



HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 1161/2020

Jitendra Meena S/o Shri Sharwan Meena, R/o Talaiwali Dhani,
Village Khorl, Luniyawas, Police Station Khonagoriyan, District
Jaipur, Raj.

-----Petitioner

Versus

1. State Of Rajasthan, Through PP.
2. Mining Department, State Government, Udhog Bhawan,
Jaipur.

-----Respondents

Connected With

S.B. Criminal Miscellaneous (Petition) No.1875/2016
S.B. Criminal Miscellaneous (Petition) No.4310/2016
S.B. Criminal Miscellaneous (Petition) No.3698/2017
S.B. Criminal Miscellaneous (Petition) No.3699/2017
S.B. Criminal Miscellaneous (Petition) No.275/2018
S.B. Criminal Miscellaneous (Petition) No.6262/2018
S.B. Criminal Miscellaneous (Petition) No.2177/2019
S.B. Criminal Miscellaneous (Petition) No.2183/2019
S.B. Criminal Miscellaneous (Petition) No.3119/2019
S.B. Criminal Miscellaneous (Petition) No.3534/2019
S.B. Criminal Miscellaneous (Petition) No.4777/2019
S.B. Criminal Miscellaneous (Petition) No.540/2020
S.B. Criminal Miscellaneous (Petition) No.541/2020
S.B. Criminal Miscellaneous (Petition) No.1868/2020
S.B. Criminal Miscellaneous (Petition) No.2730/2020
S.B. Criminal Miscellaneous (Petition) No.3114/2020
S.B. Criminal Miscellaneous (Petition) No.3712/2020
S.B. Criminal Miscellaneous (Petition) No.4129/2020
S.B. Criminal Miscellaneous (Petition) No.5097/2020
S.B. Criminal Miscellaneous (Petition) No.5150/2020
S.B. Criminal Miscellaneous (Petition) No.5829/2020



S.B. Criminal Miscellaneous (Petition) No.5869/2020
 S.B. Criminal Miscellaneous (Petition) No.5870/2020
 S.B. Criminal Miscellaneous (Petition) No.5910/2020
 S.B. Criminal Miscellaneous (Petition) No.5920/2020
 S.B. Criminal Miscellaneous (Petition) No.6076/2020
 S.B. Criminal Miscellaneous (Petition) No.6368/2020
 S.B. Criminal Miscellaneous (Petition) No.31/2021
 S.B. Criminal Miscellaneous (Petition) No.142/2021
 S.B. Criminal Miscellaneous (Petition) No.184/2021
 S.B. Criminal Miscellaneous (Petition) No.304/2021
 S.B. Criminal Miscellaneous (Petition) No.350/2021
 S.B. Criminal Miscellaneous (Petition) No.519/2021
 S.B. Criminal Miscellaneous (Petition) No.520/2021
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 S.B. Criminal Miscellaneous (Petition) No.531/2021
 S.B. Criminal Miscellaneous (Petition) No.532/2021
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 S.B. Criminal Miscellaneous (Petition) No.539/2021
 S.B. Criminal Miscellaneous (Petition) No.542/2021
 S.B. Criminal Miscellaneous (Petition) No.554/2021
 S.B. Criminal Miscellaneous (Petition) No.570/2021
 S.B. Criminal Miscellaneous (Petition) No.579/2021
 S.B. Criminal Miscellaneous (Petition) No.611/2021
 S.B. Criminal Miscellaneous (Petition) No.638/2021
 S.B. Criminal Miscellaneous (Petition) No.639/2021
 S.B. Criminal Miscellaneous (Petition) No.649/2021
 S.B. Criminal Miscellaneous (Petition) No.685/2021
 S.B. Criminal Miscellaneous (Petition) No.736/2021
 S.B. Criminal Miscellaneous (Petition) No.741/2021
 S.B. Criminal Miscellaneous (Petition) No.743/2021
 S.B. Criminal Miscellaneous (Petition) No.782/2021
 S.B. Criminal Miscellaneous (Petition) No.800/2021
 S.B. Criminal Miscellaneous (Petition) No.801/2021





S.B. Criminal Miscellaneous (Petition) No.805/2021

S.B. Criminal Writ Petition No.810/2021

S.B. Criminal Miscellaneous (Petition) No.851/2021

S.B. Criminal Miscellaneous (Petition) No.875/2021

S.B. Criminal Miscellaneous (Petition) No.941/2021

S.B. Criminal Miscellaneous (Petition) No.942/2021

S.B. Criminal Miscellaneous (Petition) No.951/2021

S.B. Criminal Miscellaneous (Petition) No.1056/2021

S.B. Criminal Miscellaneous (Petition) No.1057/2021

S.B. Criminal Miscellaneous (Petition) No.1320/2021

S.B. Criminal Miscellaneous (Petition) No.1794/2021

S.B. Criminal Miscellaneous (Petition) No.1869/2021

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S.B. Criminal Miscellaneous (Petition) No.2052/2021

