

IN THE HIGH COURT OF JUDICATURE AT PATNA

Broad Son Commodities Private Ltd. & Ors.

vs.

The State of Bihar & Ors.

Criminal Writ Jurisdiction Case No.387 of 2022

[with Criminal Writ Jurisdiction Case No. 396 of 2021; Criminal Writ Jurisdiction Case No. 501 of 2021; Criminal Writ Jurisdiction Case No. 388 of 2022; Criminal Writ Jurisdiction Case No. 401 of 2022; Criminal Writ Jurisdiction Case No. 404 of 2022; Criminal Writ Jurisdiction Case No. 413 of 2022; Criminal Writ Jurisdiction Case No. 462 of 2022; Criminal Writ Jurisdiction Case No. 465 of 2022; Criminal Writ Jurisdiction Case No. 481 of 2022; Criminal Writ Jurisdiction Case No. 497 of 2022; Criminal Writ Jurisdiction Case No. 500 of 2022; Criminal Writ Jurisdiction Case No. 505 of 2022; Criminal Writ Jurisdiction Case No. 508 of 2022; Criminal Writ Jurisdiction Case No. 516 of 2022; Criminal Writ Jurisdiction Case No. 545 of 2022]

16 May 2025

(Hon'ble Mr. Justice Chandra Shekhar Jha)

Issue for Consideration

Whether FIR as lodged against petitioners constitute any prima facie case for the offences punishable under Sections 379, 406, 411, 420 of the IPC and for the violation of rules of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage Rules, 2019 or not?

Headnotes

Mines and Minerals (Development and Regulation) Act, 1957—Sections 4, 14—Bihar Minor Mineral Concession Rules, 1972—Rule 11, 40—Bihar Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2003— Rule 3—Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019—Section 29C, 29F, 30, 39, 41, 46, 47, 50, 51 and 59—Indian Penal Code, 1860—Sections 378, 379, 406, 411, 420—settlement created in favour of the petitioners as per Rule 11(A) Rules,

1972—settlement of sand ghats was given to petitioners in furtherance of auction given in the year 2015 for a period of five years—settlement of petitioners was extended time to time—no allegations were raised against petitioners during extension period—immediately after surrendering the license, the creation of E-challan was stopped—much prior to date of lodging of FIRs *i.e.* 3 to 4 months, the petitioners were ousted from the possession of sand ghats, which was with them under settlement and after taking possession of those sand ghats, possession of same were given to local SHO and concerned Circle Officers/Mining department to keep sand securely—allegation, which raised through FIRs that on the date of lodging of FIRs, the sand which was found there in actual was less than that in Project Monitoring Unit data and it was not properly protected and covered, without mentioning any name, description and sale price of holders.

Held: as per FIRs no allegations that the petitioners were involved in illegal and excessive mining or they excavated sand beyond permitted area—much prior to lodging of FIR the sand was seized and entrusted to local police and government authorities—after the stocks were surrendered, steps were taken to sell those stocks through the Bihar State Mining Corporation and further after surrender the Officer in-Charge of the concerned police station had been asked to provide security at the stock point and it was the responsibility of the officer-in-charge to ensure that no theft takes place—dispute also appears civil in nature because for recovery of non-paid royalty amount for extended period, the concerned authority/respondents filed certificate case under the Bihar and Orissa Public Demand Recovery Act, 1914—no cognizable offence is made out against petitioners—case is squarely covered under the golden guiding principles No. 1, 2, 3, 5 & 7 of Bhajan Lal’s case—all FIRs against petitioners quashed and set aside with all its consequential proceedings—petition allowed. **(Paras 84, 85, 86, 94 to 97)**

Case Law Cited

State of Haryana vs. Bhajan Lal, **1992 Suppl. (1) SCC 335—Relied Upon.**; M/s Broad Son Commodities Pvt. Ltd. vs. The State of Bihar and Ors., **2018(4) PLJR 706**; Jayant and Ors. vs. State of Madhya Pradesh, **(2021) 2**

SCC 670; Salib @ Shalu @ Salim vs. State of U.P. and Ors., **2023 SCC Online SC 947**; State of Orissa vs. Debendra Nath Padhi, **AIR 2005 SC 359**; State of Delhi (NCT) vs. Sanjay, **(2014) 9 SCC 772**; Vijay Madanlal Choudhary and Ors. vs. Union of India and Ors., **2022 SCC Online SC 929**; Anil Mahajan vs. Bhor Industries Ltd. and Anr., **(2005) 10 SCC 228**; Indian Oil Corporation vs. NERC India Limited and Ors., **(2006) 6 SCC 736**; Vinod Natesan vs. State of Kerala and Ors., **(2019) 2 SCC 401**; HMT Watches vs. M. A. Abida and Anr., **(2015) 11 SCC 776**; Reliance Natural Resources Ltd. vs. Reliance Industries Ltd., **(2010) 7 SCC 1**; Mir Nagvi Askari vs. CBI, **(2009) 15 SCC 643**; Lalita Kumari vs. Government of Uttar Pradesh, **(2014) 2 SCC 1**; SBI vs. Rajesh Agarwal, **(2023) 6 SCC 1**; Anju Chaudhary vs. State of U.P., **(2013) 6 SCC 384**; Monica Bedi vs. State of A.P., **(2011) 1 SCC 248**; Ishwarlal Girdharilal Parekh vs. State of Maharashtra, **AIR 1969 453-457 SC 40**; Union of India vs. Venkateshan S., **(2002) 5 SCC 285**; Rajeev Kaurav vs. Baisahab, **(2020) 3 SCC 317**; Swaran Singh vs. State, **(2008) 8 SCC 435**; State of Bihar vs. P.P. Sharma, **AIR 1991 SC 1260—Referred To.**; Mithilesh Kumar Singh vs. State of Bihar and Anr., Cr.W.J.C. No. 540 of 2019; Aditya Multicom Private Ltd. Vs. The State of Bihar & Ors., Cr.W.J.C. No.1233 of 2021—**Held per incurium.**

List of Acts

Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019, Code of Criminal Procedure, 1973, Environmental Protection Act, 1986, Prevention of Money Laundering Act, 2002, Bihar and Orissa Public Demand Recovery Act, 1914.

List of Keywords

State Environment Impact Assessment Authority ‘SEIIA’, royalty amount, excavation, illegal sand mining, settlement of surrendered.

Case Arising From

From multiple FIRs lodged by Departments in connecting with illegal sand mining.

Appearances for Parties

(In Criminal Writ Jurisdiction Case No. 387 of 2022 and its analogous cases)

For the Petitioners: Mr. Suraj Samdarshi, Advocate; Mr. Avinash Shekhar, Advocate; Mr. Vijay Shankar Tiwari, Advocate; Ms. Abhilasha Jha, Advocate; Ms. Simran Kumari, Advocate

For the ED: Mr. Zohaib Hossain, Spl.counsel; Mr. Manoj Kr. Singh, Spl.PP; Mr. Prabhat Kumar Singh, Spl.PP; Mr. Pranjal Tripathi, JC.to Mr. Hossain.

For the Respondent-State: Mr. P.K. Verma, AAG-III; Dr. Mankeshwar Tiwari, AC to AAG-III; Mr. Gyan Prakash Ojha, GA-VII;

For the Mines Department: Mr. Naresh Dikshit, Spl. P.P.; Mr. Kumar Harshvardhan, Advocate

Headnotes Prepared by Reporter: Abhas Chandra, Advocate

Judgement/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.387 of 2022

Arising Out of PS. Case No.-689 Year-2021 Thana- BIHTA District- Patna

Broad Son Commodities Private Ltd. through its authorised signatory Santosh Kumar Son of Late Nageshwar prasad a company incorporated under the Provisions of the Companies Act, 1956 having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Chouk, P.S. Koilwar, District - Bhojpur (Ara), resident of Village/Mohalla 100, Pipra Pakadi, P.O. Pipra Pakadi, P.S. Bettiah Mufassil, District - West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Home, Government of Bihar, Patna Bihar
2. The Principal Secretary, Home, government of Bihar, Old Secretariat, Patna. Bihar
3. The Director General of Police, Bihar, Old Secretariat, Patna. Bihar
4. The Superintendent of Police, Patna. Bihar
5. The officer In Charge, Bihta Police Station, Patna. Bihar
6. The Principal Secretary, Mines and Geology Deptt., Govt. of Bihar, Vikas Bhawan, Bailey Road, Patna Bihar.
7. The Assistant Director, Mines and Geology Deptt., Govt. of Bihar, Vikas Bhawan, Bailey Road, Patna. Bihar
8. The District Magistrate Cum Collector, Patna. Bihar.
9. The Mines Inspector, District Mining office, Patna. Bihar

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 396 of 2021

Arising Out of PS. Case No.-260 Year-2020 Thana- RANIYATALAB District- Patna

Broad Son Commodities Pvt. Ltd. A company incorporated under the provisions of the companies Act, 1956 having its registered office at Dr. Himanshu Complex, block Road, Koilwar Chouk, P.S. Koilwar, District - Bhojpur (Ara), through its Director, Ashok Kumar aged about 65 years , Son of Ram Chandra Saw, resident of Village /Mohalla- Pareo, P.S. Bihta, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Home, Govt. of Bihar, Old Secretariat, Patna Bihar
2. The Principal Secretary, Home, Government of Bihar, Old Secretariat, Patna Bihar



- 3. The Director General of Police, Bihar, Old Secretariat, Patna. Bihar
- 4. The Superintendent of Police, Patna. Bihar
- 5. The Officer In Charge, Rani Talab Police Station, Patna. Bihar
- 6. The Principal Secretary, Mines and Geology Deptt. Govtt. of Bihar, Vikas Bhawan, Bailey Road, Patna Bihar
- 7. The Assistant Director, Mines and Geology Department, Govtt. of Bihar, Vikas Bhawan, Bailey Road, Patna.
- 8. The District Magistrate cum Collector, Patna. Bihar
- 9. The Mines Inspector, District Mines office, Patna. Bihar

... .. Respondent/s

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with

Criminal Writ Jurisdiction Case No. 501 of 2021

Arising Out of PS. Case No.-864 Year-2020 Thana- BIHTA District- Patna

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Broad Son Commodities Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Chouk, P.S. - koilwar, District - Bhojpur (Ara), through its Director, AShok Kumar aged about 65 Years Son of Ram Chandra Saw, resident of Village/Mohalla - Pareo, P.S. Bihta, District- Patna.

... .. Petitioner/s

Versus

- 1. The State of Bihar, through Principal Secretary, Home, Government of Bihar, Old Secretariat, Patna. Bihar
- 2. The Principal Secretary, Home, Government of Bihar, Old Secretariat, Patna. Bihar
- 3. The Director General of Police, Bihar, Old Secretariat, Patna. Bihar
- 4. The Superintendent of Police, Patna. Bihar
- 5. The Officer -In Charge, Bihta Police Station, Patna Bihar
- 6. The Principal Secretary, Mines and Geology Deptt., Government of Bihar, Vikas Bhawan, Bailey Road,Patna Bihar
- 7. The Assistant Director, Mines and Geology Deptt. Government of Bihar, Vikas Bhawan, Bailey Road, Patna. Bihar
- 8. The District Magistrate cum Collector, Patna. Bihar
- 9. The Mines Inspector, District mines office, Patna. Bihar

... .. Respondent/s

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with

Criminal Writ Jurisdiction Case No. 388 of 2022

Arising Out of PS. Case No.-179 Year-2021 Thana- SANDESH District- Bhojpur

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Broad Son Commodities Private Limited through its Authorised Signatory Santosh Kumar S/o Late Nageshwar Prasad A Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Chouk, P.S.- Koilwar, District- Bhojpur (Ara) through its authorised Singnatory Santosh Kumar S/o Late Nageshwar Prasad, Resident of Village/ Mohalla 100, Pipra Pakadi, P.O.- Pipra Pakadi, P.S.- Bettiah Mufasil, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar, thorough Principal Secretary, Home, Government of Bihar, Old Secretariat, Patna. Bihar
2. The Principal Secretary, Home, Government of Bihar, Old Secretariat, Patna. Bihar
3. The Director General of Police, Bihar, Old Secretariat, Patna.
4. The Superintendet of Police, Bhojpur. Bihar
5. The Officer in Charge, Sandesh Police Station, Bhojpur Bihar
6. The Principal Secretary, Mines and Geology Department, Government of Bihar. Vikas Bhawan, Bailey Road, Patna.
7. The Assistant Director, Mines and Geology Department, Government of Bihar. Vikas Bhawan, Bailey Road, Patna.
8. The District Magistrate cum Collector, Bhojpur. Bihar
9. The Mines Inspector, District Mining Officer, Bhojpur. Bihar

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 401 of 2022

Arising Out of PS. Case No.-183 Year-2021 Thana- CHANDI District- Bhojpur

Broad Son Commodities Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Chouk, P.S.- Koilwar, District- Bhojpur (Ara), through its authorised signatory Santosh Kumar, aged about 42 years (Male), S/o Late Nageshwar Prasad, R/o Village/Mohalla 100, Pipra Pakadi, P.O.- Pipra Pakadi, P.S.- Bettiah Mufasil, District- West Champaran

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Sect. Home Govt. of Bihar, Old Secretariat, Patna Bihar
2. The Principal Secretary, Home, Govt. of Bihar, Old Secretariat, Patna Bihar
3. The Director General of Police, Bihar, Old Secretariat, Patna Bihar
4. The Superintendent of Police, Bhojpur Bihar
5. The Officer in Charge, Chandi Police Station, Bhojpur Bihar



- 6. The Principal Sect., Mines and Geology Department, Govt. of Bihar, Vikas Bhawan Bailey Road, Patna, Bihar
- 7. The Assistant Director, Mines and Geology Department, Govt. of Bihar, Vikas Bhawan Bailey Road, Patna, Bihar
- 8. The District Magistrate cum Collector, Bhojpur Bihar
- 9. The Mines Inspector, District Mining Officer, Bhojpur Bihar

... .. Respondent/s

with
Criminal Writ Jurisdiction Case No. 404 of 2022

Arising Out of PS. Case No.-1018 Year-2020 Thana- DEHRI TOWN District- Rohtas

Sadashiv Prasad Singh @ Sadashiv Prasad @ Sadashiv Singh Son pf
Mareshwar Singh R/o- 410, Ganeshalay Apartment, Jharudih, Near Carmel
School, Matkuria, Dhanbad, Jharkhand 826001

... .. Petitioner/s

Versus

- 1. The State of Bihar, Through Principal Secretary, Home, Govt. of Bihar, Old Secretariat, Patna Bihar
- 2. The Principal Secretary, Home, Govt. of Bihar, Old Secretariat, Patna Bihar
- 3. The Director General of Police, Bihar, Old Secretariat, Patna Bihar
- 4. The Superintendent of Police, Rohtas Bihar
- 5. The Officer In Charge, Dehri Police Statioin, Rohtas Bihar
- 6. The Principal Secretary, Mines And Geology Deptt., Govt. of Bihar, Vikas Bhawan, Bailey Road, Patna Bihar
- 7. The Assistant Director, Mines And Geolgy Deptt., District Mining Office, Rohtas Bihar
- 8. The District Magistrate Cum Collector, Rohtas Bihar
- 9. The Mines Inspector, District Mining Office, Rohtas Bihar

... .. Respondent/s

with
Criminal Writ Jurisdiction Case No. 413 of 2022

Arising Out of PS. Case No.-115 Year-2021 Thana- IMADPUR District- Bhojpur

Broad Son Commodities Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Chouk, P.S.- Koilwar, District- Bhojpur (Ara), through its authorised signatory Santosh Kumar, aged about 42 years (Male), S/o Late Nageshwar Prasad, R/o Village/Mohalla 100, Pipra Pakadi, P.O.- Pipra Pakadi, P.S.- Bettiah Mufasil, District- West Champaran



... .. Petitioner/s

Versus

1. The State of Bihar Through Principal Secretary, Home, Govt. of Bihar, Old Secretariat, Patna Bihar
2. The Principal Secretary, Home, Government of Bihar, Old Secretariat, Patna Bihar
3. The Director General of Police, Bihar, Old Secretariat, Patna Bihar
4. The Superintendent of Police, Bhojpur Bihar
5. The officer In Charge, Imadpur Police Station, Bhojpur Bihar
6. The Principal Secretary, Mines and Geology Department, Government of Bihar, Vikas Bhawan Bailey road, Patna, Bihar
7. The Assistant Director, Mines and Geology Dept., Govt. of Bihar, Vikas Bhawan, Baily Road, Patna Bihar
8. The District Magistrate cum Collector, Bhojpur Bihar
9. The Mines Inspector, District Mining Officer, Bhojpur Bihar

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 462 of 2022

Arising Out of PS. Case No.-335 Year-2021 Thana- PALIGANJ District- Patna

Broad Son Commodities Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Chouk, P.S.- Koilwar, District- Bhojpur (Ara), through its authorised Signatory Santosh Kumar, aged about 42 Yeras (Male), S/o Late Nageshwar Prasad, R/o Village/Mohalla- 100, Pipra Pakadi, P.O.- Pipra Pakadi, P.S.- Bettiah Mufasil, District- West Champaran

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Home, Govt. of Bihar, Old Secretariat, Patna Bihar
2. The Principal Secretary, Home Government of Bihar, Old Secretariat, Patna Bihar
3. The Director General of Police, Bihar, Old Secretariat, Patna Bihar
4. The Superintendent of Police, Patna Bihar
5. The Officer in Charge, Paliganj Police Station, Patna Bihar
6. The Principal Secretary, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna, Bihar
7. The Assistant Director, Mines and Geology Department, Government of Bihar, Vikas Bhawan Bailey Road, Patna, Bihar
8. The District Magistrate cum Collector, Patna Bihar



9. The Mines Inspector, District Mining Office, Patna Bihar

... .. Respondent/s

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with

Criminal Writ Jurisdiction Case No. 465 of 2022

Arising Out of PS. Case No.-247 Year-2021 Thana- DORIGANJ District- Saran

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Broad Son Commodities Private Limited a company incorporated under the provisions of the Companies Act, 1956 having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Chouk, P.S.- Koilwar, District- Bhojpur (Ara), through its authorised Signatory Santosh Kumar, aged about 42 Yeras (Male), S/o Late Nageshwar Prasad, R/o Village/Mohalla- 100, Pipra Pakadi, P.O.- Pipra Pakadi, P.S.- Bettiah Mufasil, District- West Champaran

... .. Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Home, Government of Bihar, Old Secretariat, Patna, Bihar
2. The Principal Secretary, Home Government of Bihar, Old Secretariat, Patna Bihar
3. The Director General of Police, Bihar, Old Secretariat, Patna Bihar
4. The Superintendent of Police, Saran Chapra Bihar
5. The Officer In Charge, Doriganj Police Station Saran, Chapra Bihar
6. The Principal Secretary, Mines and Geology Department, Govt. of Bihar, Vikas Bhawan Bailey Road, Patna, Bihar
7. The Assistant Director, Mines and Geology Department, Govt. of Bihar, Vikas Bhawan Bailey Road, Patna, Bihar
8. The District Magistrate cum Collector, Saran Bihar
9. The Mines Inspector, District Mining Officer, Saran Bihar

... .. Respondent/s

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with

Criminal Writ Jurisdiction Case No. 481 of 2022

Arising Out of PS. Case No.-540 Year-2021 Thana- BARHARA District- Bhojpur

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Broad Son Commodities Private Limited, through its Authorized Signatory Santosh Kumar, a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Chouk, P.S.- Koilwar, District Bhojpur (Ara), Through its authorised signatory Santosh Kumar, Aged about 42 years (Male), Son of Late Nageshwar Prasad, Resident of Village - 100, Pipra Pakadi, P.O.- Pipra Pakadi, P.S.- Bettiah Mufasil, District - West Champaran.

