

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-39562-2018 (O&M)

Date of Decision:-11.09.2018.

Balwinder Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Navjinder Singh Sidhu, Advocate for the petitioner.

P.B. BAJANTHRI, J. (Oral)

Petitioner has sought for anticipatory bail in case FIR No.97 dated 02.08.2018 under Section 379 IPC and Sections 4 (1) and 21 of the Mines and Minerals (Regulation of Development) Act, 1957 (for short 'the Act, 1957'), registered at Police Station Kharar, District SAS Nagar, Mohali.

2.) Allegations against the petitioner is that he is owner of the tractor-trolley which was used for illegal sand mining. On that account, FIR has been registered against the petitioner.

3.) Learned counsel for the petitioner submitted that there is no complaint in accordance with Section 22 of the Act, 1957. Therefore, filing of FIR under IPC and Special Act, 1957 would be contrary to the Special Law. Learned counsel for the petitioner further submitted that petitioner is not involved in any other case. In support of interpretation of Section 22 of Act, 1957, he relied on (i) Supreme Court decision **2014 (10) JT 9 State of**

NCT of Delhi Vs. Sanjay and (ii) decision of this Court passed in Jagjit Singh Vs. State of Punjab 2014 (5) Law Herald 4503 to the extent that filing of complaint is mandatory under Section 22 of the Act, 1957.

4.) Heard the learned counsel for the petitioner.

5.) Undisputed facts are that petitioner is not a licence holder for the purpose of sand mining. Therefore, judgment of the Supreme Court in the case of State of NCT of Delhi Vs. Sanjay cited supra, it has been distinguished in respect of persons who are not licence holders for any mining. In the present case, petitioner is not a licence holder of mining. Therefore Section 22 or any of the provisions of the Act, 1957 is not attracted for the purpose of illegal mining. What is attracted is Section 378 and 379 IPC in terms of para 69 of the Supreme Court judgment cited supra. In the case of Jagjit Singh Vs. State of Punjab cited supra, this Court has not examined State of NCT of Delhi's case cited supra in particularly para 69 so as to appreciate facts and circumstances of the case. In view of the Supreme Court decision in State of NCT of Delhi Vs. Sanjay, there is no flaw in filing FIR in respect of Section 379 IPC. At the best, there may be a lacunae insofar as Section 4(1) and 21 of the Act, 1957. Thus, petitioner has not made out a case.

6.) Accordingly, petition stands dismissed.

7.) At this stage, learned counsel for the petitioner submitted that Supreme Court decision in State of NCT of Delhi supra is not applicable having regard to the fact that alleged illegal mining is in the private land and not in the river and river bed. If the petitioner is alleged to have committed any offence of illegal mining in a private land, then matter is required to be

fact that minerals are custodian of the State. It cannot be of private persons' land where illegal mining has taken place. It may be a private land if the mineral is required to be taken into consideration, in that event even if the owner of the land has extracted, in that event necessary licence/permission has to be obtained from the respective department for the purpose of extracting minerals. Therefore, extracting of minerals/sand from private land without licence would be illegal and Section 379 IPC is attracted.

(P.B. BAJANTHRI)
JUDGE

September 11, 2018.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.