

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

102

CRM-M-48999-2019

Date of decision: 19.11.2019

Raj Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Nonish Kumar, Advocate for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

The present petition has been filed for grant of anticipatory bail to the petitioner in case FIR No.0180 dated 11.10.2017 registered under Section 21(4A) of the Mines and Minerals (Development and Regulation) Act, 1957 at Police Station Partap Nagar, District Yamuna Nagar.

Learned Counsel for the petitioner has submitted that the petitioner was falsely implicated in the case due to political rivalry. The petitioner had been granted bail. While the case was fixed for prosecution evidence and cross-examination of the witnesses was deferred after lunch, the petitioner, on being informed by the Clerk of his Counsel that his presence was not required after lunch, left the Court. When the police reached his residence, the petitioner came to know about cancellation of his bail and issuance of non-bailable warrant against him. Absence of the petitioner was neither intentional nor willful but due to miscommunication between the petitioner and his Counsel. The petitioner shall abide by all the terms and conditions and he may be ordered to be released on fresh bail.

Notice of motion.

On the asking of the Court, Mr. Ramesh Kumar Ambavta, AAG, Haryana accepts notice on behalf of the respondent-State. Copy of the paper book supplied to the Learned State Counsel.

Learned State Counsel has submitted that on 20.08.2019 two PWs were present and examination-in-chief of one of the PWs was recorded and his cross-examination was deferred due to lunch break. When the case was taken after lunch, the petitioner and his co-accused left the Court without intimation on which their bail orders were cancelled and bail bonds were forfeited. The petitioner has misused the concession of bail and therefore, the present petition may be dismissed.

In the present case, the petitioner absented on 20.08.2019 on which date two prosecution witnesses were present and examination-in-chief of one of the PWs was recorded and cross-examination was deferred due to lunch break. It is now judicially noticed that the witnesses appearing in the Court are harassed and all possible dilatory tactics are adopted to avoid or delay their examination. In this context Hon'ble Supreme Court observed in ***State of U.P. Vs. Shambhu Nath Singh : 2001(2) RCR (Criminal) 390*** that witnesses tremble on getting summons from courts, in India, not because they fear examination or cross-examination in courts but because of the fear that they might not be examined at all for several days and on all such days they would be nailed to the precincts of the courts awaiting their chance of being examined. The witnesses, per force, keep aside their avocation and go to the courts and wait and wait for hours to be told at the end of the day to come again and wait and wait like that. This is the

infelicitous scenario in many of the courts in India so far as witnesses are concerned.

In view of the facts and circumstances of the case and above-said judicial precedent, absence of the petitioner on the date of hearing cannot be said to be bona fide due to any miscommunication and must be considered to deliberate and intentional to avoid the cross-examination of the witnesses present. The petitioner has misused the concession of bail and therefore, the petitioner is not entitled for grant of anticipatory bail.

In view of the above discussion, the petition for anticipatory bail is dismissed.

19.11.2019

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(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No