... .. Petitioner/s

Versus



- 1. The State of Bihar, Through Principal Secretary, Home, Government of Bihar, Old Secretariat, Patna. Bihar
- 2. The Principal Secretary, Home, Government of Bihar, Old Secretariat, Patna. Bihar
- 3. The Director General of Police, Bihar, Old Secretariat, Patna. Bihar
- 4. The Superintendent of Police, Bhojpur. Bihar
- 5. The Officer In Charge, Barahara Police Station, Bhojpur. Bihar
- 6. The Principal Secretary, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna, Bihar
- 7. The Assistant Director, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna, Bihar
- 8. The District Magistrate cum Collector, Bhojpur Bihar
- 9. The Mines Inspector, District Mining Office, Bhojpur. Bihar

... .. Respondent/s

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with
Criminal Writ Jurisdiction Case No. 497 of 2022

Arising Out of PS. Case No.-302 Year-2021 Thana- DIGHWARA District- Saran

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Broad Son Commodities Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Chouk, P.S.- Koilwar, District- Bhojpur (Ara), through its authorised Signatory Santosh Kumar, aged about 42 Yeras (Male), S/o Late Nageshwar Prasad, R/o Village/Mohalla- 100, Pipra Pakadi, P.O.- Pipra Pakadi, P.S.- Bettiah Mufasil, District- West Champaran

... .. Petitioner/s

Versus

- 1. The State of Bihar through Principal Secretary, Home, Govt. of Bihar, Old Secretariat, Patna Bihar
- 2. The Principal Secretary, Home, Govt. of Bihar, Old Secretariat, Patna Bihar
- 3. The Director General of Police, Bihar, Old Secretariat, Patna Bihar
- 4. The Superintendent of Police, Saran Chapra Bihar
- 5. The officer In Charge, Digwara Police Station, Saran, Chapra Bihar
- 6. The Principal Secretary, Mines and Geology Department, Govt. of Bihar, Vikas Bhawan Bailey Road, Patna, Bihar
- 7. The Assistant Director, Mines and Geology Department, Govt. of Bihar, Vikas Bhawan, Bailey Road, Patna, Bihar
- 8. The District Magistrate Cum Collector, Saran Bihar
- 9. The Mines Inspector, District Mining Officer, Saran Bihar

... .. Respondent/s

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with
Criminal Writ Jurisdiction Case No. 500 of 2022

Arising Out of PS. Case No.-456 Year-2021 Thana- KOILWAR District- Bhojpur

Broad Son Commodities Private Limited, through its authorised signatory Santosh Kumar, Son of Late Nageshwar Prasad, a company incorporated under the provisions of the Companies Act, 1956 having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Chouk, P.S. Koilwar, District Bhojpur (Ara), Resident of Village/mohalla 100, Pipra Pakadi P.O. Pipra Pakadi, P.S. - Bettiah Mufassil, District - West champaran.

... .. Petitioner/s

Versus

1. The State of Bihar, through principal Secretary, Home, Government of Bihar, Old Secretariat, Patna. Bihar
2. The Principal Secretary, Home, Government of Bihar, Old Secretariat, Patna. Bihar
3. The Director General of Police, Bihar, Old Secretariat, Patna. Bihar
4. The Superintendent of Police, Bhojpur. Bihar
5. The officer In Charge, Koilwar Police Station, Bhojpur. Bihar
6. The Principal Secretary, Mines and Geology Deptt., Govt. of Bihar, Vikas Bhawan, Bailey Road, Patna Bihar
7. The Assistant Director, Mines and Geology Deptt., Government of Bihar, Vikas Bhawan, Bailey Road Patna, Bihar.
8. The District Magistrate Cum Collector, Bhojpur. Bihar
9. The Mines Inspector, District Mining office, Bhojpur. Bihar.

... .. Respondent/s

with
Criminal Writ Jurisdiction Case No. 505 of 2022

Arising Out of PS. Case No.-261 Year-2021 Thana- AWTARNAGAR District- Saran

Broad Son Commodities Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Chouk, P.S.- Koilwar, District- Bhojpur (Ara), through its authorised Signatory Santosh Kumar, aged about 42 Yeras (Male), S/o Late Nageshwar Prasad, R/o Village/Mohalla- 100, Pipra Pakadi, P.O.- Pipra Pakadi, P.S.- Bettiah Mufasil, District- West Champaran

... .. Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Home, Government of Bihar, Old Secretariat, Patna Bihar
2. The Principal Secretary, Home, Government of Bihar, Old Secretariat, Patna Bihar



- 3. The Director General of Police, Bihar, Old Secretariat, Patna Bihar
- 4. The Superintendent of Police, Saran Chapra Bihar
- 5. The officer in Charge, Autar Nagar Police Station, Saran, Chapra Bihar
- 6. The Principal Secretary, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna, Bihar
- 7. The Assistant Director, Mines and Geology Department, Govt. of Bihar Vikas Bhawan Bailey Road, Patna, Bihar
- 8. The District Magistrate Cum Collector, Saran Bihar
- 9. The Mines Inspector, District Mining Office, Saran Bihar

... .. Respondent/s

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with

Criminal Writ Jurisdiction Case No. 508 of 2022

Arising Out of PS. Case No.-464 Year-2021 Thana- CHAPRA MUFFASIL District- Saran

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Broad Son Commodities Private Limited through its authorised signatory santosh Kumar A company incorporated under the provisions of the Companies Act, 1956 having having its registered office at Dr. Himanshu Compex, Block Road, Koilwar Chouk, P.S.- Koilwar, District Bhojpur (Ara), through its authorised Singatory Santosh Kumar, aged about 42 years (male), Son of Late Nageshwar Prasad, resident of Village/ Mohalla 100, Pipra Pakadi, P.O. Pipra Pakadi, P.S.- Bettiah Mufasil, District- West Champaran.

... .. Petitioner/s

Versus

- 1. The State of Bihar through Principal Secretary, Home Government of Bihar Old Secretariat, Patna Bihar
- 2. The Principal Secretary, Home, Government of Bihar, Old Secretariat, Patna. Bihar
- 3. The Director General of Police, Bihar, Old Secretariat, Patna. Bihar
- 4. The Superintendent of Police, Saran Chapra. Bihar
- 5. The Officer in charge, Mufassil Police Station, Saran, Chapra. Bihar
- 6. The Principal Secretary, Mines and Geology Department, Government of Bihar, Vikas Bhawan Bailey Road, Patna.
- 7. The Assistant Director, Mines and Geology Department Government of Bihar. Vikas Bhawan, Bailey Road, Patna.
- 8. The District Magistrate Cum Collector, Saran. Bihar
- 9. The Mines Inspector, District Mining Office, Saran. Bihar

... .. Respondent/s

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with

Criminal Writ Jurisdiction Case No. 516 of 2022



Arising Out of PS. Case No.-181 Year-2021 Thana- RANIYATALAB District- Patna

Broad Son Commodities Private Limited, through its Authorised Signatory Santosh Kumar, Son of Late Nageshwar Prasad, a company incorporated under the provisions of the companies Act, 1956 having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Chouk, P.S. Koilwar, District - Bhojpur (Ara). Resident of Village/Mohalla 100, Pipra Pakadi, P.O. Pipra Pakadi, P.S.- Bettiah Mufassil, District - West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Home Government of Bihar, Old Secretariat, Patna Bihar
2. The Principal Secretary, Home, Government of Bihar, Old Secretariat, Patna. Bihar
3. The Director General of Police, Bihar, Old Secretariat, Patna. Bihar
4. The Superintendent of Police, Patna. Bihar
5. The officer In Charge, Rani Talab Police Station, Patna. Bihar
6. The Principal Secretary, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna, Bihar.
7. The Assistant Director, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna, Bihar.
8. The District Magistrate cum Collector, Patna. Bihar
9. The Mines Inspector, District Mining office, Patna. Bihar

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 545 of 2022

Arising Out of PS. Case No.-209 Year-2021 Thana- SAHAR District- Bhojpur

Broad Son Commodities Private Limited, a Company incorporated under the provisions of Companies Act, 1956 having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Chouk, P.S.- Koilwar, District- Bhojpur (Ara), through its authorised signatory Santosh Kumar, aged about 42 years (Male), S/o Late Nageshwar Prasad, R/o Village/Mohalla 100, Pipra Pakadi, P.O.- Pipra pakadi, P.S.- Bettiah Mufassil, District- West Champaran

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Home Govt. of Bihar, Old Secretariat, Patna Bihar
2. The principal Secretary, Home, Government of Bihar, Old Secretariat, Patna Bihar
3. The Director General of Police, Bihar, Old Secretariat, Patna Bihar



- 4. the Superintendent of Police, Bhojpur Bihar
- 5. The Officer In Charge, Sahar Police Station, Bhojpur Bihar
- 6. The Principal Secretary, Mines and Geology Department, Govt. of Bihar, Vikas Bhawan, Bailey Road, Patna, Bihar
- 7. The Assistant Director, Mines and Geology Department, Govt. of Bihar, Vikas Bhawan, Bailey Road, Patna, Bihar
- 8. The District Magistrate Cum Collector, Bhojpur Bihar
- 9. The Mines Inspector, District Mining Office, Bhojpur Bihar

... .. Respondent/s

Appearance : (In Criminal Writ Jurisdiction Case No. 387 of 2022 and its analogous cases)	
For the Petitioners	: Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Vijay Shankar Tiwari, Advocate Ms. Abhilasha Jha, Advocate Ms. Simran Kumari, Advocate
For the ED	: Mr. Zohaib Hossain, Spl.counsel Mr.Manoj Kr. Singh, Spl.PP Mr.Prabhat Kumar Singh, Spl.PP Mr.Pranjal Tripathi, JC.to Mr.Hossain.
For the Respondent-State:	Mr. P.K. Verma, AAG-III Dr. Mankeshwar Tiwari, AC to AAG-III Mr. Gyan Prakash Ojha, GA-VII
For the Mines Department:	Mr. Naresh Dikshit, Spl. P.P. Mr. Kumar Harshvardhan, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
CAV JUDGMENT
Date : 16-05-2025

Heard Mr. Suraj Samdarshi, learned counsel
appearing for the petitioners, Mr. Gyan Prakash Ojha,
learned G.A.-VII for the State, Mr. Naresh Dikshit, learned
counsel appearing for the Department of Mining and Mr.
Zohaib Hossain, learned special counsel appearing for the
Union of India/E.D.

2. The petitioners of respective writ petitions have



prayed for following reliefs:

<p>(i) Cr.W.J.C. No.387 of 2022</p>	<p>(i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing Bihta P. S. Case No. 689 of 2021 registered on 17.09.2021 for alleged offences under Sections 379 and 411 of the Indian Penal Code and Rule 39 and 56 of the Bihar Mineral (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 on the ground that the same is completely illegal and without any authority of law.</p> <p>(ii) To issue further appropriate writ, order or direction in the nature of mandamus commanding the respondents 1st Set not to take any coercive steps against the petitioner in pursuance of Bihta P.S. Case No. 689 of 2021.</p> <p>(iii) The Hon’ble Court may adjudicate and hold that no cognizable offence is made out against the petitioners as per the contents of First Information report and therefore the petitioner cannot be subjected to criminal prosecution.</p> <p>(iv) To award the cost of litigation and suitable compensation to the petitioner for the loss and damages caused to the petitioner.</p> <p>(v) To grant/award any other relief or reliefs which the petitioner may be found entitled to in the facts and circumstances of the case.</p>
<p>(ii) Cr.W.J.C. No. 396 of 2021</p>	<p>(i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing Ranitalab P.S. Case No. 260 of 2020 registered on 30.11.2020 against the petitioner for alleged offences under section 379 and 34 of the Indian Penal Code, and Rule 11, 29 (C) and 56 of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 on the ground that the same is completely illegal and without any authority of law.</p> <p>ii) To issue further appropriate writ, order or direction in the nature of mandamus commanding the Respondents 1st Set not to take any coercive steps against the Petitioner in pursuance of Ranitalab P.S. Case No. 260 of 2020.</p> <p>iii) This Hon’ble Court may adjudicate and hold that no cognizable offence is made out against the Petitioner as per the contents of the First Information Report and therefore the Petitioner cannot be subjected to criminal prosecution.</p> <p>iv) To award the cost of litigation and suitable</p>



	<p>compensation to the petitioner for the loss and damages caused to the petitioner.</p> <p>v) To grant/ award any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.</p>
<p>(iii) Cr.W.J.C. No.501 of 2021</p>	<p>(i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing Bihta P.S. Case No. 864 of 2020 registered on 03.12.2020 against the petitioner for alleged offences under section 379 of the Indian Penal Code; Rule 11, 29 (C) and 56 of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 and section 22 of the Mines and Mineral (Development and Regulation) Act 1957 on the ground that the same is completely illegal and without any authority of law.</p> <p>(ii) To issue further appropriate writ, order or direction in the nature of mandamus commanding the Respondents 1" Set not to take any coercive steps against the Petitioner in pursuance of Bihta P.S. Case No. 864 of 2020.</p> <p>(iii) This Hon'ble Court may adjudicate and hold that no cognizable offence is made out against the Petitioner as per the contents of the First Information Report and therefore the Petitioner cannot be subjected to criminal prosecution.</p> <p>(iv) To award the cost of litigation and suitable compensation to the petitioner for the loss and damages caused to the petitioner.</p> <p>(v) To grant/ award any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.</p>
<p>(iv) Cr.W.J.C.No.388 of 2022</p>	<p>388 of 2022</p> <p>(i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing Sandesh P.S. Case No. 179/2021 registered on 18.09.2021 under section 378/379/411 of Indian Penal Code and Rule 39(3) and 56 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 (erroneously mentioned in the FIR as Bihar Minerals Amendment Rules 2021) on the ground that the same is completely illegal and without any authority of law.</p> <p>(ii) To issue further appropriate writ, order or direction in the nature of mandamus commanding the Respondents 1st Set not to take any coercive steps against the Petitioner in pursuance of Sandesh P.S. Case No. 179/2021.</p> <p>(iii) This Hon'ble Court may adjudicate and hold that no cognizable offence is made out against the Petitioner as per the contents of First Information Report and therefore the Petitioner cannot be subjected to criminal prosecution.</p>



	<p>(iv) To award the cost of litigation and suitable compensation to the petitioner for the loss and damages caused to the petitioner.</p> <p>(v) To grant/ award any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.</p>
(v) CrWJC. No.401 of 2022	<p>(i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing Chandi P.S. Case No. 183 / 2021 dated 18.09.2021 registered under section 379 of Indian Penal Code, Rule 39 (3) / 56 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 (erroneously mentioned in the FIR as Bihar Mineral (Concession Prevention of Illegal Mining, Transportation and Storage) Act 2021) and section 15 Environment (Protection) Act 1986 on the ground that the same is completely illegal and without any authority of law.</p> <p>(ii) To issue further appropriate writ, order or direction in the nature of mandamus commanding the Respondents 1st Set not to take any coercive steps against the Petitioner in pursuance of Chandi P.S. Case No. 183 / 2021</p> <p>(iii) This Hon'ble Court may adjudicate and hold that no cognizable offence is made out against the Petitioner as per the contents of First Information Report and therefore the Petitioner cannot be subjected to criminal prosecution.</p> <p>(iv) To award the cost of litigation and suitable compensation to the petitioner for the loss and damages caused to the petitioner.</p> <p>(v) To grant/ award any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.</p>
(vi) CrWJC No.404 of 2022	<p>(i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing Dehri Nagar (Indrapuri OP) P.S. Case No. 1018 of 2020 on 29.12.2020 for alleged offences under section 379/406/ 420 of the Indian Penal Code; Section 15 of the Environment Protection Act and section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 and Rule 56 of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules 2019 (erroneously mentioned as BMCC Rules 2019) on the ground that the same is completely illegal and without any authority of law.</p> <p>(ii) To issue further appropriate writ, order or direction in the nature of mandamus commanding the Respondents 1st Set not to take any coercive steps against the Petitioner in pursuance of Dehri Nagar (Indrapuri OP) P.S. Case No. 1018 of 2020.</p> <p>(iii) This Hon'ble Court may adjudicate and hold that no</p>



	<p>cognizable offence is made out against the Petitioner as per the contents of First Information Report and therefore the Petitioner cannot be subjected to criminal prosecution.</p> <p>(iv) To award the cost of litigation and suitable compensation to the petitioner for the loss and damages caused to the petitioner.</p> <p>(v) To grant/award any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.</p>
(vii) CrWJC No.413 of 2022	<p>(i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing Imadpur P.S. Case No. 115 / 2021 dated 23.09.2021 registered under section 379 IPC and 1,12, 13, 15/39 (3) and 56 of Rule Bihar Mineral (Concession, Prevention of Illegal Mining, Transportation and Storage) Amendment Rules 2021 and Environment Protection Act, 1986 on the ground that the same is completely illegal and without any authority of law.</p> <p>(ii) To issue further appropriate writ, order or direction in the nature of mandamus commanding the Respondents 1 Set not to take any coercive steps against the Petitioner in pursuance of Imadpur P.S. Case No. 115/2021.</p> <p>(iii) This Hon'ble Court may adjudicate and hold that no cognizable offence is made out against the Petitioner as per the contents of First Information Report and therefore the Petitioner cannot be subjected to criminal prosecution.</p> <p>(iv) To award the cost of litigation and suitable compensation to the petitioner for the loss and damages caused to the petitioner.</p> <p>(v) To grant/ award any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.</p>
(viii) CrWJC No.462 of 2022	<p>(i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing Paliganj P.S Case No. 335 / 2021 registered on 16.09.2021 under section 378/379/411 of IPC and Rule 39(3)/56 of the Bihar Mineral (Concession, Prevention of illegal mining, transportation & Storage) Rules 2019 (erroneously mentioned in the FIR as BMCC Rules 2021).on the ground that the same is completely illegal and without any authority of law.</p> <p>(ii) To issue further appropriate writ, order or direction in the nature of mandamus commanding the Respondents 1st Set not to take any coercive steps against the Petitioner in pursuance of Paliganj P.S Case No. 335 / 2021.</p> <p>(iii) This Hon'ble Court may adjudicate and hold that no cognizable offence is made out against the Petitioner as per the contents of First Information Report and therefore the</p>



	<p>Petitioner cannot be subjected to criminal prosecution.</p> <p>(iv) To award the cost of litigation and suitable compensation to the petitioner for the loss and damages caused to the petitioner.</p> <p>(v) To grant/ award any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.</p>
(ix) CrWJC No.465 of 2022	<p>(i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing Doriganj P.S. Case No. 247 of 2021 registered on 18.09.2021 for alleged offences under section 379, 411 and 420 of the Indian Penal Code and Rule 39(3) of the Bihar Mineral (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules 2019 on the ground that the same is completely illegal and without any authority of law.</p> <p>(ii) To issue further appropriate writ, order or direction in the nature of mandamus commanding the Respondents 1st Set not to take any coercive steps against the Petitioner in pursuance of Doriganj P.S. Case No. 247 of 2021.</p> <p>(iii) This Hon'ble Court may adjudicate and hold that no cognizable offence is made out against the Petitioner as per the contents of First Information Report and therefore the Petitioner cannot be subjected to criminal prosecution.</p> <p>(iv) To award the cost of litigation and suitable compensation to the petitioner for the loss and damages caused to the petitioner.</p> <p>(v) To grant/ award any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.</p>
(x) CrWJC No.481 of 2022	<p>(i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing Barahara P.S. case no. 540/2021 dated 18.09.2021 registered under section 379 IPC and Rule 39 (3)/2021 Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 on the ground that the same is completely illegal and without any authority of law.</p> <p>(ii) To issue further appropriate writ, order or direction in the nature of mandamus commanding the Respondents 1st Set not to take any coercive steps against the Petitioner in pursuance of Barahara P.S. case no. 540/2021.</p> <p>(iii) This Hon'ble Court may adjudicate and hold that no cognizable offence is made out against the Petitioner as per the contents of First Information Report and therefore the Petitioner cannot be subjected to criminal prosecution.</p> <p>(iv) To award the cost of litigation and suitable compensation to the petitioner for the loss and damages</p>



