

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 10644 of 2022**

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SOLANKI HARIBHAI ARJANBHAI

Versus

STATE OF GUJARAT

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Appearance:

MR JAY N SHAH(10668) for the Petitioner(s) No. 1

MS. KRUTI M SHAH(2428) for the Petitioner(s) No. 1

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

NOTICE SERVED BY DS for the Respondent(s) No. 2,3

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CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA**Date : 07/07/2022****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(b).

3. The petitioner is seeking a direction on the respondent authorities to release the vehicle being Tractor Engine No.3100FLU14A1006294F18, Chasis No.BZJDR101135353, Trolley Chasis No.AAI126712021.

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

4.1 The petitioner is the owner of the vehicle being Tractor Engine No.3100FLU14A1006294F18, Chasis No.BZJDR101135353, Trolley Chasis No.AAI126712021. On 14.03.2022, inspection was carried out by the team of respondent No.3, where

the vehicle was seized and was kept on custody of Sarpanch, Ghatva Gram Panchayat.

5. Learned advocate Ms.Shah has submitted that though the petitioner has made several requests to release his vehicle before the respondent Nos.2 and 3, his requests were not responded. It is submitted that thereafter on 12.05.2022, he made a representation before the Office of the respondent No.2 stating that the vehicle was seized on 14.03.2022 and even after passage of 58 days till 12.05.2022 and after expiry of 45 days, vehicle, which is seized, is required to be released as per the provision of 12(2)(b)(ii) of the Gujarat Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 (for short "the Mining Rules"). She has submitted that the issue is squarely covered by the order of the Coordinate Bench of this Court dated 26.08.2020 passed in Special Civil Application No.9203 of 2020 and the order dated 01.12.2021 passed in Special Civil Application No.16887 of 2021.

6. In response to the aforesaid submissions, learned AGP Mr.Trivedi, 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 14.03.2022. 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 judgment in the case of Nathubhai Jinabhai Gamara Vs. State of Gujarat, passed in Special Civil Application No.9203 of 2020. The Paragraph Nos.7, 10 and 11 of the judgment 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. Tractor Engine No.3100FLU14A1006294F18, Chassis No.BZJDR101135353, Trolley Chassis No.AAI126712021, 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.

Sd/-
(A. S. SUPEHIA, J)

NVMEWADA