

(2012) 10 GUJ CK 0027

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1168 of 2012 in Special Civil Application No. 12145 of 2012 with Civil Application No. 10673 of 2012 in Letters Patent Appeal No. 1168 of 2012

Rishikesh R. Shahi

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 11-10-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 451, 457

Citation : (2012) 3 GLH 837

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : M.P. Shah and Ms. Kruti M. Shah 1, for the Appellant; Krina Calla, Asstt. Government Pleader for Respondents 1 - 5, for the Respondent

Judgement

J.B. Pardiwala, J.—Having regard to the nature of the relief prayed for in the main writ-petition, and also taking into consideration the fact that this Letters Patent Appeal is directed against an interim order, whereby the learned Single Judge has refused to grant interim relief, we decided to hear the main writ-petition itself, and is accordingly, being disposed of by this judgment and order. This appeal is at the instance of a writ-petitioner, in a petition under Article 226 of the Constitution of India, and is directed against an order dated 10th September, 2012, passed by the learned Single Judge, in Special Civil Application No. 12145 of 2012, by which His Lordship admitted the writ-petition, making rule returnable on 8th October, 2012, but having regard to the nature of the dispute and the relief prayed for by the petitioner, interim relief as prayed for the release of the vehicle seized by the Authorities under the provisions of the Gujarat Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2005, was refused, as in the view of His Lordship, it would amount to allowing the writ-petition at that stage, or granting relief of final nature at the interlocutory stage.

2. The following facts are not in dispute:--

2.1 The petitioner is engaged in the business of transportation, running in the name and style of Om Sairam Logistic Business Transport at Mumbai. The petitioner is an owner of loading vehicle, a truck bearing Registration No. MH-43 U-651. On 14th June, 2012, the vehicle of the petitioner was found stationed at Sarthana Kamrej Road, Near Diamond Rose Nursery, Sand Stock Unit, by the Royalty Inspector, Surat. An inspection was carried out by the Royalty Inspector, Surat and it was noticed that sand was being loaded in the vehicle for the purpose of transporting the same outside the State of Gujarat. On such accusation/allegation, the truck was detained and seized under the provisions of the Gujarat Mineral (Prevention of Illegal Mining Transportation and Storage) Rules, 2005 (hereinafter referred to as "the Rules, 2005"). A seizure memo dated 14th June, 2012 was accordingly, issued. A bare perusal of the seizure memo would suggest that one Shri R.N. Joshi, Royalty Inspector, having his office at Geology and Mineral Department, "C" Block, 7th Floor, Multi-storeyed Building, Nanpura, Surat, in exercise of his powers under Rule 17 of the Rules, 2005, seized the vehicle for the alleged contravention of Rule 13 of the Rules, 2005.

2.2 It appears that on 18th June, 2012, the petitioner preferred an application to the respondents Nos. 3 and 4, with a prayer to release the vehicle, subject to the terms and conditions which the Authorities may deem fit to impose. The record also reveals that no order of any nature was passed by the Authorities on the said application preferred by the petitioner, dated 18th June, 2012, and therefore, the petitioner came before this High Court by way of Special Civil Application No. 8598 of 2012 and prayed for interim release of the vehicle in question, pending the confiscation proceedings under the Rules.

2.3 The learned Single Judge of this Court, vide order dated 20th July, 2012, disposed of the writ-petition, directing the Authorities to decide the application of the petitioner expeditiously and preferably within four days after receipt of the order, in accordance with the provisions of the Rules, 2005. It is the case on behalf of the petitioner that the order passed by the learned Single Judge, dated 20th July, 2012 was served on the respondent No. 3 on 26th July, 2012, and the petitioner also filed an application dated 26th July, 2012, for release of his vehicle on filing an appropriate undertaking.