	<p>caused to the petitioner.</p> <p>(v) To grant/ award any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.</p>
<p>(xi) CrWJC No.497 of 2022</p>	<p>(i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing Digwara P.S. Case No. 302 /2021 registered on 16.09.2021 registered under section 379/420 of IPC and Rule 39(3) of the Bihar Mineral (Concession, Prevention of illegal Mining, Transportation & Storage) Rules 2019 on the ground that the same is completely illegal and without any authority of law.</p> <p>(ii) To issue further appropriate writ, order or direction in the nature of mandamus commanding the Respondents 1x Set not to take any coercive steps against the Petitioner in pursuance of Digwara P.S. Case No. 302/2021.</p> <p>(iii) This Hon’ble Court may adjudicate and hold that no cognizable offence is made out against the Petitioner as per the contents of First Information Report and therefore the Petitioner cannot be subjected to criminal prosecution.</p> <p>(iv) To award the cost of litigation and suitable compensation to the petitioner for the loss and damages caused to the petitioner.</p> <p>(v) To grant/ award any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.</p>
<p>(xii) CrWJC No.500 of 2022</p>	<p>(i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing Koilwar P.S. Case No. 456 / 2021 dated 18.09.2021 registered under 378/379/411 Indian Penal Code and Rule 39(3) /56 of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Amendment Rules, 2019 on the ground that the same is completely illegal and without any authority of law.</p> <p>(ii) To issue further appropriate writ, order or direction in the nature of mandamus commanding the Respondents 1st Set not to take any coercive steps against the Petitioner in pursuance of Koilwar P.S. Case No. 456/2021.</p> <p>(iii) This Hon’ble Court may adjudicate and hold that no cognizable offence is made out against the Petitioner as per the contents of First Information Report and therefore the Petitioner cannot be subjected to criminal prosecution.</p> <p>(iv) To award the cost of litigation and suitable compensation to the petitioner for the loss and damages caused to the petitioner.</p> <p>(v) To grant/award any other relief or reliefs which the Petitioner may be found entitled to in the facts and</p>



	circumstances of the case.
(xiii) CrWJC No.505 of 2022	<p>(i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing Autar Nagar P.S Case No. 261 /2021 registered on 16.09.2021 under section 188/420/379 IPC Rule 39(3) of the Bihar Mineral (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules 2019 on the ground that the same is completely illegal and without any authority of law.</p> <p>(ii) To issue further appropriate writ, order or direction in the nature of mandamus commanding the Respondents 1st Set not to take any coercive steps against the Petitioner in pursuance of Autar Nagar P.S Case No. 261/2021.</p> <p>(iii) This Hon'ble Court may adjudicate and hold that no cognizable offence is made out against the Petitioner as per the contents of First Information Report and therefore the Petitioner cannot be subjected to criminal prosecution.</p> <p>(iv) To award the cost of litigation and suitable compensation to the petitioner for the loss and damages caused to the petitioner.</p> <p>(v) To grant/ award any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.</p>
(xiv) CrWJC No.508 of 2022	<p>(i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing Mufassil P.S Case no. 464 / 2021 registered on 18.09.2021 under section 411/379 of IPC and Rule 39(3) of the Bihar Mineral (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules 2019 on the ground that the same is completely illegal and without any authority of law.</p> <p>(ii) To issue further appropriate writ, order or direction in the nature of mandamus commanding the Respondents 1st Set not to take any coercive steps against the Petitioner in pursuance of Mufassil P.S Case no. 464/2021.</p> <p>(iii) This Hon'ble Court may adjudicate and hold that no cognizable offence is made out against the Petitioner as per the contents of First Information Report and therefore the Petitioner cannot be subjected to criminal prosecution.</p> <p>(iv) To award the cost of litigation and suitable compensation to the petitioner for the loss and damages caused to the petitioner.</p> <p>(v) To grant/ award any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.</p>
(xv) CrWJC No.516 of 2022	<p>(i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing Ranitalab P.S. Case No. 181/2021 registered on 17.09.2021 under section 378/379/411 IPC and Rule 39 (3) and 56 the Bihar</p>



	<p>Mineral (Concession, Prevention of illegal mining, transportation & Storage) Rules 2019 (erroneously mentioned in the FIR as Bihar Mining Concession Prevention of Illegal mining and Transportation and Storage Rules 2021) on the ground that the same is completely illegal and without any authority of law.</p> <p>(ii) To issue further appropriate writ, order or direction in the nature of mandamus commanding the Respondents 1st Set not to take any coercive steps against the Petitioner in pursuance of Ranitalab P.S. Case No. 181/2021</p> <p>(iii) This Hon’ble Court may adjudicate and hold that no cognizable offence is made out against the Petitioner as per the contents of First Information Report and therefore the Petitioner cannot be subjected to criminal prosecution.</p> <p>(iv) To award the cost of litigation and suitable compensation to the petitioner for the loss and damages caused to the petitioner.</p> <p>(v) To grant/ award any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.</p>
(xvi) CrWJC No.545 of 2022	<p>(i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing Sahar P.S. Case No. 209/2021 registered on 19.09.2021 under section 379 of Indian Penal Code and Rule 39(3) and 56 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Amendment Rules, 2021 on the ground that the same is completely illegal and without any authority of law.</p> <p>(ii) To issue further appropriate writ, order or direction in the nature of mandamus commanding the Respondents 1 Set not to take any coercive steps against the Petitioner in pursuance of Sahar P.S. Case No. 209/2021.</p> <p>(iii) This Hon’ble Court may adjudicate and hold that no cognizable offence is made out against the Petitioner as per the contents of First Information Report and therefore the Petitioner cannot be subjected to criminal prosecution.</p> <p>(iv) To award the cost of litigation and suitable compensation to the petitioner for the loss and damages caused to the petitioner.</p> <p>(v) To grant/ award any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.</p>

3. Before adjudicating these matters, it would be



appropriate to point out the legal backgrounds of these matters.

4. After hearing these matters in detail, the learned co-ordinate Bench of this Court reserved the judgment on 28.09.2022 but, before the pronouncement of judgment, on 02.11.2022, the Court came across its earlier judgment in the case of **M/s Broad Son Commodities Pvt. Ltd. vs. The State of Bihar and Ors.** reported in **2018(4) PLJR 706** and judgment of the Hon'ble Supreme Court in the case of **Jayant and Ors. vs. State of Madhya Pradesh** reported in **(2021) 2 SCC 670, State of Delhi (NCT) vs. Sanjay** reported in **(2014) 9 SCC 772** which have bearing upon the adjudication process and, therefore, learned counsel for the parties were given opportunity to address the Court in reference to the judgments as noted hereinabove.

5. On 04.11.2022, the learned Single Judge reiterated its earlier view, in view of the judgment of Hon'ble Supreme Court in the case of **Sanjay (supra)** and **Jayant (supra)**, that no fault may be found with lodging of the F.I.Rs. in these cases and investigation into these cases need



not be interfered with at this stage. Learned co-ordinate Bench expressed it's inability to agree with the views expressed by the another learned co-ordinate Bench of this Court in the case of **Mithilesh Kumar Singh vs. State of Bihar and Anr. (Cr.W.J.C. No. 540 of 2019)** and also in Cr.W.J.C. No.1233 of 2021 (Aditya Multicom Private Ltd. Vs. The State of Bihar & Ors.) disposed on 07.04.2022.

6. To make the diversified opinion of the Court consistent with the law and the judicial pronouncements of the Hon'ble Supreme Court on the subject, the learned co-ordinate Bench of this Court referred these matters to the Division Bench on the following issues:-

(i) Whether Section 22 of the MMDR Act of 1957 read with Rule 56 of the Rules of 2019 may be interpreted so as to read a bar on lodging of the FIR alleging commission of offences of theft etc. under the provisions of the Indian Penal Code against a licensee in the matter of excavation of sand from the river beds from an area beyond or contrary to the mining plan and in violation of the Environment Clearance, on the face of Clause (v) under sub-rule(7) of Rule 56 and the judgments of the Hon'ble Supreme Court in Sanjay and Jayant's case.

(ii) Whether the alleged thieving sale of sand



from the stock license point without issuing pre-paid E-Challan and thereby causing huge revenue loss to the State Exchequer and unlawful gain to the petitioners may be subjected to an investigation by Police by way of a police case registered for the offences under Sections 379, 411, 406 and 420 IPC ?

(iii) Whether the judgments of the learned co-ordinate Benches in the case of Mithilesh Kumar Singh (supra) and M/s Aditya Multicom Pvt. Limited vs. The State of Bihar & Ors. (Cr.W.J.C. no. 1233 of 2021) are per incurium for not noticing the earlier judgment of a Bench of equal strength, hence not laying down a correct statement of law?

7. After hearing the learned counsel for the parties, the Division Bench of this Court vide order dated 09.02.2024 answered the aforesaid reference in para-26 in the following manner:-

"26. We accordingly, answer the questions referred to us, as under:

(i) In the matter of excavation of sand from the river beds from an area beyond or contrary to the mining plan and in violation of the Environment Clearance, FIR alleging commission of offences as of theft etc. under the provisions of the IPC can be filed against a licensee and bar under section 22 of the MMDR Act, 1957 read with Rule 56 of



the Rules of 2019 would not be attracted.

(ii) For the alleged stealing sale of sand from the stock license point without issuing prepaid E-challan and causing huge revenue loss to the State Exchequer and unlawful gain to the petitioners, FIR can be lodged for the offences punishable under sections 379, 411, 406, 420 I.P.C. and it is open for the Investigating Officer to investigate the same.

(iii) The judgments of the learned Single Judge rendered in the case of Mithilesh Kumar Singh (supra) and M/s Aditya Multicom Pvt. Limited vs. The State of Bihar & Ors. (Cr.W.J.C. no. 1233 of 2021) can be said to be per incurium as the earlier decision rendered in the case of Broad Son Commodities Pvt. Ltd. (supra) rendered by another learned Single Judge was not cited and considered.”

8. After the Division Bench answered the reference, the matters were specially assigned to this Court for hearing.

9. Now, the only question which is required to be adjudicated whether in given fact and circumstances FIR's as lodged against petitioners as discussed aforesaid constitute any *prima facie* case for the offences punishable under Sections 379, 406, 411, 420 of the IPC and for the violation of rules of Bihar Minerals (Concession, Prevention of Illegal



Mining, Transportation and Storage Rules,2019) as alleged.

10. By order dated 20.02.2025, the Court impleaded Enforcement Directorate as one of the party-respondent, expressing its view that the interest of Enforcement Directorate (in short ‘ED’) must be protected, in view of submission that the ratio of **Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.** reported in **2022 SCC Online SC 929**, is only the guiding legal note available to the Court as far as case of PMLA Act is concerned, and, therefore, the Enforcement Directorate must at least be given an opportunity of hearing by impleading as a party-respondent. It is also submitted that the opportunity of hearing shall not in any way prejudice the petitioners, rather any such denial shall prejudice the Enforcement Directorate, which in broader sense appears essential to unveil the truth of the present crime (schedule offences) which is calyx of corruption and as such against the national socio-economic interest, upon which case of PMLA, 2002 against petitioners are founded.

FIRs relating to the petitioner Broad Son Commodities Private Limited



Case No.	FIR	Allegations
Cr.W.J.C. No. 501 of 2021	Bihta P.S. Case No. 864 of 2020 registered under Section 22 of the MMDR Act 1957, Rules 11, 29 (c), 56 of the Bihar Mineral (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules 2019	It is alleged that in course of spot inspection when the Ge-co-ordinate of the excavated area of Chilka Tola Sandghat was taken, it was found that the excavation of sand were done outside the E.C. Area. The Inspecting Team took measurement of the excavated ditches and found that 56,500 CFT of sand had been done outside the E.C. Area and thereby revenue loss of Rs. 16,53,045/- has been caused to the Government Exchequer.
Cr.W.J.C. No. 387 of 2022	Bihta P.S. Case No. 689 of 2021 registered under Sections 379, 411 IPC read with Rules 39(3) and 56 of the Bihar Mineral (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules 2019	In course of Inspection of the Stock at the five K-License places difference of 431950 CFT sand between the stock and the P.M.U. Report was found, it was noticed that the license holder has sold sand without issuing prepaid E- Challan. It is alleged that the license holder has sold the sand stealthily and the Register in form -J were not found duly filled up. At the all places the signboard containing name, description of land, license number and the rate of sand were not written. This has caused revenue loss of Rs. 1,73,94,607/- to the Government exchequer.
Cr.W.J.C. No.396 of 2021	Ranitalab P.S. Case No. 260 of 2020 registered on 30.11.2020 against the petitioner for alleged offences under section 379 and 34 of the Indian Penal Code, and Rule 11, 29 (C) and 56 of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019	It is alleged that mining outside the prescribed limits is a violation of the terms and conditions of the approval granted by SEIAA/and mining plan and also Rule 11 and 29(c) of the 2019 Rules and is punishable under Rule 56. It is alleged that the State Govt. has suffered a loss of Rs. 17,47,260/-.
Cr.W.J.C. No. 388 of 2022	Sandesh P.S. Case No. 179 of 2021 registered under Sections 378, 379, 411 IPC read with Rules 39(3), 56 of the Bihar Mineral (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules 2019	In course of Inspection of the Stock at two K-License places difference of 20590 CFT sand was found between the physical verification and the P.M.U. Report. It was noticed that there is differe the license holder has sold sand without issuing prepaid E-Challan. It is alleged that the license holder has sold the sand stealthily and the Register in form -J were not found duly filled up. At the all places the signboard containing name, description of land, license number and the rate of sand were not written. This has caused revenue loss of Rs. 08,23,600/- to the Government exchequer.



Cr.W.J.C. No. 401 of 2022	Chandi P.S. Case No. 183 of 2021 registered under section 379 IPC read with Rules 39(3), 56 of the Bihar Mineral (Concessions, Prevention of Illegal Mining, Transportation & Storage) Rules 2019 and 15 of Environment Protection Act.	In course of Inspection of the Stock at the K-License place difference of 13500 CFT sand was found between the physical verification and the P.M.U. Report. It was noticed that the license holder has sold sand without issuing prepaid E-Challan. It is alleged that the license holder has sold the sand stealthily and the Register in form -J were not found duly filled up. At the all places the signboard containing name, description of land, license number and the rate of sand were not written. This has caused revenue loss of Rs. 05,40,000/- to the Government exchequer.
Cr.W.J.C. No. 404 of 2022	Dehri Nagar (Indrapuri OP) P.S. Case No. 1018 of 2020 on 29.12.2020 for alleged offences under section 379/406/ 420 of the Indian Penal Code; Section 15 of the Environment Protection Act and section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 and Rule 56 of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules 2019	It is alleged that during course of inspection the local people on the condition of confidentiality disclosed that the ghat operator Bhola Yadav is engaged in illegal mining during night. It is further alleged that according to the direction of the DM, Rohtas as contained in Memo NO. 2185 dated 23.12.2020 mining operation was suspended for violation of the terms and conditions of the tender.
Cr.W.J.C. No. 413 of 2022	Imadpur P.S. Case No. 115 of 2021 registered under section 379 IPC read with Rules 1, 12,13, 15, 39(3) and 56 of the Bihar Mineral (Concessions, Prevention of Illegal Mining, Transportation & Storage) Rules 2019	In course of Inspection of the Stock at two K-License places difference of 295350 CFT sand between physical and P.M.U. Report was found. It was noticed that the license holder has sold sand without issuing prepaid E-Challan. It is alleged that the license holder has sold the sand stealthily and the Register in form -J were not found duly filled up. At the all places the signboard containing name, description of land, license number and the rate of sand were not written. This has caused revenue loss of Rs. 01,18,14,000/- to the Government exchequer.
Cr.W.J.C. No. 462 of 2022	Paliganj P.S. Case No. 335 of 2021 registered under sections 378, 379/411 IPC read with Rules 39(3), 56 of the Bihar Mineral (Concessions, Prevention of Illegal Mining, Transportation & Storage) Rules 2019	In course of Inspection of the Stock at the K-License place difference between the stock and P.M.U Report was found. it was noticed that the license holder has sold sand without issuing prepaid E-Challan. It is alleged that the license holder has sold the sand stealthily and the Register in form-J were not found duly filled up. At the place the signboard containing name, description of land, license number and the rate of sand were not written. The extent of revenue loss caused to



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		the Government exchequer has not been mentioned.
Cr.W.J.C. No. 465 of 2022	Doriganj P.S. Case No. 247 of 2021 registered under sections 379/411, 420 IPC read with Rules 39(3) of the Bihar Mineral (Concessions, Prevention of Illegal Mining, Transportation & Storage) Rules 2019	In course of Inspection of the Stock on the five K-License places it was found that the stocks were much less than mentioned stock in the report of the P.M.U., hence allegation is that the license holder has sold sand without issuing prepaid E-Challan. It is alleged that the license holder has sold the sand stealthily and the Register in form -J were not found duly filled up. At the all places the signboard containing name, description of land, license number and the rate of sand were not written. This has caused revenue loss of (i) Rs. 7,78,38,614/-,(ii) Rs.10,26,10,683/-, (iii) 15,42,37,116/-, (iv) 01,06,03,495/-, (v) 01,54,61,475/-, (vi) 01,71,49,073/- to the Government exchequer.
Cr.W.J.C. No. 481 of 2022	Barhara P.S. Case No. 540 of 2021 registered under section 379 IPC read with Rules 39(3), 56 of the Bihar Mineral (Concessions, Prevention of Illegal Mining, Transportation & Storage) Rules 2019	In course of Inspection of the Stock at the K-License place difference of 55950 CFT sand was found between the stock and P.M.U. Report. Tt was noticed that the license holder has sold sand without issuing prepaid E- Challan. It is alleged that the license holder has sold the sand stealthily and the Register in form -J were not found duly filled up. At the place the signboard containing name, description of land, license number and the rate of sand were not written. This has caused revenue loss of Rs. 22,38,000/- to the Government exchequer.
Cr.W.J.C. No. 497 of 2022	Dighwara P.S. Case No. 302 of 2021 registered under sections 379, 420 IPC read with Rules 39(3) of the Bihar Mineral (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules 2019	In course of Inspection of the Stock at the K-License place it was noticed that out of two license places, at K-7/21 place 61915 CFT sand were more than the quantity mentioned in the report of PMU which allegedly show that the license holder has illegally extracted the sand and at one place (K-12/21 the quantity was less showing that the license holder had sold the sand without issuing prepaid E-Challan. It is alleged that the license holder has sold the sand stealthily and the Register in form -J were not found duly filled up. At the place the signboard containing name, description of land, license number and the rate of sand were not written. This has caused revenue loss of Rs. 26,41,913/- and 1,24,73,807/- respectively to the Government exchequer.
Cr.W.J.C. No. 500 of 2022	Koilwar P.S. Case No.	In this case altogether seven K-



	456 of 2021 registered under sections 378, 379, 411 IPC read with Rules 39(3) and 56 of the Bihar Mineral (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules 2019	license spots are involved. In course of Inspection of the Stock at the K-License places sand was found much less at different sites which show that the license holder has sold sand without issuing prepaid E-Challan. It is alleged that the license holder has sold the sand stealthily and the Register in form -J were not found duly filled up. At the place the signboard containing name, description of land, license number and the rate of sand were not written. This has caused revenue loss of Rs. 13,36,70,320/- to the Government exchequer.
Cr.W.J.C. No. 505 of 2021	Awtar Nagar P.S. Case No. 261 of 2021 registered under sections 188, 420, 379 IPC read with Rules 39(3) of the Bihar Mineral (Concessions, Prevention of Illegal Mining, Transportation & Storage) Rules 2019	In this case altogether three K-license spots were inspected. In course of Inspection of the Stock at the two K-License places sand was found much less at different sites which show that the license holder has sold sand without issuing prepaid E-Challan. Further at third place the same was found more than the report provided in the P.M.U. Report which shows that illegal mining has been done. It is alleged that the license holder has sold the sand stealthily and the Register in form -J were not found duly filled up. At the place the signboard containing name, description of land, license number and the rate of sand were not written. This has caused revenue loss of Rs. 3,30,49,195/-, Rs. 01,10,43,423/- and 03,72,96,525/- respectively to the Government exchequer.
Cr.W.J.C. No. 508 of 2022	Muffasil P.S. Case No. 464 of 2021 registered under sections 379, 411 IPC read with Rules 39(3) of the Bihar Mineral (Concessions, Prevention of Illegal Mining, Transportation & Storage) Rules 2019	In this case in course of Inspection of the Stock at the K-License place sand was found much less as shown in the report of PMU which shows that the license holder has sold sand without issuing prepaid E-Challan. It is alleged that the license holder has sold the sand stealthily and the Register in form -J were not found duly filled up. At the place the signboard containing name, description of land, license number and the rate of sand were not written. This has caused revenue loss of Rs. 2,37,07,452/- to the Government exchequer.
Cr.W.J.C. No. 516 of 2022	Rani Talab P.S. Case No. 181 of 2021 registered under sections 378, 379, 411 IPC read with Rules 39(3), 56 of the Bihar Mineral (Concessions, Prevention of Illegal Mining, Transportation & Storage) Rules 2019	In this case altogether eighteen K-license spots were inspected. In course of Inspection of the Stock at the K-License places, sand was found much less at different sites which shows that the license holder has sold sand without issuing prepaid E-Challan. It is alleged that the license holder has sold the sand stealthily and the Register in form -J were not found duly filled up. At the place the



		signboard containing name, description of land, license number and the rate of sand were not written. This has caused revenue loss of Rs. 07,48,88,106/- to the Government exchequer.
Cr.W.J.C. No. 545 of 2022	Sahar P.S. Case No. 209 of 2021 registered under section 379 IPC read with Rules 39(3), 56 of the Bihar Mineral (Concession, Prevention of Illegal Mining, Transporation and Storage) Rules, 2019	In this case two K-license spots were inspected. In course of Inspection of the Stock at the K-License places sand was found much less at different sites which shows that the license holder as sold sand without issuing prepared E-challan. It is alleged that the license holder has sold the sand stealthily and the Register in Form-J were not found duly filled up. At the place the signboard containing name, description of land, license number and the rate of sand were not written. This has caused revenue loss of Rs. 93,60,000/- to the Government Exchequer.

11. At the outset, it is important to mention that core allegations as set out through different FIRs are mostly same, therefore, the pleadings made in Cr.W.J.C. No.501 of 2021 pertaining to Bihta P.S. Case No.864 of 2020 registered in the district of Patna is being referred and considered as to discuss the factual aspects of these cases.

