

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1692 of 2023

Arising Out of PS. Case No.-566 Year-2023 Thana- MANER District- Patna

Subhash Kumar, Son of Shiv Lal Rai, R/o vill - Dostnagar, P.S - Maner, Distt.
- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Dep. of Mines and Geology, Gov. of Bihar, Patna Bihar
2. The Secretary, Department of Mines and Geology, Gov. of Bihar, Patna
3. The District Magistrate, Patna Bihar
4. The District Mining Officer, Patna Bihar
5. The Officer-in-Charge, Maner Police Station, Patna Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Ms.Shilpi Keshari, Advocate
For the State	:	Mr. Abhishek Singh, AC to GA-7
For the Mines	:	Mr. Brij Bihari Tiwari, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 04-12-2023 Heard learned counsel for the petitioner, learned counsel
for the State and learned counsel for the Department of Mines.

2. This writ application has been filed for issuance of an appropriate direction to the respondent authorities to release the truck bearing Reg.No.UP92T6283 which has been seized in connection with Maner P.S. Case No.566 of 2023 dated 02.08.2023 registered for the offences alleged under Sections 379/411/34 of the Indian Penal Code.

3. Petitioner is said to be the owner of the truck and is engaged in doing business of transportation of sand from one place to another place. It is stated that the petitioner has purchased the

truck after getting financial assistance from a finance company.

4. As per the prosecution case, the sub-inspector of police-cum-officer in-charge of Maner police station found that the truck in question was transporting yellow sand by putting on overload plate. A large amount of yellow sand has been dumped in the land in front of a school and the same sand was being transported from thereby loading it on the truck. It is alleged that during enquiry the vehicle owner did not come forward to show any valid document. The allegation is that the owner of the truck and the driver were doing business through truck by storing illegal yellow sand stolen at the said place.

5. It is pleaded in the writ petition that the instant FIR has been lodged only under the various provisions of the IPC and not under the provisions of Bihar Mining (Concession Prevention of Illegal Mining Transportation and Storage) Rule. It is also submitted that the FIR has not been lodged under the Mines Rule 2019 and under the amended Rule 2021, therefore the question of imposing fine under the aforesaid rule would not arise.

6. Learned counsel for the petitioner, however, submits in course of argument that the plea taken in paragraph '8' of the writ application is not being pressed and on instruction she submits that owner of the truck is ready to pay the fine amount, if any, which may be imposed by the Mines Department.

7. Learned counsel further submits that the vehicle in question is lying under open sky and with every passing day it is losing its road worthiness. Four months have already gone since the date of seizure, therefore, keeping in view the principles laid down by the Hon'ble Supreme Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in (2002) 10 SCC 283 and in the case of **General Insurance Council and others Vs. State of Andhra Pradesh and Others** reported in (2010) 6 SCC 768, this Court has been passing the order for release of the vehicles on such terms and conditions as may be imposed.

8. Learned counsel has placed on record a copy of the order dated 19.09.2023 passed by a learned coordinate Bench of this Court in Cr.WJC No.665 of 2023 (Mukesh Yadav @ Mukesh Prasad Yadav Vs. State of Bihar and others) to submit that in the said case the truck was ordered to be released when the petitioner expressed his readiness to pay the amount of fine in three installments.

9. Learned counsel for the Department of Mines has placed before this Court a counter affidavit. It is sworn by the Mining Inspector, District Mining Office, Patna. Learned counsel submits that the truck in question was engaged in illegal storage and transportation of illegal sand from the site and has been seized. It is submitted that in the present case the petitioner would

be liable to pay the compounding fee and cost of 25 times of royalty of minerals loaded on the truck. Learned counsel has taken a stand that if the petitioner is ready to pay the compounding fee and cost which would be equal to 25 times of the royalty of the minerals, the Department of Mines would have no objection to the release of the vehicle in question. It is submitted that the matter may be remitted to the District Mining Officer, Patna who will consider the request of the petitioner and pass an appropriate order disclosing the amount which the petitioner would be liable to deposit.

10. Having regard to the facts and circumstances of the case, this writ application is being disposed of with liberty to the petitioner to file an appropriate application before the District Mining Officer, Patna within a period of two weeks from today whereupon the District Mining Officer shall fix the amount which the petitioner would be liable to deposit for release of the vehicle in question. This Court directs the District Mining Officer to allow the petitioner to deposit the entire amount in three installments as have been ordered by the learned coordinate Bench of this Court in Annexure- '3'.

11. On deposit of the amount so fixed by the District Mining Officer, the vehicle in question shall be released in favour of the petitioner after verifying the documents of ownership of the

vehicle in his name and the release would be subject to the following conditions:-

(i) The owner of the vehicle shall furnish a bank guarantee or any other kind of valuable security to the extent of Rs.5,00,000/- (rupees five lacs) to the satisfaction of the learned court below.

(ii) The owner shall also furnish an undertaking on oath that he shall not alienate or part with the ownership of the vehicle in question during pendency of the case and further in case any confiscation proceeding is initiated in the matter, he will cooperate with the same.

(iii) Before release of the vehicle in question a panchnama shall be prepared by the court below and the same will be kept on the record.

12. This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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