2.4 It appears that even thereafter, no orders were passed by the Authorities, and therefore, the petitioner preferred Misc. Civil Application No. 4454 of 2012, for contempt of the Court's order, under the provisions of the Contempt of Courts Act, 1971. The Division Bench, taking up contempt matters, issued notice making it returnable on 30th August, 2012, and on the returnable date, the respondent No. 3 personally remained present and tendered an affidavit in reply placing on record an order dated 8th August, 2012, passed by the Authorities, refusing to release the truck as prayed for by the petitioner.

2.5 Such being the development, the Division Bench disposed of the contempt application, granting liberty to the petitioner to file a substantive petition challenging the order dated 8th August, 2012, passed by the Authority, refusing

to release the vehicle in question.

2.6 Accordingly, the petitioner preferred Special Civil Application No. 12145 of 2012, and prayed for an appropriate order, or direction on the respondents for release of the vehicle bearing No. MH-43U 651, on such terms and conditions as the Hon"ble Court may deem fit to impose.

2.7 The learned Single Judge, vide order dated 10th September, 2012, admitted the petition by issuing rule, making it returnable on 8th October, 2012. However, His Lordship refused to grant interim relief as prayed for by the petitioner for release of the vehicle, as in the view of His Lordship, granting of such relief would tantamount to allowing the main writ-petition at that stage.

2.8 Being dissatisfied with the refusal of the interim relief, the appellant has come up before us by way of this appeal.

3. Ms. Kruti M. Shah, the learned Counsel appearing for the petitioner, vehemently submitted that the vehicle in question was seized way back in the month of June, 2012, and the vehicle has been kept at a place open to sky and extensive damage has been caused to the vehicle due to heavy rains and other weather conditions. Ms. Shah, therefore, urged that no useful purpose would be served in keeping the vehicle in the custody of the Authorities, as by the time the proceedings of confiscation are over, the vehicle would be reduced to a scrap. Ms. Shah also submitted that under the Rules, 2005, more particularly Rule 18, the authorised officer who has seized the vehicle, has power to release the vehicle on execution of a bond. Ms. Shah further submitted that the vehicle has already been exposed to this year's monsoon. Ms. Shah also submitted that the tyres have also got damaged to a considerable extent and the total cost of the new tyres would be around Rs. 2,50,000/- (Rupees two lac fifty thousand). Under such circumstances, Ms. Shah urged that the vehicle may be ordered to be released, subject to terms and conditions which this Hon"ble Court may deem fit to impose.

4. Mrs. Krina Calla, the learned Assistant Government Pleader appearing for the respondent, vehemently submitted that no case has been made out by the petitioner for release of the vehicle, as the vehicle in question has been used for illegal transportation of sand for number of times in the past, and the petitioner is habitually indulging in such activity of illegal transportation of sand. According to Ms. Calla, the date on which the vehicle was seized, the officer concerned found that sand was being loaded in the vehicle in question and the sand was to be transported outside the State of Gujarat, as reflected from the statement of the driver of the vehicle, recorded by the Officer concerned. Such being the position, the petitioner is said to have committed breach of Rule 71 of the Gujarat Minor Mineral Concession Rules, 2010 (hereinafter referred to as "the Rules, 2010"), which prohibits transportation of sand beyond border. According to Ms. Calla, the learned Assistant Government Pleader, if a person is found transporting sand to the neighbouring State, even with the authorized royalty

pass or delivery challan, it would be treated as a violation of the Act, and the Rules made thereunder, and would attract the penal provisions, except compounding, as specified therein. Thus, relying upon Rule 71 of the Rules, 2010, Ms. Calla submitted that even compounding is not permissible in such type of cases. Thus, according to Ms. Calla, having regard to the nature of the prohibition as imposed under Rule 71 of the Rules, 2010, and also taking into consideration the fact that the vehicle in question had been used for such illegal transportation of sand in the past on many occasions, the vehicle should not be ordered to be released pending the confiscation proceedings.

