

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.846 of 2024

Arising Out of PS. Case No.-42 Year-2024 Thana- AWTARNAGAR District- Saran

Chandan Kumar Akela, Son of Tarkeshwar Ray, Resident of Village- Santha,
P.S.- Garkha, District- Saran, Bihar

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar Patna, Bihar
2. The Additional Chief Secretary-cum-Mines Commissioner, Patna, Bihar
3. The District Mining Officer, Saran, District- Saran, Bihar
4. The Station House Officer, Awtarnagar Police Station, District- Saran, Bihar
5. The Investigating Officer of Awatarnagar P.S. Case No. 42/2024 dated 22.02.2024, Awatarnagar Police Station, District- Saran, Bihar

.. ... Respondent/s

Appearance :

For the Petitioner/s	:	Ms. Chhaya Kirti, Advocate Mr.Saket Anand, Advocate
For the State	:	Mr.G.P.-20
For the Deptt. Of Mines	:	Mr. Naresh Dikshit, Advocate Mr. Utsav Anand, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA

CAV JUDGMENT

Date : 29-01-2026

The petitioner has filed the present writ petition seeking following reliefs :

“(i) To issue an appropriate writ in the nature of mandamus or any other writ(s), order(s), direction(s) for issuance of direction to the respondent authorities to release the Vehicle i.e. a Diesel TATA Truck bearing registration number as



*BR04GA8399, Chasis No.-
MAT466416B2N25750 in favor of petitioner,
which was seized by Respondent no.-4.*

*(ii) To issue an appropriate writ in the nature
of mandamus or any other writ(s), order(s),
direction(s) to the concerned respondent to
cancel/quash the F.I.R. lodged as
Awatarnagar P.S. Case No.-42/2024 dated
22.02.2024 under Section 379, 411 of The
Indian Penal Code and Section 4 of MMDR
Act and Section 56 of Bihar Illegal Minerals
Mining Act.*

*(iii) Any other relief(s) for which the
petitioner is found entitled to”.*

2. Briefly stated, the facts giving rise to the present writ petition are that the petitioner is stated to be the owner of a Diesel TATA Truck bearing Registration No. BR-04GA-8399, Chassis No. MAT466416B2N25750. The petitioner is engaged in transportation business. The petitioner claims that he possessed a prepaid pass/*challan* issued by the Government of Bihar, explicitly authorizing the transportation of yellow sand within the specified time frame starting from 09:52:17 AM of 22.02.2024 till 09:52:17 A.M of 23.02.2024.

3. Further case of the petitioner is that while the driver of the petitioner had been lawfully carrying out his duty of transporting yellow sand well within permitted limit, police officials stopped him around 7.00 P.M. on 22.02.2024 and



proceeded to seize the vehicle. Subsequently, Awatarnagar P.S. Case No. 42/2024 dated 22.02.2024 for the offences punishable under Sections 379, 411 of the Indian Penal Code, Section 4 of Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'MMDR Act') and Section 56 of Bihar Mineral (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 (hereinafter referred to '2019 Rules'), has been lodged against the vehicle and its driver.

4. From the FIR, it appears the vehicle was seized due to overloading and the driver was apprehended. The petitioner has approached this Court for quashing of Awatarnagar P.S. Case No. 42/2024 and for release of his vehicle in question.

5. The learned counsel for the petitioner submitted that the respondent no. 4 has arbitrarily seized the vehicle of the petitioner, who is bonafide owner of the vehicle in question and is engaged in business of transportation. For carrying sand on the said vehicle, the petitioner has got a valid *challan* and the driver was carrying the same. The validity period commenced at 9:52:17 A.M. on 22.02.2024 and it would have continued till 9:52:17 A.M. on 23.02.2024. Therefore, no offence as mentioned in the FIR is made out against the petitioner or his driver. The whole case of the prosecution is based on the presumption that the vehicle of the petitioner was overloaded



and had been carrying sand exceeding the limit permitted in the *challan* issued for the transportation. Even the seizure memo was prepared without following the due procedure and without weighing the sand. No independent witness was joined during the seizure, which is a procedural requirement mandated by law. The authority further failed to provide the copy of the seizure memo to the co-accused driver of the vehicle and, therefore, it casts serious doubt on the credibility and authenticity of the seizure memo.

