IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 3486 of 2022

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VAJEKARNABHAI NANUBHAI SATYA THROUGH POA HOLDER GALANI BIJALBHAI BHANABHAI

Versus

STATE OF GUJARAT

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Appearance:
MS. KRUTI M SHAH(2428) for the Petitioner(s) No. 1
DS AFF.NOT FILED (N) for the Respondent(s) No. 2,3,4
MR ISHAN JOSHI, ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 1

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CORAM:**HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**

Date : 03/03/2022
ORAL ORDER

1. With the consent of the learned advocates appearing for the respective parties, the captioned writ petition is taken up for final hearing.

2. Issue ***Rule***, returnable forthwith. Mr. Ishan Joshi, the learned Assistant Government Pleader waives service of notice of Rule on behalf of the respondent-State.

3. By way of this petition under Article-226 of the Constitution of India, the petitioner has prayed for the following relief:

> *"(a) This Hon'ble Court may be pleased to admit and allow this petition;*
>
> *(b) This Hon'ble Court may be pleased to issue appropriate*

writ, order or direction for quashing and setting aside the action of the respondent No.3 of seizing the vehicle i.e. Tractor No. GJ-33-B-3580 of the petitioner;

(c) This Hon'ble Court may be pleased to issue appropriate writ, order or direction for quashing and setting aside the order dated 01.06.2021 passed and notice dated 18.02.2021 issued by the respondent no.2.

(d) This Hon'ble Court may be pleased to issue appropriate writ, order or direction to the respondent no.2 and 3 to immediately released the vehicle i.e. Tractor No.GJ-33-B-3580 of the petitioner;

(e) Pending admission final hearing and disposal of this petition, direct the respondent no.2 and 3 to release the vehicle i.e. Tractor No.GJ-33-B-3580 of the petitioner upon such terms and conditions as this Hon'ble Court may deem fit.

(f) Grant such other and further relief as thought fit in the interest of justice."

4. It is the case of the petitioner that, the petitioner is the owner of the vehicle i.e. *Tractor No.GJ-33-B-3580* (hereinafter referred to as 'the vehicle in question'). On 31.01.2021, the respondent No.3 has seized the vehicle stating that the vehicle was doing mining activity without valid royalty pass and till the final order or the concerned authority the

vehicle is to be kept safely by respondent no.4. On 18.02.2021, the respondent No.2 has issued common notice by stating that the illegal mining of 70 metric ton of ordinary sand was done without legally authorized E-royalty for which the compoinding fees of Rs.2 Lakh for Tractor (Loader) = Rs.25,000/- for empty Tractor and Rs.12,250/- for illegal mining of 70 metric ton of ordinary sand was imposed as penalty which comes to a total of Rs.2,37,250/-. The petitioner states that thereafter one order was passed on 01.06.2021 by the respondent no.2 stating that as per the notice the petitioenr has been found guilty of illegal mining of 70 metric tone of ordinary sand ans for the same the penalty of Rs.2,37,250/- + Rs.5023/- Environmental Compensation Fund is imposed.

5. Ms. Kruti Shah, learned advocate for the petitioner has submitted that as is clear from the show cause notice was issued on 18.02.2021; however, after the issuance of the show cause notice, 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.

5.1 It is urged that the petition be entertained only for the limited purpose of release of the vehicle. So far as the adjudication of the show cause notice is concerned, the petitioner be permitted to pursue the said show cause notice as per the provisions of the Act.

6. On the other hand, the learned Assistant Government Pleader has fairly conceded that after the issuance of the show cause notice, no

orders have been passed considering the pendency of the writ petition. It is also conceded that no First Information Report has been registered as provided under the provisions of Rules of 2017.

7. Heard the learned advocates appearing for the respective parties.

8. It is undisputed that show cause notice was issued 18.02.2021. It is not disputed rather conceded that after the period of 45 days, no First Information Report has been registered by the respondent authority. Therefore, the principle 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.

9. In the aforesaid judgment, this Court, while dealing with the provisions of the sub-clause (ii) of sub-clause (b) of sub-Rule (2) of Rule 12 of the Rules of 2017, in paragraphs 7, 10 and 11 has held and observed 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."

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.

10. In view of the fact that no First Information Report has been registered and the principle laid down by this Court in the aforesaid case applies to the facts of the present case, the present petition deserves to be allowed and is accordingly allowed to the limited extent of directing the respondent to release the vehicle of the petitioner i.e.

Tractor No.GJ-33-B-3580. So far as the show cause notice dated 18.02.2021 is concerned, the petitioner shall appear and file necessary reply responding to the show cause notice and it will be open to the respondent authority to consider the reply, adjudicate the show cause notice and pass orders, strictly 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.

11. 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.

(VAIBHAVI D. NANAVATI,J)

Pallavi