S.B. Criminal Miscellaneous (Petition) No.2070/2021

S.B. Criminal Miscellaneous (Petition) No.2361/2021

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S.B. Criminal Miscellaneous (Petition) No.3317/2021

S.B. Criminal Miscellaneous (Petition) No.3432/2021





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S.B. Criminal Miscellaneous (Petition) No.849/2021
S.B. Criminal Miscellaneous (Petition) No.990/2021
S.B. Criminal Miscellaneous (Petition) No.992/2021
S.B. Criminal Miscellaneous (Petition) No.1343/2021





S.B. Criminal Miscellaneous (Petition) No.1566/2021
S.B. Criminal Miscellaneous (Petition) No.1585/2021
S.B. Criminal Miscellaneous (Petition) No.2377/2021
S.B. Criminal Miscellaneous (Petition) No.3885/2021
S.B. Criminal Miscellaneous (Petition) No.4089/2021
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S.B. Criminal Miscellaneous (Petition) No.7738/2021
S.B. Criminal Miscellaneous (Petition) No.7874/2021
S.B. Criminal Miscellaneous (Petition) No.7880/2021





For Petitioner(s) : Mr. Sandeep Jain, Mr. Praveen Kumar Jain, Mr. Girraj P. Sharma, Mr. Suresh Kumar Dhenwal, Mr. K.K. Chhawal, Mr. Anil Upman, Mr. Bharat Yadav, Mr. I.P. Jakhar, Mr. Hemant Kumar Sharma, Mr. Kuldeep Kumar Sharma, Mr. Rajesh Kumar Sharma, Mr. Atul Kumar Jain, Mr. Aashish Nagarwal, Mr. Pallav Choudhary, Mr. D.D. Khandelwal, Mr. Ripu Daman Singh Naruka, Mr. Pushpendra Kumar Pandey, Mr. Praveen Kumar Jain, Mr. Mukesh Kumar Meena, Mr. Rohit Khandelwal, Mr. Abdul Wahid Naqvi, Mr. Vinod Kumar Sharma, Ms. Lata Sharma, Mr. Dilip Singh, Mr. Dharmendra Gurjar, Mr. Deepak Khandenwal, Mr. Pawan Kumar Verma, Mr. Arvind Sharma, Mr. Raghuraj Singh Rajawat, Mr. Sangram Singh Shekhawat, Mr. Jiteshu Chugh, Mr. Shyam Bihari Gautam, Mr. Aditya Mishra, Mr. Dinesh Kumar Garg, Mr. S. Gaharana, Mr. Krishan Chander Sharma, Mr. Amitabh Vijaywargia, Mr. Vishivas Saini, Mr. Satish Kumar Khandelwal, Mr. Tarun Jain, Mr. Amit Dadhich, Mr. Brijesh Kumar Bhardwaj, Mr. Rajendra Prasad Yadav, Mr. Dheeraj Tripathi, Mr. Umashanker Pandey, Mr. S.L. Sharma, Mr. Hanish Khan, Mr. Vijendra Yadav, Mr. Rohan Jain, Mr. Rahul Agarwal, Mr. Kishan Swami Vishesh Gupta, Mr. Ajay Singh Yaduvanshi, Mr. Jiya Ur Rahman, Mr. Umesh Dixit, Mr. Ashindra Gautam, Mr. Syed Shahid Hasan, Mr. Dushyant Singh Naruka, Mr. Brahm Singh Gurjar, Mr. Vikas Kabra, Mr. Mohit Pareek, Mr. Mahendra Sharma, Mr. Amit Ratnawat Mr. Dev Krishna Purohit, Mr. Krishan Kant Sharma, Mr. Mahender Meena, Mr. Amit Jindal, Mr. Kailash Chander Sharma, Mr. Gordhan Singh Fauzdar, Mr. Mohar Pal Meena, Mr. Arpit Srivastava, Mr. Ashish Sharma, Mr. Manak Chand Jain, Mr. Bharat Raj Yogi, Ms. Raj Kumar Kasana, Mr. Sandeep Kumar