6. The learned counsel further submitted that there is complete non-compliance of Rule 60 (2) of the 2019 Rules. No doubt Rule 60 (1) provides that any of the Officers mentioned in Rule 59 may stop any carrier, vehicle or vessel carrying minor minerals, to check for verification of the contents. At the same time, Rule 60 (2) provides that in case such Officer *prima facie* finds that the load of the carrier, vehicle or vessel, is more than the permitted quantity and/or *challan*, he may require the driver of the carrier, vehicle, vessel, to take such carrier, vehicle, vessel to the nearest weighbridge and get the contents weighed at the expense of the driver or the owner of such vehicle/carrier/vessel. So, this provision was not adhered to and the vehicle was never weighed on any weighbridge. Therefore, absence of weighing not only shows lack of adherence to standard



procedures but also raises questions regarding the necessity and legitimacy of the seizure. In support of his contention, learned counsel referred to a **decision dated 06.02.2025** passed in **Cr.W.J.C.No. 1074 of 2024** by the learned Coordinate Bench of this Court.

7. On the other hand, learned counsel appearing on behalf of Department of Mines vehemently contended that there is no occasion to quash the FIR and the vehicle of the petitioner has been rightly seized. The learned counsel further submitted that the driver of the vehicle did not show any *challan* for transportation of sand. However, from the copy of *challan* annexed with the writ petition, it appears that the *challan* was for transportation of 512.500 CFT of sand, but the vehicle was found carrying 800 CFT of sand. Therefore, the petitioner is liable to be penalized under Section 56 (1) of the Rules.

8. The learned counsel further submitted that the driver of the vehicle in question was knowing about this fact and for this reason he fled away from the spot without showing the *challan* and he was subsequently arrested and taken into custody. Therefore, the vehicle was seized on 22.02.2024 for overloading of the sand beyond the limits of *challan*.

9. The learned counsel further submitted that the truck of the petitioner was seized in the district of Saran, Chapra



which has consistently been identified as a highly sensitive and volatile area in matter relating to sand mining and its enforcement. Whenever any official of the Mining Department or the enforcement team proceed to seize a vehicle involved in illegal transportation of the sand, persons with vested interest and local miscreants gather at the spot, create unruly scene and actively obstruct the lawful action of the official. Several FIRs have been registered in past against persons, who attempted to prevent or disrupt seizure operations by the Mining Department in Saran district. On the alleged date of occurrence, when the vehicle of the petitioner was intercepted, then in a short span of time, local persons started assembling at the spot and the situation worsened. The officials, considering the past history of seizure in that area, acted swiftly and decisively in order to avoid escalation into a full blown law and order situation. The enforcement team carried out an on-spot volumetric measurement of the sand loaded on the truck by adopting the standard cubic calculation method (length x breadth x height) with the aid of a measuring tape. This procedure, which is widely accepted and is also practical, enabled the officials to promptly assess the load without having to shift the vehicle elsewhere, which could have aggravated the tense situation. Moreover, the nearest weighbridge was located at a substantial



distance from the place where the interception occurred. Given the sensitive nature of area and to avoid volatile situation, as crowd had started to gather, it was not practicable to transport the seized vehicle to any distant place. Under such circumstances, taking the truck to weighbridge would have escalated the law and order problem and would have exposed the officials and public at large to unnecessary risk. It was, therefore, a matter of safety and administrative prudence to conduct the measurement of the sand immediately on the spot. So, not approaching the *Dharamkanta* (weighbridge), was not an omission but a deliberate and reasonable course of action in the prevailing circumstances.

10. The learned counsel further submitted that it is not necessary in all cases to take the vehicle to weighbridge and to get the contents weighed as the circumstances compelled the officials to resort to alternative method of measurement by volumetric measurement of the sand loaded on the truck by adopting the standard cubic calculation method, which is quite accurate and time savings.

11. The learned counsel reiterated that the adoption of cubic measurement at site is a viable, lawful and transparent method available to ascertain the quantity of sand in the petitioner's truck. The sand load was assessed on the spot by



physical cubic measurement with the aid of a measuring tape. Since sand being a loose mineral varies in weight with moisture and other conditions, it makes weighbridge results less reliable than volumetric assessment. Further corroboration of the correctness of the quantity of sand assessed at the time of seizure is evident from the letter of guarantee (*Zimmanama*) executed contemporaneously when the vehicle was handed over for safe custody. The seized vehicle along with 800 CFT of sand was entrusted for safe custody to M/s Mili Enterprises, Proprietor Swarn Kumar, son of Umesh Kumar Dixit in pursuance of a valid letter of guarantee issued under the orders of the District Magistrate. The document clearly mentions the particulars of seized truck and the exact quantity of sand loaded therein. The very fact that the authorized custodian accepted custody of vehicle with the recorded load, without raising any protest or objection, strongly corroborates the accuracy of the measurement carried out by the department at the time of seizure. If there has been any discrepancy in the recorded load of 800 CFT of sand, the custodian could have refused to accept the truck along with sand. The fact that custodian accepted custody of the vehicle and the recorded quantity of sand without protest or reservation is a strong and independent corroboration that the measurement of 800 CFT carried out by the department



at the time of seizure was correct and accurate.