5. Having heard the learned Counsel for the respective parties, and having gone through the materials on record, the only question that falls for our determination in this petition is, as to whether the Authority, namely, the Collector, Surat, was justified in rejecting the application of the petitioner for release of the vehicle, on the petitioner executing a bond as provided under Rule 18 of the Rules, 2005; and whether in the facts and circumstances of the case, we should, in exercise of our powers under Article 226 of the Constitution of India, order release of the vehicle, pending the confiscation proceedings, subject to certain terms and conditions, so as to protect the interest of the Department, as also the petitioner.

6. Before advertng to the rival submissions of the parties, it would be profitable to look into certain provisions of the Rules of 2005, with which the subject matter of the petition is governed.

Rule 3 deals with restriction on possession, storage etc. of minerals. Rule 3 reads as under:--

3. Restriction on possession, storage, etc. of minerals: No person shall

(i) Win, possess, store, sell, trade, mine remove in or otherwise deal with any mineral except accordance with the provisions of the Act.

(ii) Win, possess, transport, store, sell, trade, mine or remove any mineral from any place except accordance with the terms and conditions of a registration granted by the authorised officer.

(iii) transport or carry or cause to transport or carry any mineral by any means from the place of raising to another place without being in possession of a valid transit pass/delivery challan issued by the authorised officer.

Rule 6, falling in Chapter III, is with respect to transport of mineral. Rule 6 reads as under:--

6. Transport of mineral

(i) For transportation of any mineral the lease holder shall make an application in Form-A to the authorised officer for issuing of transit passes prescribed by the Commissioner of Geology and Mining.

Providing that for the transportation of any mineral from any place the registered stockist shall make an application with legal source of minerals procured, in Form-B to the authorised officer for issuing delivery challan;

(ii) All dispatches of mineral(s) by a carrier shall be accompanied with a challan or transport pass duplicate in the Form-B. The person in charge of the carrier shall produce the challan or transport pass at the check post, en route or on demand by any authorised officer.

Provided that in the case of transport of mineral by holder of prospecting license or transport of mineral purchased by auction, in addition to transit pass, a special permit by the authorised officer or authorised auctioneer, as the case may be, shall suffice.

(iii) Holder of lease or any other mineral concession shall use challan or transit pass book issued by the authorised officer by the State Government in this behalf. The challan or the transit passes shall be in triplicate and machine number with book number and serial number of the pass obtained at a prescribed cost.

(iv) All carriers carrying mineral shall stop at all check posts or gates en route and proceed after having been cleared by the check posts/gates Authority, who shall make necessary endorsement on the triplicate copy held by the in charged of the carrier;

(v) A challan or transit pass issued by the authorised officer shall be duly certified by him for inter-state transport.

Rule 13 of the Rules, falling in Chapter VI, deals with penalties. Rule 13 reads as under:--

13. Penalties:--

(1) Whoever contravenes the provision of Rule 5, 6, and 8 of these rules shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both and in case of continuing contravention with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(2) Whenever any person raise transport or store or cause to be raised transported or stored without any lawful Authority, the State Government may recover from such person the mineral so raised, or transported stored where such mineral has already been disposed of the price thereof and may also recover from such person rent, royalty or tax as the case may be;

(3) Whenever any person raise, transports or stores or cause to be raises or transported or stored without any law full Authority any mineral from any land/ place and for that purpose or use any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to

be seized by an officer or Authority specially empowered in this behalf;

(4) Notwithstanding anything contained in the Code of Criminal Procedure 1973, an offence under sub rule (1) shall be cognizable.

Rule 14 provides for compounding of offence. Rule 14 reads as under:--

14. Compounding of offence: Any offence punishable under these Rules may either before or after the institution of the prosecution be compounded by the Authorized Officer on payment of such amount as may be decided by Commissioner of Geology and Mining; When an offence is compounded,

(i) no further proceedings shall be commenced against such person;

(ii) if any proceedings have already been commenced against such person such proceedings shall not be further proceeded with; and

(iii) the accused person, if in custody shall be discharged and the property seized shall, if it is not to be so retained, be released.

