

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.544 of 2024

Arising Out of PS. Case No.-124 Year-2023 Thana- RUDRAPUR District- Madhubani

Bhairab Thakur Son Of Late Asha Thakur R/O-Mahrail, P.S.-Rudrapur, Distt.-
Madhubani.

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary, Government Of Bihar
2. The Additional Chief Secretary, Department Of Home Government Of Bihar, Patna Bihar
3. The Additional Chief Secretary-Cum Mines Commissioner, Government Of Bihar, Patna Bihar
4. Shree Santosh Kumar Son Of Shree Surendra Kumar Gupta, Mineral Development Officer, Madhubani Bihar
5. Superintendent Of Police, Madhubani Bihar
6. Officer In Charge Rudrapur Police Station, Madhubani Bihar

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 2079 of 2024

Arising Out of PS. Case No.-124 Year-2023 Thana- RUDRAPUR District- Madhubani

Sushil Kumar Yadav @ Sushil Yadav Son of Gonu Yadav Resident of Village
- Karnpur, P.S.- Rudrapur, District- Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar
2. The Additional Chief Secretary, Department of Home, Government of Bihar, Patna Bihar
3. The Additional Chief Secretary - Cum- Mines Commissioner, Govt. of Bihar, Patna Bihar
4. Shree Santosh Kumar Son of Shree Surendra Kumar Gupta Mineral Development Officer, Madhubani
5. Superintendent of Police, Madhubani Bihar
6. Officer In Charge Rudrapur Police Station, Madhubani Bihar

... .. Respondent/s

Appearance :

(In Criminal Writ Jurisdiction Case No. 544 of 2024)

For the Petitioner/s : Mr. Binodanand Mishra, Sr. Advocate
Mr. Sandeep Kumar, Advocate



For the State : Mr. Md. Harun Quareshi, AC to SC-1
For the Deptt. Of Mines : Mr. Naresh Dikshit, Spl. PPMises
Mrs. Kalpana, Advocate
(In Criminal Writ Jurisdiction Case No. 2079 of 2024)
For the Petitioner/s : Mr. Binodanand Mishra, Sr. Advocate
Mr. Sandeep Kumar, Advocate
For the State : Mr. Raghwendra Kumar, SC-22
For the Deptt. Of Mines : Mr. Naresh Dikshit, Spl. PP Mines
Mrs. Kalpana, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date :16-12-2025

Cr.WJC No. 544 of 2024 has been filed on behalf of
the petitioner, Bhairab Thakur, seeking following relief(s):

“(i) For issuance of an order, direction or writ including writ in the nature of certiorari quashing the F.I.R bearing the Rudrapur P.S. Case No 124 of 2023 dated 21/10/2023 registered for offences under section 04/21 Mines And Minerals (Regulation and Development) Act, 1957, MMRD Act 1957 & 56 Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage), Revised Rules 2021 and Section 379/34 of I.P.C.

(ii) For issuance of an appropriate declaration holding that institution of FIR and its investigation by the Police is contrary to the provisions of section 22 of the Mines and Minerals (Development and Regulation) Act 1957 and rule 61 of the Bihar Minerals (Concession, prevention of illegal mining, transportation & storage) Rules 2019.

(iii) For issuance of an appropriate declaration holding institution of F.I.R by the Police is totally without Jurisdiction and it is fit to be quashed by this Hon'ble Court.

(iv) For any other relief(s) to which the petitioner may be found entitled in the facts and circumstances of the present case.”



02. Cr.WJC No. 2079 of 2024 has been filed on behalf of the petitioner, Sushil Kumar Yadav @ Sushil Yadav, seeking following relief(s):

“(i) For issuance of an order, direction or writ including writ in the nature of certiorari quashing the F.I.R bearing the Rudrapur P.S. Case No 124 of 2023 dated 21/10/2023 registered for offences under section 379/34 of IPC 04/21 MMRD Act 1957 & 56 Bihar Minerals (Goods and Illegal Mining, Transport & Storage) Prevention, Revised Rules 2021.

