COURT OF MUNSIFF/JMIC BUDGAM
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CNR No. JKBG030035982025
Date of Institution; 22/05/2025
Date of Order; 02/06/2025
FIR No. 121 of 2025 PP Soibugh

In the case of:-

Waseem Hussain Wani

S/o Ghulam Hussain Wani

R/o Gariand-Kalan,Budgam

Applicant through Adv Irshad Rasheed.

Versus

Union Territory of Jammu and Kashmir

Through PP Soibugh.

through Standing Counsel for DMO and Ld APP.

In the matter of:- Release of JCB bearing Reg. No 1266593

CORAM: ***Tasneem Kawoos(KCS Judicial) KCS(J) JK00293***

ORDER.

By the medium of this order the Court seeks to dispose off the application for release of JCB bearing Reg. No. 1266593 seized by Police Post Soibugh.

1. It is averred in the application that the applicant is rightful owner of the vehicle and same has been seized by the concerned authority without any lawful justification and the said vehicle is lying with the concerned.
2. The applicant submits that the vehicle is sole source of livelihood for him as well as to his family and the said vehicle is also financed.
3. The applicant has prayed for the release of the vehicle since it has been lying at the police post from the date of procedure and through get damaged on account of non-use report was called from the concerned Incharge Police Post. Perusal of the same reveals that the vehicle has been seized for Commission of offences under Section 21 MMD&R Act, Section 39/192, 146/196, 190(II) of the Motor Vehicle Act for illegal excavation of clay. Since an offence under MMD&R Act was alleged, the court deemed it proper to call a report from the District Mining Officer same is part of record. Perusal of the Objection filed by the District Mineral Officer reveal that the JCB machine in question has been seized for illegal extraction of clay however, the report is silent as to the fact whether the violation is the 1st , 2nd and 3rd violation, in absence any specific submission to that extent the violation is deemed to be 1st.
4. Report of DMO also mentions that the applicant should be penalized under Rule 72 of Jammu and Kashmir Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules 2016. Additionally, the Learned APP has also filed objections. She has conceded the application if the same is released on a Supurdnama.

Heard and perused.

5. The general law relating to the release of vehicle seized in connection with crime pending investigation or trial has been laid down by the Hon'ble Supreme Court in Sundar Bhai Ambalal Desai Versus State of Gujarat 2002, (10) SSC 283 at

> **"it is of no use to keep seized vehicle at the police station for allowing 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. The court is also cognizant of the directive passed by the Hon'ble High Court in Ashish Sharma and Anr Versus Jammu and Kashmir and Ors.**

6. Wherein it was held that all applications for the release of vehicles on the ground of illegal or unauthorized mining shall be moved to the competent Magistrate who shall deal with all such applications independently of the above referred provisions and no such vehicle shall in the case of 1sttime violation be released otherwise than releasing the composite amount of Rs. 50000, in case of 2nd time violation a composite amount of Rs. 1 Lac and in case of 3rd time or more confiscate a vehicle and may not release unless the allegations pursuant the FIR or the proceedings referred under Rule 83 are complete. Since the confiscation proceedings has not been proceedings in the instant case as per the report nor it is reported case of 3rd time violations, therefore , this application has to be dealt with under Section 497 of the Bharatiya Nayai Suraksha Sanhita (BNSS) corresponding to Section 451 of CrPc.

7. Since the investigation of the FIR is still going the Court is well within the powers to order release of the vehicle under Section 497 of the BNSS 2024, however, the issue that remains to be decided is the realization of fine.

   72. Unlawful transportation and excavation etc of minerals. Wherever a carrier/machine is ***found to be transporting/ excavating*** any mineral in whatever form, without a proper challan as required under these rules, such carrier/machine shall be liable to be dealt as under:-

   (i) Where a carrier is found to be indulging in violation of the rules for the first time, the said mineral would be liable to be seized along with the carrier, which may be released only upon realization of the payment of price of the mineral and the applicable royalty for the mineral being transported and a fine not less than Rs. 10,000/-

   (ii) Wherever a carrier is found to be indulging in such violation for the second time, the said mineral along with carrier shall be seized and released after three days upon realization of price of mineral and the applicable royalty and a fine which shall not be less than Rs. 20,000/-

   (iii) Wherever a carrier is found to be indulging in such violation for the third time or more, the in-charge officer shall proceed as per the Section 21 of the Act.

