IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CRM-M-8897-2024
Date of Decision: 21.03.2024

GURDEEP SINGH

…..APPELLANT

VERSUS

STATE OF HARYANA

…...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Brijender Kaushik, Advocate for the appellant.
Mr. B.S. Virk, Sr. DAG, Haryana.

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SANDEEP MOUDGIL, J

1. The jurisdiction of this court has been invoked under section 482 Cr.P.C for setting aside the condition of deposit of Rs. 2 lacs of penalty amount in form of fixed deposit imposed by the mining department vide impugned order dated 31.01.2024(Annexure P-3) passed by JMIC, Ambala in case FIR No. 57 dated 10.01.2024 u/s 21(1) & 21(4)(A) of Mining and Minerals Act,(Regulation of Development) 1957 and section 379 of IPC.

2. It is contended by learned counsel for the petitioner that petitioner is the owner of the Tipper in question bearing registration no. HR-37-E-6485, which has been seized during investigation of FIR No.57 dated 10.01.2024 registered at Police Station Haryana State Enforcement Bureau,(in short HSEnB) District Ambala under Section 21(1) & 21(4)of Mines and Minerals (Regulation of Development) Act, 1927 and Section 379of the IPC, 1860. An application was moved by the petitioner for releasing the Tipper on superdari which was allowed

vide order dated 31.01.2024(Annxure P-3) by the trial court but with the condition to deposit ₹2,00,000/- of penalty amount in the form of Fixed Deposit.

3. He further contends that said condition is onerous and not sustainable in the eyes of law, as the vehicle has been falsely implicated in this case of alleged illegal mining; that vehicle has been wrongly challaned and that no such condition can be imposed unde section 451 Cr.P.C., which provides for passing appropriate orders for custody of the property pending conclusion of enquiry at trial. Learned counsel also refers to ***"Sunderbhai Ambalal Desai v. State of Gujarat" 2003(1) R.C.R. (Criminal) 380; "Ikram v. The State of Rajasthan"***

4. State counsel who is present in the court accept advance notice on behalf of the state and opposes the prayer of the petitioner on the ground that the allegations against the petitioner are serious in nature and the trial court has rightly imposed the condition of depositing the penalty amount of ₹2,00,000/- so as to release the tipper on superdari. It is further submitted that the case laws cited by learned counsel for the petitioner are not applicable to the facts of this case.

5. Heard learned counsel for the respective parties and gone through the record meticulously.

6. The case in hand pertains to release of the tipper bearing registration no. HR-37-E-6485 with a condition to deposit Rs. 2 lacs of penalty amount wherein the counsel of the petitioner contends that the order being illegal should be set aside and has also relied upon section 451 Cr.P.C. which is reproduced herein below:-

> *451. Order for custody and disposal of property pending trial in certain cases. When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may,after recording such evidence as it thinks necessary, order*

it to be sold or otherwise disposed of. Explanation.- For the purposes of this section," property" includes-

[a) property of any kind or document which is produced before the Court or which is in its custody,

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence"

7. A perusal of the above mentioned section makes it abundantly clear that with the inclusion of the word 'may' the court has the discretion regarding the order of disposal and custody. Meaning thereby, The court can apply conditions to the release and the custody of the property.

8. In Sunderbhai Ambala Desai vs State of Gujrat(supra), following observation was made by Hon'ble Supreme Court:

> *"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."*

Further, In Ikram v. The State of Rajasthan (supra), cited by learned counsel for the petitioner, the petitioner was shown as a witness and not as an accused in the charge-sheet but his truck involved in the incident was seized. The prayer for release of the truck was granted requiring the petitioner to furnish bank guarantee of ₹5,00,000/-, which was modified by the High Court to the extent of allowing the petitioner to deposit original title deed of the land instead of bank guarantee. Considering all the circumstances, Hon'ble Supreme Court further modified the condition for release of the vehicle by stipulating that petitioner would furnish personal bond together with an undertaking that he will not transfer the vehicle till conclusion of the trial and produce the same as and when required.

