**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 13530 of 2026**

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ABHIRAJSINH KANAKSINH GOHIL
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR. VIREN A. PATEL(18484) for the Petitioner(s) No. 1
MR. ANGESH A. PANCHAL, AGP for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE MS. JUSTICE NISHA M. THAKORE**

**Date : 01/10/2026**

**ORAL ORDER**

Rule. Learned Assistant Government Pleader waives service of notice of Rule for the respondents.

2. By way of present petition under Article 226 of the Constitution of India, the petitioner herein prays for the following reliefs:

> *"A) YOUR LORDSHIPS may be pleased to admit and allow this petition; in the interest of justice;*
>
> *(B) YOUR LORDSHIPS may be pleased to issue appropriate writ, order or direction for quashing and setting aside the notice (at ANNEXURE-B) and action of seizing the vehicle being Eicher Company 06 Tyre truck bearing registration no. GJ05AZ9940 by the respondent authorities and release the vehicle being Eicher Company 06 Tyre truck bearing registration no. GJ05AZ9940, of the ownership of the petitioner which is seized by the respondents and at present the case is pending with the respondent, on such terms and conditions as this Hon'ble Court may deem think fit.*
>
> *(C) YOUR LORDSHIPS may be pleased to issue appropriate writ, order or*

*direction for releasing the vehicle being Eicher Company 06 Tyre truck bearing registration no. GJ05AZ9940 of the ownership of the petitioner which is seized by the respondents and at present the case is pending with the respondent, on such terms and conditions as this Hon'ble Court may deem fit pleased to direct the respondent authorities to forthwith release the Eicher Company 06 Tyre truck bearing registration no. GJ05AZ9940 in the interest of justice;*

*(D) YOUR LORDSHIPS may be pleased to Pending admission and final disposal of this petition, your lordships may be pleased to release the vehicle being Eicher Company 06 Tyre truck bearing registration no. GJ05AZ9940, appropriate terms and conditions that may be deemed fit and proper to this Hon'ble Court in the interest of Justice."*

3. Heard learned advocate for the petitioner and Learned Assistant Government Pleader for the respondents.

4. It is the case of the petitioner that the petitioner is the owner of the seized vehicle and the vehicle in question was seized by respondent No.2 on 07.07.2026. Notice pertaining to the same was issued which duly produced at Annexure B.

5. Learned advocate for the petitioner submitted that as is clear from the seizure memo, the same was issued on 07.07.2026; however, no steps worth the name have been initiated by the respondent, much less filing the F.I.R. as provided under sub-clause (ii) of sub-clause (b) of sub-Rule (2) of Rule 12 of the Gujarat Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 (hereinafter referred to as the "Rules of 2017"). It is submitted that in absence of any F.I.R. registered beyond the specified period, the action of the respondent authority seizing the vehicle, is illegal and against the principles laid

down by this Court in the case of Nathubhai Jinabhai Gamara v. State of Gujarat, rendered in Special Civil Application No.9203 of 2020. It is submitted that, this Court has categorically held and observed that if the complaint is not registered as envisaged under sub- clause (ii) of sub-clause (b) of sub-Rule (2) of Rule 12 of the Rules of 2017, in absence of the complaint, the competent authority will have no option but to release the seized vehicle without insisting for any bank guarantee. Therefore, the principles laid down by this Court in the case of Nathubhai Jinabhai Gamara v. State of Gujarat (supra) applies to the facts of the present case. It is therefore urged that the petition deserves to be allowed directing the respondent authorities to release the vehicle. It is urged that the petition be entertained only for the limited purpose of release of the vehicle.

6. Per contra, learned AGP for the respondent authority submitted that the respondent authority has filed complaint in the Court of learned Chief Judicial Magistrate, Nasvadi on 19.08.2026 being Criminal Inquiry No.10 of 2026.

7. Learned advocate for the petitioner submitted that the said complaint dated 19.08.2026 filed by the respondent authority is lodged in the Court of learned Chief Judicial Magistrate, Nasvadi, which is against the provision of Rule 12(2) of the Gujarat Minerals (Prevention of Illegal Mining Transportation and Storage) Rules 2017. (Amended Rules, 2019).

8. Placing reliance on Rule 12(2) of the Rules 2017, it was submitted that the complaint would be maintainable before the Court of Sessions. It was submitted that the aforesaid complaint filed by the

respondent authority in the Court of learned Chief Judicial Magistrate, Nasvadi is non-est in eye of law.