12. The learned counsel further submitted that penalty of Rs. 2,84,960/- imposed on the petitioner can never be said to be arbitrary or excessive. This amount has been arrived at by applying the rate of royalty under Rule 51(1)(b) together with the multiplier prescribed under Rule 56. Therefore, the assessment of financial liability in this case has been made strictly as per the statutory mandate, leaving no scope for alleging arbitrariness.

13. The learned counsel further submitted that so far as practicable, every care has been taken while preparing the seizure list. If the petitioner has any genuine grievance with respect to the measurement of sand at the time of seizure or with the quantum of penalty imposed, the proper and efficacious legal remedy available to the petitioner to prefer an appeal before the competent authority under Rule 67 of the 2019 Rules.

14. The learned counsel further submitted that interception and seizure of the vehicle of the petitioner and the assessment of the sand loaded on the vehicle were proper and valid and considering the facts and circumstances, the FIR cannot be quashed.

15. From the rival submission of the parties, the issue which arises before this Court is whether non-compliance of



Rule 60 (2) of 2019 Rules would make the whole prosecution unsustainable considering the admitted fact that the petitioner was holding *challan* for transportation of yellow sand within the specified time framed from 22.02.2024 at 09:52:17 A.M. till 23.02.2024 at 09:52:17 A.M. If the Rule 60 (2) of 2019 Rules is taken to be mandatory, then volumetric measurement of the sand loaded on the truck of the petitioner would not help the cause of the prosecution. However, if it is taken that Rule 60 (2) of 2019 Rules is merely directory in nature and volumetric assessment of sand loaded on the vehicle of the petitioner is permissible to make out a case against the petitioner, then the present writ petition would liable to be dismissed.

16. Rule 60 of 2019 Rules reads as under :

“60. Power to stop and check any carrier, transport or vessel.—

(1) Any of the Officers mentioned in Rule 59 may stop any carrier, vehicle or vessel carrying minor minerals, to check for verification of the contents.

(2) In case such Officer prima facie finds that the load of the carrier, vehicle or vessel, is more than the permitted quantity and / or challan, he may require the driver of the carrier, vehicle, vessel, to take such carrier, vehicle, vessel to the nearest weighbridge and get the contents weighed at the expense of the driver or the owner of such vehicle/carrier/ vessel.

(3) If any person who refuses to obey the lawful command of such Mining Officer shall be



prosecuted under these Rules”.

17. If this Rule is considered to be of such nature that no derogation is permissible, there may be situation when weighing on weighbridge might not be possible. There may be situation where weighbridge is not conveniently located or reachable or taking the vehicle/carrier to the weighbridge might give rise to law and order situation. A situation may also arise where use of weighbridge is out of question. In these circumstances, considering the Rule 60 (2) to be completely rigid and having no flexibility would defeat the whole purpose. On the other hand, if this Rule is considered to be merely directory, unscrupulous persons may take advantage of this flexibility and they may have a field day. This could not be the intention of the legislature.

18. Therefore, the intention of legislature needs to be gathered from the statutory provision. Rule 60 (2) of 2019 Rules provides that if the officer *prima facie* finds the load to be more than the permitted quantity, he may require the carrier to be taken to the nearest weighbridge and get the contents weighed. So, it appears to be a discretion given to the officer to take the carrier to the nearest weighbridge if he is *prima facie* of the opinion that the carrier has exceeded the permitted load. In general parlance, the word ‘may’ does not mean ‘must’ or



‘shall’. But there has been occasions when the word ‘may’ has been treated as ‘shall’. The construction of word ‘may’ as ‘shall’ is permissible in cases where the extant of power is overriding and discretion cannot be left in the hands of a person who has to give effect to such statute. So, it all depends on the nature of power and the effect of the exercise of the power conferred by the statute. At the same time, the foremost rule of interpretation is literal rule of interpretation requiring courts to apply the exact, ordinary, grammatical meanings of words in a statute. Thus, the words are given their natural and popular meaning. This rule of interpretation is applied when the statutory language is unambiguous and clear. This rule can be given a go-bye only if such interpretation would lead to an absurd result.