(ii) For issuance of an appropriate declaration holding that institution of FIR and its investigation by the Police is contrary to the provisions of section 22 of the Mines and Minerals (Development and Regulation) Act 1957 and rule 61 of the Bihar Minerals (Concession, prevention of illegal mining, transportation & storage) Rules 2019.

(iii) For issuance of an appropriate declaration holding institution of F.I.R by the Police is totally without Jurisdiction and it is fit to be quashed by this Hon'ble Court.

(iv) For issuance of an order, direction or writ including writ in the nature of mandamus, commanding the respondents to release the 6-wheeler tipper bearing Chasis No. HAR3DXSSL02819569, Engine No. H00257771, Reg. No. BR32GB6559 which has been taken away by the police 20.07.2024 from the petrol pump namely Ranjit Highway Service near Kanhauli (Jhanjharpur).

(v) For any other relief(s) to which the petitioner may be found entitled in the facts and circumstances of the present case.”

03. Briefly stated, common facts in both the aforesaid



case(s), are that the District Mining Officer, Madhubani gave a written report to the SHO, Rudrapur P.S., Madhubani about illegal mining and seizure of vehicle and on the basis of said written report, Rudrapur P.S. Case No. 124 of 2023 has been instituted under Sections 379/34 of the Indian Penal Code, Section 4/21 of Mines and Minerals (Development and Regulation) Act, 1957, (for short 'the MMDR Act') and Rule 56 in Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 (for short 'the 2019 Rules'). In the written report, it has been stated that at 10:00 PM on 20.10.2023, the informant received a secret information about illegal mining of sand in between river *Kamla* and its eastern embankment road at Village - Mahrail by a JCB. When the raid was conducted, a JCB, and one *Tipper* (six wheeler) loaded with white sand, were found and the drivers fled away from the spot on seeing the raiding party. Photographs and measurement were taken for the area from which illegal excavation of sand was made. From this measurement, the informant found $3000 + 600 = 3600$ cubic feet of white sand was illegally excavated. The JCB was brought to the police station as the Tipper vehicle could not be started, it was left at the spot. Thus, the case was registered against the owners and



drivers of JCB and Tipper vehicles. The name of the petitioners transpired during investigation as the persons who owned the JCB and the Tipper vehicles, respectively.

04. Mr. Binodanand Mishra, learned senior counsel appearing on behalf of the petitioners, submitted that from the facts of the case, no offence is made out against the petitioners and the FIR has been wrongly instituted and prosecution is malicious. *Tipper* vehicle was not even seized whereas the vehicle of one of the petitioners has been seized without any basis. Learned Senior counsel further submitted that the land in question belongs to the petitioner, Bhairab Thakur, and there is no violation of any of the provision either of the MMDR Act or the 2019 Rules. The Hon'ble Supreme Court in the case of ***Threesiamma Jacob & Ors. Vs. Geologist, Deptt. Of Mining And Geology & Ors., AIR 2013 SC 3251***, held that mineral wealth sub-soil rights vest in the land owner and not in the State. The land owner has proprietary rights of the minerals lying in his land. The Hon'ble Supreme Court further held that the ownership of sub-soil/mineral wealth should normally follow the ownership of the land , unless the owner of the land is deprived of the same by some valid process. If the land from which it is alleged that excavation was made is not the



Government land and it was made from the land belonging to the petitioner, Bhairab Thakur, there could be no violation of any of the provision of either the MMDR Act or the 2019 Rules. The FIR has been instituted for violation of Section 4 and Section 21 of the MMDR Act. This Section 4 provides that prospecting and mining operations must be conducted under a license or lease. So far as Section 4(1A) is concerned, there is no contravention of Section 4(1A) as there was no transportation of any mineral from any Government property. If there is no violation of Section 4 of the MMDR Act, there could be no application of Section 21 of the MMDR Act. Learned senior counsel further submits that the petitioners have not violated any of the provisions of the 2019 Rules so as to attract penalty under Section 56 of the 2019 Rules. It is not the case of the informant that the land belongs to the Government for which any permit was required either for excavation or transportation. Rather, it has been admitted in the counter affidavit of the respondents that the land is *raiyati*. The JCB of the petitioners was being used to level the land and no excavation was made. There is no allegation of transportation of any minerals against these petitioners. Therefore, it is not a case of illegal mining, transportation or storage. Learned senior counsel further



submitted that there is no description of land as no plot number or boundary has been given. So, the place of occurrence is uncertain. Moreover, when it is admitted position of the respondents that the land is not the Government land, for excavating soil from this land, no permission is required.

