

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**Cr. Rev. No.1520 of 2023**

Sadhan Nandi, son of Amar Nandi, resident of Ward No.16, Devipur,  
Mangalbari, P.O. Mangalbari, P.S. Malda, District Malda (W.B.)

..... ... Petitioner

Versus

The State of Jharkhand

.... .... Opposite Party

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**CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND**

For the Petitioner

: Mr. Gautam Kumar, Advocate

Ms. Savita Kumari, Advocate

For the State

: Mr. Pankaj Kr. Mishra, APP

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04/16.02.2024 Learned counsel for the petitioner and learned APP for the State are present.

2. The instant criminal revision has been directed on behalf of the petitioner against the order dated 02.11.2023 passed by the learned Judicial Magistrate-1<sup>st</sup> Class, Rajmahal in Taljhari P.S. Case No.38 of 2023, whereby for release of the truck bearing Registration No. WB-59C/8906 has been rejected.

3. The brief facts leading to this criminal revision are that as per prosecution case the informant/Circle Officer, Taljhari has carried out the surprise raid on 27.05.2023 having received information that near Mouza Bekchury, M/s Md. Samim Stone Works operating the stone crusher machine in plot No.27 in the area of 3 acres and 2 kathas of Mouza Bekchury. The petitioner has also the dealer registration form-B issued by the Mining Department bearing registration No.J062021777 valid up to 28.06.2022 and also the certificate issued by the Pollution Department valid up to 31.03.2024 but the order of "Close down the operation of the Unit with immediate effect" passed by the Member Secretary, JSPCPB, Ranchi vide letter No.717 dated 10.04.2023. Despite that the illegal excavation of the stone and the same were being crushed to prepare the stone chips was carrying on. At the time of the raid, the truck bearing registration No. WB25E 0749 was found loaded with 900 cubic ft. stone chips, its driver was Nitish Kumar Yadav. No paper was shown by him on demand. This truck was also seized. In that work other vehicles were also involved, details of which are also given in the schedule. At Sr. No.4, the truck bearing registration No. WB59C 8906 is shown empty and the same was also seized thereon. In view of the allegations made, case crime No.38 of 2023 was registered with the Taljhari Police Station under Sections

175, 379, 411 and 188 of the Indian Penal Code, Section 4/ 54 of the JMMC Rule, 2004, 07/09 of the Jharkhand Mineral Transportation and Storage Rule, 2017 and Sections 21(1), 21(6) of the MMDR Act, 1957.

4. The owner of the truck bearing registration No. WB59C 8906 had moved the application for release of the said truck before the learned trial Court with these averments that he is the bona fide owner of the seized truck, which is the commercial vehicle and the same is being detained in the police station, so he has been suffering heavy loss day to day. He undertakes that he would produce the same vehicle as per the direction of the Court and also ready and willing to furnish the sureties to the satisfaction of the Court concerned.

5. The report issued by the In-charge Officer of District Legal Cell Branch, Sahibganj addressed to the Station-In-charge Officer, Taljhari Police Station dated 31.10.2023 are on record, which shows that the confiscation proceeding of the vehicles involved in the offence including the vehicle of the petitioner bearing registration No. WB59C 8906 is still pending.

6. The learned trial Court rejected the release application of the said vehicle on the very ground that since the confiscation proceeding was pending and relied upon the judgment passed by the Hon'ble Apex Court in the case of ***State of Madhya Pradesh Vs. Uday Singh in Criminal Appeal No.524 of 2019 dated 26.03.2019.***

7. Aggrieved from the impugned order passed by the learned trial Court, the instant Criminal Revision was directed on behalf of the petitioner on the ground that the impugned order is bad in the eyes of law. The learned trial Court has relied upon the judgment passed by the Hon'ble Apex Court, which was not application at all in the facts and circumstances of this case in hand. It is further stated that there is no bar in releasing the said vehicle in the rule of Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 though the confiscation proceeding under Section 11 of the Jharkhand Minerals (Prevention of Illegal Mining Transportation and Storage) Rules, 2017 power is given to the Deputy Commissioner to conduct the confiscation proceeding; yet nothing is there to exclude the jurisdiction of the Court to release the vehicle.

8. The learned APP for the State has defended the impugned order on the ground that the impugned order bears no infirmity, as per the report received from the Legal Cell Branch, Sahibganj, the confiscation was pending, as such,

the learned trial Court has rightly rejected the release application.

9. I have heard the learned counsel for the petitioner and learned APP for the State and perused the materials available on record.

10. Herein the **Rule 11 of the Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017** becomes relevant to reproduce as under:

*“11. Search, Seizure and Confiscation.- (i) The following officers are authorized to stop, check, search and verify at any place/truck/other vehicle carrying the minerals/ore from the mine or other source or storage and seize the same as required within the jurisdiction as specified below:*

(i)	<i>Additional Secretary/Principal Secretary/Secretary/Commissioner, Mines</i>	<i>Chief</i>	<i>In the entire State.</i>
(ii)	<i>Director of mines</i>		<i>In the entire State.</i>
(iii)	<i>Additional Director of mine</i>		<i>-do-</i>
(iv)	<i>Deputy Director of mine</i>		<i>Within their respective jurisdiction</i>
(v)	<i>District Collector/Deputy Commissioner</i>		<i>Within their respective jurisdiction</i>
(vi)	<i>District/Assistant Mining Officer</i>		<i>Within their respective jurisdiction</i>
(vii)	<i>Sub Divisional Magistrate/Any other officer authorized by the collector</i>		<i>Within their respective jurisdictions/jurisdiction authorized by the collector in the District</i>
(viii)	<i>Mining Inspector</i>		<i>-do-</i>
(ix)	<i>In-charge check-gate</i>		<i>-do-</i>