   Rule 72(1) provides that any vehicle, equipment or tool seized for illegal transportation or storage of minor minerals shall not be released unless the following amounts are realized:

   (a) The price of the mineral found during illegal transportation;

   (b) The applicable royalty on such mineral; and

   (c) A fine not less than ₹10,000.

   This rule imposes mandatory preconditions for the release of seized vehicles or machinery involved in illegal mining. The term 'realized' signifies actual payment. It applies at the administrative stage and is intended to deter environmental and mineral theft. Importantly, this rule operates independently of criminal liability.

8. Section 21 of the MMDR Act penalizes violations of the Act or rules made thereunder.:- Section 21(1): Punishes illegal mining, transportation, or storage with imprisonment up to five years and a fine up to 5 lakh rupees per hectare.- Section 21(4): Allows seizure and confiscation of any vehicle or equipment used in illegal mining.- Section 21(5): Prescribes enhanced penalties for repeat offenders, including mandatory minimum imprisonment. These provisions are penal in nature and require proof of guilt before punishment can be imposed. Confiscation under Section 21 is punitive and triggered after trial. Rule 72(1) governs administrative consequences at the time of seizure, setting financial conditions for provisional release. Section 21 deals with penal consequences like imprisonment and confiscation upon conviction.

Thus, the officer may apply Rule 72(1) for immediate recovery, while Section 21 is invoked for criminal prosecution in serious or repeated violations. Courts, including in Ashish Sharma v. UT of J&K, have upheld the validity of Rule 72(1) as a deterrent against illegal mining. They recognize it as a statutory embargo on the unconditional release of seized vehicles. However, courts may allow release on a refundable deposit or indemnity bond in suitable cases to protect ownership rights and livelihoods, especially when prolonged seizure causes deterioration of the vehicle. Realization of fine under Rule 72 is considered an interim regulatory measure, distinct from penal fines under Section 21.Rule 72(1) of the 2016 Rules and Section 21 of the MMDR Act must be read together to provide a balanced legal framework. Rule 72(1) provides for immediate administrative deterrence through financial conditions, while Section 21 ensures criminal accountability upon conviction. This harmonized approach balances environmental protection, procedural fairness, and the rights of the accused.

9. There appears to exist a nuanced dissonance in the interpretation and concurrent operation of Rule 72 of the relevant Rules and Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the “MMDR Act”). Section 21(4) of the Act unequivocally criminalizes the transportation of minerals without lawful authority, rendering such act *per se* an offence, and mandating confiscation of the vehicle involved by the competent court empowered to take cognizance, irrespective of whether the violation is a first-time or subsequent contravention. Contrariwise, Rule 72(iii) circumscribes the authority of the In charge Officer to invoke Section 21 proceedings only upon the commission of a third or subsequent offence. For the first and second infractions, the Rule merely authorizes the realization of the price of minerals, including royalty and a prescribed fine, thereby implying that no prosecutable offence is deemed to have been constituted at those stages. Consequently, it follows that, for initial and second violations, even upon application by the In charge Officer, the lodging of an FIR by the police may not be legally sustainable. However, a plain reading of Section 21 of the MMDR Act vests the police with autonomous powers to act in accordance with law, regardless of the frequency of the offence. Furthermore, Rule 72 envisages imposition of a "fine", which, being a penal consequence, necessarily presupposes a finding of guilt, and hence, a conviction following due adjudication. It is a settled principle of criminal jurisprudence that no person may be convicted or penalized without the prosecution proving the foundational allegations beyond reasonable doubt. In light of the foregoing legal position, this Court is of the considered opinion that any realization of fine or cost of minerals under Rule 72,

