

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-3115-2025  
Reserved on: 14.02.2025  
Pronounced on: 28.02.2025

Sarwan Kumar ...Petitioner

Versus

State of Punjab ...Respondent

**CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA**

Present: Mr. Avtar Singh Bhatti, Advocate,  
for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

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**ANOOP CHITKARA, J.**

| FIR No. | Dated      | Police Station                | Sections                                                                                |
|---------|------------|-------------------------------|-----------------------------------------------------------------------------------------|
| 8       | 29.01.2024 | Taragarh, Distt.<br>Pathankot | 379 IPC and Section 21 (1) of Mines and Minerals (Development and Regulation) Act, 1957 |

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.
2. In paragraph 11 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the status report filed by the State, which reads as follows:

*“5.B. That present FIR has been registered on the complaint bearing letter no.01 special dated 29.01.2024 addressed to SHO PS Taragarh Pathankot stating therein that on dated 29.01.2024 at about 12.15 AM (night) District Mining Officer, Pathankot, Assistant District Mining Officer, Kathua Malikpur and Sangamdeep Singh Junior Engineer-cum-Mining Inspector Kathua Sub Division Malikpur, Pathankot had conducted checking of Kirian Crusher Zone and during checking, one tipper (CAB No.P5518TY320984), without number plate which was loaded with minor minerals, came out from river side and entered J.S. Stone Crusher, Jaswan*

*and on seeing Sangamdeep Singh Junior Engineer-cum-Mining Inspector, driver of said tipper ran away after unloading the tipper. The police party was informed in this regard. Then ASI Balbir Singh along with police party reached at the spot and witnessed the site. Then fresh minor mineral which was unloaded, was found at the spot in the area of J.S. Stone Crusher, Jaswan and its location was Lat.32.279463 and Long. 75.466575. At that time there is no legal quarry inside the area of Jaswan and the said minor mineral has been dug out illegally from river Ravi. On the bank of Ravi river two number tippers (one without number plate) and (one bearing no.PB-06-AK-2395) were also found, which were coming for loading the material in Ravi river and they stopped their way and by taking this advantage, driver took away the Chain Excavator machine and succeeded in running. This matter pertains to illegal mining and accordingly, legal action may be taken against owner of said Stone Crusher and three tippers and unidentified drivers of one Chain Excavator for commission of offence punishable under Sections 21 (1) of Mines and Minerals Act 1957 and 379 of IPC. Three unloaded tippers out of which one tipper without number having CAB No. PS518TY320984 from the area of J.S. Stone Crusher, tipper bearing no.PB-06-AK-2395 and one other tipper without number which was going from J.S. Stone Crusher towards river were handed over to ASI Balbir Singh and taken into police possession. Neither tipper drivers nor owner of crusher were found on the spot. During search, Chowkidar Sham Lal son of Parkash Chand, resident of Narot Jaimal Singh of J.S. Stone Crusher met him and he disclosed the names of the owners of J.S.Stone Crusher as Baldev Singh and Ramesh Singh sons of Sardar Singh, residents of village Jaswan, PS Taragarh, District Pathankot and on their asking mining was being done and accordingly.*

*the present FIR was registered.”*

4. Counsel for the petitioner submits that name of petitioner has been surfaced on the basis of disclosure statement of co-accused Vishawjeet Singh. He prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and his family.
5. The State’s counsel opposes bail and refers to the status report.
6. It would be appropriate to refer to the following portions of the status report, which read as follows:

***“Role of the petitioner:-***

*The petitioner/accused Sarwan Kumar @ Kaka S/o Panjab Raj R/o village Tajpur, District Pathankot was operating chain excavator by which the illegal mining was carried out and mineral were loaded in the tipper. The Petitioner on asking of his owner/accused Baldev Raj was loading Tippers with Minerals by operating the said Chain Excavator machine and when police raid on the illegal mining, the petitioner took/drive the said Machine towards the River side and thereafter he fled away after parking the machine on the side of J.S. Stone Crusher.*

***E. Evidence against the petitioner/accused:-***

*During the investigation of case, accused Vishawjeet Singh was arrested, who disclosed that the petitioner/accused Sarwan Kumar @Kaka was operating chain excavator by which the illegal mining was carried out and mineral was loaded in the tipper. The Chain Excavator machine which was being operated by the Petitioner Sarwan Kumar @Kaka for illegal mining was recovered by the police at the side of J.S. Stone Crusher, hence, the petitioner has been nominated in this case as an accused for having involvement in commission of such offence. Accordingly, keeping in view the aforesaid facts and circumstances, the petitioner/accused Sarwan Kumar does not deserve concession of anticipatory bail.”*

**REASONING:**

7. Pre-trial incarceration should not be a replica of post-conviction sentencing. The evidence might be prima facie sufficient to launch prosecution or to frame charges, but this Court is not considering the evidence at that stage but is analyzing it for the stage of anticipatory bail. An analysis of the above does not justify custodial interrogation or pre-trial incarceration.

8. Given the above, the penal provisions invoked coupled with the prima facie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability for custodial interrogation or the pre-trial incarceration at this stage. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail.

9. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on anticipatory bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilqa

Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

10. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

|    |                                                                                                                                      |  |
|----|--------------------------------------------------------------------------------------------------------------------------------------|--|
| 1. | AADHAR number                                                                                                                        |  |
| 2. | Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk. |  |
| 3. | Mobile number (If available)                                                                                                         |  |
| 4. | E-Mail id (If available)                                                                                                             |  |

11. This order is subject to the petitioner's complying with the following terms.

12. The petitioner is directed to join the investigation within seven days of uploading this order on the official webpage of the High Court of Punjab and Haryana and as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, the prosecution will be open to seeking cancellation of the bail. During the investigation, the petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

13. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

14. In case the Investigator/Officer-In-Charge of the concerned Police Station arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

15. This bail is conditional, and the foundational condition is that if the petitioner

indulges in any non-bailable offense, the State may file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.

16. The concerned trial court is authorized to delete, modify, or relax any of the above conditions and shall be competent to do so in accordance with the law.

17. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

18. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

19. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

**(ANOOP CHITKARA)**  
**JUDGE**

**28.02.2025**  
**Jyoti-II**

|                            |     |
|----------------------------|-----|
| Whether speaking/reasoned: | Yes |
| Whether reportable:        | No. |