12. It is submitted by Mr. Suraj Samdarshi, learned counsel appearing for petitioners that in furtherance of auction conducted in the year 2014, settlement was created in favour of petitioners of the entire district of Patna, Bhojpur and Saran as one unit. The aforesaid settlement was for a period of five years i.e. from 2015 to 2019. After completion of aforesaid period of five years, the settlement of petitioner



was extended from 01.01.2020 till 31.10.2020 at first instance. Thereafter, the settlement was again extended from 01.11.2020 till 31.12.2020 at second instance, whereafter the another and third extension was given from 01.01.2021 till 31.03.2021 and finally the fourth and last extension was given to settlee/petitioners from 01.04.2021 till 30.09.2021. It is pointed out that the basic allegations as raised through different FIRs was that the sand was illegally excavated outside the permitted area for which the government has suffered a loss on account of such act. The allegation raised against the settlee i.e. Broad Son Commodities Private Limited and its employees.

13. Mr. Samdarshi submitted that the entire FIR is based on mere presumptions as on its facial perusal, no offence *qua* theft appears *prima facie* made out against petitioner's company and its employees. There is no specific allegation of any wrong doing against petitioners. It is submitted that on the basis of presumption, as some pits were found adjacent to petitioners leased area, therefore, same was alleged to be illegally excavated by the petitioners



for which petitioner cannot be said liable merely because his presence was lawful in furtherance of settlement as submitted above. It is submitted that this is not a case where the respondents caught red-handed any representative of petitioners involving or indulging in illegal excavation outside leased area. No incriminating articles like Pokelanes, JCBs, Trucks etc. belonging to the petitioners has been found or seized from the place of alleged occurrence. It is also pointed out that the compliance of Rule 59(2) of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 and also Section 100 (4) and 100(5) of the Code of Criminal Procedure, 1973 (in short 'CrPC') regarding search and seizure also does not appear to be followed, which further makes entire allegation doubtful on its face. The FIRs in issue failed to disclose that same was lodged in furtherance of any inspection report, even alleged inspections *qua* two sites were not made in presence of any independent witnesses. Therefore, in absence of any inspection report, the allegations *qua* illegal mining beyond permitted area is just an allegation motivated otherwise.



14. Mr. Samdarshi further submitted that Geo co-ordinates has been prescribed by the environmental authorities in the environmental clearance certificate issued by the State Environment Impact Assessment Authority (in short 'SEIIA'), which clearly stipulates that the prosecution if any be initiated only in terms of provisions available under Environmental Protection Act, 1986. In this context, it is submitted that environment clearance for "Chilka tola" sand ghat has been granted by the State Environment Impact Assessment Authority (SEIAA) vide Letter No.439 dated 23.12.2016 **(Annexure-9 to 1st Supplementary affidavit).**

15. Mr. Samdarshi further submitted that the settlement created in favour of the petitioners as per Rule 11(A) of the Bihar Minor Mineral Concession Rules, 1972, was covering entire districts, which suggests on its face that although the mining plan or environmental clearance could be of a smaller area but, the mineral potential even lying outside the environmental clearance area is not the property of the State during the period of settlement. As such, even



extraction beyond the excavation clearance area for the settlement made for the entire district, at best, it can be taken as breach of the terms of environmental clearance and same cannot be treated as illegal mining.

16. It is further submitted that the petitioner paid entire royalty for the district of Patna, where environmental clearance capping for “Chilka tola” sand ghat was 8,77,504/- tonnes per annum, which was never exhausted by the petitioner and, therefore, if it is assumed that 96,500 CFT (3860 MT) sand has been excavated by petitioner, it cannot be said that any violation of environmental clearance was made, as same is well within the capping limit and also cannot be said to cause any revenue loss to the respondents. It is submitted that with this allegation also, it is not a case of theft of sand.

17. Explaining further, it is submitted by Mr. Samdarshi that even if it is assumed that petitioners conducted mining of sand outside the permissible area, the same at maximum is the case of excess mining for which petitioner is liable to pay additional liability in light of Clause



5 of Appendix 2 of the New Sand Policy, Appendix 2 Clause 6(vii) of notification no.2887 dated 22.07.2014, Clause 11(xv) of work orders for calendar year 2015, Clause 22 Part III of agreement of the calendar year 2015 and Rule 29(B)3((ii) and Rule 51(7) of 2019 Rules. Even Rule 56(3) of the 2019 Rules suggest that for any unauthorized mining, the government is liable to recover royalty only.

18. It is further submitted that the petitioners have settled the entire stretch of river passing through the district for which the auction amount was paid in terms of Rule 26(1)9b) and Schedule II of the 1972 Rules. It is pointed out that according to sand policy, 2013 and Bihar Minor Mineral Concession Rules, 1972, the petitioner was required to prepare a mining plan and submit the same to the State Government for approval. On the basis of the mining plan, the petitioner was granted the environmental clearance by SEIAA, which prescribed the particular area from which petitioner could excavate the sand. This demarcation was on the basis of mineral potential of the river at a particular place. If the mineral potential of a particular ghat got diminished



due to several factors like monsoon, excess rain etc., the petitioner was entitled to get a revised new mining plan approved and obtained new environmental clearance for new area and, therefore, the mining plan for district Patna was revised and new environmental clearance was granted for 13 new sand ghats. The approval of revised new mining plan contained in Letter No.16 dated 02.01.2019 (**Annexure-12 series/second Supplementary affidavit**).

19. It is submitted that in aforesaid factual circumstances, if there is any breach, then the same is covered by Rule 30 and Rule 47 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019.

20. In this context it is also submitted that even though if any excavation was done outside the permitted environmental clearance area, the Collector is authorized to impose a penalty upon the petitioner in terms of Rule 30 of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019. It was also opened for Collector to suspend or cancel the settlement under Rule



47 of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019. However, no such action was taken and straightway the present criminal prosecution in bunch was lodged against the petitioners.

21. It is pointed out that Rule 30 of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 also applied in case of violation of Rule 29(C), which provides that the settlee observe the terms and condition of mining plan as well as the terms and conditions of the environmental clearance.

22. While concluding argument, it is submitted by Mr. Samdarshi that admittedly when petitioner could not carry out work due to financial hardships, they surrendered their license of settlement with Government whereafter, the entire ghats admittedly came in possession of the concerned police stations/respondent (Mining Department). It is pointed out that no allegation for any illegal mining was raised for five years but the moment the petitioners surrendered the license due to financial hardships, the series of FIRs for theft were lodged against petitioners admittedly, when the sand in issue



was not in possession of petitioners, therefore, no offence as alleged *qua* theft, cheating or breach of trust *prima facie* appears made out and, therefore, importing the ratio of **State of Haryana vs. Bhajan Lal** since reported in **1992 Supp (1) SCC 335**, present FIRs are liable to be quashed/set aside.

23. It is further submitted by Mr. Samdarshi that whenever an accused approached the court of law for quashing the FIR or any criminal proceedings arising therefrom, such proceedings were manifestly attended frivolous or vexatious or otherwise instituted with ulterior or oblique motive for wrecking vengeance then, in such circumstances the court must look into the FIR with care and a little more closely and it will not just be enough for the court to look into the allegation made in the FIR/complaint alone as to whether the necessary legal ingredients *qua* alleged offences are disclosed or not. It is submitted that in case of frivolous or vexatious proceedings, the court must look other attending circumstances emerging from the record of the case over and above and if need be with due care and



circumspection, try to read in between the lines. In support of his submissions, learned counsel relied upon the legal report of Hon'ble Supreme Court as available through **Salib @ Shalu @ Salim vs. State of U.P. and Ors.** since reported in **2023 SCC Online SC 947.**

24. It is further submitted by Mr. Samdarshi that being a law abiding citizens, apprehending the situations, petitioners approached this Hon'ble Court through **Cr.W.J.C. No.6890 of 2019** reported in **2019 (4) PLJR 246** seeking a direction upon the authorities to stop illegal mining and transportation of sand, wherein the Hon'ble Court observed that illegal mining required remedial measures immediately. The Hon'ble High Court issued certain directions thereof, primarily regarding establishment of check posts to check illegal mining and deployment of police personnel along with the authorized representatives of the settlee of the district, to identify the challans, on the basis of which, transportation was being done but even thereafter, the illegal mining was continued, which was one of the reasons for causing financial loss to petitioners, compelling him to



surrender license in 2021. It is submitted that petitioner took all possible legal steps to check illegal mining including intimation to the police and the officials, assisting the administration in putting up check post to prevent illegal transposition of sand and lodging of FIR's against illegal miners. Some of the FIR's lodged by the petitioners are annexed with **Cr.W.J.C. No. 387/2022** vide **Annexure -26 Series in 4th Supplementary Affidavit.**

25. In this context, it is further submitted that illegal mining becomes frequent practice during Covid-19 and, therefore, the petitioners being *bona fide* settlee suffered loss. The petitioners further suffered a loss due to Covid-19 related slow down and also on account of prohibition of four wheeler trucks to transport sand. For aforesaid reasons, continuation of mining activity became unviable and, therefore, the petitioner vide Letter dated 26.04.2021 surrender its settlement of sand ghats in the district of Patna, Bhojpur and Saran with effect from 01.05.2021.

26. It is pointed out that after surrender of the



settlement, the generation of E challan on the mining department's portal was suspended/blocked from 01.05.2021. Importantly, the generation of e- transit challans were not only stopped for the secondary loading sand ghats, but also for K- license sites. It is also pointed out that being a law abiding citizens, the petitioners vide letter dated 10.06.2021 (Annexure-7 in Cr.W.J.C. 387/2022) submitted a representation to Assistant Director, District Mining Office, Patna, vide letter dated 09.06.2021 (Annexure-7 in Cr.W.J.C in 388/2022) submitted a representation to the Assistant Director, District Mining Office, Bhojpur and vide letter dated 10.06.2021 (Annexure-9 in Cr.W.J.C No. 465 /2022) submitted a representation to the Mines Inspector, District Mining Office, Saran requesting that a physical verification of the stock at K-license sites be conducted and petitioner be allowed to sell sand therefrom.

27. It is pointed out that despite aforesaid request, no physical verification was conducted and the petitioner was not allowed to sell the sand stock at the K- license sites. It is further submitted that the sand stocked at the K-license sites



was being misappropriated by antisocial elements for which the petitioner filed informatory petition before the C.J.M. Patna on 11.06.2021 (Annexure 8 in Cr.W.J.C. No. 387/2022). In Bhojpur, such informatory petition was filed on 21.06.2021 (Annexure 8 to Cr.W.J.C. No. 388/2022). In Saran such informatory petition was filed on 09.06.2021 (Annexure 8 to Cr. W.J.C. No. 465/2022).

28. It is further submitted that being law abiding citizens, the petitioners filed monthly returns for K-license sites in accordance with Rule 46 (2). According to the returns filed for the month of May 2021, a total of 80,82,250 CFT sand was available at the K-License sites in Patna as per Annexure-9 to the writ application. Similarly, for Bhojpur, a total of 44,82,250 CFT sand was available at the K License sites. (Annexure 9 Cr.W.J.C No. 388/2022). Similarly, in Saran a total of 1,81,76,650 CFT sand was available (Annexure 11 at Page no. 90 in Cr.W.J.C No. 465/2022).

29. It is further submitted by Mr. Samdarshi that in aforesaid development, Director, Mining Department on 10.07.2021 issued a notice in the Hindi Daily newspaper



“Dainik Bhaskar” (**Annexure-10 in Cr.W.J.C. 387/2022**)

in which general public was informed about the availability of sand with K-license holders in various districts of Bihar and were directed to approach such K-license holders directly for purchase of sand. In the District of Patna, the total quantum of sand available at K-license sites were mentioned as 86,98,550 CFT, which was more than the total quantum of sand as per the monthly returns. In the District of Bhojpur the total quantum of sand available at the K license sites was mentioned as 45,22,475 CFT, which was more than total quantum of sand as per the monthly returns. In the District of Saran the total quantum of sand available at the K license sites was mentioned as 1,86,25,325 CFT which was again more than the total quantum of sand as per the monthly returns. Thus, there was no shortage of sand as on 10.07.2021.

30. It is pointed out that all of a sudden, vide Letter No. 261 dated 07.07.2021 issued by the Deputy Director, Mining Department, 34 K-licenses of Patna were cancelled. Vide Letter No. 264 dated 08.07.2021 issued by the Deputy



Director, Mining Department, 15 K-licenses of Bhojpur were cancelled. Vide Letter No. 1223 dated 24.07.2021 issued by the District Mining Officer, and in Saran district, 13 K-licenses were cancelled and the stocks lying over there was seized by the mining department. After cancellation of aforesaid K-licenses, the sand stocked at K-license sites was formally seized vide Letter No. 1557 dated 11.07.2021. In Bhojpur, the sand stocked at K-license sites was formally seized vide Letter No.3000 dated 12.07.2021. Consequent upon, after cancellation of the K-license sites and seizure of sand the petitioner lost control and possession over the sand which was stocked at the K-license sites.

31. It is further submitted that after seizure sands at K License sites the department of mines had handed over the sand to the local police stations and revenue authorities for care and protection in terms of Letter No. 3007 dated 15.07.2021 (**Annexure 24 of the 3rd Supplementary Affidavit in Cr.W.J.C 387/2022**), letter no. 1557 dated 11.07.2021 (**Annexure-25 of the 3rd Supplementary Affidavit in Cr.W.J.C. 387/2022**) which was marked to



the police stations and the circle officers in Bhojpur and Patna respectively to ensure that the seized sand be kept securely.

32. Mr. Samdarshi further submitted that the all sand at K License sites was royalty paid, therefore, the Collector, Patna issued Letter No. 1592 dated 14.07.2021 **(Annexure 12 to Cr.W.J.C No. 387/2022)**, whereby the surrender of the settlement of sand ghats in Patna by petitioner was accepted and the earlier demand of Rs. 80,48,58,604/- for the remainder of the settlement period was reduced by the cost of 1,29,56,870 CFT sand (at the at the rate of Rs. 4027 per 100 cubic feet) seized from the secondary loading area and the K-license sites and issued a fresh demand for Rs. 28,30,85,450/-, which is the approval of the fact that the K license sites and secondary loading areas was royalty paid, otherwise there was no occasion for adjustment.

33. It is further submitted that the Mining Department after seizing all sands and after cancellation of K-license of petitioners started to sell the sand from the month of July, which is evident from Letter No. 614 dated



04.09.2021 (**Annexure-13 to Cr.W.J.C. No. 387/2022**)

whereby the authorities were directed by the Director, Mining Department to expedite the sale of seized sand, whereby the quantum of sand seized at K license sites on 02.09.2021 in Patna was shown to be 80,78,650 CFT, quantum of sand at K-license sites at Bhojpur was shown to be 45,09,675 CFT and quantum of sand at K license sites in Saran was shown to be 1,80,48,625 CFT. It is submitted that the quantum of sand mentioned in Letter No. 2614 dated 04.09.2021 was almost equal to the quantum mentioned in the monthly returns filed by petitioners.

34. It is submitted that in view of aforesaid, it is evident that no theft was committed from the authorized sites in favour of settlees/petitioners and also of sand, which was in possession of petitioners at different K-license sites and secondary sites. It is pointed out that all of a sudden in 3rd week of September, all the aforementioned FIRs were registered against the petitioners suddenly alleging huge misappropriation of sand within a shot span of 10-15 days. It is submitted that when admittedly the aforesaid documents,



which is of an unimpeachable character of sterling quality suggest that the sand alleged as stolen was not from possession petitioners, lodging of FIRs against petitioners for the offence of theft *prima facie* not made out and it is out of ulterior and oblique motive.

35. In support of aforesaid submissions, Mr. Samdarshi further submitted that the sand stocked at “K” -license site was royalty paid and same was also established by the information received by petitioners under RTI from mining department in which they have admitted that the sand stocked at K-license site is royalty paid, which is apparent from Letter No. 1996 dated 18.08.2021 (Annexure-19 to Cr.W.J.C. No. 387/2022) in which it has been accepted that petitioner has paid advance royalty and has filed return till May 2021. It has also been accepted that sand is transported after capping is provided. The mining department through Letter No. 3598 dated 18.08.2023, as annexed as Annexure-23 Series (2nd Supplementary Affidavit in Cr.W.J.C. No. 387/2022) categorically said that no additional royalty is payable if sand is transported from K-license site on a valid e-



challan. It has been clarified that sand is transported from sand ghat to K-license site on the basis of e-challans. It is further pointed out that Letter No. 3596 dated 18.08.2023 wherein it has been accepted by Mining Department that if sand stocked being stolen from the K- license sites, it would amount to loss to the company.

36. It is submitted that FIRs were lodged mainly with allegation that during course of inspection, sand stocked at K-license sites was found to be less than PMU Data, which is not a correct position, for the reason that petitioners surrendered the settlement from 01.05.2021 and, therefore, the generation of K-license was stopped from same date. However, the FIR has been lodged in September after a delay of more than four months, where admittedly the police and Mining Department seized and took the possession of K license sites from the month of July, 2021 onward. It is also pointed out that out of thirteen FIRs only in two FIRs i.e. Bihta P.S. Case No. 689 of 2021 (Cr.W.J.C No. 387/2022) and Rani Talab P.S. Case No. 181 of 2021 (Cr.W.J.C. No. 516/2022), the date of alleged inspection has been stated,



whereas in other FIRs the date of inspection also not appears to be available, making the entire events doubtful and unfounded.

37. In view of aforesaid, the allegation raised through different FIRs are completely false and appears raised maliciously in order to compel the petitioner to pay the royalty for the surrendered period.

38. Beside aforesaid, it is submitted that the State of Bihar has also registered certificate cases against the petitioners under the Bihar and Orissa Public Demand Recovery Act, 1914 seeking to recover the cost of sand alleged to have been misappropriated from the K-license sites. It is therefore, submitted that the respondents have admitted that the alleged liability of the petitioner is civil in nature.

39. While concluding argument, Mr. Samdarshi submitted that considering all such aspects, this Court through Cr. Misc. No. 8423 of 2023 granted anticipatory bail to CEO of Aditya Multicom Private Limited, wherein the Hon'ble Court, vide order dated 18.05.2023, has recorded



the stand of the Director, Mines that stock was handed over to the local police for providing security and that steps were taken to sell the sand through Bihar State Mining Corporation. It was also recorded that learned counsel of mines and Director of Mining Department has stated that there may be a situation in which even the persons who were given the responsibility to keep the stocks secured may be involved in the occurrence.

40. It is also submitted that no offence under Section 411 of the IPC is made out against the petitioners, as there is no allegation in the FIRs that petitioners received any stolen property at any point of time, where as per Section 420 of IPC is concerned, it is submitted that the FIRs on its face, nowhere reveals or contains any averments, which may suggest that petitioners cheated with fraudulent intention from very inception particularly, in the background when admittedly the petitioners were settlees since 2015 and for long six years, no any such allegations were raised.

41. In support of his aforesaid submissions, the learned counsel has relied upon the legal report of Hon'ble



Supreme Court as available through **Anil Mahajan vs. Bhor Industries Ltd. and Anr.** since reported in **(2005) 10 SCC 228, Indian Oil Corporation vs. NERC India Limited and Ors.** since reported in **(2006) 6 SCC 736** and also in **Vinod Natesan vs. State of Kerala and Ors.** since reported in **(2019) 2 SCC 401.** The learned counsel also relied upon the legal report of **State of Orissa vs. Debendra Nath Padhi** since reported in **AIR 2005 SC 359 and HMT Watches vs. M.A. Abida and Anr** since reported in **(2015) 11 SCC 776.**

**ARGUMENT ON BEHALF OF DEPARTMENT OF MINES
(RESPONDENT Nos. 6 to 9):**

42. It is submitted by Mr. Naresh Dikshit, learned Spl.P.P. appearing for the Department of Mines and aforesaid respondents that the documents introduced by way of different Annexures by the petitioners to show their innocence was neither the part of FIRs nor the part of charge-sheet, as in that view of matter, those documents/annexures cannot be looked into in present proceeding under Sections 226 and 227 of the Constitution of India, as those documents can only be introduced as



evidences and same be viewed during trial only. It is pointed out that the writ court cannot assume the duty of the trial court. It is submitted that in view of the reference answered by Hon'ble Division Bench of this Court through Cr.W.J.C. No.299 of 2022, it is clear that FIR is maintainable in the cases. Therefore, this Court can only see as to whether the allegations made in the FIR make out any *prima facie* case as alleged or not. It is submitted that the Hon'ble Single Judge of this Court in Cr.W.J.C. No.1919 of 2017 and 10 of 2018 preferred by the petitioner already dismissed that no case is made out to quash the FIR. It is further submitted that Hon'ble Supreme Court in the matter of **State of Bihar vs. P.P. Sharma** since reported in **AIR 1991 Sc 1260** observed that the Hon'ble Court under circumstances would not have assumed jurisdiction put and end to the process of investigation and trial provided under the law.

43. It is submitted that in view of aforesaid, the writ petitions are devoid of any merit and, therefore, same be dismissed.

ARGUMENT ADVANCED ON BEHALF OF
DEPARTMENT OF ENFORCEMENT (ED):



44. This Court has impleaded the Department of Enforcement as a party respondent for hearing in present case to avoid any prejudice to the Department vide its order dated 20.02.2025.