19. Now, coming to the provisions of Rule 60 (2) of 2019 Rules, it appears the legislature in its wisdom used the word ‘may’ and did not put any mandatory compliance for the officer concerned to take the carrier to any weighbridge. There appears no compulsion for the officer concerned who *prima facie* finds a case of overloading. The use of word ‘may’ gives a discretion to the officer concerned to adopt the option of weighing the carrier on weighbridge. It is one of the options and it could not be said that it is only option. Therefore, the officer concerned may take a call as to whether he would exercise the



option of weighbridge or adopt another method for calculating the quantity of laden minerals. Even from perusal of other provisions of 2019 Rules as existed on the date of occurrence, there is no material showing mandatory nature of Rule 60 (2).

20. If, considering the facts and circumstances, the officer concerned arrives at a decision that weighing or measurement of the minerals is not possible on weighbridge, he may adopt the other methods and seizure could not be stated to be bad only on the ground that the option of weighing on weighbridge was not exercised and the same is against the mandatory nature of Rule 60 (2). This discretion depends upon the facts and circumstances and a situation may arise where it would not be possible to make the weighing on weighbridge and the same would frustrate the cause of justice. No doubt, procedural safeguards are to be adhered to and if there is sufficient compliance of the same, the same would suffice for the purpose of Rule 60 (2).

21. Coming to the facts of the present case, the mineral is sand and allegation is overloading of the vehicle exceeding the *challan* weight. The respondent authorities took a volumetric measurement of the loaded sand on the vehicle of the petitioner and found it to be more than weight taken on weighbridge, considering the nature of minerals and time tested method of its



measurement by calculating it on the basis of cubic method (length x breadth x height) gives a fairly accurate measurement of assessment. If such measurement has been taken and recorded, the petitioner should not have any grievance on this account. Moreover, the petitioner has alternative remedy available in the form of Rule 67 of the 2019 Rules to challenge the measurement and other aspects in an appeal.

22. Therefore, I am of the considered opinion that considering the express language used by legislature, the Court cannot read the word 'shall' in place of 'may' in Rule 60 (2). As such, submission made on behalf of the petitioner is not persuasive enough to take a view that in case of alleged overloading, the officer is mandatorily required to take the vehicle to a weighbridge.

23. So far as other contentions of the petitioner about the validity of *challan* or not providing copy of seizure memo to the driver of the vehicle are concerned, such contentions have not much merit. It is not the case of the respondent authorities that the petitioner was not holding the valid *challan*. If the driver was not served with the copy of seizure memo, this lapse would not vitiate the whole prosecution. Further, claim of non-adherence to other procedural safeguard *ipso facto* would not have rendered the FIR liable to be quashed under writ



jurisdiction. Moreover, all these issues could be agitated before the learned trial court.

24. Therefore, the petitioner has not been able to make out a case for quashment of the Awatarnagar P.S. Case No. 42/2024.

25. So far as the prayer of the petitioner regarding release of the vehicle is concerned, it has been submitted on behalf of the respondent Mining Department that a penalty amount of Rs. 2,84,960/- has been imposed in terms of Rule 51(1)(b) read with Rule 56 of the 2019 Rules and the petitioner can get the release of the vehicle by paying this penalty amount, the petitioner has an available remedy in the form of an appeal before the competent authority under Rule 67 of the 2019 Rules. However, the truck of the petitioner has been seized on 22.02.2024 and almost two years have elapsed and the vehicle of the petitioner has been losing its road-worthiness, hence I am of the view that the respondent authorities could be directed to release the vehicle subject to payment of the penalty amount in easy installments.

26. While dealing with the seized vehicles from time to time by the police either in commission of various offences or abandoned vehicles or vehicles which are recovered during investigation of complaint of thefts, the Hon'ble Supreme Court



in the case of ***Sunderbhai Ambalal Desai vs. State of Gujarat,***

(2002) 10 SCC 283 observed as under:-

“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.

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.”

27. Accordingly, the concerned respondent is directed to release the Tata truck of the petitioner bearing Registration No.BR-04GA-8399 on payment of penalty amount of Rs.2,84,960/- in six monthly installments. The Truck in question would be released after payment of first installment of Rs. 50,000/- before the authority concerned, on or before 27th February, 2026, and rest penalty amount would be paid in five equal monthly installments on or before 27th of every month,



subject to further satisfaction of the court concerned.

28. With the aforesaid observations/directions, the present petition stands disposed of.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
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