

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/LETTERS PATENT APPEAL NO. 717 of 2020  
In R/SPECIAL CIVIL APPLICATION NO. 8809 of 2020**

**With**

**CIVIL APPLICATION (FOR STAY) NO. 1 of 2020  
In R/LETTERS PATENT APPEAL NO. 717 of 2020**

**With**

**R/LETTERS PATENT APPEAL NO. 882 of 2020  
In SPECIAL CIVIL APPLICATION NO. 1628 of 2020**

**With**

**CIVIL APPLICATION (FOR STAY) NO. 1 of 2020  
In R/LETTERS PATENT APPEAL NO. 882 of 2020  
In SPECIAL CIVIL APPLICATION NO. 1628 of 2020**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH  
and  
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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**MANSUKH ALIAS RAVJI GORASIYA**

**Versus**

**THE STATE OF GUJARAT**

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**Appearance:**

**Letters Patent Appeal No.717 of 2020**

**MR MAULIK NANAVATI for MR JAY N SHAH (10668) & MS. NAMRATA j  
SHAH(6534) for the appellants**

**MR KAMAL B TRIVEDI, ADVOCATE GENERAL assisted by MS SHRUTI PATHAK,**

AGP for the respondents.

Letters Patent Appeal No.882 of 2020

MS KRUTI M SHAH for the appellant  
MR KAMAL B TRIVEDI, ADVOCATE GENERAL assisted by MS SHRUTI PATHAK,  
AGP for the respondents.

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**CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM  
NATH  
and  
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI**

**Date : 19/04/2021**

**CAV JUDGMENT**

**(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE VIKRAM NATH)**

1. These two appeals raise similar questions of law and facts, as such, have been taken up together.
2. Letters Patent Appeal No.882 of 2020 has been filed assailing the correctness of the CAV order dated 14.10.2020 passed in Special Civil Application No.1628 of 2020 which is interim in nature whereby the writ petitioner-appellant was permitted to get the vehicle in question released after furnishing necessary continuing bank guarantee as shown in notice Form-J and on fulfillment of other requirements.
3. Letters Patent Appeal No.717 of 2020 has been filed assailing the correctness of the interim order

dated 11.09.2020 passed in Special Civil Application No.8809 of 2020 wherein again the learned Single Judge directed the Authorized Officer to release the vehicle after obtaining necessary continuing bank guarantee as shown in notice Form-J and on fulfillment of other requirements by the petitioner.

4. In both the writ petitions, the petitioners are vehicle owners whose vehicles have been seized under the provisions of Gujarat Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 (hereinafter referred to as "the 2017 Rules").

5. In Special Civil Application No.1628 of 2020, the seizure of the vehicle being Tata Hitachi Machine was made on 16.10.2019 and notice in Form-J under the 2017 Rules was issued on 24.12.2019. The petitioner objected to the notice by giving a reply dated 30.12.2019 stating that the vehicle was being used for levelling of the road at Pipalsat and had nothing to do with any illegal mining activity, as such, the same may be released. When despite the said reply dated 30.12.2019 the vehicle was not released,

the petition was filed in January, 2020 before this Court for quashing of the notice dated 24.12.2019 and also for release of the vehicle.

6. In Special Civil Application No.8809 of 2020, the Dumper bearing No.GJ-12-V-6037 was seized on 18.5.2020 and notice was issued on 22.06.2020 alleging that the vehicle was carrying 7.670 metric tons of minor mineral without royalty pass and accordingly, royalty fee of Rs.38,350/- and compounding fee of Rs.50,000/- were demanded. The petitioner gave a written response on 01.07.2020 stating that the vehicle has been illegally detained and seized by violating the statutory rules and that he was ready to pay penalty of Rs.38,350/- and was also ready and willing to give bank guarantee of Rs.50,000/-. However, when he did not receive any response and relying upon certain orders of this Court wherein under similar circumstances the vehicles have been released unconditionally, he filed the petition in the first week of July, 2020.

