

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 13618 of 2022**

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MINALBEN SATISHBHAI SOLANKI

Versus

STATE OF GUJARAT

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Appearance:

MS KRUTI M SHAH, ADVOCATE for

MS NAMRATA HARISHBHAI CHAUHAN(6534) for the Petitioner(s) No. 1

MR SAHIL B. TRIVEDI, AGP for the Respondent(s) No. 1

DS AFF.NOT FILED (N) for the Respondent(s) No. 1,3

NOTICE SERVED BY DS for the Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**

Date : 04/08/2022

ORAL ORDER

1. **RULE.** Learned AGP waives service of notice of rule for and on behalf of the respondents.

2. At the outset, learned advocate Ms.Kruti Shah has submitted that the writ petition is confined to prayer No.7(c).

3. The petitioner is seeking a direction for releasing the vehicle No.GJ-36-T-8877, Chassis No.MA1VDAPGDH6D48774, which was seized by the respondents and further or quashing and setting aside the seizure memo dated 13.05.2022 and show cause notice dated 21.05.2022 issued in connection with the aforesaid vehicle.

4. The brief facts of the case are as under:

4.1 The petitioner is the owner of the vehicle being GJ-36-T-8877, Chassis No.MA1VDAPGDH6D48774. On 13.05.2022, the respondent No.2 detained the said vehicle near Nageshri Toluaka, Tal. Jafrabad, District - Amreli and a seizure memo pertaining to the same was served to the petitioner on the same day and on 21.05.2022 a show cause notice was issued by the respondent No.2 to one Punjabhai Sarmanbhai

Kodiyatar stating that the said vehicle was carrying overloaded 40.62 MT building limestone with expired delivery challan and thereby imposed total penalty of Rs.4,06,350/-.

4.2 On 17.05.2022, the said Punjabhai made an affidavit on oath before the respondent No.2 and stated that the reason for expiry of delivery challan was breakdown of the vehicle and due to mechanical error / issue the vehicle was driven at slow speed and, therefore, the vehicle was seized. Further, on 01.06.2022 the petitioner made a reply stating that the vehicle was not involved into illegal transportation of limestone and he was having valid royalty pass pertaining to the same, the reason for delay was breakdown of the vehicle. In spite of the fact that though the petitioner has made several oral requests to release his vehicle before the respondent. no.2, his request are not responded and thus the petitioner thereafter on 30.06.2022 made a representation under Rule 12 before the office of respondent no.2 stating that the vehicle is seized by them on 13.05.2022 and thereafter petitioner was served with a show cause notice by the respondent no.2 asking the petitioner to pay the penalty but the petitioner stated that since the vehicle is seized and detained from 13.05.2022 and till date almost 2 months has been passed, as per rule 2 (2)(b) (ii) of the Gujarat Mineral (Prevention of illegal Mining, Transportation and Storage) Rules, 2017, if the application for compounding of offence is not received the vehicle so seized shall be produced before the Court, which has power to determine commission of such offence, upon expiry of 45 days from the date of the seizure or upon completion of Investigation, whichever is earlier.

5. Learned advocate Ms.Shah has submitted that the action of the respondent no.2 of detaining and seizing the vehicle on 13.05.2022, is illegal and against the provisions of the Rules of 2017 inasmuch as, by now, more than 45 days have been passed and no complaint, as envisaged under sub-clause (ii) of clause (b) of sub-rule (2) of Rule 12 of the Gujarat Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 (for short, "the Mining Rules"), has been filed. It is therefore, urged that the issue raised in the present writ petition, stands covered by the judgment in the case of Nathubhai Jinabhai Gamara vs. State of Gujarat, rendered in Special Civil Application No.9203 of 2020 by the order dated 26.08.2020. It is submitted that this Court, has held and observed that after the period of 45 days, in absence of any complaint by the concerned competent authority, the detention and seizing of the vehicle would render illegal. In support of her submissions, she has also placed reliance on the decision dated 01.12.2021 passed in Special Civil Application No.16887 of 2021.