Maheshwari, Mr. Prahlad Sharma, Mr. Ram Rakh Sharma, Mr. Rajendra Singh Tanwar, Mr. M.S. Choudhary, Mr. Ajeet Singh Devanda, Mr. Shivraj Chauhan, Mr. Chaman Singh, Mr. S.N. Meena, Mr. Mohammad Aslam, Mr. Vijay Singh Yadav, Mr. Nawab Ai Rathore, Mr. Sanwar Mal, Mr. Girish Khandelwal, Mr. Kirodee Lal Meena, Mr. Harendra Singh, Mr. Surendra Singh Rajawat, Mr. Mukesh Kumar Goyal, Mr. Hari Krishana Sharma, Mr. Ramniwas Meena, Mr. Moti Lal Sharma, Mr. Manish K. Sharma, Mr. Timan Singh, Mr. Om Prakash Sharma, Mr. Avadesh Kumar Purohit, Mr. Dilip Singh Kurka, Mr. Khurshid Ahmed Khan, Mr. Jitendra Choudhary, Mr. Pawan Sharma, Mr. B.L. Dhakar, Mr. Aman Ali, Mr. Sumit Khandelwal, Mr. Ravindra Kumar Paliwal, Mr. H.C. Mourya, Mr. Teeka Ram Meena, Mr. Mahendra Kumar Naharwal, Mr. Kumud Singh, Mr. Bheem Singh Dabla, Mr. Sangram Singh Shekhawat, Mr. Ajeet Singh Devanda, Mr. Rajendra Yadav, Mr. Lakhan Singh Meena, Mr. R.B. Sharma, Mr. K.K. Bairwa, Mr. Jagdish Singh Chauhan, Mr. Chandarpal Singh Sujawat, Mr. Malkhan Chaturvedi, Mr. Mukesh Pal Jadoun, Mr. Ramawtar Meena, Mr. Vivek Joshi, Mr. Rajneesh Gupta, Mr. Dushyant Jain, Mr. Anil Kumar Jain, Mr. Anil Jain, Mr. Rajeev Bhushan Bansal, Mr. Mahendra Meena, Mr. Syed Ali Naqvi, Mr. Dinesh Pareek, Mr. Poonam Chand Sharma, Mr. Ashwani Kumar Kuswaha, Mr. Pankaj Kumar, Mr. Manish Kumar Sharma, Mr. Dushyant Jain, Mr. Sanjay Khan

For Respondent(s) : Mr. M.S. Singhvi (Sr. Adv.) Advocate General, assisted by Mr. Sheetanshu Sharma
Mr. Zakir Hussain, Additional Government Counsel
Mr. F.R. Meena, Public Prosecutor

HON'BLE MR. JUSTICE PANKAJ BHANDARI

REPORTABLE

Order

01/12/2021



1. Defect(s), pointed out by the Registry, in any of the petitions, are waived.

2. First part of the present bunch of cases pertains to:

A. Vehicles seized by the police under Section 379 of IPC and Section 4/21 of the Mines and Minerals (Development And Regulation) Act, 1957 (hereinafter referred to as "the Act of 1957");

B. Vehicles seized under Motor Vehicles Act;

C. Vehicles seized under Section 38 of the Police Act and Rajasthan Minor Mineral Concession Rules, 2017 (hereinafter referred to as "the Rules of 2017") (hereinafter referred to as "the first category of cases").

3. Second part of the present bunch of cases pertains to cases where the vehicles have been seized by the Mining Department under Section 4/21 of the Act and are being dealt with in accordance with Rules 54 & 60 of the Rules of 2017 (hereinafter referred to as "second category of cases").

4. The petitioners had approached and prayed before the Court below for release of the vehicles under Sections 451 and 457 of Cr.P.C., but the same was rejected. Some of the petitioners thereafter preferred revisions, which also stand rejected by the Revisional Court.

5. On the last date, the counsel for the petitioners were heard. The question of parity struck the Court, as the vehicles which were seized by the Mining Department, were being released after compounding the offence and after collecting the compounding fee, cost of mineral and the fine imposed by the National Green Tribunal (hereinafter referred to as "NGT") whereas the vehicles which were seized by the police, were being released only after





obtaining a surety and bank guarantee. In the latter case, no cost of mineral and fine was imposed as per the directions of the NGT while releasing the vehicles.

6. This Court was of the view that when two vehicles starting from the same quarry containing the same material, weighing similarly, are seized, one by the police and other by the Mining Department, then why the wrong doers should not be treated at par. The Court, therefore, requested learned Advocate General to assist the Court. Learned Advocate General sought time to seek instructions from the State and having used his good office, he has come with the approval of the State to treat both the categories of wrong doers at par.