7. In both the writ petitions, interim orders were granted to the extent that the vehicles may be

released upon furnishing continuing bank guarantee and fulfilling other requirements as per the rules. The petitioners were aggrieved by the said interim orders which imposed the condition of furnishing a continuing bank guarantee as, according to them, the learned Single Judge vide final judgment and order dated 26.08.2020 passed in **Special Civil Application No.9203 of 2020** in the case of **Nathubhai Jinabhai Gamara Vs. State of Gujarat** had held that if no prosecution is launched within 45 days of the seizure of the vehicle, there would be no question of furnishing bank guarantee and the detention of the vehicle thereafter would be illegal and as such liable to be released unconditionally. It is also the ground taken by the appellants that in a large number of cases, the vehicles have been released by interim orders without insisting for bank guarantee. In the above backdrop, the present two appeals have been preferred praying for release of the vehicles without insisting for Bank Guarantee.

8. We have heard Mr. Maulik Nanavati, learned counsel for Ms. Namrata J. Shah and Mr. Jay N. Shah,

learned advocates appearing for the appellant in Letters Patent Appeal No.717 of 2020, Ms. Kruti M. Shah, learned advocate appearing for the appellant in Letters Patent Appeal No.882 of 2020 and Mr. Kamal B. Trivedi, learned Advocate General assisted by Ms. Shruti Pathak, learned Assistant Government Pleader for the State-respondents.

9. Mr. Maulik Nanavati and Ms. Kruti Shah, learned counsels for the appellants have made the following submissions:-

i. The learned Single Judge committed error in imposing the condition of furnishing continuing bank guarantee while passing interim order for release of the vehicles as the same was in direct conflict with the judgment of the learned Single Judge dated 26.08.2020 passed in Special Civil Application No.9203 of 2020 inasmuch as 45 days time from the date of seizure had long expired in both the appeals and no written complaint was filed before the Court of Sessions, as such, the learned Single Judge ought to have followed the ratio laid down in the judgment

dated 26.08.2020. According to them, the learned Single Judge's did not respect the judicial discipline in not following the earlier judgment dated 26.08.2020.

ii. Accordingly to the learned counsels, the learned Single Judge's had only two options, either to follow the judgment dated 26.08.2020 or refer the matter to a Larger Bench if they were not agreeing with the view taken by the learned Single Judge in the judgment dated 26.08.2020. Instead the learned Single Judge took up the task of considering the merit of the judgment of the learned Single Judge which was not within their domain as they were not sitting in appeal but were co-ordinate Benches.

iii. It is mandatory on the part of Authorized Officer to file the complaint within 45 days before the Court of Sessions as prescribed in Rule 12(2)(b) (ii) failing which, the Authorized Officer would not have any justification for retaining the vehicles even for a day after 45 days and the vehicle will have to be necessarily released unconditionally on the 46<sup>th</sup> day.

iv. If any other interpretation is applied to Rule 12(2)(b)(ii), then the Authorized Officer would be in a very strong bargaining position and misuse his authority by continuing with the detention of the vehicles and the vehicle owners would have no other option but would be compelled to accept the compounding or to pay the penalty and so long as such provision continues, the vehicles would remain in confinement. Such interpretation would be very harsh and unreasonable and violative of Article 14 of the Constitution.

v. It would be an open ended discretion at the hands of the competent authority, on one hand by not filing the complaint and on the other hand insisting for a continuing Bank Guarantee. Once the complaint is filed then the provisions of the Code of Criminal Procedure, 1973, would come into play and the vehicle owners like the present appellants would be at liberty to approach the Criminal Court for release of their vehicles under the provisions of the Code of Criminal Procedure, 1973. In the absence of any complaint being filed the vehicle owners cannot approach the Criminal Court under provisions of the



Code of Criminal Procedure for release of the vehicles.