Rule 81, or Rule 82 must be predicated upon due proof of contravention. Until such adjudication is complete, the machinery for enforcement under these Rules must remain circumscribed by the procedural safeguards of criminal law. Accordingly, where a vehicle is seized for alleged contravention, and where the accused furnishes a security bond or undertaking for payment of the requisite amount, it would be just and proper to release the vehicle on *Supurdnama*, pending the final determination of guilt. Such an interim arrangement finds authoritative support in the judgment of the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai v. State of Gujarat*, SLP (Crl.) No. 2745 of 2002, decided on 01.10.2002, wherein it was held that release of property during investigation, inquiry or trial is an interim measure, always subject to the ultimate outcome of the proceedings. Thus, the release of the vehicle on *Supurdnama*, upon execution of a security bond, neither frustrates the object of the Act nor precludes future confiscation or recovery. Should the accused be held guilty, the fine and value of the mineral can be duly recovered, and the vehicle, being identifiable, remains subject to seizure and confiscation at any subsequent stage in accordance with law. In Sanjib v State of Rajasthan & Anr. **Citation:** 2024 Live Law (Raj) 198, the Rajasthan High Court held that the Court held that if confiscation proceedings were initiated, the tractors should be released only on payment of penalty and compounding fees, but if not, then the petitioner may approach the competent court for release of the vehicle after furnsihing a bond or bank gauarantee of similar value. Same was also affirmed by Honble Kerela High Court in Andar v State of Kerela.

10. In the instant case, there is no mention of Rule 72 in the FIR lodged. The said FIR has been specifically lodged under Section 21 of the MM D and R Act. Though rule 72 is clear same can only be done in case of a third time violation which is not reflected in the

report. Nonetheless, FIR has been lodged and the application for release pending investigation is before this Court. Regard being had to the law on the point, the application under Section 497 of the BNSS is to be decided.

11. Therefore, keeping in view (i) the absence of prior violations, (ii) the fact that the FIR invokes only Section 21 of the MMDR Act, (iii) the lack of confiscation proceedings, and (iv) the direction of the Hon'ble Apex Court in *Sunderbhai Ambalal Desai* case, the court finds it appropriate to release the vehicle on *Supradnama* (interim custody) subject to conditions. This would uphold the applicant's livelihood rights without compromising ongoing investigation or regulatory enforcement.

12. Since FIR has already been lodged the fine can be realized at the conclusion of the trial when the accused is found liable for the commission of the offense however, viewing the directives of the Hon'ble High Court as well as the mandate of Rule 72 of the 2016 Rules, the Court deems proper at this stage to order the release of vehicle on supurdnama provided same in not involved in any other FIR , to the applicant, who through a sale letter and copy of Sale Affidavit has established prima facie chain of custody to the machine in question, subject to following conditions;

    - The applicant shall furnish an indemnity bond undertaking that he shall be liable to pay any penalty as may be imposed by the competent court under the MMDR Act and the rules made thereunder, along with the cost of the minerals as may be proved, the applicable royalty and fine, if the guilt of the accused is proved after trial;
    - the vehicle is required in future, the executant shall produce the same as per the direction of the court and further the said vehicle shall not be sold or materially altered or engaged in any illegal activity or activity of which he has accused of;

- The applicant shall produce the vehicle before the competent court as and when required for the purpose of confiscation, if any, which may be initiated at appropriate stage in terms of relevant provisions of the MMDR Act and the rules made there under.
- The Investigating Officer shall release the vehicle in favour of applicant after retaining the Registration Certificate or any other original document which shall be produced before Court in due course.
- The applicant shall not sell, transfer, or otherwise dispose of the vehicle until the conclusion of the trial and shall ensure the vehicle is kept in good condition and shall not make any structural modifications therein.
- The Investigating Officer is directed to take photographs of the vehicle and prepare a detailed panchnama before releasing the vehicle. These photographs and the panchnama shall be retained in the case file for future reference.
- The IO concerned is directed to release the vehicle in favour of the applicant after making proper valuation of the mineral by an expert and the valuation report shall be made part of the final report.

13. Application accordingly disposed off. Be consigned to records after due compilation.

Announced
02/06/2025

TASNEEM KAWOOS

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Munsiff/JMIC
Budgam