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**(2023) 11 MP CK 0062**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** Miscellaneous Criminal Case No. 51534 Of 2023

Ashish Sharma

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

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**Date of Decision:** Nov. 20, 2023

**Acts Referred:**

- Code Of Criminal Procedure, 1973 - Section 451, 482
- Indian Penal Code, 1860 - Section 414
- Motor Vehicles Act, 1988 - Section 50(k), 51, 52, 77, 116, 122, 177, 192, 194(1)

**Hon'ble Judges:** Anand Pathak, J

**Bench:** Single Bench

**Advocate:** Arvind Kumar Dwivedi, Rajeev Upadhyay

**Final Decision:** Disposed Of

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### **Judgement**

Anand Pathak, J

1. Present petition under Section 482 of Cr.P.C. has been preferred against the order dated 04.11.2023 passed in Criminal Revision No.34/2023,

whereby the learned Additional Sessions Judge, Lahar, Distt. Bhind, has dismissed the revision holding it to be not maintainable as the order assailed

therein was an interlocutory order. Further challenge is to the order dated 25.10.2023 passed by the JMFC, Lahar, wherein an application under

Section 451 of Cr.P.C. for interim custody of Dumper No.RJ11GB9780 confiscated for alleged transportation of minor minerals under Sections as

mentioned below, during the pendency of the trial, was rejected.

2. Learned counsel for the petitioner at the outset submits that he is not pressing the order dated 04.11.2023 passed in Criminal Revision No.34/2023

and is confining his arguments to the order dated 25.10.2023 passed by JMFC, Lahar, whereby his application for interim custody of dumber was rejected and has submitted that the main ground of rejection of the application by learned trial Court is that the dumper was found involved in alleged transportation of minor minerals and was booked vide crime No.239/2023 under Sections 379, 414 of IPC, Sections 52/192, 116/194(1), 122/177 of the Motor Vehicles Act and Sections 50(k)/177, 51/177, 77/177 of the Central Motor Vehicles Rules. It was further contended that so far as the offence in relation to illegal transportation of minor minerals is concerned, the Collector has imposed a penalty of Rs.4,40,870/- which has been deposited by the petitioner on 17.10.2023 and receipt thereof has been appended along with the petition as Annexure P/4. It was further contended that so far as Sections under the Motor Vehicles Act are concerned, the fine imposed had also been deposited. Even the Collector has directed release of the vehicle and so far as involvement of the said vehicle under Section 379 of IPC is concerned, the said offence is not made out, but even then since it has been registered, final adjudication will be done in the trial and till then as the penalty which has been imposed has already been deposited, the vehicle may be released in interim custody. On the strength of above arguments, it is submitted that present petition be allowed and the Dumper No.RJ 11 GB 9780 be released in interim custody to the petitioner which is the sole means of bread earning of the petitioner.

3.Per contra, Shri Upadhyay appearing on behalf of the respondent/State on advance copy submitted that no illegality has been committed by the trial Court in rejecting the application as at the time of hearing of the matter, there was nothing on record to show that penalty imposed for illegal transportation of minor minerals has been deposited and also since the said illegal transportation had caused loss to the environment, therefore, it was found incumbent not to release the said vehicle in interim custody. It was further submitted that though the petitioner after passing of the order by the trial Court on 17.10.2023 has deposited the penalty with regard to illegal transportation of minor minerals and other penalty imposed under the Motor Vehicle Act, but still case under Section 379 of IPC is to be tried and in that regard at present it would not be expedient to release the vehicle on

interim custody.

4. After hearing the rival contentions of the parties and after going through the record appended to the present petition, this Court finds that only reason

for the trial Court to reject the application for releasing the vehicle in interim custody was that till date the vehicle of the petitioner which was found

transporting illegal minor minerals was not penalized and there was every chance of environmental hazard being caused by the petitioner, and there is

every possibility of repetition of the offence, therefore, in the light of the judgment of the Apex Court in the matter of Sunderbhai Ambalal Desai vs.

State of Gujarat reported in (2002) 10 SCC 283, the application for interim custody was rejected.

5. This Court finds that after passing of the said order, the Collector has imposed a penalty of Rs.4,40,870/- against the petitioner for illegal

transportation of minor minerals which includes the penalty towards the loss to the environment, therefore, this Court deems it expedient to allow the

said application, and accordingly, the application is allowed and it is directed that if the petitioner furnishes a bond in the sum of Rs.1,00,000/- (Rupees

one lac only) to the satisfaction of trial Court/ Magistrate concerned, then the possession of vehicle in question be given to the petitioner on interim

custody during pendency of the trial after verification of the requisite documents pertaining to the ownership of the vehicle in question, subject to the

following conditions:-

(i) Petitioner will not make any change in the appearance of vehicle in question;

(ii) He shall not create any third party rights over the vehicle in question;

(iii) He shall produce the vehicle before the trial Court/ Magistrate, as and when demanded, on his own cost;

(iv) It is made clear that after release of vehicle the petitioner shall not commit same nature of offence by using the said vehicle.

(v) This order shall remain in force till final disposal of the case pending before trial Court/ Magistrate and at the time of final disposal of the case, the

trial Court/Magistrate will be at liberty to pass appropriate order with regard to vehicle in question in accordance with law without getting influenced

by this order.

With the aforesaid, this petition is disposed of.