the extent of 4,43,900 without e-challan which has been alleged to be in violation of Miner Mineral Rules, 2019.

4. Learned senior counsel for the petitioner submits that petitioner is innocent, has committed no offence and has been falsely implicated in present case. He submits that petitioner is a Director of M/s CTS Industries Ltd. which is engaged in the business of extracting mines such as stone chips under valid mining lease, mining licence and other permits in the State of Jharkhand. He sells it in other States after payment of royalties, taxes and other charges on the same to the State of Jharkhand. He further submits that the company M/s CTS Industries Ltd. has been granted Mining Lease by the State of

Jharkhand vide Agreement dated 30.03.2016 for extracting stones/stone boulders for a period of 10 years. The company was also granted consent to operate under Section 25 & 26 of the Water (Prevention & Control of Pollution) Act, 1974 and Section 21(1) of the Air ((Prevention & Control of Pollution) Act, 1981 by the Jharkhand State Pollution Control Board from time to time vide its letter dated 14.06.2016, 28.07.2016, 14.11.2017, 03.02.2018, 14.12.2018, 24.05.2020 and 20.03.2021. On the basis of the mining lease and consent to operate, the company started its crushing machine for crushing stone into stone chips under valid licence, lease agreement and permits.

5. He further submits that the company M/s CTS Industries Ltd. is operating its Mining & Crushing Unit in the State of Jharkhand and is further selling the same from the State of Jharkhand to other States after payment of royalties, taxes and other charges on the same to the state of Jharkhand. Thus, it is making inter-State sale in the State of Bihar and for this purpose it has already taken licence from the competent officer in Form-L under Rule 49(1) of Miner Mineral Rules, 2019.

6. He further submits that from bare perusal of the FIR, it appears that there is no specific or any allegation of any loss

to the revenue of the State of Bihar as the stone chips stored and transported by M/s CTS Industries Ltd. was admittedly mined and crushed in the State of Jharkhand under a valid licence, lease and permit and further admittedly, the royalty and other charges on the stone chips so extracted from the State of Jharkhand was duly paid to the State of Jharkhand. As there was no extraction of any minerals from the State of Bihar, there was no requirement in law for payment of any charges such as royalty to the State of Bihar and, therefore, no allegation of loss to the revenue has been made in the FIR.

7. He further submits that from the facts stated above, it is evident that the company, M/s CTS Industries Limited in which the Petitioner is a Director has no stone mines in the State of Bihar nor is engaged in mining of minor minerals in the state of Bihar. On the contrary, the company is getting its mine products from the State of Jharkhand to the State of Bihar wherein it is maintaining depots and effecting sale and paying huge revenue in the shape of GST to the State of Bihar. The Petitioner could have sold stone chips directly from the State of Jharkhand to the bulk customers in Bihar and in that process the State of Bihar could not have got any revenue as GST because the sale could have been on the basis of GST deposited in the

State of Jharkhand for the interstate sale transaction.

8. He further submits that the Mineral Development Officer himself in his letter No. 459 dated 01.03.2019 has written to the Assistant Director for uploading the quantity of the stock of the petitioner in the user ID of the Department. Thus, there was discrepancy in the website of the department with respect to the stock already shown by the company of the petitioner. Each and every consignment of the stone boulders generates mining challan and the same is available on the website of the department of Mines and Geology of the State of Jharkhand which can be verified for the same. The petitioner also intimated the Mineral Development Officer to verify it. The petitioner had also handed over the hard copy of the same.

9. He further submits that the Mineral Development Officer had written a letter to the learned Additional Sessions Judge-12, Bhagalpur in which he had mentioned about the quantum of fine to the tune of Rs.10,00,000/- but has shown loss of revenue to the tune of Rs. 50.00 Crore as contended by the learned Spl. P.P. (Mines). However, there is absolutely no basis for the aforesaid figures as to where from the loss of revenue has been calculated in absence of any allegation of mining by the petitioner in the State of Bihar.

10. He further submits that from the facts stated above, it is manifestly clear that there is no violation of any provisions of mining law mentioned above. The allegations in the FIR are vague and Rule 49 of the Bihar Minor Concession Rules, 1972 only requires obtaining of licence for stocking of minor minerals and admittedly the Petitioner is having the licence for the period in question which has been renewed from time to time. Further, under Rule 49 of the Bihar Minor Minerals Concession Rules, 1972 as also Rule 39 of the Miner Mineral Rules, 2019, the offences are bailable in nature even if committed by any person which is punishable for an imprisonment for 2 years or with a fine which may be extended to 5 Lakhs or both. However, in the present case there is no such allegation, hence, no offences under these provisions are made out against the petitioner or the company. He further submits that admittedly M/s CTS Industries Ltd. was granted valid license in Form-L by the Mineral Development Officer, Bhagalpur for permission to store stone chips at Pirpainti Rail Goods Siding issued by the Mineral Development Officer, Bhagalpur a stock of about 43,69,067 cft. of stone chips were authenticated to be available with M/s CTS Industries Ltd. Thus, in absence of any foundational facts no offence is made out

under Section 378, 379 or 411 of the IPC.

