

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-41914-2022
Reserved on: 31.01.2023
Pronounced on: 16.02.2023**

Ram Saran

...Petitioner

Versus

State of Haryana

...Respondent

Present: Ms. Ishita Jain, Advocate for
Mr. Namit Khurana, Advocate for the petitioner.

Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

Aggrieved by dismissal of the application for release of the vehicle (JCB Machine bearing registration No.HR04-J-9940), seized for being used in illegal mining under the Mines and Minerals (Development and Regulations) Act, 1957 the petitioner claiming to be its registered owner, has come up before this court, seeking its release.

2. In Sunderbhai Ambalal Desai v. State of Gujarat, (2002) 10 SCC 283, Hon'ble Supreme Court holds,

[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.

[18]. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

3. The State objects that the vehicle involved in illicit mining can only be released after following the directions of the National Green Tribunal. However, perusing the above captioned FIR reveals the incorporation of offenses punishable under the Indian

Penal Code, 1860, [IPC] apart from the mining offenses. The offences under IPC are triable by the traditional criminal courts as per the procedure prescribed under the Code of Criminal Procedure, 1973. As such prima facie, the Criminal Courts trying the offenses under IPC would have jurisdiction to try the accused. Given above, the jurisdiction to adjudicate the release of the vehicle involved in the FIR and the offences under IPC shall also rest with these courts. Consequently, the High Court shall have jurisdiction under section 482 CrPC to adjudicate the release of the vehicle involved in the mine offenses and the offenses under IPC.

4. Given above, the impugned order dated 06.07.2022 (Annexure P-4) passed by Ld. Sub-Divisional Judicial Magistrate, Bilaspur, District Yamuna Nagar, whereby the court had rejected the release of the vehicle, is quashed and set aside. The concerned court, to order the release of the vehicle to the petitioner after verifying the registration certificate and ascertaining that the petitioner is the registered owner of the vehicle, sought to be released. If the vehicle is found to be hypothecated, then information about its release also be sent to the concerned financial agency.

5. In Darshan Singh v. State of Punjab, CWP-24941-2019 etc. decided on 28.01.2020, a Division Bench of this Court passed the following order: -

“6. In the circumstances, we deem it appropriate to order the release of the vehicles on Sapurdari on the condition that the petitioners shall deposit 20% of the assessed amount in cash and give security for the remaining amount along with the other conditions which may have been imposed by the Court to the satisfaction of the Trial Court.

7. In view of the stand of the State it is clear that no useful purpose would be served by keeping these petitions pending. Consequently, the same are disposed of as having been rendered infructuous.”

6. The release of the vehicle mentioned above on superdari shall be subject to the petitioner depositing security by way of a fixed deposit for Rs Five Lacs, with the clause of automatic renewal of the principal and the interest reverting to the linked account, made in favor of the 'Chief Judicial Magistrate' of the concerned district. The fixed deposit may be made from any of the banks where the stake of the State is more than 50% or any of the well-established and stable private sector banks. The fixed deposit need not necessarily be made from the petitioner's account. Such court shall have a lien over the deposit until the case's closure, or discharged by substitution, or up to the expiry of the period mentioned under S. 437-A CrPC, 1973, and at that stage, subject to the proceedings under S. 446 CrPC, the entire amount of fixed deposit, less taxes if any, shall be endorsed/returned to the depositor.

7. Apart from the above-fixed deposit, the petitioner shall execute a bond in the

following manner. In this indemnity bond, the petitioner shall undertake to pay to the State, in case so ordered in these or any related proceedings, the value of the vehicle as per the valuation report quantifying the vehicle's current market value as assessed by a valuer, along with interest at the rate of 6% per annum, compoundable annually. The petitioner shall get the vehicle's valuation done at their expense, and the concerned police officers/other officials shall permit the valuer to inspect the vehicle without any delay or obstruction and shall behave with the valuer and the petitioner decently and respectfully.

8. This order is subject to compliance within two months, failing which it shall eclipse and shall stand recalled automatically under sections 362 and 482 CrPC without any further reference to this court.

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

16.02.2023
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Whether speaking/reasoned:	Yes
Whether reportable:	No.