

**Tapas Mitra and Ors Vs. The State of Jharkhand and Ors**

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**SooperKanoon Citation :** [sooperkanoon.com/62439](http://sooperkanoon.com/62439)

**Court :** Jharkhand

**Decided On :** Aug-04-2015

**Appellant :** Tapas Mitra and Ors

**Respondent :** The State of Jharkhand and Ors

**Judgement :**

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(Cr.) No.- 205 of 2015  
1. Tapas Mitra, Son of late Mahadev Mitra, resident of Meri Tola, Bari Bazar, PO & PS- Sadar, Chaibasa, District- West Singhbhum 2. Samresh Kumar Pati, Son of Basant Bihari Pati, resident of Charai, PO & PS Muffasil, Chaibasa, District- West Singhbhum 3. Jai Sing Laguri, Son of late Kailash Laguri, resident of village, Siringsiya, PO & PS Tonto, District- West Singhbhum 4. Maheshwar Alda, Son of Yadav Alda, resident of Station Road, PO & PS- Sadar, Chaibasa, District- West Singhbhum . Petitioner(s) -V e r s u s- 1. State of Jharkhand 2. The District Mining Officer, Chaibasa having its office at Chaibasa Sadar, PO & PS Sadar Muffasil, District- West Singhbhum 3. The Assistant Mining Officer, Chaibasa, having its office at Chaibasa Sadar, PO & PS Sadar Muffasil, District- West Singhbhum 4. The Officer in-charge, Chaibasa Muffasil, PO & PS Chaibasa Muffasil, District- West Singhbhum . ... Respondents CORAM: - HONBLE MR. JUSTICE RAVI NATH VERMA For the Petitioner(s) : - Mr. Suraj Verma, Advocate For the State : - Mr. J.Rahman, A.P.P. C.A.V. ON- 29/07/2015 PRONOUNCED ON-04/08/2015  
The four petitioners by invoking the extra ordinary jurisdiction of this Court under article 226 of the Constitution of India has questioned the legality of the order

dated 06.04.2015 passed by Sessions Judge, West Singhbhum at Chaibasa in Criminal Revision no. 01 of 2015 whereby the order passed by learned Chief Judicial Magistrate, Chaibasa in G.R. Case no. 116 of 2014 rejecting the prayer of the petitioners for release of their tractors and trailers, has been affirmed.

2. The prosecution case, in nutshell, is that on the written report of the informant Bhola Harijan, Assistant Mining Officer, Chaibasa Sadar, Muffasil P.S. Case no. 26 of 2014 was instituted under Sections 379/411 of the I.P.C. and also under Section 4/54 of Jharkhand Minor Mineral Concessions Rules and under Section 3/9 of J.M.T.C. Regulation Act and also under Section 4/21 of M.M.(D.R.) Act with the allegation that the informant received an information regarding the illegal excavation of sand and its transportation. Whereafter, he along with other officials of Mining Department and Police Personnel came to the place of occurrence and found five tractors loaded with illegal sand about 100 cubic whereafter the team seized the tractors and trailers bearing nos. (1) JH06G-1657/JH06G- 4515, (2) JH06E-5557/JH06E-5558, (3) JH06A8546/JH06A8547 and (4) JH06E6220/JH06E6221 and (5) JH06E8353/JH06E8354 and when the valid papers were demanded from the drivers, they failed to produce any paper of transportation of the sand. The drivers of the tractors were also arrested.

3. It appears from the record that the petitioners filed a petition on 18.11.2014 before the court of learned Chief Judicial Magistrate, Chaibasa for release of their vehicles, but the same was rejected vide order dated 29.01.2015. Whereafter, revision was preferred before the learned Sessions Judge, West Singhbhum at Chaibasa bearing Criminal Revision no. 01 of 2015 but the same was also rejected holding that the vehicles have been parked safely in the premises of police station and if the vehicles are released, the same would hamper the investigation of this case. The revisional court further held that the Mining Department, Chaibasa has mentioned in his report that the confiscation proceeding has not been initiated as the copy of the F.I.R., seizure list have not been remitted to the Mining Department and the same has been called for, as such confiscation proceeding of the seized vehicles loaded with illegally mined sand is under process.

4. Learned counsel appearing for the petitioner submitted that the order impugned is perverse and against the mandates of the Honble Supreme Court to release the commercial vehicles without any delay. It was also submitted that the vehicles are vulnerable to vagaries of nature and the vehicles in question being commercial vehicles are lying in open space and there is every apprehension that due to weathering effect and by efflux of time, the vehicles will be converted into garbage. Hence, prayer is to release the vehicles.

5. Contrary to the aforesaid submission, learned counsel representing the State relying upon the orders of the court below submitted that vehicles are safely parked in the premises of police station and the competent authority has already taken steps for initiation of confiscation proceeding. As such, the court below has rightly rejected the petition for release of the vehicles. 36. This Court at present is not going into the merit of the allegation levelled in the F.I.R. The tractors alongwith trailers in question stand seized since 22.02.2014. It is common knowledge that vehicles are vulnerable to vagaries of nature in case they are kept in open space without adequate care.

7. In a case *Sunderbhai Ambala Desai Versus State of Gujarat* [(2002) 10 S.C.C. Page 283], the Honble Supreme Court has held that commercial vehicles seized in respect of offence shall not be kept in custody for a very long period. The vehicle owner, in case, approaches for release of the same prompt action should be taken after preparing necessary Panchnama, if required, steps shall be taken for identification and also for recording evidence and adopt other appropriate measures, so that in the event the property is subjected to natural decay the evidence is available during proceedings. In paragraph 17, the Honble Supreme Court further held as follows: In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police station for a long 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. This can be done pending hearing of applications for return of such vehicles.

8. The Honble Supreme Court in the aforesaid case has given direction to release the vehicle after taking proper and sufficient bank guarantee. As it appears from the order impugned, since the confiscation proceeding has not yet been initiated, no purpose will be served by keeping the vehicle in open space till the disposal of the proceeding as the vehicles are vulnerable to vagaries of nature and due to weathering effect , there will be a natural decay. As such, the court below is directed to release the vehicles in favour of the petitioners after examining the documents relating to their ownership and taking proper security including bank guarantee equal to the present value of the vehicles in question and the court shall also take steps to make a Panchnama and photographs of the vehicles, which shall be kept on record for further use during proceedings, so that the trial may not be hampered. The owners of the vehicles would also give an undertaking that they would not dispose of the vehicles or alienate in any way during pendency of the case in court below as well as in confiscation case, if initiated, and would produce the vehicles as and when required. If the petitioners violate any of the term of undertaking 4 given by them and fail to produce the vehicles before the court or as directed by the Confiscation Authority, the Court or the authority shall be at liberty to forfeit the bank guarantee filed earlier in court. The release of the vehicles will be subject to result of the case in court below or before the Confiscation Authority.

9. With the aforesaid observation, this Writ Petition (Cr.) is, hereby, allowed. The impugned orders dated 29.01.2015 passed by learned Chief Judicial Magistrate, Chaibasa in G.R. Case no. 116 of 2014 and also the order dated 06.04.2015 passed by learned Sessions Judge, West Singhbhum at Chaibasa in Criminal Revision no. 01 of 2015 are, hereby, set aside. (R. N. Verma, J.) Jharkhand High Court, Ranchi Dated, 4th August, 2015 Ritesh/N.A.F.R.

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