10. On the other hand, learned Advocate General Shri Kamal Trivedi appearing on behalf of the State respondents drew the attention of the Court to the various provisions contained in the 1957 Act as also the 2017 Rules. Shri Trivedi also tried to convince the Court that the orders passed by the learned Single Judge requiring the release of the vehicles on furnishing of continuing Bank Guarantee of the amount indicated in Notice Form-J were just and valid and as such no interference would be required by the Division Bench in appeal. He also submitted that the orders passed by the learned Single Judge impugned in the present appeals are interim in nature and as such also the present appeals may not be entertained.

11. Insofar as the submission relating to judicial discipline being adhered to by the learned Single Judge as canvassed by the learned counsels for the appellants is concerned, Shri Trivedi left that issue to the wisdom of the Court. Further, insofar as non-

filing of a complaint till date that too even after a period of more than a year in one of the cases and still insisting for demand of continuing Bank Guarantee, Shri Trivedi did make an effort to convince the Court by referring to the various provisions under the 1957 Act as also the 2017 Rules, but could not show us any provision as to which would place a cap on the authority to file the complaint within a fixed time-frame.

12. Having considered the submissions, we find that the judgment dated 26.08.2020 passed in **Special Civil Application No.9203 of 2020** in between **Nathubhai Jinabhai Gamara Vs. State of Gujarat**, clearly laid down that the written complaint as envisaged under Rule 12 would have to be filed on the expiry of the period specified therein i.e. 45 days. In the absence of filing of such a complaint, the purpose of seizure and the Bank Guarantee would stand frustrated and the seized property will have to be released without insisting for Bank Guarantee. The relevant extract from the said judgment as contained in paragraphs-6 to 12 are reproduced below:

*"6. Salient features of the Rules can be summarized thus:*

*(1) Seizure of the offending property as a security against the amount of penalty if any as may be determined as also to ensure the presence of the alleged offender before the government at notice stage in the event of person found to be indulging into objectionable activities by the use of the said property.*

*(2) Issuance of notice in Form J; release of the seized property upon receipt of the bank guarantee equal to penalty payable under Rule 21 or written down value of the property in case of illegal mining or illegal storage of minerals subject to right of the investigator to conduct investigation and other actions.*

*(3) Investigating and compounding of the offence if compoundable; upon receipt of the application for compounding, and recovery of the compounded amount by invocation of bank guarantee if the amount remains unpaid after the specified period.*

*(4) Preliminary investigation and registration of a complaint before the court of sessions upon expiry of 45 days from the date of seizure or completion of the investigation whichever event*

*occurs earlier, if compounding is not permissible or offence is not compoundable or not compounded.*

*(5) Trial by the court of sessions and imposition of penalty or confiscation of the property after appropriate opportunity of making a representation in writing as also the opportunity of being heard to the alleged offender found to have committed the offence.*

*(6) Validity of the bank guarantee and its renewal until occurrence of certain eventualities.*

*(7) Custody of the property seized until the occurrence of certain events.*

*7. Pertinently the competent authority under Rule 12 is only authorized to seize the property investigate the offence and compound it; the penalty can be imposed and confiscation of the property can be done only by order of the court. Imposition of penalties and other punishments under Rule 21 is thus the domain of the court and not the competent authority. Needless to say therefore that for the purpose of confiscation of the property it will have to be produced with the sessions court and the custody would remain as indicated in sub-rule 7 of Rule 12. Thus where the offence is not compounded or not*

*compoundable it would be obligatory for the investigator to approach the court of sessions with a written complaint and produce the seized properties with the court on expiry of the specified period. In absence of this exercise, the purpose of seizure and the bank guarantee would stand frustrated; resultantly the property will have to be released in favour of the person from whom it was seized, without insisting for the bank guarantee.*

*8. Although Rule 12, while referring to Rule 22 speaks about compoundability of offence and impermissibility of the compounding, the class of offences not qualifying for compounding are not indicated therein and on the contrary it speaks about compoundability of 'any' offence punishable under the Rules. Thus all the offences would be compoundable in absence of contrary provision; at any time before the order of confiscation by the court.*

