

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.66193 of 2019**

Arising Out of PS. Case No.-66 Year-2019 Thana- BELHAR District- Banka

Kanhaiya Lal Jha, S/o Late Mahadeo Jha R/o village- Rajpur, P.S.- Belhar,
District- Banka

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Manoj Kumar Jha, Advocate
For the Opposite Party/s :	Mr. Anil Kumar, A.P.P.
For the Department of Mines:	Mr. Naresh Dikshit, Spl.P.P.

**CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT**

Date : 16-10-2023

Heard learned counsel for the petitioner; learned
A.P.P. for the State along with learned Spl.P.P. appearing for
Department of Mines.

2. The present quashing application has been filed seeking quashing of the part of the order dated 30.05.2019 passed by the learned Additional Sessions Judge-I, Banka in connection with A.B.P. No. 743 of 2019 arising out of Belhar P.S. Case No. 66 of 2019 registered under Sections 379 and 411 of the Indian Penal Code read with Section 8 of B.M.P.I.M.T.S. Rules 2003 (Amended 2014) and Section 40 of the BMMC Rules, 1972 read with Section 15 of the Forest Environment Protection Act, 1986,



whereby anticipatory bail of the petitioner was allowed with a direction to surrender before the learned Court below within four weeks from the receipt of the order, subject to deposit of loss amount and fine in accordance with law.

The learned counsel for the petitioner submits that the case was taken up on 16.05.2023 when a learned Co-ordinate Bench was pleased to direct that petitioner shall not be arrested. The learned counsel submits that petitioner in compliance of the order dated 30.05.2019 did not surrender within the period of four weeks as directed by the learned Additional Sessions Judge-I, Banka rather he moved before this Court by filing the instant application as the petitioner was aggrieved by the fact that despite not being the owner of the land he was directed to deposit the loss amount and fine in accordance with law.

3. It is next submitted that petitioner is aggrieved by the part of the order dated 30.05.2019, whereby he has been directed to deposit the loss amount and fine in accordance with law which was made a condition precedent for his surrender. The learned counsel next submits that co-accused namely, Shiv Mohan Jha, on



whose ancestral land the illegally mine sand was found had moved before this Court seeking anticipatory bail by filing Cr. Misc. No. 18260 of 2022. It is submitted that a learned Co-ordinate Bench by order dated 18.08.2022 was pleased to grant anticipatory bail to Shiv Mohan Jha after noticing the fact that the land from which the illegally mine sand was recovered was the ancestral land of Shiv Mohan Jha. It is next submitted that despite land belonging to Shiv Mohan Jha he was not saddled with any condition of depositing the loss amount and fine to the Government.

4. The learned counsel thus submits that when petitioner admittedly is not the owner of the land, the condition which has been imposed is onerous. The learned counsel appearing for the Department of Mines is not in a position to rebut the submissions of the learned counsel for the petitioner that Shiv Mohan Jha, who is also as accused in the F.I.R., was granted anticipatory bail by a learned Co-ordinate Bench after noticing that the illegally mine sand was recovered from his ancestral land.

5. Considering the submissions made by the learned counsel for the petitioner, the order dated



30.05.2019 passed by the learned Additional Sessions Judge-I, Banka, wherein a condition has been imposed that the petitioner will deposit the loss amount and fine in accordance with law, is hereby set aside.

6. In the event if the petitioner surrender on or before 31.10.2023, his bail bond shall be accepted on furnishing a bail bond of Rs. 10,000/- (Rupees Ten Thousand) of two sureties of like amount each to the sanctification of the learned Court below as has been recorded in the order dated 30.05.2019 in A.B.P. No. 743 of 2019.

7. The quashing application is thus allowed.

(Satyavrat Verma, J)

Nilmani/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	18.10.2023
Transmission Date	N.A.