7. It is contended by learned counsel for the petitioners that for offence under Section 21 of the Act of 1957, a complaint has to be filed by a person authorized by the appropriate Government and in absence thereof, the Court is barred from taking cognizance under Section 22 of the Act of 1957. It is also contended that since the police has seized the vehicles and police is not authorized under the Act of 1957 to file a complaint, no cognizance can be taken under Section 22 of the Act of 1957. On behalf of the petitioners, reliance is placed on the judgment in *Imran & Ors. Versus State of U.P. & Anr.*: **Application U/s 482 No.16700 of 2019** decided by the Allahabad High Court on 10.7.2019 wherein the Allahabad High Court has held that the police is competent to investigate the offence under the Act and under the Indian Penal Code, but the Court can take cognizance only when a complaint in writing is submitted by the authorized officer.

8. It is further contended that in view of the judgment in *Sunderbhai Ambalal Desai & Ors. Versus State of Gujarat* reported





in **(2002) 10 SCC 283**, vehicles cannot be withheld and should be released. It is contended that fine can be imposed on the petitioners only after they are held guilty. The prayer made before the Court is that the vehicles should be released only on furnishing of surety.

9. It is also contended that some of the petitioners are not willing to compound the offence and are ready to face the trial and therefore, their vehicles should be released only on furnishing of surety.

10. Learned Advocate General appearing on behalf of the State contends that there is rampant illegal mining in the State of Rajasthan and the petitioners, who are involved in the illegal mining, do not even care for the life of the persons who are trying to prevent illegal mining.

11. It is argued that as per the provision of Rule 54 of the Rules of 2017, compounding fee is prescribed and it further provides that cost of mineral is to be taken as ten times of royalty in lieu of rent, royalty, compensation for environmental degradation and tax chargeable on the land occupied without lawful authority etc., is also required to be paid. It is contended that in addition to this, NGT has also directed the State Authorities to take a particular amount.

12. Learned Advocate General submits that the State at the highest level has taken a decision that the persons involved in illegal mining will be treated at par. The vehicles which are seized by the Mining Department and the vehicles which are seized by the Police Department can be released in both cases by compounding of offence under Section 379 IPC as well as under the Act of 1957 subject to their depositing the compounding fee,



cost of mineral and the amount determined by the NGT.

13. It is also contended that the Act of 1957 does not bar the police from seizing the vehicles and investigating the offence under the Act of 1957 as well as the offence under the Indian Penal Code. The only restriction under Section 22 of the Act of 1957 is on the Court from taking cognizance of an offence unless, the complaint is filed by the authorized officer. It is argued that the appropriate Government can at any stage authorize a person to file a complaint and even a police officer in this respect can be authorized to file a complaint.

14. Learned Advocate General has placed reliance on the judgment of the Punjab and Haryana High Court in *Balwinder Singh Versus State of Punjab & Anr.*: **CRM-M-14956-2020** & other connected matters wherein it was held that there is no bar of investigating the case by the police under the Act of 1957. Reliance has also been placed on the judgment in *Jayant Etc. Versus The State of Madhya Pradesh*: **Criminal Appeal Nos.824-825/2020** decided by the Apex Court on 03.12.2020 wherein the Apex Court has held as under:

“However, our above conclusions are considering the provisions of [Section 23A](#) of the MMDR Act, as it stands today. It might be true that by permitting the violators to compound the offences under the [MMDR Act](#) or the rules made thereunder, the State may get the revenue and the same shall be on the principle of person who causes the damage shall have to compensate the damage and shall have to pay the penalty like the principle of polluters to pay in case of damage to the environment. However, in view of the large scale damages being caused to the nature and as observed and held by this Court in the case of Sanjay (supra), the policy and object of [MMDR Act](#) and Rules are the



result of an increasing awareness of the compelling need to restore the serious ecological imbalance and to stop the damages being caused to the nature and considering the observations made by this Court in the aforesaid decision, reproduced hereinabove, and when the violations like this are increasing and the serious damage is caused to the nature and the earth and it also affects the ground water levels etc. and it causes severe damage as observed by this Court in the case of Sanjay (supra), reproduced hereinabove, we are of the opinion that the violators cannot be permitted to go scot free on payment of penalty only. There must be some stringent provisions which may have deterrent effect so that the violators may think twice before committing such offences and before causing damage to the earth and the nature.”