9. In the present case, it is the tractor of the petitioner, who is accused in the case pertaining to Mines and Minerals Act, which has been seized during investigation and as such, the cited authority is not applicable. Further, the contention of learned counsel for the petitioner to the effect that condition to deposit ₹2,00,000/- as penalty is onerous, is also without any merit, as even in Sunderbhai Ambalal Desai's case (supra), it has been held by Hon'ble Supreme Court that Magistrate has to pass appropriate order by taking appropriate bank guarantee as well as security for return of the vehicle. In these facts and circumstances, the condition imposed by learned Magistrate so as to deposit ₹2,00,000/- as penalty in the form of Fixed Deposit, for releasing the vehicle on superdari, cannot be considered to be unreasonable.

10. Moreover, from the perusal of the file it is clearly evident that the vehicle in question apart from the present FIR No. 57 has been repeatedly found to be involved in illegal mining/transport on 11.12.2022 and was released on superdari; again seized by the police 29.10.2023 and was released on superdari.

11. A coordinate Bench of this Court in ***"Amit vs State of Haryana 2019 SCC Online P&H 7325*** dealt with the same situation, when a vehicle belonging to the petitioner was seized under sub-rule 104 of the Haryana Minor Minerals Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012. An application for releasing the vehicle on superdari was rejected by the Magistrate and the order was upheld by the Court of Sessions. This court noticed as under:

> *"2. The brief facts of the case which can been seen from the file would be that vide Annexure P-1, the vehicle belonging to the petitioner was seized under Sub-rule 104 of The Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012 (hereinafter, referred to as 'the Rules'). Learned counsel for the petitioner thereafter, moved an application before the learned Illaqa Magistrate, Palwal for releasing the vehicle Tractor on Superdari to the petitioner who is stated to be the owner of the vehicle. Learned Illaqa Magistrate, Palwal vide impugned order has dismissed the application on the ground that as per Rule 104 of the Rules; the*

> *consequences of illegal or un-authorised mining have been specifically provided the provisions of Rules 104 which is reproduced as under:-*
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> *"104. Consequences of illegal or unauthorised mining---Any act of illegal or unauthorised mining shall be liable to the following:*
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> *(i) for a first time violation, the said mineral shall be liable to be seized along with the impounding of all such tools, equipment, vehicles or any other things used for such unauthorised operation, which may be released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral extracted and, in addition, a fine which shall not be less than Ten Thousand rupees;*
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> *(ii) for a second time violation, the said mineral shall be liable to be seized along with the impounding of all such tools, equipment, vehicles or any other things used for such unauthorised operation for a minimum period of seven days, which may released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral extracted and, in addition, a fine which shall not be less than fifteen thousand rupees;*
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> *(iii) wherever a person is found to the indulging in such offence for the third time or more, the officer concerned shall register an and handover all such tools, equipment, vehicles or any other things used for such unauthorised Operation to the Police. Any such offence shall entail (a) confiscation of all such tools, equipment, vehicles or any other thing used for such unauthorised operation for a period of minimum thirty days or more, and (b) pecuniary penalty and punishment for the offence as provided under* Section 21 *of the Mines & Minerals (Development & Regulation) Act, 1957."*

3. Learned Illaqa Magistrate, Palwal has further observed that against the action taken by the Mining Officer (Officer In charge), an appeal lies to the Director under Rule 109 of the Rules is reproduced as under:-

> *"109. Appeals:- (1) Unless otherwise provided, an appeal against an order passed by the Officer- in-Charge [District Level Environmental Committee] shall lie with the Director;*
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> *(2) An appeal against the order passed by the Director shall lie before the Administrative Secretary of the Department; (3) No order under these rules shall be passed by the competent authority against any person unless he has been issued a show cause and given a Page N: 5 of total 8 Pages 5 of 8 Neutral Citation No:=2024:PHHC:057183 2024:PHHC:057183 CRM-M-11155-2024 reasonable opportunity to make a representation."*