05. Learned senior counsel for the petitioners further submitted that since no complaint has been made by the land owner, there would be no application of Section 379 of IPC, more so, when nothing has been removed from the land in question. Even otherwise, the JCB of the petitioner, Bhairab Thakur, was being used to level the field and no transportation of either soil or sand was being made by the vehicles of the petitioners. Learned senior counsel further submitted that the land of the petitioner, Bhairab Thakur, lies between the eastern and western embankment of river *Kamla* being *Khesra* No. 362(old) and 1006, 1004, 1015, 1017, 1097 (new) etc. which are *khatiyani* and purchased land of the petitioner, Bhairab Thakur, and the land of other villagers also lies between these two embankments. In the rainy season, the river is flooded and it overflows over the agricultural land of the petitioners and other villagers. After the rainy season, the farmers use to level their fields and remove the sand from their agricultural land by means



of JCB and other implements for the purpose of farming. The petitioner, Bhairab Thakur, who is the owner-cum-driver of the JCB having registration No. BR-32 GB-2052 along with petitioner, Sushil Kumar Yadav, who is the owner of Tipper vehicle, had been leveling the surface of his agricultural land in day time. In the night, they left the JCB as well as Tipper vehicle at the site and came home. Thereafter, an apparently false case has been lodged under the mining laws.

06. Learned senior counsel further submitted that during investigation, I.O. found the place of occurrence to be agricultural field of one Sushil Thakur, who is none else but the grandson of petitioner, Bhairab Thakur. The Director, Mines by Memo No. 2830 dated 16.07.2024, instructed all the District Magistrates and the Superintendent of Police that no royalty is payable for non-commercial use of the land. Learned senior counsel referred to the decision in the case of *Murari Singh Harbansh Narayan Singh Vs. State of Bihar Thr. Chief Secretary, Government of Bihar, 2020(1) BLJud 637: 2020 AIJ_PT 1752178*, wherein the Civil Writ was disposed of on the submission of the State-respondents that there could be no auction of a *raiya* land for any purpose without consent of the owner of the land. Same is the situation in the present case, as it



has come on record that the land in question belongs to the petitioner, Bhairab Thakur. Unless consent is opted from the landlord, the said land is not subject to any auction. Learned senior counsel, thus, submitted that from the aforesaid submission, it is clear that no offence is made out against the petitioners either under Section 379/34 of IPC or any provisions of the MMDR Act and the 2019 Rules.

07. Learned Special PP, Mr. Naresh Dikshit, appearing on behalf of the respondent no. 4,, vehemently contended that the FIR has been rightly instituted and the vehicles of the petitioners were found involved in illegal mining of white sand and, therefore, same were seized. Moreover, whether there was involvement of the petitioners or not, the same could be decided after full fledged trial and not at this stage in the present writ petitions. The petitioners have no cause of action to file the present writ petitions. Police has investigated the matter and found the allegation of the informant to be true. The petitioners have been illegally mining the white sand from *Kamla* river without valid papers and permit. The petitioners claim that their vehicles were seized from the land belonging to petitioner, Bhairab Thakur. In this regard, a report was sought from the Circle Officer, Andhratharhi and in his