*It shall be the responsibility of the mining lessee/dealers to ensure that their carriers afford all assistance and co-operation for such inspection.*

*(ii) The dealer/lessee shall allow any competent authority/competent officer or any such officer authorized by competent authority to inspect the place where mining, storage and processing unit exists to verify the stocks of ore and minerals and take sample or the abstract from the records maintained by him.*

*(iii) Every dealer shall allow competent authority competent officer or any officer authorized by the director, Mines/Commissioner, Mines or Secretary, Department of Industries, Mines and Geology, Jharkhand to enter and inspect the premises, where the mineral is kept or stored. Inspection of such documents as desired in writing and furnishing of information as directed in writing shall be obligatory for such dealer.*

*(iv) Every officer making a seizure, under these rules shall prepare a list of minerals, tools equipment, vehicles or any other article, so seized and deliver a copy thereof signed by him to the person found in possession of such minerals, Such officer shall keep such seized property under proper custody with proper official seal and with detailed information.*

*(v) Any minerals, tool, equipment, vehicle or any thing seized shall be liable to be confiscated by an order of the court of the Deputy Commissioner of the concerned District and shall be disposed of in accordance with direction of such court.”*

11. From the bare perusal of **Rule 11(v)** of the **Jharkhand Minerals**

**(Prevention of Illegal Mining, Transportation and Storage) Rules, 2017**, it is evident that though the court of Deputy Commissioner of the district concerned is empowered to conduct the confiscation proceeding in regard to the minerals, tool, equipment, vehicle or anything seized shall dispose of the same; yet this jurisdiction of the court of Deputy Commissioner of the district concerned is not exclusive jurisdiction. Neither in the **Rule 11** of the **Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017** nor in any other rule of the said Rules, the jurisdiction of the Criminal Court is barred to release the vehicle by exercising power under Chapter 34 of the Code of Criminal Procedure, 1973. Consequently, the Criminal Court was empowered to entertain the application for release of the vehicle, because in the Rules, the jurisdiction of the Court is not ousted. Mere pendency of confiscation proceeding is not bar to dispose of application for release of vehicle. The learned Court below has placed reliance upon the judgment of Hon'ble Apex Court in the case of *State of Madhya Pradesh Vs. Uday Singh* in *Criminal Appeal No.524 of 2019 dated 26.03.2019 reported in (2020) 12 SCC 733* rejected the release application of the vehicle. It is pertinent to mention here that the said judgment of the Hon'ble Apex Court is not applicable in the facts of the case in hand because in the case of *State of Madhya Pradesh Vs. Uday Singh (supra)* the Hon'ble Apex Court had dealt with confiscation and seizure proceedings initiated under Section 52 of the Forest Act, 1927. Under Section 52-C of the Forest Act, 1927, there is specific bar of jurisdiction of Court, wherein it is provided that no Court, Tribunal or Authority (other than the authorized officer, appellate authority and Court of Session referred to in Section 52, 52-A and 52-B) shall have jurisdiction to make orders with regard to possession, delivery, disposal or distribution of the property in regard to which proceedings for confiscation are initiated under Section 52. Therefore, the learned Court below has erred in rejecting the release application of the appellant by placing reliance upon the judgment passed by the Hon'ble Apex Court in the case of *State of Madhya Pradesh Vs. Uday Singh (supra)*.

12. Since there is no bar in this very provision, the learned Court below was empowered to release the vehicle in view of Section 451 of the Code of Criminal Procedure after having verified the title of the said vehicle and it was also incumbent upon the learned trial Court to impose the condition in regard

not to transfer the said vehicle to anyone during pendency of the case and also to take undertaking from the registered owner of the vehicle to produce the same when and where the said vehicle was required during trial *inter alia* along with other just and proper condition.

13. The Hon'ble Apex Court in “**Sunderbhai Ambalal Desai v. State of Gujarat**” (2002) 10 SCC 283 has laid down following guidelines in regard to release of vehicle:

*“Para 5. Section 451 clearly empowers the court to pass appropriate orders with regard to such property, such as: (1) for the proper custody pending conclusion of the inquiry or trial;*

*(2) to order it to be sold or otherwise disposed of, after recording such evidence as it thinks necessary;*

*(3) if the property is subject to speedy and natural decay, to dispose of the same.*

**Para 7.** *In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:*

*1. owner of the article would not suffer because of its remaining unused or by its misappropriation;*

*2. court or the police would not be required to keep the article in safe custody;*

*3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and*

*4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.*

**Para 13.** *For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 CrPC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the court under Section 451 CrPC to impose any other appropriate condition.*

**Para 17.** *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.”*

14. In view of the above discussions, the impugned order passed by the learned trial Court needs interference. The case law of Hon'ble Apex Court, which was relied upon by the learned Court below is not applicable in the facts

of the case in hand.

15. Accordingly, this Criminal Revision is allowed and the impugned order passed by the learned trial court is, hereby, set-aside. The matter is remitted back to the learned court below to dispose of the release application of the petitioner afresh in view of the observations made by this Court and also taking into consideration the guidelines as laid down by the Hon'ble Apex Court in the case of *Sunderbhai Ambalal Desai (supra)*.

**(Subhash Chand, J.)**

Madhav/-**A.F.R.**