

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-16097-2024
Reserved on: 19.04.2024
Pronounced on: 26.04.2024
2024:PHHC: 057260

ISHWAR CHAND

.... PETITIONER

Vs.

STATE OF HARYANA

.... RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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

Mr.Randhir Singh, Addl. AG, Haryana.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C., petitioner has prayed to set aside the order dated 21.12.2023 (*Annexure P3*), whereby application filed under Section 451 CrPC for release of his vehicle, moved by the petitioner, was rejected by the Id. Judicial Magistrate, Naraingarh, District Ambala, subject to payment of fine in case FIR No.431 dated 19.08.2023 under Sections 21(1) and 21(4)(A) of Mines and Minerals (Development and Regulation) 1957 [for short 'the Act'] and Section 379 of IPC, at Police Station Naraingarh, Ambala.

2. Ld. counsel contends that petitioner is owner of the tractor trolley No.HR-04J-2719, which has been impounded during investigation of FIR No.431 dated 19.08.2023 under Sections 21(1) and 21(4)(A) of the Act and Section 379 of IPC, at Police Station Naraingarh, Ambala; that petitioner moved an application to release the vehicle on superdari, but the same was rejected by making it conditional to pay the fine as imposed under Section 21(4A) of the Act read with Rule 104 of the Haryana Minor Mineral

Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012 [for short ‘the Rules’]. Ld. counsel contends that because of the seizure of the vehicle, petitioner is suffering great financial loss, as the tractor trolley in question is his only source of income. It is further contended 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. Ld. State counsel has opposed the bail petition by pointed out that by way of the impugned order dated 21.12.2023, the Court of Id. Magistrate not only rejected the application of the petitioner to release the tractor trolley in question of superdari, but at the same time allowed the application of the Mining department so as to confiscate the vehicle till recovery of the fine amount. Ld. State counsel also pointed out that though by way of the present petition, petitioner has challenged that part of the order, whereby his application for superdari has been rejected but has not challenged the order confiscating the vehicle. Still further, it is contended that vehicle of the petitioner was found to be involved in illegal mining for the third time and that as per the relevant Rules, the vehicle can be released only on payment of fine and in case of non-payment of the same, the same is liable to be confiscated. When this fact was brought to the notice of the Id. Magistrate, the application of the department for confiscation was allowed. Ld. State counsel

submits that no illegality has been committed by the Id. Magistrate and so, the petition deserves to be dismissed.

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

5. 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.”

6. 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.

7. It is thus evident that matter before Hon'ble Supreme Court in *Ikram's case (supra)* 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 the Act, which has been seized during investigation and as such, the cited authority is not applicable.

8. 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 (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 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 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 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 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.”

9. In present case, it is pertinent to notice that while passing the impugned order, ld. trial Court found that vehicle of the petitioner was found to be involved in illegal mining for the 3rd time. The contention of the petitioner to the effect that vehicle was empty at the time of seizure was found to be wrong inasmuch as, as per the seizure memo, sand was loaded in the vehicle. The FIR was registered, as the fine/penalty amount had not been paid by the petitioner. Ld. Magistrate also noticed the details of earlier instances when the vehicle of the petitioner had been seized as it was found to be involved in the illegal mining. Reference was then made to **CRM-M-19322-2020** titled as *Irfan Vs. State of Haryana and another*, decided by the Coordinate Bench of this Court on 15.10.2020, in which it was observed that confiscation could be done at a later stage.

10. Thus, in view of Rule 104 of the Rules and the legal position explained in *Amit's case(supra)*, the application of the department for confiscation was rightly allowed. There is nothing on record to suggest that petitioner filed statutory appeal against imposition of the penalty against him or against confiscation of his vehicle by the department.

11. In view of the factual and legal position as discussed above, no

illegality can be found in the impugned order.

Dismissed.

Pending application(s), if any, also stand disposed of.

26.04.2024

Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>