report, it has been clearly stated that the land where the illegal mining and excavation has been done belongs to someone else and does not belong to the petitioner, Bhairab Thakur. Therefore, the statement of the petitioner, Bhairab Thakur, that the land belongs to him is not correct. This petitioner has not produced any document in support of his claim regarding title, possession and ownership of the land where illegal mining was being done. Mr. Dikshit further submitted that the petitioners relied on the letter issued by the Director, Mines vide Memo No. 2830 dated 16.07.2024, but the said letter is for excavation of soil/earth dug from *raiyati* land for non-commercial use. The same is not the case here as the petitioners were engaged in illegal mining/excavation of white sand and not ordinary soil. Moreover, this Memo No. 2830 was issued on 16.07.2024 whereas the incident of illegal mining is of 20.10.2023 and hence, it has no retrospective effect and would not come to the help of the petitioners. Mr. Dikshit further submitted that for the sake of argument, if it is taken that if any quarrying has been made on *raiyati* land, the person making such quarry is required to file an application seeking quarrying permit under Rule 33 of the 2019 Rules. If the petitioners claim that they had been excavating their private land, still, they were supposed to apply



for quarrying permit. Mr. Dikshit further submitted Rule 41 of the 2019 Rules prescribes for getting E-Challan for movement of all minor minerals and Rule 43 provides prohibition on transportation or carrying of any Ore/ mineral without being in possession of a valid transit pass/challan/ E-challan in Form-G or in the prescribed format issued by the Competent Officer under the 2019 Rules. Mr. Dikshit further submitted that no doubt, the petitioners have committed offence and trial has been going on before the competent court. Therefore, the petitioner must face trial and cannot pray for quashing of the FIR. Thus, Mr. Dikshit, submitted that the writ petition(s) is devoid of any merit and the same be dismissed.

08. By way of reply, learned senior counsel appearing on behalf of the petitioners submitted that there is no requirement of getting quarry permit as Rule 33 of the 2019 Rules make it clear that quarrying permit is required for all minerals except sand and stone.

09. I have given my thoughtful consideration to the rival submission of the parties.

10. For quashing of an FIR, the Hon'ble Supreme Court in the case of *State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426*, has given certain



guidelines in paragraph-102, which reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no



investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Normally, an FIR would be liable to be quashed, if it falls within any of the enumerated abovenoted circumstances of the ***State of Haryana v. Bhajan Lal (supra)***.

11. The learned senior counsel for the petitioners has vehemently contended in order to convince this Court that the contents of the FIR and subsequent material collected during investigation would not make out any cognizable offence. The petitioners claimed that the land from which their vehicles were



seized is *raiyati* land and no mines/minerals were seized from the spot. It has also been submitted on behalf of petitioners that the authorities have certified that the land is *raiyati* and relying on the decision of Hon'ble Supreme Court in the case of ***Threesiamma Jacob & Ors. (supra)*** on the proposition that the land owner has the proprietary right over the minerals lying in his land, lodging of FIR is wrong and abuse of process of law. Since no complaint has been made by the land owner, if the contention of the State is taken to be true that the land belongs to some other person, no offence is made out either under the IPC or under the MMDR Act. However, in his counter, the Department of Mines, has disputed these facts submitting that the petitioners have not produced any document showing the land to be *raiyati*, except relying on some reports of Circle Officer and Police Authorities. It has also been contended on behalf of Department of Mines that even for making excavation on *raiyati* land some sort of permit is required.

12. Thus, from the rival contention of the parties, it is clear that the disputed questions of fact are raised in the matter and the petitioners want this Court to adjudicate the same. This Court, in writ jurisdiction under Article 226 of the Constitution of India, would not like to venture into adjudication of disputed



questions of fact. If some material has come in support of the case of the petitioners, they are at liberty to raise their issues before the learned trial court at the time of taking cognizance or at the time of framing of charge. But, in the given facts and circumstances, when the facts are not admitted, the petitioners could not seek quashing of the FIR against them. Therefore, the authorities relied on by the petitioners would not come to their help due to dissimilarity of facts. Accordingly, finding no occasion to intervene in the matter, the instant writ petition(s) are dismissed.

13. However, the petitioners are at liberty to raise all issues and have recourse of law before appropriate forum in appropriate proceeding. All issues are left open and it goes without saying that dismissal of present writ petition(s) would not cause prejudice to the merits of the case of the petitioners.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	13-11-2025
Uploading Date	16-12-2025
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