Rule 17 is with regard to seizure of property liable to confiscation. Rule 17 reads as under:--

17. Seizure of property liable to confiscation:--

(1) When there is reason to believe that an offence has been committed in respect of any mineral together with vehicles or other conveyances used in committing such offence may be seized by any officer authorised by the Government in that behalf (herein after referred to as the authorized officer) and record details of seizing property in Form-J.

(2) Every officer seizing any property under these rules shall place on such property a mark in such manner as may be prescribed, indicating that the same has been so seized and shall as may be, except where the offender agrees in writing to get the offence compounded, either produce the property seized before the Officers appointed by the state Government;

(3) Where any mineral seized under sub-rule (1) produced before Officers authorized by the state Government and he is satisfied that offence has been committed in respect thereof, he may order confiscation of the mineral or value or part of the value thereof so seized and produced, together with the vehicles, or other conveyance used committing such offence.

(4) No order confiscating any property shall be made under sub-rule (3) unless the person from whom the property is seized is given-

(a) a notice in writing in Form K informing him of the goods on which proposed to confiscate such property.

(b) opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the ground confiscation; and

(c) a reasonable opportunity of being heard in the matter

(5) Without prejudice to the provisions of sub-rule (4) no order for confiscation of vehicle, or other conveyance under sub-rule (3) shall be made if the owner thereof proves to the satisfaction of competent Authority or authorized officer that it was used without his knowledge, connivance or the knowledge of connivance of his agent, if any or other person in charge of the vehicle or other conveyance in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.

(6) The property seized under this rule shall be kept in the custody the authorized officer or with any third party until compensation compounding the offence is paid or until an order of the officer authorized by the Commissioner directing its disposal is received.

(7) The State Government may at any time on its own accord call for the examination of the order of confiscation by the competent Authority on an application, call for and examine the records of the case and may make such enquiry or cause such enquiry to be made and pass such order as he may think fit;

Provided that no order prejudicial to any person shall be passed without giving him an opportunity of being heard.

Rule 18 relates to the power of the Authorized Officer to release the vehicle on execution of bond. Rule 18 reads as under:--

18. Power to release property seized on bonds:-- The Authorised Officer who has seized any vehicle or other conveyance under rule 13, and where a report of such seizure has been made to the officers authorized by Commissioner under sub-rule (3) of that rule may release the same on the execution by the owner thereof a bond for the production of the property so released, if and when so required before the officers authorized by the Commissioner having jurisdiction to try the offence on account of such seizure has been made.

Rule 71 of the Rules, 2010, prohibits transportation of sand beyond border. Rule 71 reads as under:--

71. Prohibition to Transport Sand Beyond Border. - No movement of sand shall be allowed beyond the border of the State. In case, any vehicle is found transporting sand to the neighboring State even with authorized royalty pass or delivery challan, it shall be treated as violation of Act and the Rules made thereunder and the penal provisions, except compounding, as specified therein shall be applicable.

7. In the present case, indisputably the seizure of the vehicle was under the Rules, 2005. On the respondent No. 5's own showing, as reflected from the affidavit in reply, that the office had issued notice to the petitioner dated 6th September, 2012, calling upon the petitioner to show cause as to why the vehicle

should not be confiscated under Rule 17 of the Rules, 2005, for the alleged violation or contravention of Rules 3 and 6 of the Rules of 2005, as well as Rule 71 of the Rules of 2010.

8. We are not at all impressed by the submission of Ms. Calla, learned Assistant Government Pleader appearing for the respondents that as there is a contravention of Rule 71 of the Rules, 2010, the vehicle should not be released even if the petitioner is ready and willing to execute a bond, or abide by any other conditions. Rule 18 provides the power of the Authority for release of the property seized, on the execution by the owner, a bond, for the production of the property so released. It appears that in the present case, the Collector, Surat, rejected the application on the premise that the vehicle in question had been used for illegal transportation of sand beyond the border on number of occasions, but, as rightly pointed out by Ms. Shah, the learned Counsel appearing for the petitioner that at no point of time, the petitioner was served with any notice in that regard.