9. Heard learned advocates appearing for the respective parties.

10. Rule 12 of the Rules, 2017 read thus:

> *"12. Seizure of property liable to confiscation.-*
>
> *(1) 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 other thing (hereinafter referred to as "property") shall be liable to be seized by the Government in the manner specified in sub-rule (2) of this rule.*
>
> *(2) [Every Authorised Officer seizing any property under these rules shall photograph the property and place on such property a mark in such manner as may be determined, indicating that the same has been so seized and shall:*
>
> *(a) issue a notice in Form J informing the person from whom the property is seized of the property so seized, and release the property so seized upon receipt of a bank guarantee for an amount equal to -*
>
> *(i) the penalty payable under rule 21, in case of transportation of, or causing to transport, mineral without lawful authority; or*
>
> *(ii) the written down value of the property, in case of illegal mining or illegal storage of mineral:*
>
> *Provided that, release under clause (a) of sub- rule (2) shall be without prejudice to and shall not in any manner affect the conduct of investigations and other actions contemplated under clause (b) of sub-rule (2).*
>
> *Explanation: Under these rules property is seized as a security against the amount of penalty due to the Government and to ensure the presence of the alleged offender before the*

*Government if the case is at notice stage.]*

*(b)[conduct,*
*(i) an investigation and if he is satisfied that a compoundable offence has been committed in respect of the property, he may, subject to receipt of a compounding application, order payment of such amount for compounding the offence as may be deemed appropriate, which amount, if not paid within thirty days, may be recovered by invocation of the bank guarantee furnished under clause (a) of sub-rule (2); or*

*(ii) a preliminary investigation, and if compounding is not permissible under rule 22 or if he is satisfied that the offence committed in respect of the property is not compoundable, upon the expiry of forty-five days from the date of seizure or upon completion of the investigation, whichever is earlier, shall approach by way of making a written complaint, before the Court of Sessions.*

*Explanation: Any offence under these rules shall be tried by the Court of Sessions in accordance with the Procedure laid down under the Code of Criminal Procedure, 1973;]*

*(3) [Where the court is satisfied that an offence has been committed and is punishable under these rules, the court may order for,-*

*(a) penalty in accordance with rule 21,*

*(b) confiscation of the property under sub-section (4A) of section 21 of the Act, where the property seized under sub-rule (1) above is produced before a court under sub-clause (ii) of clause (b) of sub-rule (2).]*

*(4) No order for confiscating any property shall be made under sub-rule (3) unless the person from whom the property seized is given:*

*(a) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation; and; (b) a reasonable opportunity of being heard in the matter.*

*(5) [***]*

*(6) [The bank guarantee issued under clause (a) of sub- rule (2) shall be valid for an initial period of one year and shall be renewed from time to time until payment for compounding the offence under sub-clause (i) of clause (b) of sub- rule (2) or until payment of the penalty determined under sub-rule (3), as applicable, is made:*

*Provided that, if upon a determination under sub-rule (3), a penalty for an amount exceeding the amount of the bank guarantee is levied and the penalty amount is not paid, then the excess penalty amount may be recovered in the same manner as if it were an arrear of land revenue.]*

*(7) [The property seized under this rule shall be kept in the custody of the Authorised Officer, any other third party, nearest police station or Government premises until:*

*(a) a bank guarantee is provided pursuant to clause (a) of sub-rule (2)*

*(b) payment of the amount as determined under sub- clause (i) of clause (b) of sub-rule (2) for compounding the offence is made or,*
*(c) payment of penalty as determined under sub-rule (3) is made: or*

*(d) an order of the Court directing its disposal is received by the Authorized Officer."*

11. Considered the aforesaid submissions advanced by the learned advocates for the respective parties. The aforesaid issue was considered in Special Civil Application No.9213 of 2020, wherein, by order dated 06th November, 2020, while considering identical facts, it was held that the complaint is to be filed before the Court of Sessions under Rule 12(2) of the Rules, which provide that for an offence under the said Rules, the same be tried by Court of Sessions in accordance with the procedure laid down under the Criminal Procedure Code, Considering Rule-12 of the Rules, 2017 and the Notification dated 29th July, 2023 duly produced by the petitioner, the competent forum is Sessions Court, wherein, the complaint is to be filed. Learned

Assistant Government Pleader appearing for the respondent – State was not in a position to controvert the aforesaid position of law and the Notification, as referred above.

12. At this stage, it is apposite to refer to the ratio as laid down in Special Civil Application No.9213 of 2020 dated 06th November, 2020 wherein in an identical facts, the said issue was under consideration, wherein the paras-9 to 12 of the said order read thus:

> *" 9. Now the Court would like to deal with as to when bank guarantee is required to be furnished. On reading of Rule 12 of the said Rules as it is, the bank guarantee is required to be furnished at the time (i) for the release of the seized property (ii) for recovery of unpaid penalty or (iii) for compounding of offence and recovery of compounded amount, if it remains unpaid on expiry of specified period of 30 days. In fact, the offence can be compounded at two stages being (i) at a notice stage within 45 days of the seizure of the vehicle and (ii) during the prosecution but before order of confiscation. So State can insist upon furnishing bank guarantee for compounding the offence during prosecution, but provided prosecution is lodged and application for compounding of offence is moved by the petitioner. In the case on hand, neither there is prosecution nor there is any application for compounding of offence moved by the petitioner, therefore, question of bank guarantee does not arise. Looking to the scheme of Rule 12 of the said Rules, the competent authority is authorized to seize the property, investigate into the offence and compound it, whereas, penalty can be imposed and confiscation of the property can be done only by order of the Court. So it is clear that imposition of penalty and other punishment falls in the domain of the Court and not competent authority. Thus, custody of the property on production with the Sessions Court for the purpose of confiscation of the property*