45. Upon so.

46. Mr. Zohaib Hossain, learned special counsel appearing for the Department of Enforcement submitted that the FIRs were lodged for the offences punishable under Sections 420, 406, 379 of the IPC and for the violation of Rule 40 Bihar Minor Mineral Concession Rules, 1972 and Rule 3 of the Bihar Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules 2003. It is submitted that the offences alleged are scheduled offences under Prevention of Money Laundering Act, 2002 (in short 'PMLA Act').

47. At the outset, it is submitted by Mr. Zohaib Hossain that the submissions as raised as to lodge present FIRs appears violation of Article 21 of the Constitution of India *qua* petitioners cannot be accepted that mere lodging of FIR cannot be taken as an act of violation of fundamental right as available to a citizen contained in Article 21 of the



Constitution of India.

48. It is also submitted that the ratio of **Bhajan Lal case (supra)** and also **Pepsi Food Ltd. (supra)** cannot be said applicable to the present fact and circumstances. It is submitted that in Cr.W.J.C. No.10 of 2018, the petitioner is seeking quashing of the FIR. However, a perusal of the allegation mentioned in FIR shows that those are liable to be investigated and at this stage, this Court sitting in writ jurisdiction would not be justified in weighing the materials, which have been brought by the petitioners by way of annexures to the writ applications. The investigation in this case cannot be interfered with facts and circumstances of the case, stated hereinabove. In result this Court:-

“**26.** In Cr. W.J.C. No. 10 of 2018, the petitioner is seeking quashing of the FIR. **However, a perusal of the allegations mentioned in the FIR shows that those are liable to be investigated and at this stage this Court sitting in its writ jurisdiction would not be justified in weighing the materials which have been brought by the petitioner by way of Annexures to the writ applications and the rejoinder. The investigation in the case cannot be interfered with in the facts and circumstances of the case stated hereinabove.**

27. In result, this Court does not find any reason to



interfere with the impugned orders and the FIRs which are subject matter of challenge in both the writ applications. **These writ applications with interlocutory application are, therefore, dismissed."**

49. It is also submitted that while disposing aforesaid writ petition, the reliance was made on **State of Delhi (NCT) vs. Sanjay** since reported in **(2014) 9 SCC 772**. It is submitted that the judgment dated 05.10.2018 passed by Hon'ble Mr. Justice Rajeev Ranjan Prasad in Cr.W.J.C. No.1910 of 2017 and Cr.W.J.C. No.10 of 2018, as aforesaid, was challenged before Hon'ble Supreme Court in SLP (Crl.) No. 10602 and 10596 of 2018, which was dismissed as withdrawn.

50. It is further submitted by Mr. Hossain that while dealing with Cr.W.J.C. No. 540 of 2019 in connection with Sigaudi P.S. Case No.2 of 2018, Cr.W.J.C. No. 676 of 2019 in connection with Bhagwanganj P.S. Case No.2 of 2018, Cr.W.J.C. No. 693 of 2019 in connection with Dhanarua P.S. Case No.7 of 2018 and Cr.W.J.C. No.718 of 2019 in connection with Naubatpur P.S. Case No.718 of 2019, where FIRs were lodged under Sections 420, 406, 379 read with 34



of IPC along with Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 (for short 'MMDR Act'), Rules 40, 21 and 22 of the Bihar Minor Minerals Concession Rules, 1972 (for short '1972 Rules) and Section 15 of the Environment (Protection) Act, 1986 (for short '1968 Act'), were quashed by one of the learned coordinate Bench presided by Hon'ble Mr. Justice Ashwani Kumar Singh.

51. In this context, it is submitted that while hearing aforesaid matters, the earlier judgment dated 05.10.2018 passed in Cr.W.J.C. No. 1910 of 2017 and SLP order dated 05.10.2018 was not brought to the knowledge of the Court, as it seems from the order whereas counsel was same.

52. It is further submitted by Mr. Hossain that Cr.W.J.C. No.1233 of 2021 in connection with Dehri Town P.S. Case No.407 of 2021 registered under Sections 379, 411, 420 and 409 of the IPC and Rule 39(2), 39(3) and 56(2) of the Bihar Mineral (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 was filed before Hon'ble Patna High Court and vide order dated



07.04.2022, the Hon’ble Patna High Court quashed the aforesaid FIR relying upon the judgment of Mithilesh Kumar Singh i.e. order dated 26.08.2019.

53. In this context, it is further pointed out that Cr.W.J.C. No.299 of 2022 in connection with Barun P.S. Case No.318 of 2021 registered for the offences under Sections 379, 411, 420 IPC read with Rules 11, 39 and 56 of the Bihar Mineral (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 was filed before this Court and Hon’ble Mr. Justice Rajeev Ranjan Prasad observed as follows:-

“51. At this stage, this Court is of the considered opinion that the submission advanced on behalf of the petitioners saying that because these petitioners are the licencees, therefore in their cases allegation of theft, transfer of stolen property, criminal breach of trust or cheating would not lie are liable to be rejected. If a licensee, in the garb of having license indulges in dishonestly mining from the river beds by causing large and dip pits beyond the E.C. Permitted area and thereby engage in excavation, extraction, removal and selling of the minor minerals, **his act would, prima-facie, subject to investigation, fall in the category of theft and criminal breach of trust....**

X X X

63... It is difficult to appreciate as to why the earlier



judgment of this Court was not cited even as the petitioner was the same and one and learned Senior Counsel who was leading him before the learned Co-ordinate Bench was aware of the judgment of this Court which was in fact challenged before the Hon'ble Supreme Court where also the same learned Senior Counsel had represented the petitioners. At the same time, learned counsel for the State as well as the Department of Mines did not place the earlier judgment before the learned co-ordinate Bench...."

54. Therefore, the matter was referred before the Hon'ble Chief Justice for further reference to a Division Bench, which has settled the difference of opinions of the single Judge benches of the Hon'ble High Court.

55. Thereafter, this case was taken up on hearing by the Hon'ble Division Bench of the High Court on 09.02.2024, which held as under:-

"25. Thus, in view of the aforesaid, we are of the view that the decision rendered in the case of Mithilesh Kumar Singh (supra) and M/s Aditya Multicom Private Limited (supra) can be said to be *per incurium*."

56. Thereafter, on 07.10.2024, a single Judge bench led by Hon'ble Mr. Justice Arvind Singh Chandel passed an order in M/s Aditya Multicom vs. The State of



Bihar Cr.W.J.C. No. 1597 of 2024 in connection with Dehri Town P.S. Case No 115 of 2024 dated 13.02.2024 registered for the offence punishable under Sections 379 and 420 of the IPC which was registered on the basis of information shared by the Directorate of Enforcement and quashed the FIR without taking into consideration the above-mentioned decision of Hon'ble Division Bench of this Court dated 09.02.2024.

57. Despite observation of this Court, as the information was shared by ED, the department was not impleaded as party so that department could apprise the Hon'ble Court in respect of the money laundering angle involved in the entire case.

58. It is submitted by Mr. Hossain that this is a case of illegal mining beyond the permissible limit or beyond territory of settlement/mining without a mineral concession. It is pointed out that excess mining will not absolve the settlees from criminal liability. It is submitted that even after the settlement the ownership of natural resources lies with the State. It is pointed out that the petitioner caused a loss of



Rs. 210.68 crores (Rupees Two Hundred Ten Crores Sixty-eight Lakhs) to the State due to illegal mining. In support of his submission, learned counsel relied upon the legal report of Hon'ble Supreme Court as available through **Reliance Natural Resources Ltd. Vs. Reliance Industries Ltd. [(2010) 7 SCC 1]**.

58.1. Mr. Hossain further submitted that for purpose of Section 411 IPC, property obtained through criminal breach of trust is included within the definition of "stolen property" under section 410 of IPC and, therefore, squarely falls within the ambit of Section 411 IPC. In this regard, learned counsel relied upon the legal report of Hon'ble Supreme Court as available through **Mir Nagvi Askari Vs. CBI [(2009) 15 SCC 643]**.

58.2. In support of his submission, learned counsel relied upon the legal reports of Hon'ble Supreme Court as available through **Lalita Kumari Vs. Government of Uttar Pradesh [(2014) 2 SCC 1]**; **SBI Vs. Rajesh Agarwal [(2023) 6 SCC 1]**; **Anju Chaudhary Vs. State of U.P. [(2013) 6 SCC 384]**; **Monica Bedi Vs. State of A.P.**



[(2011) 1 SCC 248]; Ishwarlal Girdharilal Parekh Vs. State of Maharashtra [AIR 1969 453-457 SC 40]; Union of India Vs. Venkateshan S. [(2002) 5 SCC 285; Rajeev Kaurav Vs. Baisahab [(2020) 3 SCC 317 and Swaran Singh Vs. State [(2008) 8 SCC 435.

59. Concluding argument, Mr. Hossain submitted that the documents annexed with writ petitions cannot be viewed at this stage and, therefore, there is no occasion to quash the present FIRs as it may affect the proceedings of department in PMLA case in view of ratio as settled by Hon'ble Supreme Court in **Vijay Madan Lal case (supra)**.

COUNTER ARGUMENT TO THE AFORESAID SUBMISSIONS BY PETITIONERS:

60. Taking a contrary note of aforesaid submissions as raised by Department of Mines and Department of Enforcement, it is submitted by Mr. Samdarshi that both these departments projected these cases as of illegal mining. It is pointed out that illegal mining means mining beyond the permissible limit or beyond territory of settlement or mining without concession. It is submitted that in none of these FIRs aforesaid allegation was raised against petitioners. It is



pointed out that the Department of Enforcement has stated that in Chandi P.S. Case No.183 of 2021 and Awtarnagar P.S. Case No.261 of 2021 there is allegation of excess mining. It is submitted that Chandi P.S. Case No.183 of 2021 is under challenge in Cr.W.J.C. No.401 of 2022 and Awtar Nagar P.S. Case No.261 of 2021 is under challenge in Cr.W.J.C. No.505 of 2022, where in both FIRs, there is no allegation *qua* excess mining. It is pointed out that as ED raised the ownership of sand that was never with petitioners is not justifiable. Agreeing with the submission of Department of Enforcement, it is submitted by Mr. Samdarshi that there cannot be any dispute with respect to the proposition that ownership of natural resources lies with the State. However, once the State after obtaining royalty and other taxes, settles a particular area and permits excavation of minor minerals the same is guided by the Rules framed under Section 15, 23C and 26 of the MMDR Act. Since the 2019 Rules provides a mechanism for payment of royalty in advance and for excess extraction there is a specific rule that is Rule 51(7) of 2019 Rules, suggest excess dispatch cannot be alleged



against the settlee in view of Rule 29(F) which mandate that the electronic weight bridges have to be integrated with the central server and it is only after verification of quantum of sand, through the weight bridges, the E-challan is generated and such quantity is reduced from the total permissible limit allotted to the petitioner. Neither there is any case of excess mining against the petitioner as per the department of Mines, nor there is any demand in relation to excess excavation in terms of Rule 51(7).

61. While concluding argument, it is pointed out that both these departments are silent to their argument that how the present FIRs made out any *prima-facie* case for the offence alleged under section 420, 379, 406 of the IPC.

62. It is submitted that mere lodging of FIRs which are not otherwise disclosing any offence cannot force petitioners to face the trauma of criminal trial. It is pointed out that the documents annexed with writ petitions are such an impeachable quality of sterling nature that departments are not in a position to deny and, therefore, same can be read at this stage in view of **Devendra Nath Padhi case**



(supra). This Court has wide power to deal with all such documents to secure the ends of justice and to save the petitioners from facing criminal trial, which apparently appears unoccasioned in view of submission as advanced hereinabove.

CONCLUSION:-

63. It would be apposite to reproduce the FIR of Bihta P. S. Case No – 447/21 dt. 03.07.2021 in Cr. WJC No 387 of 2022 for sake of convenience:-

सेवा में,

थानाध्यक्ष,

बिहटा थाना।

विषय:- प्राथमिकी दर्ज करने के संबंध में।

महाशय,

उपर्युक्त विषय के संबंध में कहना है कि आपके थानान्तर्गत निर्गत अनुज्ञप्ति लाईसेंस यथा K-19/2021, K-44/2021 एवं K-52/2021 के पता क्रमशः 1. मौजा – आनंदपुर, मौजा नं०-36, प्रखण्ड-बिहटा, थाना-बिहटा, जिला-पटना, खाता सं०- 466, खेसरा सं०- 269 2. मौजा- कटेशर, मौजा नं०- 39, प्रखण्ड-बिहटा, थाना-बिहटा, जिला-पटना, खाता सं०- 163, खेसरा सं०- 411 एवं 3. मौजा-देवकुली, मौजा नं०- 55, प्रखण्ड-बिहटा, थाना-बिहटा, जिला-पटना, खाता सं०-58, खेसरा सं०-24 के स्थलों पर उपलब्ध बालू की मात्रा का भौतिक सत्यापन दिनांक 27.06.2021 को समय 11.00 AM से 3.00 PM तक खान निरीक्षक आजाद आलम, श्री अंजय कुमार एवं श्री अमित कुमार के साथ किया गया। भौतिक सत्यापन के दौरान उक्त अनुज्ञप्ति स्थलों पर बालू की मात्रा शून्य पाया गया जबकि PMU द्वारा उपलब्ध कराये गये प्रतिवेदन के अनुसार उक्त स्थलों पर क्रमशः (1). 87450 टनफीट , (2) 24450 घटफीट एवं (3) 298600 घनफीट बालू का भण्डारण है। उक्त से स्पष्ट होता है कि अनुज्ञप्तिधारी के कर्मियों/संचालकों द्वारा बिना



प्रीप्रड ई-चालान निर्गत किये चोरी से बालू का विक्रय कर दिया गया है। साथ ही किसी भी व्यक्ति द्वारा प्रपत्र "ज" में संधारित पंजी का भौतिक सत्यापन के क्रम में प्रस्तुत नहीं किया गया। सभी अनुज्ञप्ति स्थलों पर साईन बोर्ड जिसपर अनुज्ञप्तिधारी का नाम, पता, खाता-खेसरा, मौजा, अनुज्ञप्ति संख्या एवं बालू का विक्रय मूल्य आदी अंकित नहीं पाया गया तथा भण्डारित बालू स्थलों का fencing एवं भण्डारित बालू को तारपोलिन से ढका हुआ नहीं पाया गया।

उक्त कृत कार्य अनुज्ञप्ति के कंडिका 1, 12, 13, एवं 15 का उल्लंघन है तथा बिहार खनिज (समानुदान, अवैध खनन, परिवहन एवं भण्डारण निवारण) नियमावली 2019 के नियम 39 (3) के तहत दण्डनीय है। K- अनुज्ञप्ति संख्या 19/2021 के बावत 43,82,500/- रु०, K- अनुज्ञप्ति संख्या 44/2021 के बावत 12,32,500/- रु० एवं अनुज्ञप्ति संख्या 52/2021 के बावत 1,49,40,000/- रु० सरकारी राजस्व की क्षति हुई है, जो वसूलनीय है।

अतः अनुरोध है कि अनुज्ञप्तिधारी के प्राधिकृत कर्मियों / संचालकों के विरुद्ध उपरोक्त वर्णित नियम तथा IPC के नियम 378, 379, 411, 420 एवं IPC के अन्य सुसंगत धाराओं के तहत प्राथमिकी दर्ज करने की कृपा करेंगे। (मे० ब्रॉडसन कॉमोडिटीज प्रा० लि० द्वारा प्राधिकृत कर्मियों / व्यक्तियों की सूची अनुज्ञप्तिवार संलग्न)।

विश्वासभाजन
ह०/- अस्पष्ट
राजेन्द्र कुमार सिंह
खान निरीक्षक
जिला खनन कार्यालय, पटना।

64. It would be further apposite to reproduce the FIR of Chandi P. S. Case No.183/21 dt. 18.09.2021 in Cr.W.J.C. No. 401 of 2022 for the sake of convenience, which is as under:-

जिला खनन कार्यालय, भोजपुर, आरा
पत्रांक-3484
सेवा में,
थानाध्यक्ष,
चांदी थाना, भोजपुर।

विषय:- लघु खनिज भण्डारण अनुज्ञप्ति स्थलों पर PMU द्वारा उपलब्ध कराये गये भण्डारित बालू की मात्रा एवं स्थलीय निरीक्षण में पाये गये बालू का अंतर के आलोक में प्राथमिकी दर्ज करने के संबंध में।



प्रसंग:— विभागीय पत्रांक—2614/एम., दिनांक—04.09.2021 एवं समाहरणालय (खनन शाखा) का पत्रांक—3000/खनन, दिनांक—12.07.2021

महाशय,

उपर्युक्त विषय के संबंध में कहना है कि अवैध खनन, परिवहन एवं भण्डारण के विरुद्ध विभागीय निदेशानुसार आपके थानान्तर्गत भोजपुर जिला द्वारा निर्गत अनुज्ञप्ति लाईसेंस का भौतिक सत्यापन करने के पश्चात एवं PMU से प्राप्त K —अनुज्ञप्तियों पर भण्डारित बालू की मात्रा में अंतर पाया गया। अनुज्ञप्ति संख्या पर पाये गए भण्डारित बालू की मात्रा का अंतर जिसपर प्राथमिकी दर्ज की जानी है इस प्रकार है:—

S. No.	Licence Address	Police Station	License No.	Khata No.	Khesra No.	Area	PMU द्वारा उपलब्ध मात्रा	भौतिक सत्यापन की मात्रा	FIR for difference in Quantity
01	Mauza-Farhangpur Anchal Koilwar	Chandi	K-12/21	526	1134 1133	33 Dismal	106.500 Cft	120000 cft	13500 cft.

भौतिक सत्यापन श्री रंजीत कुमार, तत्कालीन खान निरीक्षक द्वारा किया गया है। उक्त से स्पष्ट होता है कि अनुज्ञप्तिधारी द्वारा बिना प्रीपेड ई—चालान निर्गत किये चोरी से बालू का विक्रय कर दिया गया है। साथ ही किसी भी व्यक्ति द्वारा प्रपत्र ‘ज’ में संघारित पंजी का भौतिक सत्यापन के क्रम में प्रस्तुत नहीं किया गया। सभी अनुज्ञप्ति स्थलों पर साईन बोर्ड जिसपर अनुज्ञप्तिधारी का नाम, पता, खाता—खेसरा, मौजा, अनुज्ञप्ति संख्या एवं बालू का विक्रय मूल्य आदी अंकित नहीं प्या गया।

उपरोक्त वर्णित सभी 01 K—अनुज्ञप्ति स्थलों में भण्डारित बालू की मात्रा में पाए गए अंतर का मात्रा 13500 घनफीट होता है, जिसके कारण रु.540000/— सरकारी राजस्व की छति हुई है, जो वसूलनीय है। उक्त कृत कार्य अनुज्ञप्ति के कंडिका 1,12,13 एवं 15 का उल्लंघन है तथा बिहार खनिज (समानुदान, अवैध खनन, परिवहन एवं भण्डारण निवारण) (संशोधित) नियमावली 2021 के नियम 39(3) एवं 56 के तहत दण्डनीय है।

अतः अनुरोध है कि अनुज्ञप्तिधारी मेसर्स ब्रॉडसन कॉमोडिटीज प्रा. लि. के निदेशक मंडल एवं अवैध प्रेषण में संलिप्त व्यक्तियों के विरुद्ध उपरोक्त वर्णित नियम तथा IPC के नियम 378, 379, 411 एवं IPC के अन्य सुसंगत धाराओं के तहत प्राथमिकी दर्ज करने की कृपा की जाये ताकि अवैध खनन, परिवहन एवं भण्डारण के साथ—साथ राजस्व की क्षति को रोका जा सके।

Registered Chandi PS Case No.183/21 dated 18.9.21

विश्वासभाजन
ह0—17.9.21

U/s 379 IPC & Bihar Minerals (Concession Prevention Illegal Mining transportation & Storage) Act 2021 U/s 39(3)/56 and 15 EP. Act, S.I. Raja Ram Prasad will Please investigate this case.

