

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

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CRM-M-11155-2024

**Naresh Kumar**

**.....Petitioner**

**Vs.**

State of Haryana

**.....Respondent**

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**Reserved On.: 19.04.2024**  
**Pronounced On: 26.04.2024**  
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**CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA**

Argued By: Mr. Brijender Kaushik, Advocate  
for the petitioner.

Mr. Randhir Singh, Additional AG, Haryana.

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**DEEPAK GUPTA, J.**

By way of this petition filed under Section 482 Cr.P.C., petitioner has prayed to quash the condition of deposit of ₹2,00,000/- of penalty amount in the form of Fixed Deposit imposed by the Mining Department, for releasing the vehicle of the petitioner, vide order dated 31.01.2024 (Annexure P-3) passed by learned Judicial Magistrate 1<sup>st</sup> Class, Ambala.

2. It is contended by learned counsel that petitioner is the owner of the tractor in question, which has been seized during investigation of FIR No.27 dated 11.11.2023 registered at Police Station Haryana State Enforcement Bureau, District Ambala under Section 21(1) of Mines and Minerals (Regulation of Development) Act, 1927 and Section 379 of the IPC, 1860. Application moved by the petitioner for releasing the tractor on superdari was allowed on 31.01.2024 by the court but with the condition to deposit ₹2,00,000/- of penalty amount in the form of Fixed Deposit. Learned counsel

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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 under 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”* S.L.R. (Criminal) 4797-4799/2023 decided by Hon’ble Supreme Court on 04.05.2023; and CRM-M-9846-2024 titled as *“Sukhchain v. State of Haryana”* decided by co-ordinate Bench of this Court on 26.02.2024.

3. Respondent has opposed the petition.
4. In the status report filed by way of an affidavit of Shri Adarshdeep Singh, HPS, Deputy Superintendent of Police, HSENB, District Ambala, it is submitted that during routine checking in the area of Shahzadpur, District Ambala, the checking party of the Mining and Geographic Department, Haryana caught the petitioner along with his tractor trolley loaded with crushed stones (Bajri) without any E-rawana or bill, which is required to be obtained in compliance of the order dated 23.04.2019 and 19.02.2020 passed by the National Green Tribunal, New Delhi. In furtherance of the letter dated 03.11.2023 received from the Mining Department, FIR was registered and the tractor and trolley seized by the checking team of the Mining Department were taken into possession.
5. Learned State counsel submits that allegations against the petitioner are serious in nature and that learned Judicial Magistrate 1<sup>st</sup> Class,

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Ambala has rightly imposed the condition of depositing the penalty amount of ₹2,00,000/- so as to release the tractor trolley on superdari. It is further submitted that authorities cited by learned counsel for the petitioner are not applicable to the facts of this case.

6. I have considered submissions of both the sides and have perused the record.

7. In *Sunderbhai Ambalal Desai v. State of Gujarat (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.”

8. 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. It is thus evident that matter before Hon'ble Supreme Court in

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*Ikram's* case was pertaining to releasing the vehicle, which belonged to the witness of a case and not to accused.

In the present case, it is the tractor trolley 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.

10. 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.

11. A coordinate Bench of this Court in ***Amit v. 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 be 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

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(Annexure P-5) 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:-

**“104. Consequences of illegal or unauthorised mining---**Any act of illegal or unauthorised mining shall be liable to the following:

(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;

(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;

(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;

(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

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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 be 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 be 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. It is not the case of petitioner that he has

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

13. In view of the aforesaid discussion of legal and factual aspects, this Court finds no merit in the present petition.

Dismissed.

(DEEPAK GUPTA)  
JUDGE

April 26, 2024

Neetika Tuteja

|                           |        |
|---------------------------|--------|
| Whether Speaking/reasoned | Yes/No |
| Whether Reportable        | Yes/No |