*shall be dealt with as indicated in sub-rule 7 of Rule 12 of the said Rules. So it means where offence is not compounded or not compoundable, it would be obligatory for the investigator to approach the Sessions Court with a written complaint and produce the seized property with the Court on expiry of the specified period i.e. 45 days. In absence of this exercise, the purpose of seizure and / or bank guarantee would stand frustrated. Consequently, the property will have to be released in favour of the person from whom it was seized without insisting for the bank guarantee. So, submission made at bar and stand of the State to contend that furnishing of the bank guarantee is mandatory upon the seizure of the property is untenable and unacceptable.*

*10. In sum and substance, when there is no any compounding application moved by the petitioner as contemplated in Rule 12(2)(a) of the said Rules, no any investigation is conducted and finalized by filing complaint before the Sessions Court or produce the vehicle before the Sessions Court within specified period, the State authority has no right to have dominance over the seized property and insist for bank guarantee and thus avoid to follow procedure as contemplated in Rule 12(2) (b)(i) and (ii) read with sub-rule 7 of Rule 12 of the said Rules. In nutshell, inaction on the part of the respondent after effecting seizure on 21.02.2020 till date, by turning blind eye on Rule 12(2)(b)(i)(ii) and (7) of the said Rules, is nothing but illegal and unauthorized stand on the part of the State to continue dominance over the seized property without recourse of further action contemplated under Rule – 12(2)(b) read with Rule 7 of the said Rules.*

*11. Lastly, learned AGP would raise contention that order dated 05.09.2020 is appealable before the competent authority under Rule 18 of the said Rules and therefore, present petition may not be entertained in view of alternative efficacious remedy available to the petitioner. In the case of hand, the issue goes to the root of*

*inaction on the part of respondent authority as aforesaid and therefore, in Court's opinion, the petitioner is not required to be relegated to such recourse, more particularity when action of respondent nos.2 and 3 to continue dominance over seized vehicle on account of non compliance of Rule 12(2)(b)(ii) of the said Rules is involved in the present petition and therefore, the Court is not inclined to accept such contention and direct the petitioner to relegate to take recourse under Rule 18 of the said Rules.*

*12. In view of above position, the petition is required to be allowed and accordingly action of respondent nos.2 and 3 for dominance over seized vehicle having become unauthorized and illegal on account of non compliance of Rule 12(2)(b)(ii) of the said Rules, relief in terms of para – 7(B) is granted. While parting with this order, respondent no.1 – State is directed to issue suitable guidelines to the authorized officer responsible to implement procedure under Mining Rules of 2017 (as amended in 2019) in terms of this order as to stage and eventuality at which bank guarantee can be insisted and compliance of Rule 12(2) (b) in case no application for compounding or release of vehicle / property is moved by the person concerned. Accordingly, present petition is allowed. Rule is made absolute to the aforesaid extent. Direct service is permitted."*

13. Considering the facts of the present case, and the ratio as laid down, in Special Civil Application No.9213 of 2020 dated 06th November, 2020 as referred above, as also Scheme of Rule 12(2)(b)(ii), as referred above, respondent authority was required to approach the learned Sessions Court under the provisions of Rule 12(2)(b)(ii) of the Rules, 2017. In absence of the aforesaid exercise undertaken by the competent authority, the complaint in question came to be filed in the Court of learned Chief Judicial Magistrate, Nasvadi would be non-est

in the eye of law. At the cost of repetition, the complaint is maintainable before the Court of Sessions under Rule 12(2)(b)(ii) of the Rules, 2017 (Amended Rule, 2019).

14. For the foregoing reasons, the respondent authority is directed to release the vehicle of the petitioner being Truck of Eicher Company 06 Tyre Truck having Registration No. GJ-05-AZ-9940, the complaint in question having been filed before the Forum, which has no jurisdiction to consider the complaint. The present order is passed only to release the vehicle in question, reserving the liberty in favour of the respondent authorities to initiate the appropriate steps, in accordance with law. It is clarified that this Court has not examined the merits of the issue involved and the observations made are only for the limited purpose of releasing the vehicle.

15. In view of the aforementioned discussion, the petition succeeds and is accordingly allowed in part. Rule is made absolute to the aforesaid extent. No order as to costs. Direct service is permitted

**(NISHA M. THAKORE,J)**

SUYASH SRIVASTAVA

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SUYASH KUMAR SRIVASTAVA(HC01570), PRIVATE SECRETARY, at High Court of Gujarat on 02/10/2026 13:20:07