

IN THE COURT OF THE SESSIONS JUDGE

AT : GANDHINAGAR

SESSIONS CASE NO.85 OF 2023

ORDER BELOW EXH.22

- [1] The present application is filed by the accused under Section 227 of the Criminal Procedure Code for discharging the accused.
- [2] Present case is arising out of the FIR being No.11216009230356 of 2023 registered with Mansa police station, District : Gandhinagar. Applicants have been chargesheeted for the offence punishable under Section 379 and 114 of IPC and Section 4(1), 4(1)A and 21 of Mines and Minerals (Regulation and Development) Act and Rule 3 & 21 of Gujarat Mineral (prevention of illegal mining, transportation and storage) Rules.
- [3] The case of the prosecution, in nutshell, is that complainant - Rizvanhussen Rafikmiya Bukhari, who is mines supervisor at Geologist office, Gandhinagar, that one team including Prant Officer, Kalol, SOG police inspector was conducting a search at Anodiya village and they have noted illegal mining activity and found certain articles including excavation machines from and nearby the lease. It was found that accused have misused the

royalty pass and by doing so they have done theft of 249944.86 metric tone of sand amounting Rs.5,99,86,766/-. Accused have abetted each other. FIR is based on the issue that the accused persons failed to pay fine amount of Rs.8,48,26,340/-. With the aforesaid allegations aforesaid FIR filed against the accused.

[4] After investigation, chargesheet came to be filed against the accused and Criminal Case No.840 of 2023 registered before the learned JMFC Court, Mansa. Offences are triable by this Court, so, learned JMFC Court, Mansa has committed the case before this Court and after committal, case has been registered as Sessions Case No.85 of 2023. Accused have been granted bail.

[5] It is submitted that FIR is culminated into the chargesheet. The learned Magistrate cannot take cognizance as it is barred under Section 22 of the Mines and Minerals Act, neither FIR nor the chargesheet is maintainable under the law, therefore, FIR and subsequent proceedings are void ab initio. Learned advocate for the accused has prayed to grant the application. In support of his submissions, learned advocate for the accused has relied on the following judgments :

1. Case of Jayant and other Versus State of Madhya Pradesh, reported in 2021 2 SCC

670

2. Order passed by Hon'ble High Court of Gujarat in R/Criminal Misc. Application No.427 of 2020, dated 14.07.2023
3. Order passed by Hon'ble High Court of Gujarat in R/Criminal Misc. Application No.12383 of 2014, dated 25.08.2023

[6] I have perused the application and judgments cited at the bar, this court has considered that Cognizance under Mines and Minerals Act is permitted in case of filing of the complaint, while in the present case, chargesheet is filed, which is not maintainable as per Section 22 of the Mines and Minerals Act. I would like to reproduced Section 22 of Mines and Minerals Act as under :

Section 22 : No Court shall take cognizance of any offence punishable under this Act or any Rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government.

[7] In view of the above discussion, in the present case, complainant has not filed the complaint, FIR bearing C.R.No.11216009230356 lodged before the Mansa police station by the State against the accused for the offence punishable u/s.4(1), 4(1)(A) and 21 of Mines and Minerals (Devlopment and Regulation) Act, 1957 and Rule 3 and 21 of Gujarat Mineral (Prevention of illegal mining, transportation and storage) Rule, 2017 and

Section 379 and 114 of IPC, which culminated into Criminal Case No.840 of 2023, and after committal, it culminated into Sessions Case No.85 of 2023, wherein, offences against accused punishable u/s.4(1), 4(1)(A) and 21 of Mines and Minerals (Devlopment and Regulation) Act, 1957 and Rule 3 and 21 of Gujarat Mineral (Prevention of illegal mining, transportation and storage) Rule, 2017 are not tenable in the eye of law. If the accused are discharged under Section 4(1), 4(1)A and 21 of Mines and Minerals (Regulation and Development) Act and Rule 3 & 21 of Gujarat Mineral (prevention of illegal mining, transportation and storage) Rules, the only case which remains against the accused persons is under Section 379 and 114 of IPC. Case under Section 379 and 114 of IPC is triable by Magistrate. Therefore, considering facts and circumstances of the present case, I am of the view that the application is required to be partly allowed. Hence, following order is passed:

ORDER

- [1] The application at Exh.22 is partly allowed.
- [2] Accused are hereby ordered to be discharged from the offences punishable u/s.4(1), 4(1)(A) and 21 of Mines and Minerals (Devlopment and Regulation) Act, 1957 and Rule 3 and 21 of Gujarat Mineral (Prevention of illegal mining, transportation and storage) Rule, 2017 arising out of FIR being

No.11216009230356 of 2023, registered with Mansa police station.

- [3] R&P of the Criminal Case No.840 of 2023 be sent back to the Court of Judicial Magistrate First Class, Mansa alongwith the copy of this order, if any.
- [4] Learned Judicial Magistrate First Class, Mansa is directed to restore the Criminal Case No. 840 of 2023 and proceed further against the accused for the offence punishable u/s.379 and 114 of IPC as per law.
- [5] Sessions Case No.85 of 2023 is hereby disposed of.

Signed and Pronounced in open Court on 16th day of April, 2026.

Date : 16.04.2026
Place: Gandhinagar

[ASHISH J.S. MALHOTRA]
GJ01504
SESSIONS JUDGE
GANDHINAGAR

/pbshah/