6. In response to the aforesaid submissions, learned AGP Mr.Mehta, upon instructions, has submitted that as per his information, no criminal prosecution has been initiated and no F.I.R. has been filed, as required under the provision of Rule 12 of the Mining Rules.

7. Heard the learned advocates for the respective parties and also perused the documents as pointed out by them. The issue raised in the writ petition is governed under Rule 12(2)(b) (ii) of the Mining Rules, which reads as under:

*"12. Seizure of property liable to confiscation.-
(2)(b)(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."

8. The vehicle was seized on 13.05.2022. Undisputedly, the complaint, as envisaged under sub-clause (ii) of clause (b) of sub-rule (2) of Rule 12 of the Mining Rules, has not been filed yet and, therefore, in absence of any complaint, the action of continuation of the detention of the vehicle by the respondent authority, is illegal and against the provisions of the Mining Rules.

9. Reliance has rightly been placed on the order dated 26.08.2010 passed in the case of Nathubhai Jinabhai Gamara Vs. State of Gujarat, in Special Civil Application No.9203 of 2020. Paragraph Nos.7, 10 and 11 of the order read thus:-

"7. Pertinently the competent authority under Rule 12 is only authorized to seize the property investigate the offence and compound it; the penalty can be imposed and confiscation of the property can be done only by order of the court. Imposition of penalties and other punishments under Rule 21 is thus the domain of the court and not the competent authority. Needless to say therefore that for the purpose of confiscation of the property it will have to be produced with the sessions court and the custody would remain as indicated in sub-rule 7 of Rule 12. Thus where the offence is not compounded or not compoundable it would be obligatory for the investigator to approach the court of sessions with a written complaint and produce the seized properties with the court on expiry of the specified period. In absence of this exercise, the purpose of seizure and the bank guarantee would stand frustrated; resultantly the property will have to be released in favour of the person from whom it was seized, without insisting for the bank guarantee.

10. The bank guarantee is contemplated to be furnished in three eventualities: (i) for the release of the seized property and (ii) for compounding of the offence and recovery of compounded amount, if it remains unpaid on expiry of the specified period of 30 days; (iii) for recovery of unpaid penalty. Merely because that is so, it cannot be said that the investigator would be absolved from its duty of instituting the case on failure of

compounding of the offence. Infact offence can be compounded at two stages being (1) at a notice stage, within 45 days of the seizure of the vehicle; (2) during the prosecution but before the order of confiscation. Needless to say that for compounding the offence during the prosecution, prosecution must be lodged and it is only then that on the application for compounding, the bank guarantee could be insisted upon. In absence of prosecution, the question of bank guarantee would not arise; nor would the question of compounding of offence.

11. The deponent of the affidavit appears to have turned a blind eye on Rule 12 when he contends that application for compounding has been dispensed with by the amended rules inasmuch as; even the amended Rule 12(b)(i) clearly uses the word "subject to receipt of compounding application". Thus the said contention deserve no merits. Thus, in absence of the complaint, the competent authority will have no option but to release the seized vehicle without insisting for bank guarantee. There is thus a huge misconception on the part of the authority to assert that even in absence of the complaint it would have a dominance over the seized property and that it can insist for a bank guarantee for its."

10. It has been held that it would be obligatory for the investigator to approach the Court of Sessions with a written complaint and produce the seized properties with the Court on expiry of the specified period. In absence of such exercise, the purpose of seizure and the bank guarantee would stand frustrated; resultantly, the property will have to be released in favour of the person from whom it was seized, without insisting for the bank guarantee.

11. Under the circumstances, in absence of any complaint, the petition deserves to be allowed and the action of the respondent authority in seizing the vehicle, i.e. No.GJ-36-T-8877, Chassis No.MA1VDAPGDH6D48774, deserves to be quashed and set aside and is accordingly, quashed and set aside. The respondent authority, is forthwith directed to release the vehicle.

12. With the aforesaid direction, the matter is allowed in part.
Rule made absolute to the aforesaid extent.

MAHESH BHATI/135

(A. S. SUPEHIA, J)