*9. On perusal of the affidavit by respondent No.2, it appears that an attempt has been made to read amended and unamended rules in a distorted manner by picking up few contemplations of the rules in a selective manner. That, in the opinion of this court, is not a proper reading of the rules. Although the compounding of the offence under Rule 22 would*

*be permissible even after institution of the prosecution; should there be an application for the purpose.*

*10. The bank guarantee is contemplated to be furnished in three eventualities: (i) for the release of the seized property and (ii) for compounding of the offence and recovery of compounded amount, if it remains unpaid on expiry of the specified period of 30 days; (iii) for recovery of unpaid penalty. Merely because that is so, it cannot be said that the investigator would be absolved from its duty of instituting the case on failure of compounding of the offence. In fact offence can be compounded at two stages being (1) at a notice stage, within 45 days of the seizure of the vehicle; (2) during the prosecution but before the order of confiscation. Needless to say that for compounding the offence during the prosecution, prosecution must be lodged and it is only then that on the application for compounding, the bank guarantee could be insisted upon. In absence of prosecution, the question of bank guarantee would not arise; nor would the question of compounding of offence.*

*11. The deponent of the affidavit appears to have turned a blind eye on Rule 12 when he contends that application for compounding has been dispensed with by the amended rules*

*inasmuch as; even the amended Rule 12(b)(i) clearly uses the word "subject to receipt of compounding application". Thus the said contention deserve no merits. Thus, in absence of the complaint, the competent authority will have no option but to release the seized vehicle without insisting for bank guarantee. There is thus a huge misconception on the part of the authority to assert that even in absence of the complaint it would have a dominance over the seized property and that it can insist for a bank guarantee for its.*

*12. In view of the above discussions, the petition is required to be allowed. Relief in terms of para 8(A) is granted and the show-cause-notice dated 22.04.2020 issued by respondent No.2 is quashed and set aside. Rule is made absolute."*

13. The aforesaid judgment takes into consideration the relevant rules and the law on the point. The learned Single Judge dealing with the matter in the case of **Nathubhai Jinabhai Gamara (supra)** has recorded reasons while interpreting the Rules, 2017. It was a final judgment and not an interim order. In both the appeals the learned Single Judges were apprised of the judgment in the case of

**Nathubhai Jinabhai Gamara (supra)**, which was on an identical issue and squarely on the point. Whether the judgment in the case of **Nathubhai Jinabhai Gamara (supra)** was right or not, could only be looked into by a higher forum i.e. in an appeal by a Division Bench or before the Supreme Court. A learned Single Judge of coordinate strength is bound by the said judgment of a Coordinate Bench and as a principle of judicial discipline must follow it unless for reasons to be recorded it disagrees and refers the matter for consideration by a Larger Bench taking a view different from the view taken in the earlier judgment of the learned Single Judge. Therefore, the submission of the learned counsels for the appellants to the extent that the learned Single Judge in both the appeals erred in not following the judgment in the case of **Nathubhai Jinabhai Gamara (supra)** and committed an error of law has substance. According to the learned counsels for the appellants, they were entitled to the reliefs as had been granted in the case of **Nathubhai Jinabhai Gamara (supra)**, as the view expressed therein and the ratio laid down would hold the field till such time the same is not



disturbed in appropriate proceedings before superior forum.

14. The law on judicial discipline insofar as it relates to respecting decision of a co-ordinate Bench is concerned, is well laid down by the Supreme Court in the case of **U.P.Gram Panchayat Adhikari Sangh & Ors. vs. Daya Ram Saroj & Ors. reported in [2007(2) SCC 138]**. The Supreme Court noted that by ignoring the earlier decision of a coordinate Bench, a Division Bench of the High Court directed that part-time tube-well operators should be treated as permanent employees with same service conditions as far as possible and observed:

*"26. Judicial discipline is self-discipline. It is an inbuilt mechanism in the system itself. Judicial discipline demands that when the decision of a coordinate Bench of the same High Court is brought to the notice of the Bench, it is to be respected and is binding, subject of course, to the right to take a different view or to doubt the correctness of the decision and the permissible course then open is to refer the question or the case to a larger Bench. This is the minimum discipline and decorum to be*