9. In any view of the matter, we are not going into the merit of the question as to whether the vehicle is liable to be confiscated under Rule 17 of the Rules, 2005, for which a show cause notice has already been issued and the proceedings will take its own course. We are only concerned with the limited question as to whether the vehicle should be ordered to be released by imposing suitable terms and conditions pending the confiscation proceedings.

10. We find substance in the submission of Ms. Shah that by keeping the vehicle open to sky for a long period of time will reduce the vehicle to a scrap. The object of Rule 18 of the Rules, 2005 is analogous to Section 451 of the Criminal Procedure Code. An identical question fell for consideration of the Supreme Court in the case of *Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat*, . The Supreme Court was primarily dealing with the provisions of Sections 451 and 457 of the Code. While quoting the aforesaid two provisions of the Act in the judgment, it was observed in para 7 as under:--

7. In our view, the powers u/s 451 Criminal Procedure Code should be exercised expeditiously and judiciously. It would serve various purposes, namely:--

- 1) owner of the article would not suffer because of its remaining unused or by its misappropriation;
- 2) Court or the police would not be required to keep the article in safe custody;
- 3) if the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail: and
- 4) this jurisdiction of the Court to record evidence should be exercised promptly, so that there may not be further chance of tampering with the articles.

11. To safeguard the interests of the prosecution, in that case the Supreme Court directed that following measures should be adopted giving instances contained in para 12 reproduced hereinbelow:--

12. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:--

(1) preparing detailed proper panchnama of such articles;

(2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and

(3) after taking proper security.

12. While dealing with the seized vehicles from time to time by the police either in commission of various offences or abandoned vehicles or vehicles which are recovered during investigation of complaint of thefts, the Court observed as under:--

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance Company or by a third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance Company then the insurance Company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance Company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

13. In *Sunderbhai Ambalal Desai (supra)*, the Supreme Court also considered its earlier decision in the case of *Smt. Basava Kom Dyamogouda Patil Vs. State of Mysore and Another*, and made the following observations in para 8.

..... This Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under:--

4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by police, it ought not be retained in the custody of the Court or of the police for

any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the sessions judge proceeded on the footing that one of the essential requirements of the code is that the articles concerned must be produced before the Court or should be in its custody. The object of the code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance.

The Court further observed that where the property is stolen, lost or destroyed and there is no prima facie defence made out that the state or its officers had taken due care and caution to protect the property, the magistrate may, in an appropriated case, where the ends of justice so require, order payment of the value of the property.

To avoid such a situation, in our view, powers u/s 451 Cr. P.C. should be exercised promptly and at the earliest.

14. The principle as laid down by the Supreme Court in *Sunderbhai Ambalal Desai* (supra) could be made applicable in the facts of the present case.

15. We are also not impressed by the submission of Ms. Calla, learned Assistant Government Pleader, that if the contravention is of Rule 71 of the Rules, 2010, then under such circumstances no orders could be passed for the release of the vehicle, even if the owner of the vehicle is ready and willing to execute the bond as provided under Rule 18 of the Rules, 2005. We do not find anything in the Rules of 2005 or in the Rules of 2010, which prohibits the Authority to exercise his power under Rule 18 of the Rules, 2005, for release of the vehicle, upon the owner executing a bond, if contravention or breach of Rule 71 of the Rules, 2010 is complained of. Ultimately, if the confiscation is going to be under Rule 17 of the Rules, 2005, as reflected from the affidavit in reply, then Rule 71 of the Rules, 2010 would be no bar in releasing the vehicle, pending the confiscation proceedings.

16. If the Rules of 2005 empowers an authorized officer to seize a vehicle on the ground of contravention or breach of other provisions of the Rules, then at the same time, it is also expected of the concerned Department to keep the vehicle

in a safe custody and in a manner to ensure that the vehicle is not damaged, but it is a matter of common knowledge that as and when vehicles are seized and kept in the open office premises of the Department, not only they occupy substantial space of the office premises of the Department, but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the Police station or other places for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. Ultimately, if the Department fails to make out any case and the confiscation proceedings are dropped, then under such circumstances, even if the vehicle is returned to the owner, it will not serve any good purpose because of extensive damage being already caused to such vehicles. To avoid all this, Rules provide for release of the vehicle on execution of a bond.