अनुप त्रिपाठी
(खान निरीक्षक)
पिता—स्व. मदन मोहन त्रिपाठी
ग्रा0—वकुलारी, था.—गुठनी,
जिला—सिवान, बिहार
मो0 9661701005

65. It would be further apposite to reproduce a notice issued by Mining Department on 10.07.2021 in the



Hindi Daily newspaper Dainik Bhaskar (**Annexure-10 in Cr.W.J.C. 387/2022**) in which general public was informed about the availability of sand with K-license holders in various districts of Bihar, which is as under:-

बिहार सरकार			
खान एवं भूतत्व विभाग आवश्यक सूचना आम जन/ट्रांसपोर्टर्स/कार्य संवेदकों को सूचित किया जाता है कि बिहार राज्यान्तर्गत विभिन्न जिलों में बालू के प्रपत्र 'K' भण्डारण अनुज्ञप्तिधारियों के पास प्रचुर मात्रा में बालू उपलब्ध है। अनुरोध है कि सुविधानुसार अपने जिला/निकटवर्ती जिला के भण्डारण अनुज्ञप्तिधारियों से सम्पर्क कर बालू प्राप्त कर सकते हैं। इस संबंध में किसी भी प्रकार के कठिनाई होने पर संबंधित जिला खनन कार्यालय के प्रभारी पदाधिकारी से सम्पर्क किया जा सकता है। विवरणी निम्नवत् है:-			
जिला	प्रपत्र 'K' भण्डारण अनुज्ञप्ति की संख्या	कुल भण्डारित बालू की मात्रा (cft)	सम्पर्क पदाधिकारी का नाम/मोबाईल सं०
अरवल	12	4084733.25	श्री प्रमोद कुमार/8051999728
औरंगाबाद	15	29286925	श्री पंकज कुमार/7294805905
बाँका	24	33236831	श्री अखलाक हुसैन/99737886110
बेगूसराय	04	217800	श्री उपेन्द्र पासवान/9431551802
भागलपुर	06	40650	श्री अखलाक हुसैन/99737886110
भोजपुर	19	4522475	श्री आनंद प्रकाश/7549125357
जमुई	08	90750	श्री निधि भारती/9852903038
जहानाबाद	07	325025	श्री अरुण कुमार चौधरी/9199618063
मुंगेर	01	500	श्री गोपाल साह/9431678029
नालन्दा	05	1098076	श्री मुकेश कुमार/9955328191
नवादा	13	4381150	श्री मुकेश कुमार/9955328191
पटना	64	8698550	श्री सुरेन्द्र प्रसाद सिन्हा/9431289921
रोहतास	17	57584000	श्री संजय कुमार/7903845475
सारण	25	18625325	श्री शिवचन्द्र प्रसाद/8789089502
शेखपुरा	01	2000	श्री उमेश चौधरी/7366040300
वैशाली	04	1366950	श्री जय प्रकाश सिंह/8789724518
2. उपरोक्त के अतिरिक्त राज्यान्तर्गत 07 जिलों (यथा- नवादा, बाँका, अरवल, किशनगंज, मधेपुरा, वैशाली, बक्सर) के वैद्य बालूघाट बंदोबस्तधारियों द्वारा नदी तल से 300 मीटर की दूरी के अन्दर सेकेंडरी लोडिंग प्वाइंट पर भी बालू का पर्याप्त भण्डारण किया गया है, जहां से आमजन आवश्यकतानुसार बालू प्राप्त कर सकते हैं। किसी भी प्रकार की असुविधा होने पर अथवा अन्य कोई सूचना देने के लिए विभागीय नियंत्रण कक्ष के दूरभाष संख्यया- 0612-2215350,2215351 पर सम्पर्क किया जा सकता है। <div> <div>(गोपाल मीणा)</div> <div>निदेशक, खान</div> </div> PR.003426(mines)2021-22			

66. It would be relevant to reproduce surrender of settlement to the Collector, Patna dated 26.04.2021, which



is as under:-

त्राहिमाम संदेश

सेवा में,
समाहर्ता महोदय,
पटना

मैं अशोक कुमार निदेशक, ब्रॉडसन कमोडिटीज प्रा० लि० हिमांशु कम्पलेक्स कोईलवर, बालू के उठाव में आने वाले समस्याओं का त्राहिमाम संदेश देना चाहता हूँ। मेरी कम्पनी के पक्ष में पंचांग वर्ष 2015-2019 तक पटना, भोजपुर एवं सारण तीनों जिले के सम्पूर्ण बालू घाटों को सरकार के द्वारा बंदोबस्ती दी गयी थी। बंदोबस्ती अवधि समाप्त होने के उपरान्त सरकार के द्वारा पुनः विस्तार अवधि दिनांक 01/04/2021 से 30/09/2021 तक दी गयी है। बालू के उठाव में आने वाले समस्याओं का बिन्दुवार जिक्र कर रहा हूँ।

1. बालू पर अवैध उत्खनन एवं प्रेषण पर रोक लगाने के लिये माननीय उच्च न्यायालय के आदेश के आलोक में समाहर्ता महोदय भोजपुर के द्वारा बबुरा में बाँस-बल्ला रहित अस्थाई चेक नाका लगाने की अनुमति प्रदान की गयी है, परन्तु चेक नाका पर दण्डाधिकारी या पुलिस बल की प्रतिनियुक्ति नहीं की गयी।

2. जिसके कारण बालू के अवैध प्रेषणकर्ता निबोध बिना चलान चेक कराये जबरदस्ती चेक नाका से पास करते हैं। कम्पनी के कर्मचारी के द्वारा जब इनको रोका जाता है, तो ये अवैध बालू से लदे वाहनों के पास कराने वाले गिरोह मरने-मारने पर उतारू हो जाते हैं। उक्त मारपीट के क्रम में इन लोगो के द्वारा पत्थरबाजी एवं अवैध आग्नेयास्त्रों से गोलियां भी चलाई जाती है, जिसके चलते पूर्व में मेरे दो कर्मचारियों को गोली लगी थी। उक्त काण्ड का नामजद प्राथमिकी बड़हारा थाना में भी दर्ज करायी गई, परन्तु अभियुक्त अभी भी खुलेआम बाहर घूम रहे हैं।

3. अब तो प्रायः प्रतिदिन अवैधकर्ताओं के द्वारा बबुरा, भोजपुर चेक नाका पर पत्थरबाजी एवं गोलियां चलती रहती है, जिसके फलस्वरूप 8 अप्रैल 2021 को करीब 10 बजे रात्री में पुनः पत्थरबाजी एवं फायरिंग की गई, जिसमें मेरे स्टॉफ को कमर में पिस्टल की गोली लगी।

4. कल अर्थात 11 अप्रैल 2021 पुनः अवैधकर्ता गिरोह के द्वारा पत्थरबाजी की गई एवं बालू लदे अवैध गाड़ी को छुड़ाया गया, इसी क्रम में मेरे एक कर्मचारी को बड़ा सा पत्थर सर में लगा, जिसे स्थानीय अस्पताल में ले जाने पर मामला को सिरियस बताते हुए पटना पी०एम०सी०एच० रेफर कर दिया गया। इन सारी वारदातों की सूचना समाहर्ता भोजपुर, पुलिस अधीक्षक भोजपुर, एस०डी०ओ० भोजपुर, प्रधान सचिव, खान एवं भूतत्व विभाग एवं मुख्य सचिव बिहार सरकार को भी पत्र के माध्यम से सूचना दी गई है। परन्तु सरकार के तरफ से बंदोबस्ताधारी को जड़ा सी भी मदद नहीं मिल पा रही है। नतीजतन जमालपुर से कोल्लहरामपुर तक एवं फुहॉं सेमरा से लेकर बिंदगावाँ, बन्धुछपरा, बलवन टोला होते हुये नदी के किनारे से बबुरा पुल के नीचे अवैध भण्डारण कर 14 चक्का गाड़ियों (जो सरकार के द्वारा प्रतिबंधित किया गया है) पर लोडकर अवैध परिवहन किया जाता है। इनके उपर कोई अंकुश नहीं है। इसमें पुलिस की संलिप्ता से इन्कार नहीं किया जा सकता है। आज क्षेत्र के प्रायः सभी गांवों में (प्रायः कोईलवर पुल के उत्तर) अवैध बालू का अड्डी खुला हुआ है। जहाँ पर असमाजिक तत्वों के द्वारा गांव के नवनिहालों को भी बालू के काले धंधे में संलिप्त किया जा रहा है। इससे इनकी जिंदगी तो बरबाद हो रही है, समाज का अपराधीकरण भी तेजी से हो रहा है। यह तो अभी कोईलवर पुल के उत्तर का



भयावह दृश्य पेश किया जा रहा है। ऐसी विकट स्थिति में कम्पनी के द्वारा राजस्व संग्रहण एक दुरुह कार्य है।

5. कोईलवर पुल से उत्तर जमालपुर से लेकर बबुरा तक पर्यावरण की स्थिति बद से बदतर हो गयी है। यहां के लोग स्थमा एवं दमा के रोगों से ग्रसित हो रहे हैं। बच्चों के लिये जीना मुश्किल हो रहा है क्योंकि आकाश में अवैध परिचालन के चलते आकाश धूलकण से अक्षादित रहा है। इसके लिये कोई समस्या का समाधान नहीं है। कमोबेश यही स्थिति फुहों से लेकर सेमरा, बधु छपरा बिंदगावाँ, बलवन टोला होते हुये बबुरा पुल के नीचे तक बना हुआ है। इसको देख-रेख करने वालो कोई माय बाप नहीं है। कोईलवर पुल के दक्षिण एवं पटना जिला तथा सारण जिले में भी पहलेजा, कलूघाट, डोमवाँ घाट, एल0सी0टी एवं गंगाजल घाट इन सब घाटों पर तकरीबन एक-डेढ़ साल से कोई परिवहन चलान ही नहीं कटा है। वहां के लोकल आदमी अवैध उत्खनन एवं प्रेषण में लगे रहते है कोई व्यक्ति परिवहन चलान कटाने के लिए तैयार नहीं होता है। परिवहन चलान कटाने के लिये कहने पर मरने मारने पर उतारू हो जाते है। इस तरह से राजस्व संग्रहण वहां पर नहीं हो पाता है। इससे सरकार एवं कम्पनी को प्रतिदिन लाखों रुपये का क्षति होती है। तथा सारण जिला अन्तर्गत वीर कुँवर सिंह पुल के नीचे भारी मात्रा में अवैध बालू का प्रेषण किया जाता है। इस सम्बन्ध में सारण जिला के डी0आई0जी साहब, कमिशनर महोदया, डी0एम साहब, एवं एस0पी0 साहब को समय-समय पर पत्र, ई-मेल एवं whatsapp के माध्यम से सूचना दी जाती रही है, परन्तु उपरोक्त कुकृत्यों पर कभी पूरी कारवाई नहीं हुई। अब तो वहाँ से प्रतिबंधित 14 चक्का ट्रक एवं उसके उपर भार क्षमता वाले वाहनों पर बालू की दुलाई धड़ल्ले से की जा रही है। कोई देखने वाला नहीं है।

5(b) ऐसी ही स्थिति कमोबेश पटना जिला में भी रानीतलाब थाना क्षेत्र, बिहटा थाना क्षेत्र, विक्रम थाना क्षेत्र, पालीगंज थाना क्षेत्र एवं पुनपुन नदी क्षेत्र में अनेकों जगहो पर अवैध बालू के उत्खनन करने के लिये गोलीबारी होते रहती है। बालू के अवैधकर्ताओं के कारण पुरा क्षेत्र अशांत है।

6. इसके अलावा पटना एवं भोजपुर दोनो जिले में नये 29 Modify घाटों का जो कि सरकार के द्वारा स्वीकृति प्राप्त है एवं SIEEA के द्वारा भी पर्यावरणीय स्वीकृति प्राप्त है। फिर भी सरकार के द्वारा उक्त घाटों को खोलने की अनुमति नहीं दी जा रही है, जिससे उन घाटों में राजस्व के संग्रहण नहीं हो पा रही है। इस परिस्थिति में कम्पनी सरकार को त्राहिमाम संदेश देती है।

इस परिस्थिति में सरकार के तरफ से अगर यथोचित मदद नहीं मिलेगी जिसमें कि :-

(1) बिहटा:- समाहर्ता महोदय के आदेश के उपरान्त भी ईमादपुर थाना क्षेत्र के बिहटा के बांस-बल्ला रहित चेक नाका की स्थापना ईमादपुर थाना प्रभारी के द्वारा नहीं करने दी जा रही है। जिससे स्पष्ट होता है कि सरकारी राज्यादेश को सरासर उल्लंघन हो रहा है।

2. सकड्डी 3.धरहारा 4.बहिरो 5.बेलाउर बंगला में चेक नाका देने का आदेश, पुलिस बल के उपस्थिति में दण्डाधिकारी के देख-रेख में मेरे कर्मी के द्वारा चलान की वैधता की जांच की जायेगी एवं बबुरा चेक नाका पर सशस्त्र पुलिस बल की प्रतिनियुक्ति (गृह रक्षक वाहिनी को छोड़कर) एवं दण्डाधिकारी की भी प्रतिनियुक्त अभी तक नहीं हो पायी है। फलस्वरूप अवैध उत्खननकर्ता एवं प्रेषणकर्ता निर्बाध अवैध बालू का प्रेषण कर रहे है। अब तो परिस्थिति ऐसी उत्पन्न हो रही है कि हमलोग को भी असमाजिक तत्वों के द



ारा घेरा जा रहा है। हमलोग के उपर कभी भी कोई अप्रिय घटना हो सकती है।

इन सारी व्यवस्थाओं के नहीं रहने पर सरकारी राजस्व का संग्रहण अति दुष्कर होगा। इस संदर्भ में कम्पनी सरकार को अवगत करा देना चाहती है कि किसी भी सुरतेहाल में कम्पनी अपना EC Transfer किसी को नहीं करेगी। बाध्य होकर यह पत्र मुझे लिखना पड़ रहा है कि सचिवालय से लेकर जिला तथा सम्बन्धित थाना वगैरह सभी जगहों पर सैकड़ों पत्राचार किया तथा मिलकर भी पत्र दिया गया एवं सम्बन्धित पदाधिकारियों के सामने भी सैकड़ों घटना घटीत हुआ तथा सैकड़ों प्राथमिकी भी दर्ज हुआ, लेकिन कारवाई शून्य है।

इस पत्र को स्मारित करते हुए कहना है कि लाख प्राथमिकी/पत्राचार करने के उपरान्त भी सरकार से अपेक्षित सहयोग नहीं मिलने के कारण बालू का अवैध करोबार अपने चरम सीमा पर चल रहा है प्रशासन बिलकुल लाचार है या लाचार दिखलाने की कोशिश कर रही है समझ से परे है। बालू के अवैध धंधा करने वाले/पासर गुप की पुलिस के साथ साँठ-गाँठ करने वाले का तूती बोल रहा है। कम्पनी चाह कर भी कुछ नहीं कर पा रही है, कानून व्यवस्था अपने हाथ में ले नहीं सकती है और कानून व्यवस्था से किसी प्रकार का अपेक्षित सहायोग मिल नहीं पा रहा है, ऐसी प्रतिकूल परिस्थिति में कम्पनी राजस्व संग्रहण करने में अपने आप को असमर्थ पाती है। इस परिस्थिति में मेरे सामने अब अगला किस्त देने का सारा विकल्प बंद हो चुका है।

अतः कम्पनी 01 मई 2021 से भोजपुर, पटना एवं सारण जिलों के सारे बालू घाटों की बन्दोबस्ती छोड़ने का कठिन निर्णय ले रही है।

विश्वासभाजन

ह0/—

26.4.2021

67. It would be also apposite to reproduce the physical verification report of Sand Ghats of Patna District, which reads as under:

सेवा में,

सहायक निदेशक
जिला खनन कार्यालय
पटना

विषय:— पटना जिलान्तर्गत K-License पर भण्डारित बालू का भौतिक सत्यापन करने के सम्बन्ध में।

महाशय,

उपर्युक्त विषय के संदर्भ में सादर सूचित करना है कि पटना जिलान्तर्गत K-License पर भण्डारित बालू का उठाव उस समय तक नहीं होगा, जब तक उक्त भण्डारित बालू का भौतिक सत्यापन नहीं हो जाये। इस संदर्भ में कम्पनी के द्वारा आपको इंगित करते हुए पत्र भी दिया गया था, जिसमें स्पष्ट किया गया था कि कम्पनी के द्वारा बालू घाटों को सरेण्डर कर दिया गया है तथा खान एवं भूतत्व विभाग पटना के माध्यम से



कम्पनी के सारे भण्डारित बालू के अनुज्ञप्तियों (K-License-ID) को Block कर दिया गया है, जब तक की भण्डारित बालू की सत्यापन न हो जाये। अब ऐसी स्थिति में जबकि अवैधकर्ताओं का बोलबाला था और जिसके सामने सरकार भी करीब-करीब लाचार हो गई थी। कोविड-19 के कारण सरकार द्वारा लगाये गये लॉकडाउन में K-License पर कोरोना के विषम परिस्थिति को देखते हुए सारे कर्मों को अपने घर भेज दिया गया। लॉकडाउन के स्थिति में अवैधकर्ताओं तथा पुलिस के सहयोग से मेरी कम्पनी के स्टॉक K-License से बालू की चोरी धड़ल्ले से किया गया। जबकि ऐसी आपदा में भण्डारित बालू की सुरक्षा की जबाबदेही भी श्रीमान की थी न की कम्पनी की वैसे भी भण्डारित बालू पर सरकार के द्वारा रोक लगाने का कोई औचित्य समझ में नहीं आ रहा है, क्योंकि सरकार द्वारा दिये गये अनुज्ञप्ति पर भण्डारित बालू बिना उचित निर्गत (K-License के ID) पर चलान के सम्भव ही नहीं।

अतः श्रीमान् से नम्र निवेदन है कि सरकार के द्वारा निर्गत अनुज्ञप्ति पर कम्पनी के द्वारा किए गए भण्डारित बालू का यथाशीघ्र भौतिक सत्यापन कर बालू का उठाव की अनुमति प्रदान करने की कृपा की जाये।

विश्वासभाजन

ह0/—

10.06.2021

68. It would be also apposite to reproduce the Letter
No. 1592 dated 14.07.2021 issued by Collectorate, Chapra,
which reads as under:

सारण समाहरणालय, छपरा

(खनन शाखा)

पत्रांक—1592/खनन, पटना

फोन नं0—0615—2219545(o) 2219097(R)

दिनांक— 14/07/2021

फैक्स नं0—06152-22218900(Fax)

ई—मेल— dm-patna.bih@nic.in

प्रेषित,

मेसर्स ब्रॉडसन कॉमोडिटीज प्रा0लि0,

डॉ0 हिमांशु कम्प्लेक्स, ब्लॉक रोड,

कोईलवर चौक, आरा (भोजपुर)।

विषय:— पटना जिलान्तर्गत संचालित बालूघाटों की विस्ताति बन्दोबस्ती अवधि पंचांग वर्ष 2021 (दिनांक 01.04.2021 से दिनांक 30.09.2021 के लिए) का बकाया बन्दोबस्ती राशि ब्याज सहित एवं देय अन्य कर का भुगतान करने के संबंध में।

प्रसंग:— आपका आवेदन पत्रांक शून्य, दिनांक 25.04.2021, कार्यालय के पत्रांक—982, दिनांक 29.04.2021 आपका आवेदन पत्रांक शून्य दिनांक 03.05.2021 कार्यालय के पत्रांक—1009, दिनांक 04.05.2021 एवं जिला खनन कार्यालय पटना के पत्रांक—1414 दिनांक 01.07.2021, कार्यालय पत्रांक—1475, दिनांक 08.07.2021 एवं कार्यालय आदेश ज्ञापांक—1557, दिनांक 11.07.2021

उपर्युक्त विषय के संबंध में कहना है कि पटना जिलान्तर्गत संचालित बालूघाटों



की विस्तारित बन्दोबस्ती अवधि पंचांग वर्ष 2021 (दिनांक 01.04.2021 से 30.09.2021 तक) के लिए बन्दोबस्ती को आपके द्वारा दिनांक 01.05.2021 से सरेंडर कर दिया गया है। कार्यालय आदेश ज्ञापांक-1557 दिनांक 11.07.2021 द्वारा बालूघाटों के नदी तट से 300 मीटर के अन्दर सेकेण्डरी लोडिंग स्थलों तथा भण्डारण अनुज्ञप्ति स्थलों पर भण्डारित बालू को सरकारी सम्पत्ति मानते हुए कार्यालय पत्रांक-833 दिनांक 21.03.2021 द्वारा निर्गत कार्यादेश की सामान्य शर्त की कंडिका 16(xxviii) तथा बिहार खनिज (समानुदान अवैध खनन परिवहन एवं भण्डारण निवारण) नियमावली 2019 (यथा संशोधित) के नियम 50 के प्रावधानों के तहत जप्त किया गया है। जिला स्तरीय गठित समिति के द्वारा जप्त बालू की बिक्री के लिए निर्धारित किए गए विक्रय मूल्य के आधार पर गणनित राशि का विवरण निम्न प्रकार है:-

सेकेण्डरी लोडिंग स्थल पर जप्त बालू की मात्रा (घनफीट में)	भण्डारित अनुज्ञप्ति स्थलों पर जप्त बालू की मात्रा (घनफीट में)	कुल मात्रा (घनफीट में)	कुल राशि	अभ्युक्ति
7700270	62256600	12958870	521773155 /—	रु0 40 ति फीट विक्रय मूल्य आधार

