

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1104 of 2023

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Amaresh Kumar Singh Son of Sri Panchdev Singh Resident of NH-19,
Dahiyawan Tola, Chapra, P.O.- Chapra, P.S.- Chapra Town, District- Saran at
Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Mines and Geology Department, Government of Bihar, Patna.
3. The District Magistrate, Bhojpur at Ara, District- Bhojpur at Ara.
4. The District Mines Officer, Bhojpur at Ara, District- Bhojpur at Ara.
5. The Mines Inspector, Bhojpur at Ara, District- Bhojpur at Ara.
6. The Station Head Officer, Azimabad Police Station, District- Bhojpur at Ara.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.B.K. Mangalam, Advocate Mr. Awnish Kumar, Advocate Mr. Aradhna Kamal, Advocate Ms. Anita Kumari, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha, GA 7 Mr. Naresh Dixit, Spl.PP Mr. Sangh Mitra Gupta, A.C. G.A.7 Mr. Abhishek Jha, A.C. to G.A.7

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

3 10-04-2023 Heard learned counsel for the petitioner and learned
Special P.P. Mines appearing for the Mines Department.

The petitioner has filed the instant application for
the following reliefs:

*“ For issuance of an appropriate writ in the nature
of CERTIORARI for quashing the seizure list dated
14.12.2022 in respect of petitioner's Truck bearing
Registration No. BR-04GA-2825, which was illegally
seized by the Respondent no.5 on 14.12.2022 and*



was handed over to the Respondent no.6 for the safe custody on the ground that the petitioner's truck was seized by the Respondent no.5 on the ground of overloading but without weighing the petitioner's vehicle and ascertaining the weight of sand loaded on it.

(II) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities for release of the petitioner's seized Truck being Registration No. BR-04GA-2825 in favour of the petitioner on the ground that the petitioner's truck was illegally seized by the Respondent no.5 without ascertaining the quantity of sand loaded on it and therefore, the seizure was without jurisdiction.

(III) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Authorities for payment of compensation and damages suffered by the petitioner because of illegal seizure of his above mentioned truck and for its recovery from the erring officer, who had seized the petitioner's truck but without ascertaining the actual load even after the repeated request of the driver.

(IV) For issuance any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case. That, the substantial question of law involved in the present”.

The facts in brief are that the truck of the petitioner



bearing Registration No. BR-04GA-2825 Engine no. JHPZ104033 Chasis no.MB1NACHD8JPHB7225 which had the national permit for public carrier was seized by the respondents-authorities vide challan issued on 13.12.2022 at 4.30 pm.

It is the categorical case of the petitioner that the sand loaded on the vehicle was as per the quantity mentioned in the challan, however, his vehicle was seized by the Mines Inspector, Bhojpur at Ara (respondent no.5) on the ground of overloading.

Learned counsel submits that seizure under Rule 56(2) of the Bihar Minerals (Concession and Prevention of Illegal Mining, Transport & Storage) Rules, 2019 and even the proceeding under the same is absolutely illegal for the reason that the same would not be applicable in the case of the petitioner. From the materials on record it would transpire that the quantity of sand mentioned in the seizure list against the petitioner's vehicle is based only on eye estimation and not on the basis of actual weight of the vehicle.

It is submitted by learned counsel for the petitioner that although the confiscation proceeding with respect to the vehicle in question has been started however no useful purpose would be served in keeping the vehicle in the custody of the



respondent authorities. Learned counsel submits that the vehicle be released subject to the petitioner satisfying the conditions which may be imposed by the authority concerned. In support of his contention learned counsel for the petitioner relies on the judgment in the case of **Sunderbhai Ambalal Desai versus State of Gujarat [(2002) 10 SCC 283]** and more particularly paragraph no.17 thereof which is reproduced hereunder for ready reference:-

“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.”

It is lastly submitted that as per instructions received, Confiscation Case no.19 of 2023 is pending with respect to the vehicle before the District Magistrate, Bhojpur at Ara (respondent no.3).

Learned Special P.P., Mines Department appearing for the respondents submits that a counter affidavit has been filed on behalf of the respondents stating therein that the vehicle



of the petitioner was carrying 800 cubic ft. of sand against the challan which indicated the load quantity of 700 cubic ft. There is no illegality in the order and the petitioner not having paid the penalty under Rule 56(4) of 2019 Rules, the petitioner may appear in the confiscation case pending before the respondent no.3 which is in seisin of the matter.

Having heard learned counsel for the parties and taking into consideration the averments made, the writ application is disposed of giving liberty to the petitioner to raise all the points raised in the instant application before the authority concerned in the Confiscation Case no.19 of 2023.

So far as the prayer for interim release of the vehicle in question is concerned, the Court finds substance in the submissions made on behalf of the petitioner. In view of the judgment of Hon'ble Supreme Court in the case of Sunderbhai Ambalal Desai (supra) and more particularly paragraph no. 17 thereof as quoted hereinabove, the petitioner is given liberty to move for interim release of the vehicle in question by moving an appropriate application before the Confiscating Authority/District Magistrate, Bhojpur at Ara (respondent no.3). On an application being filed the authority concerned (respondent no.3) shall pass immediate orders and on furnishing



of appropriate bonds/guarantee as well as security for return of the said vehicle if required at any point of time, the vehicle in question shall be released during pendency of the confiscation proceeding, in favour of the petitioner.

In fixing the bond/security to be furnished by the petitioner, the confiscating authority shall take into consideration the value of the vehicle as mentioned in the last insurance policy with respect to the vehicle in question.

The entire exercise with respect to interim release of the vehicle shall be completed within a period of two weeks of communication/receipt of a copy of this order.

This writ application stands disposed of with the above observations and directions.

(Partha Sarthy, J)

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