Rule 18 of the Rules, 2005, as referred to above, enables the authorised officer to provide for interim custody of such property, pending conclusion of the confiscation proceedings, or any other enquiry. It is only a temporary arrangement, and what is contemplated is, only an interim provision to provide custody with a proper person as the authorised officer thinks fit, with liability to produce the property back as and when directed by the authorised officer. The maximum duration of the arrangement is only till conclusion of the confiscation proceedings, or any other enquiry. It follows that the arrangement is only temporary and the main object is to protect or preserve the property, pending the confiscation proceedings. Even if the person entrusted with the interim custody is the owner, his possession or custody during the period of entrustment is only as representative of the authorised officer, and not in his independent right. He is bound by the terms of entrustment and the bond executed by him in favour of the authorised officer. His ownership or right to possession may not operate against his obligation to the Department. The entrustment or custody will not invest him with any preferential right to ownership or even possession. In the eye of law, his possession or custody is only that of the authorised officer of the Department.

What is stated above does not mean that the power of the authorised officer is arbitrary. Even though the power is discretionary, it has to be exercised in a judicious manner. Whenever such application for interim custody of the vehicle is preferred, the authorised officer is obliged to take into consideration many other factors, over and above the contravention which is alleged. While deciding such an application, the authorised officer's main concern should be to protect or preserve the property, pending the confiscation proceedings or any other enquiry. An application under Rule 18 of the Rules, 2005 could not be rejected only on the ground that the owner of the vehicle is alleged to have committed breach of the Rules. If that be the only consideration, then the object with which Rule 18 of the Rules, 2005 has been enacted, would get frustrated. The

authorised officer is obliged to keep the object of Rule 18 of Rules, 2005 in mind while deciding the application. In the present case, we have noticed that the Collector, Surat, being the authorised officer under the Rules of 2005, took into consideration only the fact that the petitioner being the owner of the vehicle, was trying to transport the sand outside the State of Gujarat and has past antecedence. The Collector, Surat failed to consider the consequences of keeping the vehicle idle at an open place for months together pending the confiscation proceedings, and also failed to consider that the vehicle is prone to fast natural decay on account of weather condition. Such being the position, we are of the opinion that the authorised officer failed to exercise his discretion in a judicious manner. The discretion has to be exercised judiciously and not as per the whims and caprice of the authorised officer.

17. For the foregoing reasons, we allow this Letters Patent Appeal and the writ-petition, being Special Civil Application No. 12145 of 2012, and direct the respondents to release the vehicle of the petitioner, bearing Registration No. MH-43U 651, on the petitioner furnishing an undertaking of the nature as referred to hereinafter:--

1. The petitioner shall execute a bond, within a period of one week from today, for the production of the vehicle so released, if and when required before the officer authorized by the Commissioner having jurisdiction to try the offence on account of such seizure, to the satisfaction of the authorized officer.

2. The petitioner shall carry on his business of transport, strictly in accordance with the Gujarat Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2005, as well as in accordance with the Gujarat Minor Mineral Concession Rules, 2010;

3. The petitioner shall not sell, transfer or alienate the vehicle in any manner, pending the confiscation proceedings, and shall produce the vehicle before the authorized officer, as and when call upon to produce the same for the purpose of further proceedings in the matter.

18. The petitioner is directed to file an undertaking on oath on the above terms, and on filing such an undertaking before the Authorized Officer or the Authority concerned, the Authorized officer shall immediately release the vehicle and hand over the same to the petitioner. With the above observations and directions, the Letters Patent Appeal as well as the writ-petition stand disposed of. Rule is accordingly made absolute. Civil Application also stands disposed of. As prayed for, direct service is permitted.