कार्यालय के प्रासंगिक पत्रांक-1475 दिनांक 06.07.2021 द्वारा विस्तारित बन्दोबस्ती अवधि पंचांग वर्ष 2021 (दिनांक 04.04.2021 से दिनांक 30.09.2021 तक) बकाया बन्दोबस्ती राशि रु0 80,45,58,604 /— (रु अस्सी करोड़ अड़तालिस लाख अन्दावन हजार छः सौ चार मात्र) देय कर एवं ब्याज जमा करने हेतु नोटिस निर्गत किया गया था। बालू भण्डारण स्थलों पर जप्त बालू की मात्रा बिक्री किए जाने पर कुल राशि रु0 52,17,73,155 /— (रु0 बावन करोड़ सत्रह लाख तीहत्तर हजार एक सौ पचपन मात्र) सरकार को प्राप्त होगा। आपके भण्डारण स्थलों पर जप्त 1,29,56,870 घनफीट का बकाया आपके अस्पष्ट शेष बचता है। आपके द्वारा विस्तारित बन्दोबस्ती अवधि दिनांक 01.04.2021 से दिनांक 30.09.2021 तक की बन्दोबस्ती का प्रत्यार्पण किया गया, किन्तु बिहार बालू खनन नीति 2019 की कंडिका 18 के प्रावधान के तहत आपके द्वारा प्रत्यार्पण के पूर्व सम्पूर्ण बन्दोबस्ती राशि जमा नहीं की गई है। अतः आपके प्रत्यार्पण को स्वीकृत करते हुए सूचित किया जाता है कि शेष बन्दोबस्ती राशि जमा नहीं की गयी है। अतः आपके प्रत्यार्पण को स्वीकृत करते हुए सूचित अस्पष्ट शेष बन्दोबस्ती राशि रु0 28,30,85,450 /— (रु0 अठाईस करोड़ तीस लाख पचासी हजार चार सौ पचास मात्र) ब्याज सहित एवं देय कर अस्पष्ट खनन कार्यालय, पटना में अविलम्ब भुगतान करना सुनिश्चित करें अन्यथा नीलामपत्र मुकदमा दायर करते हुए अग्रेतर कार्रवाई किया जाएगा।

ह0-अस्पष्ट
समाहर्ता, पटना

69. It would be also apposite to reproduce the letter dated 04.09.2021 regarding selling of seized sand from all IDs and review the revenue collection from sand, which reads as under:



बिहार सरकार
खान एवं भूतत्व विभाग
सं० सं०-2/एम०एम० (बा०)-22/21-2614/एम०, पटना, दिनांक-04/09/2021
प्रेषक,
गोपाल मीणा, भा०प्र०से०
निदेशक, खान।
सेवा में,
सभी संबंधित उप निदेशक
सभी संबंधित सहायक निदेशक
सभी संबंधित खनिज विकास पदाधिकारी,
सभी संबंधित खान निरीक्षक,
पटना/भोजपुर/सारण/रोहतास/औरंगाबाद।

विषय:- जप्त बालू की बिक्री में तीव्रता लाने एवं सभी ID से बालू की बिक्री प्रारम्भ करने एवं प्राप्त राजस्व की समीक्षा के संबंध में।
महाशय,

उपर्युक्त विषयक संबंध में कहना है कि विभिन्न जिलान्तर्गत प्रपत्र-K लघु खनिज भण्डारण अनुज्ञप्ति स्थलों पर जप्त बालू तथा विभागीय पी०एम०यू० के डेटाबेस में दर्ज प्रपत्र-K भण्डारण अनुज्ञप्ति में उपलब्ध बालू की मात्रा (अनुलग्नक-1) से संबंधित आंकड़ों के आधार पर आपके जिलान्तर्गत राजस्व समाहरण का लक्ष्य निर्धारण किया गया है, जो पत्रांक-2333/एम०, दिनांक-19.08.2021 से सूचित किया गया था। किन्तु नदी तट से 300 मीटर के अंदर सेकेन्डरी लोडिंग पॉईंट पर तथा अन्य स्थलों पर जप्त भण्डारित बालू की मात्रा को भी जिलास्तरीय समिति द्वारा निर्धारित दर से बालू बिक्री करायी जानी है एवं राशि खनन शीर्ष में जमा कराया जाना है। समीक्षा के दौरान यह भी ज्ञात हुआ है कि आपके जिलान्तर्गत सभी आई०डी० से बालू की बिक्री नहीं की जा रही है, (जिलावार विवरण संलग्न)।

उपरोक्त के आलोक में उक्त के आलोक में निदेशित किया जाता है कि अपने जिलान्तर्गत सभी आई०डी० से बालू की बिक्री चालू करायी जाय।

अपने जिला में अभी तक बिक्री किये गये बालू, शेष बचे बालू, जमा राशि से संबंधित प्रतिवेदन यथाशीघ्र उपलब्ध कराना सुनिश्चित किया जाय। विभाग के पास उपलब्ध प्रतिवेदन के अनुसार जिलावार स्थिति निम्न प्रकार है

Day wise Sell of sand from Seized Stocks					
Sl. No.	District	No. of Accounts	Allowed Capping Qty in MT	Total Sale (July+August+September) in MT	Balance in MT
1.	AURANGABAD	9	4,27,772.79	88,278.00	3,39,494.79
2.	BHOJPUR	5	1,99,483.36	24,026.00	1,75,457.36
3.	PATNA	38	4,27,677.60	2,33,124.00	1,94,553.60
4.	ROHTAS	5	30,846.00	16,338.00	14,508.00
5.	SARAN	15	1,81,417.24	80,930.00	1,00,487.24
	TOTAL	72	12,67,196.99	4,42,696.00	8,24,500.99

3. इसी क्रम में यह भी निदेशित किया जाता है कि यदि आपके जिला में बालू की



Patna High Court CR. WJC No.387 of 2022 dt.16-05-2025
73/102

मात्रा में कमी/चोरी हुई है, तो बिहार खनिज (समानुदान, अवैध खनन, परिवहन एवं भंडारण निवारण), नियमावली, 2019 के नियम-39 और 56 एवं भारतीय दंड विधान की सुसंगत धाराओं के तहत प्राथमिकी दर्ज करायें। साथ ही राजस्व हानि का आंकलन कर उसकी वसूली हेतु निलाम-पत्र मुकदमा दायर कर दर्ज प्राथमिकी और दायर नीलाम पत्र वाद की प्रति उपलब्ध कराना सुनिश्चित किया जाय।
अनुलग्नक:- यथोक्त।

विश्वासभाजन
ह0/-
निदेशक, खान

ज्ञापांक:- 02 एम0एम0(बा0)-22/21.2614/एम0, पटना, दिनांक- 04/9/2021
प्रतिलिपि:- सभी संबंधित समाहर्ता को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।
ह0/-

निदेशक, खान

ज्ञापांक:- 02 एम0एम0(बा0)-22/21.2614/एम0, पटना, दिनांक- 04/9/2021
प्रतिलिपि:- प्रधान सचिव कोषांग, खान एवं भूतत्व विभाग, बिहार, पटना को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।
ह0/-
निदेशक, खान

70. It would be also apposite to reproduce the order dated **18.05.2023** as passed by one of the learned coordinate Bench of this Court in **Cr. Misc. No. 8423/2023**, by which Hon'ble Court has granted anticipatory bail to one of the petitioner namely, Sadashiv Prasad Singh, who was the Chief Executive Officer of M/s Aditya Multicom Pvt. Ltd., which reads as under for a ready reference:

“Heard Mr. P.N. Shahi, learned Senior Counsel assisted by Mr. Suraj Samdarshi, learned Advocate for the petitioner and Mr. Naresh Dixit, learned Spl. PP for the Department of Mines, Government of Bihar.

Pursuant to the direction of this Court vide its order dated 17.05.2023, the District Mining Officer, Aurangabad is present,



however, he being a new incumbent of the post was unable to render much assistance, hence, this Court called for the appearance of the Director, Mines. Mr. Md. Naiyar Iqbal, the Director, Department of Mines has, thus, appeared and explained the matter.

Petitioner in the present case is the Chief Executive Officer of M/S Aditya Multicom Private Limited (hereinafter referred to as “the Company”). He is seeking pre-arrest bail in connection with Daudnagar P.S. Case No. 481 of 2021 registered for the offences punishable under Sections 379, 411 and 420 of the Indian Penal Code and Rule 11, 39 and 56 of the Bihar Miner (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 (hereinafter referred to as “the Rules of 2019”). He has given the list of cases in paragraph ‘3’ which are all of similar nature and from which, it appears that in recent times, about 28 cases have been lodged against the Company and its officials wherein the allegations are of similar nature.

As per the prosecution story, the Mines Development Officer, Aurangabad alleges that in course of physical verification of the stock of the K- License No. 05, 04/2021 and 19/2020, the total stock of 2,05,350 CFT were found whereas the Project Monitoring Unit (in short “PMU”) made available a report that at the stock point, the total quantity of sand stored was 7,08,830 CFT. He alleges that the license holder and its staffs/operators have transported 05,03,480 CFT of sand without issuing pre-paid e-challan. It is alleged that the license holder has not followed the provisions of Clause (1), (12), (13), and (15) of the License and Rule 11 and 39 of the Rules of 2019 which is punishable under Rule 56 of the Rules. The informant alleges that the license holder company had proceeded under Sections 379, 411, 420 of the Indian Penal Code and other suitable Sections.

Learned Senior Counsel for the petitioner submits that it is an admitted fact that the Company is the settlee of the sand ghat. Lastly, the settlement was extended for the period 01.04.2021 to 30.09.2021. He paid the first installment of the settlement amount but thereafter for various reasons, the Company decided to surrender the settlement in terms of the contract. The Company surrendered the settlement with effect from



01.05.2021.

It is stated that after the Company surrendered the lease, the District Magistrate, Aurangabad wrote to the Director, Mines and Geological Department, Government of Bihar to suspend the stock license of the petitioner with immediate effect and to conduct a verification of the stock at the different stock points in the district. In this connection, letter containing Memo No. 635 dated 01.05.2021 (Annexure '4') was issued by the District Magistrate, Aurangabad.

Learned Senior Counsel further submits that in the light of the said order, the Sub-Divisional Magistrate, Daudnagar conducted an inspection and according to his report at K-point 4/2021 and 5/2021, approximately 1,05,750 and 15,300 metric ton of sand were found.

Learned Senior Counsel has explained that if it is converted in CFT, it will come to 30,26,000/- CFT. The contention is that on the date of inspection i.e. 11.05.2021, 30,26,000/- CFT of sand were present at those places.

Learned Senior Counsel further submits that after the Settlee Company surrendered the stocks, the possession of the same was taken and arrangements were made by the Department to sale the stocks through their own platforms. In this connection, the notice published in newspaper Dainik Bhaskar by the Department as contained in Annexure '9' to the application dated 10th July, 2021 has been placed.

A bunch of papers have been placed today from which learned counsel for the petitioner has submitted that it is the own letter of the Mines Development Officer, Aurangabad addressed to the Officer-in-Charge of different police stations as contained in Memo No. 1555 dated 25.11.2021 which refers the letter of the District Magistrate dated 11.07.2021 and 17.08.2021. By this letter, the Mining Development Officer has reminded the Officer-in-Charge of the police station that they had to take care of the safety of the stocks lying at the stock points of the earlier settlee. By way of reminder, the Officer-in-Charge were directed to provide security so that no loss is caused to the Government Exchequer.

Learned Senior Counsel for the petitioner has also produced



a copy of the e-challan which is generated at the mining point. It contains the e-cap of ghat. The e-challan issued by the settlee of this case has been enclosed as Annexure '13' to show that these e-challans are issued containing the weight of the sand, quantity in CFT and the value for which it is sold. These sand are sold from the stock point, however, they are the same and one in respect of which the e-challan is generated at the mining point.

In any case, it is the submission of the learned Senior Counsel that after surrender of the stock, it was in the possession of the Officer-in-Charge of the concerned police station, therefore, these are the relevant facts which have not been disclosed in the FIR lodged on 26.08.2021.

Mr. Naresh Dixit, learned Spl. PP for the Department of Mines and the Director, Department of Mines both do not dispute the contention of the learned counsel for the petitioner that the settlement was surrendered on 01.05.2021. They do not dispute that after it was surrendered, an inspection was carried by the S.D.M., Daudnagar on 11.05.2021 in which 30,26,000/- CFT sand were found at the stock point. They further do not dispute that after the stocks were surrendered, steps were taken to sell those stocks through the Bihar State Mining Corporation and further after surrender the Officer-in-Charge of the concerned police station had been asked to provide security at the stock point and it was the responsibility of the Officer-in-Charge to ensure that no theft takes place.

In course of hearing all these matters, while answering the queries of this Court, learned counsel for the Department of Mines as well as the Director of the Department have equivocally stated that there may be a situation in which even the persons who were given the responsibility to keep the stocks secured may have been involved.

Having regard to the facts and circumstances of the case, the submissions noted hereinabove and the statements of the learned counsel for the Department and the Director of Mines as recorded hereinabove when this Court finds that in large number of cases which are stated in paragraph '3' of the application, the petitioner has been granted privilege of anticipatory bail by learned co-ordinate Bench of this Court and some of them which



have been placed before this Court are in Cr. Misc. No. 68755 of 2022, Cr. Misc. No. 69656 of 2022, Cr. Misc. No. 69250 of 2022, Cr. Misc. No. 69140 of 2022, Cr. Misc. No. 69402 of 2022, Cr. Misc. No. 23928 of 2022, Cr. Misc. No. 74522 of 2022 and Cr. Misc. No. 7407 of 2023, to maintain a uniformity in justice, this Court directs that in case of his arrest or surrender within a period of four weeks from today, the petitioner shall be released on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) in connection with Daudnagar P.S. Case No. 481 of 2021 with two sureties of the like amount each to the satisfaction of learned Sub Divisional Judicial Magistrate, Aurangabad, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

And further condition that the court below shall verify the criminal antecedents of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

Before this Court parts with this order, it is expedient in the interest of justice to record that after today's discussion in connection with this case, in course of hearing, the Director of Mines having realized that the role of those who were given the responsibility of securing the stocks is also required to be looked into, undertakes to take up this issue at appropriate level for appropriate action.

This application stands disposed of accordingly.”

71. It would be also apposite to reproduce Sub-section (4) and (5) of Section 100 of the Cr.P.C. for better understanding of the legal position *qua* search and seizure, which are as under:-

“100. Persons in charge of closed place to allow search-
(1) xxx



(2) xxx

(3) xxx

(4) Before making a search under this chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.

(5) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.”

72. It would be also apposite to reproduce **Sections 378, 379, 406, 411, 420** of the Indian Penal Code for better understanding of legal issues involved in present case, which are as under:

"Section 378:- Theft. Whoever, intending to take dishonestly any movable property out of the possession of any person without that person’ consent, moves that property in order to such taking, is said to commit theft."

379. Punishment for theft.— Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

411. Dishonestly receiving stolen property.— Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished



with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Cheating and dishonestly inducing delivery of property.
—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

73. It is also relevant to reproduce Section 4, 14, of the Mines and Minerals (Development and Regulation), Act, 1957, which reads as under:

4. Prospecting or mining operations to be under license or lease.—(1) [No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence [or of a exploration licence] or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder]:
Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with terms and conditions of a prospecting license or mining lease granted before the commencement of this Act which is in force at such commencement:
[Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, [the Atomic Minerals Directorate for Exploration and Research] of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited., a Government company within the meaning of [clause (45) of section 2 of the Companies Act, 2013 (18 of 2013), and any [other entities including private entities that may be notified for this purpose, subject to such conditions as may be specified by the Central Government]
[Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease mining concession or by any other name) in force immediately before the commencement of this Act in the Union territory of Goa, Daman and Diu.]
[(1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in



[No reconnaissance permit, prospecting license or mining lease] shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder. [(3)Any State Government may, after prior consultation with the Central Government and in accordance with the rule made under section 18, [undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not already held under any reconnaissance prospective or mining lease].

xxx xxx xxx

14. [Sections 5 to 13] not to apply to minor minerals.—The provisions of [sections 5 to 13] (inclusive) shall not apply to 2[quarry leases, mining leases or other mineral concessions] in respect of minor minerals.

29-C. Observance of terms & conditions of mining plan/ environmental clearance.—The settlee shall observe the terms and conditions of the mining plan as well as the terms and conditions laid in the Environmental Clearance pertaining to the concerned settlement.

29-F. Installation of Weighbridges.—Each sandghat may have an electronic weigh-bridge, integrated with central server. However for adjacent sandghats, department may allow use of common weighbridge. Any vehicle found carrying sand without proper weighment slip/ e-challan shall be liable to be seized under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 or the rules made there under.

30. Penalty in case of breach of terms.— (1) In case of mining within restricted area or mining sand beyond a depth of 3 meters, a penalty of Rs. One Lakh shall be imposed by the Collector against the settlee for a first time violation.

(2) For a second time violation a penalty ranging from Rs. Five lakh to rupees ten lakhs may be imposed against the settlee keeping in view the gravity of the violation.



(3) Wherever a settlee is found indulging in such offence for the third time or more the settlement of that particular sandghat may be suspended by the Collector temporarily for a maximum period of one month until such breaches are rectified. If the breaches are not rectified in the time given by the Collector in this regard, action for cancellation of the settlement of the concerned sandghat shall be taken in extreme condition.

(4) Transportation of sand shall be carried out through covered carriers only and no wet sand shall be loaded in carriers. The Competent Authority shall impose fine equivalent to market price of sand loaded in the said carrier for any transportation of wet sand and sand transported uncovered from the transporter.

39. (1) Every person who carried business of minor/major mineral beyond any lease hold area shall obtain a stockist license from the Mining Officer in Form-K which shall be displayed at a conspicuous place of business and shall maintain proper accounts of purchase and sale of all such minerals in a register in form-H which shall be produced before the Mines Commissioner, Director of Mines, Additional Director of Mines or Deputy Director of Mines or Mining officer or any other officers authorised by the Government, for inspection. Every application for obtaining license in Form-K shall be accompanied with a fee of Rs. 10,000/- (Ten Thousand Rupees)

(a) Every such license shall be valid for one calendar year; (b) Every such license may be renewed on application which shall be accompanied by a fee of Rs. 2000 (Two Thousand Rupees)

(2) Every such person as mentioned in (1) shall issue a transport challan in Form-'G' or in the prescribed format to every carrier, while dispatching minerals from his stock.

(3) If any person as mentioned in (1) fails to maintain a register in form 'H' or obtain license in Form 'K' or issue a challan in Form 'G' or in the prescribed format, shall be punishable with simple imprisonment which may extend up to one year or value of the mineral along with a fine which may extend upto Rs 10,000/- or with both.

41. E-Challan- The movement of all minor minerals, whether by Mineral Concession Holder or by the Corporation, shall be monitored through e-Challan in Form G or in the prescribed format.

46. Registers, returns and Signboard.— (1) Every Mineral Concession holder shall maintain Register in Form 'H' in which day to day transaction shall be entered. He shall also have to display a signboard.

(2) Every Mineral Concession holder shall submit every month to the Competent Officer a true and correct return for minerals in Form 'I' by the fifteenth day of the following month to which it relates.

(3) Every Mineral Concession Holder shall submit annual returns



in Form “J” as appended to these rules before the 30th April of each year in respect of the preceding financial year. (4) Every Mineral Concession holder shall give all reasonable facilities to the Mining Officer or Director of Mines or Additional Director of Mines or Deputy Director of Mines or any other Officer authorised by the Collector in this behalf to inspect, verify and check the accounts of the minerals.

(5) If the accounts, returns and other evidence produced by the Mineral Concession holder or any other person who has removed minerals, are in the opinion of any of the officers authorised incorrect, incomplete or unreliable either wholly, or partly, the officer concerned, shall report to the Mining Officer who shall proceed to assess to the best of his judgment, the amount of royalty due from the assessee:

Provided that if the mining officer himself has formed the opinion he shall proceed forthwith to assess to the best of his judgment, the amount of royalty due from the assessee.

(6) The state government in addition to accounts/ returns or other evidence may also direct to ascertain the actual quantity of mineral excavated during relevant concession period by deploying modern technology such as aerial survey/ground survey or any latest method.

47. Power to Suspend or Cancel Mineral Concession.—

(1) The Collector shall be competent to cancel / suspend any Mineral Concession in his district.