11. He lastly submits that there is no allegation in the entire prosecution case that the petitioner was found extracting any Minor Mineral anywhere in the State of Bihar and thereby avoided to pay any royalty to the State of Bihar nor any evidence has come to suggest any illegal mining by the petitioner in the State of Bihar to cause any loss of revenue. Thus, it is submitted that the petitioner may be granted the privilege of Anticipatory Bail.

12. Learned Special PP for the Mines Department vehemently opposes the prayer of the petitioner and submits that in the present case altogether three accused were named, the petitioner is one of them. The petitioner is having two license bearing License No.49 of 2018 and 43 of 2018. From perusal of the F.I.R it also appears that the petitioner is engaged in transportation and selling of stone chips since the year 2017 up till September 2020. In these periods, the petitioner has altogether transported 5,15,139 tons of stone chips on the strength of two stockiest licence issued in his name. From perusal of Letter No.1386 dated 27.09.2021 which has been sent by the Mineral Development Officer, Bhagalpur to the Additional District Judge-XII, Bhagalpur in compliance of the

direction of the Court wherein it has been stated that in the year 2017-18, about 45,163 ton of stone were transported without any valid challan whereas in the year 2019-20, about 4,49,125 ton of stone were transported out of which prepaid challan was available only for 1,12,692 tons and in the year 2020-21, 20,850 tons of stone were transported by the petitioner without any valid prepaid transportation challan. From perusal of the aforesaid letter, it is evident that out of total stone chips transported which is 5,15,139 tons, only 1,12,692 tons were transported under a valid transportation challan and 4,02,446 tons were transported illegally without any prepaid challan. He further submits that 4,02,446 tons of stone which were transported by the petitioner without any prepaid transportation challan caused a loss of Rs.50,00,19,162/-. On above a penalty of ten thousand has also been imposed. After calculation due to the petitioner illegally transporting the excavated and mined stored minerals in the state of Bihar caused a loss of Rs.50,00,29,160/-.

13. He further submits that vide Letter No.135 dated 04.02.2020, 316 dated 11.05.2020, 797 dated 30.09.2020 and Letter No.152 dated 04.02.2021, the Mineral Development Officer, Bhagalpur requested the Station Master, Pirpainti to

give the details of stockiest licence holders, who were transporting the stone chips through railway racks, but the Railway Station Master did not furnish any of the information required, afterwards the Mineral Development Officer, Bhagalpur vide Letter No.1090 dated 26.12.2020 suspended the stockiest licence of the petitioner and has directed the petitioner to restrain from storage and transportation of the stone chips under the said license.

14. He further submits that the petitioner has stated that the petitioner company is helping the State of Bihar in generating revenue in the shape of GST and furthermore stated that the petitioner could have sold stone chips directly from the State of Jharkhand to the bulk customers in Bihar and in such process the State of Bihar could not have got any revenue as GST. In response to the aforesaid statement, it is submitted that it is the petitioner who has wished to conduct mining activity, storage and transportation of stone chips in the State of Bihar on its own and if a person who operates or carry any minerals in the State of Bihar has to follow the existing mining rules. Therefore, the statement that petitioner is helping in State of Bihar in generating revenue as GST is baseless and cannot be a ground to let-off the petitioner this illegal transportation and

storage.

15. He further submits that the petitioner's bail application has rightly been rejected by the learned Additional Sessions Judge-XII, Bhagalpur two times considering the fact that petitioner has violated and caused a huge loss of revenue to the State of Bihar by storing and transporting the stone chips without any valid prepaid transportation challan and in such situation, the petitioner cannot be granted such liberty and relief of anticipatory bail. He further prayed before this Hon'ble Court to reject the same and direct the petitioner to deposit the amount which has been misappropriated by the petitioner by transporting and storing the stone chips without any valid license. He lastly humbly submits that Petitioner has caused a huge revenue loss to the State of Bihar to the tune of about Rs. 50 crores and if the petitioner does not deposit the said amount to the concerned authorities, the petitioner does not deserve the privilege of anticipatory bail.

16. Having regard to the facts and circumstances of the case, submissions made on behalf of parties, the nature of allegation and the offence coupled with the fact that petitioner was granted licence for storing of minor minerals and there is no any specific allegation of mining of stones in the State of Bihar

against the petitioner, let the above named petitioner, be released on bail, in the event of his arrest or surrender before the learned Court below within a period of six weeks from today, on furnishing bail bond of Rs.25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of the learned Court below where the case is pending/successor Court in connection with Pirpainti P.S. Case No. 16 of 2021, subject to the condition as laid down under Section 438 (2) of the Cr.P.C.

17. Accordingly, this application stands disposed of.

(Anjani Kumar Sharan, J)

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