*maintained by judicial fraternity."*

15. Recently, the Supreme Court in the judgment rendered in **Criminal Appeal No.452 of 2020 in the case of S.Kasi vs. State through The Inspector of Police Samanynallur Police Station, Madurai District** explained in detail the principle of judicial discipline in paragraphs-31 to 33 of the report which reads as follows :

*"31. Learned Single Judge in the impugned judgment has taken a contrary view to the earlier judgment of learned Single Judge in Settu versus The State (supra). It is well settled that a coordinate Bench cannot take a contrary view and in event there was any doubt, a coordinate Bench only can refer the matter for consideration by a Larger Bench. The judicial discipline ordains so. This Court in State of Punjab and another versus Devans Modern Breweries ltd. and another, (2004) 11 SCC 26, in paragraph 339 laid down following:-*

*"339. Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter may be referred only to a Larger Bench. (See Pradip Chandra Parija vs. Pramod*

*Chandra Patnaik, (2002) 1 SCC 1 followed in Union of India Vs. Hansoli Devi, (2002) 7 SCC 273. But no decision can be arrived at contrary to or inconsistent with the law laid down by the coordinate Bench. Kalyani Stores (supra) and K.K. Narula (supra) both have been rendered by the Constitution Benches. The said decisions, therefore, cannot be thrown out for any purpose whatsoever; more so when both of them if applied collectively lead to a contrary decision proposed by the majority."*

32. *Learned Single Judge did not follow the judicial discipline while taking a contrary and diagonally opposite view to one which have been taken by another learned Single Judge in Settu versus The State (supra). The contrary view taken by learned Single Judge in the impugned judgment is not only erroneous but also sends wrong signals to the State and the prosecution emboldening them to act in breach of liberty of a person.*

33. *We may further notice that learned Single Judge in the impugned judgment had not only breached the judicial discipline but has also referred to an observation made by learned Single Judge in Settu versus The State as uncharitable. All Courts including the High Courts and the Supreme Court have to follow a principle of Comity of Courts. A Bench whether coordinate or Larger, has to refrain from making any uncharitable observation on a decision even though delivered by a Bench of a lesser coram. A*

*Bench sitting in a Larger coram may be right in overturning a judgment on a question of law, which jurisdiction a Judge sitting in a coordinate Bench does not have. In any case, a Judge sitting in a coordinate Bench or a Larger Bench has no business to make any adverse comment or uncharitable remark on any other judgment. We strongly disapprove the course adopted by the learned Single Judge in the impugned judgment."*

16. Since two Hon'ble Single Judges have passed the impugned interim orders not in conformity with the law laid down in **Nathubhai Jinabhai Gamara (supra)**, we deem it appropriate not to deal with the said issue in these appeals as the judgment in the case of **Nathubhai Jinabhai Gamara (supra)** is not in challenge before us. Let the issue be decided in the writ petitions by the learned Single Judge on merits as to whether the learned Single Judge would agree to the view taken by the judgment in the case of **Nathubhai Jinabhai Gamara (supra)** or would like to refer the same for consideration by a Larger Bench. However, in the facts of the present cases the impugned orders cannot be sustained, the appellants

would be entitled to the reliefs as granted by the learned Single Judge in the case of **Nathubhai Jinabhai Gamara (supra)**.

17. We accordingly allow these appeals to the aforesaid extent and set aside only that part of the order of the learned Single Judge where it directs for furnishing of continuing Bank Guarantee. Let the vehicles seized by the respondent authorities be released forthwith as per the view taken in the judgment dated 26.08.2020 passed in the case of **Nathubhai Jinabhai Gamara (supra)** within a period of 1 week from today. The learned Single Judge may proceed to decide the petitions on their own merits.

18. Consequently, the connected Civil Applications stand disposed of.

**(VIKRAM NATH, CJ)**

**(ASHUTOSH J. SHASTRI, J)**

GAURAV J THAKER/RADHAN