4. Learned counsel for the petitioner has contended that action has been taken under Section 21 (4) *and (4-A) of The Mines and Minerals (Development and Regulation) Act, 1957(hereinafter referred to as 'the Act') and therefore, an application for seeking Superdari would lie in the Court of the Magistrate under the Act itself and even if there are Rules* *providing an alternate remedy, that remedy will not apply in view of the proposition of law that Rules cannot override the provisions of an Act.*

5. I have heard learned counsel for the petitioner and perused the case file.

*6.Section 21 (4)of the Act is a provision provided for penalties with regard to situation where a person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to the seized by an officer of authority specially empowered in this behalf.Section 21(4-*A) of the Act *which was interpreted by way of Act of 38 of 1999 w.e.f. 18.12.1999 provides that any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court. The above two provisions are reproduced as under:-*

> *"21.Penalties:-- (1) xxx (2) xxx (3) xxx (4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to the seized by an officer of authority specially empowered in this behalf.*

(4-A) any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court."

7. The Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012 has been made in exercise of the powers conferred under Section 15 (1)and Section 23 (c)of The Mines and Minerals (Development and Regulation) Act, 1957 in which vide Rule 104 of the Rules, consequences of illegal or unauthorised mining has been provided. Under Rule 104(i) it is specifically provided that for a first time violation, the said mineral shall be liable to be seized along with the impounding of all such tools, equipment, vehicles or any other things used for such unauthorised operation, which may be released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral extracted and, in addition, a fine which shall not be less than Ten Thousand rupees shall be paid.

8. Learned counsel for the petitioner has argued that it was his first time violation, therefore, Rule 104 (i) would apply in the present case The rationale and objective of Rule 104 is apparent. In case of violation by any person using his vehicle or tool etc.; the release of the same can be made only after realisation on the payment of the price of the mineral and the applicable royalty for the mineral extracted apart from fine of Rs.10,000/-. Such kind of provision seems to be a deterrent provision which has been made by the Rules in pursuance of powers derived from the Act. That is *why statutory appeal has been provided under Rule 109 which would lie to the Director. Therefore, a defined procedure has been prescribed under the Rules in order to not only safe guard the interest of the State but also to safe guard the interest of the person from whom the vehicle and the minerals are confiscated by providing the remedy of appeal.*

9. Argument raised by learned counsel for the petitioner that the provisions of Rules 104 and 109 cannot apply because there is a statutory remedy available to him under the Act itself; seems to be an attractive but does not cut any ice. The Rules which have been framed under the provisions of the Act are in operation and are presumed to be valid in law. Not only this, even a perusal of Section 21 (4)& (4-A) of the Act would show that Section 21 (4) of the Act deals with seizure of the vehicle and Section 4-A of the Act deals with the confiscation of the vehicle. This is a case where vehicle has been seized and has not been confiscated at this stage by any order of the Court. Therefore, the remedy, if any for the petitioner would be before the Director as envisaged under Rule 109 of the Rules."

12. The legal position as discussed in Amit's Case (supra) is squarely applicable to the facts of present case. In the present case, it is not the case of petitioner that he has filed any appeal before the Director under Rule 109 of the Rules against imposition of the penalty. Therefore, no illegality is found to be committed by the trial court in making the payment of penalty amount in the form of Fixed Deposit in the court, as condition precedent for releasing the vehicle of the petitioner.

13. In case petitioner is ultimately found to be innocent after trial, the amount to be deposited may be returned to him.

14. In the light of the above, this Court is of the considered view that no fault can be found with the judgment passed by the trial court and the instant petition being devoid of merits is liable to be dismissed.

(SANDEEP MOUDGIL)
JUDGE

21.03.2024
anuradha

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