(2) Subject to such restrictions as the State Government may prescribe, the Collector may suspend or cancel and forfeit the Security Deposit/Earnest Money Deposit of any mineral concession in the following circumstances after giving reasonable opportunity of being heard -

(a) if wrong documents have been furnished to obtain mineral concession; or (b) if the mineral concession is transferred or sublet by the holder thereof; or

(c) if any mining revenue payable by the holder thereof is not duly paid; or

(d) in the event of any breach by the holder of such mineral concession by his servant or agent, or by any one acting on his behalf, with his express or implied permission, of any of the terms and conditions of such mineral concession; or

(e) if the holder of mineral concession or his agent or employee is convicted of an offence punishable under the Act or these Rules or any other law for the time being in force, relevant and connected with mining matters or matter relating to mining revenue or of any cognizable and non-bailable offence under any other relevant law; or

(f) if the purpose for which the mineral concession was granted ceases to exist; or

(g) if the mineral concession has been obtained through misrepresentation or fraud; or

(h) If the Mineral Concession Holder has violated any of the



conditions mentioned in these rules; or

(i) If the Mineral Concession Holder fails to obtain the environmental clearance or violates any of the condition mentioned therein; or

(j) If the Mineral Concession Holder fails to start mining operation within three months from the date of executing deed

(k) If, for any other reason, the Collector is prima facie satisfied, that the mineral concession is fit to be cancelled.

(3) For any action taken under sub-rule (1), the Mineral Concession Holder shall not be eligible for any compensation or refund whatsoever.

(4) Notwithstanding anything mentioned above, in case of detection of any violation of the Act, these rules and any other condition of the mineral concession the State Government or the Collector may, apart from cancelling the mineral concession, also impose suitable financial penalties and/or start criminal prosecution.

(5) Any such penalties levied shall be recoverable under the Public Demand Recovery Act, 1914 (Act 4 of 1914).

50. Exit Option for Mineral Concession Holder.— (1) Any Mineral Concession Holder, at any point of the Mineral Concession period, may opt to exit the business upon giving Six months' notice to the Collector. However, this option is not available to Mineral Concession Holder who have not paid their bidding amount or settlement amount or have violated any condition of settlement.

(2) The Collector may allow such Mineral Concession Holder to exit the business and return any security money deposited by the Mineral Concession Holder after deducting such dues as are recoverable.

(3) The Collector, thereupon, shall initiate arrangement for a fresh bidding.

(4) In case of fraud or violation of mining or environmental conditions or any other irregularities reported, no exit option will be available to the Mineral Concession Holder and their security deposit shall be forfeited.

51. Rent/royalty and assessment.— 1. When a Mineral Concession is granted:- (a) Dead rent shall be charged at the rates specified in Schedule II;

(b) Royalty shall be charged at the rates specified in Schedule III(A); and

(c) Surface rent shall be charged at the rate specified by the Collector from time to time for the area occupied or used by the lessee.

2. On and from the date of commencement of these rules, the provisions of sub-rule (1) shall also apply to the leases granted or renewed prior to the date of such commencement and subsisting on such date.

3. If the Mineral Concession Holder permits the working of more



than one mineral in the same area, the Collector may charge separate dead rent in respect of each mineral.

Provided that the lessee shall be liable to pay the dead rent or royalty in respect of each mineral, whichever be higher in amount.

4. Notwithstanding anything contained in any instrument of lease the Mineral Concession Holder shall pay rent/royalty in respect of any minor mineral own, extracted and removed at the rate specified from time to time in Schedule II and III(A).

5. The State Government may, by notification in the official Gazette, amend the Schedule II, III(A) & III(B) so as to enhance or reduce the rate at which rents/royalties shall be payable in respect of any minor mineral with effect from the date of publication of the notification in the official Gazette.

6. The Mining Officer, after such enquiry and verification as he may deem necessary of the monthly returns furnished by the lessee in Form "I" and Annual Return in Form "J" shall assess the amount of rent/royalty payable by the Mineral Concession Holder at the end of the prescribed period.

7. Notwithstanding anything contained in these Rules, the royalty in case of auction of the minor minerals shall be the amount of auction. In cases where the royalty on dispatched quantity exceeds the auction amount, the extra royalty for the excess quantity of mineral extracted shall also be payable.

8. The Mineral Concession Holder shall also pay all assessments and imposition whatsoever being in the nature of public demands which shall from time to time be charged, assessed or imposed by the authority of the State Govt.

59. Power to enter, inspect, search and seize.—(1) For the purpose of ascertaining the position of the working, actual or prospective of any mine or abandoned mine or for any other purpose connected with these rules, any of the following Officers namely:

- (a) The Mines Commissioner, the Director Mines; or
- (b) The Collector or any other officer authorised by the Collector
- (c) Additional Director, Deputy Director, Assistant Director, Mineral Development Officer and Mining Inspectors; may, (i) enter and inspect any mine;
- (ii) survey and take measurements in any such mine;
- (iii) weigh, measure or take measurements of the stocks of mineral lying at any mine;
- (iv) examine any document, book, register or record in the possession or power of any person having the control of, or connected with, any mine and place, marks of identification thereon and take extracts from or make copies of such document, book, register or record;
- (v) order the production of any such document, book register as is referred in clause(iv);
- (vi) examine any person having the control of or connected with any mine;



(vii) seize any document, sample, equipment, conveyance, animal, commodity, minor mineral, material, raw material or any other item of concern.

(2) In case of such search and seizure, provisions of Section 100 of the Code of Criminal Procedure 1973 shall apply.”

75. It would be further relevant to reproduce **Rule 11 of the Bihar Minor Mineral Concession Rules, 1972,** which reads as under:

“11A. Mode of Settlement -(1) The settlement of sand as minor mineral shall be done by public auction-cum-tender in favour of the highest bidder by the Collector/any officer so authorised by the State Government in the underlined manner;-

(a) Each river as a whole situated in each district shall be considered as a single stretch, the minimum area of which shall not be less than 5 hectares in any case.

(b) Likewise, all rivers in a district shall be treated as individual stretches and all such stretches in one district shall be combined into one single unit for the purpose of settlement.

(c) The highest bidder shall deposit 25% of the auction amount immediately after the auction, following which an in-principle sanction order shall be issued in his favour by the Collector/any officer so authorized by the State Government.

(d) The highest bidder shall submit the required documents (approved mining plan, environmental clearance, bank draft of the due installment of auction amount and other taxes within the prescribed time limit as referred to in the prevailing notification issued by the State Government in this regard, following which the work order shall be issued in his favour by the Collector/any Officer so authorised by the State Government.

(e) The successful bidder shall submit a mining plan prepared for the respective sandghat unit and duly approved by the State Government or by the Officer/Committee so authorised in this regard.

(f) The successful bidder shall obtain environmental clearance from the competent authority as per the prevailing Environmental impact Assessment notification of the Ministry of Environment and Forest, Government of India and as per the provisions of the Environment Protection Act.

Provided that the State Government may direct for the combined settlement of two or more districts as one single unit keeping in view specific geographical disposition, practical difficulties in district-wise demarcation of river bed and sand mining areas located therein, law and order situation, interest of revenue, checking of illegal mining and other relevant factors into consideration. Provided further that in



case of non settlement of anyone or more units, the Mines Commissioner may decide collection of royalty through any public sector undertaking or zila parishad or gram panchayat on recommendation of the Collector.

Provided further that such sand deposits in isolated and far flung areas, which reasonably and conveniently could not be settled by auction shall be identified by the Collector and on approval of the same by the Mines Commissioner, the competent officer (as defined in the rules) may issue permits for extraction of sand from such areas, period for which will not exceed one year.....”

76. It would be further apposite to reproduce para 25 of **Debendra Nath Padhi case (supra)**, which reads as under:

“25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is “necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code”. The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a



police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.”

77. It would be further, apposite to reproduce **para 22, 23, 24, 25, 33, 34 & 46 of Mariam Fasihuddin case (supra)**, which reads as under:

“**22.** Section 420 IPC provides that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy, the whole or any part of valuable security, or anything, which is signed or sealed, and which is capable of being converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine. Further, Section 415 IPC distinctly defines the term ‘cheating’. The provision elucidates that an act marked by fraudulent or dishonest intentions will be categorised as ‘cheating’ if it is intended to induce the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, causing damage or harm to that person.

23. It is thus paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e., (i) the deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) *mens rea* or dishonest intention of the accused at the time of making the inducement. There is no gainsaid that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

24. It is well known that every deceitful act is not unlawful, just as not every unlawful act is deceitful. Some acts may be termed both as unlawful as well as deceitful, and such acts alone will fall within the purview of Section 420 IPC. It must also be understood that a statement of fact is deemed ‘deceitful’ when it is false, and is knowingly or recklessly made with the intent that it shall be acted upon by another person,



resulting in damage or loss. 'Cheating' therefore, generally involves a preceding deceitful act that dishonestly induces a person to deliver any property or any part of a valuable security, prompting the induced person to undertake the said act, which they would not have done but for the inducement.

25. The term 'property' employed in Section 420 IPC has a well-defined connotation. Every species of valuable right or interest that is subject to ownership and has an exchangeable value - is ordinarily understood as 'property'. It also describes one's exclusive right to possess, use and dispose of a thing. The IPC itself defines the term 'moveable property' as, "***intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.***" Whereas immoveable property is generally understood to mean land, benefits arising out of land and things attached or permanently fastened to the earth.

33. The offence of 'forgery' under Section 468 IPC postulates that whoever commits forgery, intending that the document or electronic document forged, shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Whereas Section 471 IPC states that whoever fraudulently or dishonestly uses as genuine any documents which he knows or has reason to believe it to be a forged document, shall be punished in the same manner as if he had forged such document.

34. There are two primary components that need to be fulfilled in order to establish the offence of 'forgery', namely : (i) that the accused has fabricated an instrument; and (ii) it was done with the intention that the forged document would be used for the purpose of cheating. Simply put, the offence of forgery requires the preparation of a false document with the dishonest intention of causing damage or injury.

46. The sum and substance of the above discussion is that the elementary ingredients of 'cheating' and 'forgery' are conspicuously missing. Thus, the continuation of the criminal proceedings against the Appellants is nothing but an abuse of the process of law.

78. It would be further apposite to reproduce **para 27**

of Randheer Singh case (supra), which reads as under:



"27. In *Mohd. Ibrahim [Mohd. Ibrahim v. State of Bihar, (2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929]* , this Court held as under : (SCC pp. 757-60, paras 19-24 & 27-30)

"19. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused *tried to deceive him* either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

22. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code.

A clarification

23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person



defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.

24. The term “fraud” is not defined in the Code. The dictionary definition of “fraud” is ‘deliberate deception, treachery or cheating intended to gain advantage’. Section 17 of the Contract Act, 1872 defines “fraud” with reference to a party to a contract.

* * *

27. The term “fraudulently” is mostly used with the term “dishonestly” which is defined in Section 24 as follows:

24. “Dishonestly”.—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”.

28 [**Ed.** : Para 28 corrected vide Official Corrigendum No. F.3/Ed.B.J./149/2009 dated 6-10-2009.] . To “defraud” or do something fraudulently is not by itself made an offence under the Penal Code, but various acts when done fraudulently (or fraudulently and dishonestly) are made offences. These include:

(i) Fraudulent removal or concealment of property (Sections 206, 421 and 424).

(ii) Fraudulent claim to property to prevent seizure (Section 207).

(iii) Fraudulent suffering or obtaining a decree (Sections 208 and 210).

(iv) Fraudulent possession/delivery of counterfeit coin (Sections 239, 240, 242 and 243).

(v) Fraudulent alteration/diminishing weight of coin (Sections 246 to 253).

(vi) Fraudulent acts relating to stamps (Sections 255 to 261).

(vii) Fraudulent use of false instrument/weight/measure (Sections 264 to 266).

(viii) Cheating (Sections 415 to 420).

(ix) Fraudulent prevention of debt being available to creditors (Section 422).

(x) Fraudulent execution of deed of transfer containing false statement of consideration (Section 423).

(xi) Forgery making or executing a false document (Sections 463 to 471 and 474).

(xii) Fraudulent cancellation/destruction of valuable security,



etc. (Section 477).

(*xiii*) Fraudulently going through marriage ceremony (Section 496).

It follows therefore that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law.

Section 504 of the Penal Code

29. The allegations in the complaint do not also make out the ingredients of an offence under Section 504 of the Penal Code. Section 504 refers to intentional insult with intent to provoke breach of peace. The allegation of the complainant is that when he enquired with Accused 1 and 2 about the sale deeds, they asserted that they will obtain possession of land under the sale deeds and he can do whatever he wants. The statement attributed to Appellants 1 and 2, it cannot be said to amount to an “insult with intent to provoke breach of peace”. The statement attributed to the accused, even if it was true, was merely a statement referring to the consequence of execution of the sale deeds by the first appellant in favour of the second appellant.

Conclusion

30. The averments in the complaint if assumed to be true, do not make out any offence under Sections 420, 467, 471 and 504 of the Code, but may technically show the ingredients of offences of wrongful restraint under Section 341 and causing hurt under Section 323 IPC.”

79. It would further be apposite to reproduce **para 69 to 72 of Sanjay case (supra)**, which reads as under:

“69. Considering the principles of interpretation and the wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the riverbed. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the ecosystem of the rivers and safety of bridges. It also weakens riverbeds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the groundwater levels.



70. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorised under the Act shall exercise all the powers including making a complaint before the Jurisdictional Magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorised officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist the Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person is sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitutes an offence under the Penal Code.

71. However, there may be a situation where a person without any lease or licence or any authority enters into river and extracts sand, gravel and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is liable to be punished for committing such offence under Sections 378 and 379 of the Penal Code.

72. From a close reading of the provisions of the MMDR Act and the offence defined under Section 378 IPC, it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravel and other minerals from the river, which is the property of the State, out of the State's possession without the consent, constitute an offence of theft. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking cognizance against such persons. In other words, in a case where there is a theft of sand and gravel from the government land, the police can register a case, investigate the same and submit a final report under Section 173 CrPC before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in Section 190(1)(d) of the Code of Criminal Procedure."

80. And, finally it would be apposite to reproduce the ratio of **Bhajan Lal case (supra)** what Hon'ble Apex Court



has observed in **para 102**, as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

81. Earlier all previous litigations were roaming



around issues whether FIR under Penal Code is maintainable or not in view of provisions available under Rule-22 read with Rule-56 of the MMDR Act, 1957, which was ultimately held by division bench of this Court that FIR is maintainable in terms of its order dated 09.02.2024.

82. Now, the prime and only consideration for adjudication left whether the offences as alleged committed under Indian Penal Code *prima-facie* made out or not against petitioners as raised through different FIRs which are the subject matters of aforementioned writ petitions.

For section 379 of the I.P.C.

83. From the basic definition of theft, it appears that following legal ingredients must be satisfied to make out a *prima-facie* case for theft:-

- (i) Intending to take dishonestly any movable property;
- (ii) From the possession of any person;
- (iii) Without that person's consent;
- (iv) And that property must moves in order to such taking.



84. From perusal of FIRs, it appears that the allegation of theft was raised mainly for the reasons that on K-license site sand found in actual was less than that in Project Monitoring Unit (in short "PMU") Data. The FIRs itself suggest that the same was lodged between the month of September to December, 2021, wherein it is mentioned that the name of settlee, their address and sale price of sand were not mentioned. Stored sand were not found fenced or covered by tarpolene, therefore, the case was lodged against the petitioners under sections 378, 379, 406, 411, 420 of the IPC. The allegation as per FIR is not regarding illegal mining or any mining outside the mining plan. The allegation in FIR is also not regarding excessive mining. The mere allegation, which raised through FIRs that on the date of lodging of FIRs, the sand which was found there in actual was less than that in PMU data and it was not properly protected and covered, without mentioning any name, description and sale price of holders.

85. Before entering into the core issues, it would be apposite to mention following important aspects of present



criminal prosecutions, which was not even disputed by the respondents:-

(i) The settlement of sand ghats was given to petitioners since 2015 to 2019 in furtherance of auction given in the year 2015 for a period of five years.

(ii) The settlement of petitioners as aforesaid was extended time to time. Firstly from 01.01.2020 till 31.10.2020, secondly from 01.11.2020 till 31.12.2020, thirdly from 01.01.2021 till 31.03.2021 and finally fourth extension was given from 01.04.2021 till 30.09.2021.

(iii) It is admitted position that no such allegation were raised against petitioners during aforesaid period.

(iv) Petitioners surrendered their license on 1st May, 2021.

(v) Immediately after surrendering the license, the creation of E-challan was stopped. The reason behind surrendering E-challan that settlement was not financially viable for petitioners due to Covid-19 like situations and the ban of 14 wheeler trucks and the K-license sites from month of July, 2021, all sand ghats were taken back by the authorities and were handed over to local police stations and the Circle



Officers in Bhojpur and Patna respectively for care and protection. When petitioners surrender their settlement, the authorities concerned raised a demand for balance royalty of Rs.28,30,85,450/-. And further from Letter No.614 dated 04.09.2021, it appears that the Government started to sell the sand from K-license sites of the petitioners, before lodging FIRs.

86. Admittedly, much prior to date of lodging of FIRs i.e. 3 to 4 months, the petitioners were ousted from the possession of sand ghats, which was with them under settlement and after taking possession of those sand ghats, possession of same were given to local SHO and concerned Circle Officers/Mining department to keep sand securely. It appears that if there were no covering of tarpolene as alleged through FIRs or it was not fenced, it was the responsibility of the local SHO and the authorities with whom the sand in issue was in possession because for all such acts, the petitioners cannot be said to be liable once as possession was withdrawn over sand ghats. In such circumstances, non-displaying rate, name of settlee (petitioners) appears very obvious.



87. No doubt, illegal mining or excessive mining or mining beyond permitted area/map plan is theft. This proposition was confirmed by Hon'ble Supreme Court in **Sanjay Case (supra)** but, in present cases, there are no such allegations as per FIRs that the petitioners were involved in illegal and excessive mining or they excavated sand beyond permitted area. It is admitted position that Government started to sale sand from first week of September, 2021 from different K-sites, therefore, on the date of lodging of FIRs, for shortage of any sand stocks, respondents itself appears responsible.

88. Hence, with available allegation, it cannot be said that any *prima facie* offence *qua* theft appears to be made out against petitioners.

**For Section 406 IPC Breach of Trust defined
under section 405 of the IPC**

89. It is an admitted position that much prior to lodging of FIR the sand was seized and entrusted to local police and government authorities i.e. since July, 2021, and therefore, there is no question to make out any case for the



offence committed under Section 405 of the IPC, which is punishable under section 406 of the IPC.

For Section 411 IPC:

90. From the FIRs, the allegation is not of nature which may suggest that petitioners at any point of time retains any property knowing or having reason to believe that same to be stolen property.

For Section 414 IPC:

91. The allegation of voluntarily assisting in concealing or disposing or making away sand is also not available against petitioners to make out a case under section 414 of the IPC.

For Section 420 IPC:

92. So far as cheating is concerned, petitioners were the lawful settlees of the sand ghats of three different districts like Patna, Bhojpur and Saran in furtherance of auction conducted in the year 2014 after paying the huge amount of royalty. Considering the nature of work admittedly on four different occasions from 01.01.2020 till



31.10.2020, again from 01.11.2020 till 31.12.2020, third time on 01.01.2021 till 31.03.2021 and fourth extension was given from 01.04.2021 till 30.09.2021, settlement was extended in favour of petitioners but when business of petitioners failed to remain financially viable any more, the same was surrendered in May, 2021, and thereafter, for the balance period Rs.28,30,85,450/- outstanding royalty was demanded by respondents. There is nothing on record which may suggest that petitioners from very inception intended to cheat the authorities concerned in their long tenure of settlement of six years.

93. Hence, by any prudent imagination, the case of cheating *prima-facie* not appears convincing against petitioners.

94. It is relevant to mention that vide order dated 15.05.2023 passed in Cr. Misc. No. 8423/2023, by which Hon'ble Court has granted anticipatory bail to the petitioner namely, Sadashiv Prasad, who was the Executive Chief Officer of M/s Aditya Multicom Pvt. Ltd. wherein the Director, Department of Mines categorically stated that the settlement



was surrendered on 01.05.2021 and after it, an inspection was carried out by the authorities concerned, wherein it is further stated that after the stocks were surrendered, steps were taken to sell those stocks through the Bihar State Mining Corporation and further after surrender the Officer-in-Charge of the concerned police station had been asked to provide security at the stock point and it was the responsibility of the officer-in-charge to ensure that no theft takes place. It was further stated that there may be a situation in which even the persons who were given the responsibility to keep the stocks secured may have been involved.

95. The dispute also appears convincing civil in nature because for recovery of non-paid royalty amount for extended period, the concerned authority/respondents filed certificate case as mentioned in aforesaid paragraph No. 38 under the Bihar and Orissa Public Demand Recovery Act, 1914.

96. Taking note of aforesaid legal discussions, the allegation raised in the FIRs and the documents which are of



sterling nature as discussed in preceding paragraphs, this Court is of the view that no cognizable offence, as alleged, is made out against petitioners, and the case is squarely covered under the golden guiding principles No. 1, 2, 3, 5 & 7 as available through **Bhajan Lal case (supra)**. Accordingly, all FIRs against petitioners are hereby quashed/set-aside with all its consequential proceedings, which are the subject matter of aforementioned writ petitions.

97. Consequent upon, all writ petitions stand allowed.

98. Let a copy of this judgment be sent to the court concerned.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	19.04.2025
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