

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-9295-2017

Date of decision: 31.10.2017

Jagtar Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.L.S. Mann, Advocate
for the petitioner.

Ms.Samina Dhir, DAG, Punjab.

H.S. MADAAN, J.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioner Jagtar Singh, an accused in FIR No.73 dated 18.8.2015 for the offences under Sections 379 IPC and 21 of The Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as '*the Act*'), registered with Police Station Koom Kalan, District Ludhiana.

Shortly put, facts of case as per prosecution version are that on 18.8.2015, a police party from Police Station Koom Kalan headed by HC Makhan Singh was present at village Rattangarh Chowk for the purpose of patrolling and checking of private vehicles, when HC Makhan Singh received a secret information that Jagtar Singh son of Bant Singh, resident of village Sahllu Bhaini was excavating sand from his fields with

JCB machine; that the sand comes within definition of minerals so its excavation was banned, therefore, Jagtar Singh by doing so secretly had committed an offence under Sections 379 IPC besides provisions of the Act. On the basis of the ruqa sent to the police station, formal FIR was registered.

On registration of formal FIR, apprehending his arrest in this case, the petitioner had approached the Court of Sessions seeking grant of pre-arrest bail by filing an application. His such application had been assigned to learned Additional Sessions Judge, Ludhiana, who vide order dated 3.11.2016 dismissed the same for the reason that petitioner had concealed material facts from the Court regarding earlier dismissal of his application on 11.9.2015 and has misled the Investigating Officer joining investigation on 21.11.2015 despite the fact that no directions were issued to the Investigating Officer to release him on bail. The Investigating Officer was directed to initiate proceedings against the accused for making false representation and intimation to the police. As such, the petitioner has approached this Court asking for similar relief.

Notice of the petition was given to respondent – State, which put in appearance through counsel.

I have heard learned counsel for the parties besides going through the records and I find that no ground to grant pre-arrest bail to the petitioner is made out.

Learned counsel for the petitioner has contended that petitioner by excavating sand from his own land had not committed any offence what to talk of theft under Section 379 IPC or under Section 21 of

the Act and further for the offences under the Act, only a complaint could be filed. The petitioner has since joined the investigation and no recovery is to be effected from him, therefore, interim bail granted to him vide order dated 20.3.2017 be made absolute.

On the other hand, learned State counsel vehemently opposed the request contending that the sand in the fields is a mineral which belong to the State and no person can remove the same without any authorization and furthermore, an FIR can certainly be registered for the offences under IPC adding offences under the Act; that though the accused has joined the investigation but has not rendered full cooperation, therefore his custodial interrogation is necessary. Under Section 4 of the Act, 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, as the case may be, of a mining lease, granted under this Act and the rules made thereunder. Therefore, removal of sand without grant of licence or mining lease is clearly an offence under Section 21 of the Act, which provides that whoever contravenes the provisions of sub-Section (1) or sub-Section (1A) of Section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine which may extent to five lakh rupees per hectare of the area.

Learned State counsel has referred to citation *State of NCT of Delhi Versus Sanjay, 2014 Criminal Law Journal 4854* by the Hon'ble Apex Court, wherein it was observed that illegal extracting and removal of sand, gravel etc. from river bed without licence makes two

offences i.e. one under Section 4 of the Act and other under Sections 378 and 379 IPC since it happens to be public property. It was observed that natural resources are the assets of the nation and its citizens; it is the obligation of all concerned, including the Central and the State Governments, to conserve and not waste such valuable resources. It was further observed that no person will do mining activity without a valid lease or licence and that Section 21 of the Act is a penal provision according to which if a person contravenes the provisions of Sub-Section (1A) of Section 4 shall be prosecuted and punished in the manner and procedure provided in the Act and that offence under Section 4 is cognizable notwithstanding anything contained in the Code of Criminal Procedure. It was also observed that police can take action without complaint by authorised officer under Section 22 of the Act since words used in Section 22 is not a complete and absolute bar for taking action by police.

Furthermore, as per the affidavit filed by Ms.Harkamal Kaur, PPS, Assistant Commissioner of Police, Sahnewal, Ludhiana, the petitioner/accused is shown to be involved in following other criminal cases:

- (i) FIR No.221 dated 23.3.2014, under Section 379 IPC and Section 21 of the Act, Police Station Koom Kalan, Ludhiana;
- (ii) FIR No.61 dated 28.7.2014, under Section 379 IPC and Section 21 of the Act, Police Station Koom Kalan, Ludhiana;
- (iii) FIR No.197 dated 23.11.2013, under Section 21 of the Act, Police Station Sahnewal, Ludhiana;

(iv)FIR No.13 dated 14.2.2015, under Sections 379 IPC and Section 21 of the Act, Police Station Koom Kalan, Ludhiana; and

(v)FIR No.197 dated 9.10.2014, under Sections 379 IPC and Section 21 of the Act, Police Station Sahnewal, Ludhiana.

Thus, the petitioner is a habitual criminal. Furthermore, the Court of Sessions has also found him guilty of concealment of facts and making misrepresentations. Such type of person is not entitled to discretionary relief of pre-arrest bail. His custodial interrogation appears to be necessary for complete and effective investigation. It is well settled that custodial interrogation is more elicitation oriented since a person, who is couched in comparative safety of pre-arrest bail would certainly not disclose all the facts within his knowledge which would be inculpatory for him. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely which is not called for.

Thus finding no merit in the petition, the same stands dismissed.

31.10.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No