15. I have considered the contentions and have perused the provision of the law as well as the judgments cited.

16. In majority of cases applications were moved before the Court below in which release of vehicle(s) was rejected by Court below under Sections 451 & 457 Cr.P.C. As per Section 457(2) Cr.P.C., the Magistrate can order property to be delivered on such conditions as Magistrate thinks fit.

17. In the first category of cases, seizure was made by the police authorities and the course laid down under Section 451 Cr.P.C. and Section 457 Cr.P.C. pertaining to release or delivery of vehicles was resorted to. It was brought to the notice of the Court that in the first category of cases, neither fine as determined by NGT was being imposed nor any cost of mineral was being recovered.

18. The Apex Court has observed in *Jayant Etc.* (supra) that it is the duty cast upon the State to restore the ecological imbalance and to stop damage being caused to the nature. If vehicle is released only on taking surety, it would be encouraging illegal





mining.

19. Taking note of the rampant illegal mining and ecological imbalance as well as damage being caused to the nature as a consequence of it and to maintain parity between the persons whose vehicles are seized by the Mining Department and the Police Department, this Court in applications pertaining to the first category of cases deems it appropriate to allow the applications for release of vehicles subject to the following conditions:

- i) Petitioners shall deposit the compounding fees, the compensation as determined by the NGT and cost of the mineral with the Mining Department.
- ii) Petitioners shall submit proof of such deposit before the concerned Court.
- iii) Petitioners shall submit an undertaking to the Court below that in future they would not indulge in any illegal mining and/or illegal transportation of mineral and that if in future, the Apex Court imposes any condition, they would comply with the same.

If the above conditions are fulfilled, the concerned Court shall drop the proceedings and issue release order. The proceedings in the criminal case shall stand disposed.

20. The contention of the counsel for the petitioners that they are ready to face the trial and no condition should be imposed against them for release of the vehicles and the vehicles be released only on surety, cannot be accepted for the very reason that the Court is bound to see that parity is done.



21. It is made clear that if a person wishes to contest the criminal case, still the vehicle(s) would only be released on depositing of compensation as determined by the NGT and cost of mineral. In such cases, since the offence is not being compounded, compounding fee would not be collected and criminal case would proceed.

22. It is brought to the notice of this Court that in certain cases, in one FIR, many vehicles are seized. It is made clear that in such cases also, if the above-mentioned conditions are fulfilled, then the FIR qua the petitioner(s), would stand disposed.

23. For removal of doubt, it is made clear that compounding of the offence by the Court below would cover only those cases falling under Categories A, B & C of the "first category".

24. Now dealing with the matters wherein vehicles have been seized by the Mining Department i.e. "the second category". Counsel appearing for second category of cases have agreed for orders on similar lines as that of first category.

25. It is pertinent to refer to the order of the Supreme Court in *State of Rajasthan & Ors. Versus Jagdish Prasad: SLP (Cri.) No(s).106-107/2021* & other connected matters wherein it was observed that the cases where vehicles have been seized by the Mining Department have to be dealt with in accordance with the Mining Act and Rules meaning thereby that the Mining Department is competent to compound the offence and release the vehicles after obtaining the compounding fee, cost of mineral and fine imposed in accordance with the directions of the NGT.



26. These petitions accordingly stand disposed and the petitioners are at liberty to approach the concerned authority of the Mining Department and after depositing the compounding fee, cost of mineral and fine imposed as per the directions of the NGT and after submitting an undertaking to the Mining Department that in future they would not indulge in any illegal mining and/or illegal transportation of mineral and if in future, the Apex Court imposes any condition, they would comply with the same and have the offence compounded.

27. This Court is conscious of the fact that in none of the petitions, prayer is made for quashing of proceedings/FIR. However, for doing justice to the litigants as well as to put a deterrence on the wrong doers so that offences are not repeated, this Court deems it proper to exercise its inherent powers for disposal of the cases pending before this Court, which will consequently result in compounding of the cases pending before the Court below.

28. The Court acknowledges the efforts made by learned Advocate General in obtaining the consent of the Government for treating the two bunch of cases at par and permission of the Government for compounding of the offence of first category. The disposal of these cases would also result in disposal of the cases pending before the Court below. Imposition of the above conditions for release of the vehicles, which is at par with the vehicles released by the Mining Department, would act as a deterrent and prevent illegal mining.

29. In view of the above, all these petitions are disposed of.



30. Stay applications also stand disposed of.

(PANKAJ BHANDARI),J

SUNIL SOLANKI /19



RAJASTHAN HIGH COURT



सत्यमेव जयते