

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

CRM-M-9618-2021

Date of decision:-2.3.2021

Balwinder Singh alias Lucky

...Petitioner

Versus

State of Punjab

...Respondent

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

Present: Mr.S.K. Choudhary, Advocate
for the petitioner.

Mr.J.S. Ghuman, DAG, Punjab.

H.S. MADAAN, J.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioner – Balwinder Singh alias Lucky, aged 44 years, resident of Dugana @ Dagana Khurd, Hoshiarpur, an accused in FIR No.14 dated 10.2.2021, under Section 21(1) of Mines and Mineral (Development and Regulation) Act, 1957 & Sections 379, 411 IPC, registered with Police Station Bullowal, District Hoshiarpur.

Briefly stated, the facts of the case as per the prosecution story are that on receipt of secret information, a raid was conducted by the

police party and tractor trolley bearing No.PB-07-AS-3305 make Farmtrac – 45 loaded with sand and another empty trolley parked in Khalwan Chohal, Police Station Bullowal, District Hoshiarpur were recovered. Some persons were loading sand in the trolleys. Those tractor trolleys were taken into police possession. Two clean shaven persons were apprehended, who disclosed their names as Rajinder Sahni and Bajinder Kumar. Rajinder Sahni while being inquired disclosed that he had brought the Farmtrac – 60 tractor of blue colour from Lucky (present petitioner), at whose instance he was loading sand. Whereas Bajinder Kumar on being asked disclosed that Farmtrac – 45 tractor bearing registration No.PB-07-AS-3305 belongs to Sonu and at the asking of Sonu, he was filling sand in the trolley. In that way, Balwinder Singh alias Lucky (present petitioner) and Sonu were nominated in this case.

Apprehending his arrest in this case, the present petitioner had approached the Court of Sessions seeking grant of pre-arrest bail by filing an application. However, his such request was declined by learned Sessions Judge, Hoshiarpur vide detailed order dated 23.2.2021. As such, the present petitioner has approached this Court by way of filing the instant petition asking for the similar relief.

Notice of the petition was issued to respondent – State. Mr.J.S. Ghuman, DAG, Punjab has appeared on behalf of respondent – State. He opposes the petition.

I have heard learned counsel for the parties besides going through the records.

Pre arrest bail is a discretionary relief and is to be granted in

exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from arrest and custodial interrogation.

Though the petitioner was not found to be at the spot removing sand from Khalwan Chohal but driver of the tractor trolley had disclosed to the police that he was loading sand in the tractor trolley belonging to present petitioner and the present petitioner had asked him to do so. In that way, the name of the present petitioner has cropped up as a culprit in this case.

The argument advanced by learned counsel for the petitioner that such type of statement of co-accused is inadmissible and cannot be looked into is totally misconceived. Such disclosure statement of co-accused can certainly be taken into consideration for providing lead in investigation and even during trial it is admissible under Section 30 of the Indian Evidence Act.

Section 30 of the Indian Evidence Act provides that when more person than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Furthermore, the custodial interrogation of the petitioner/accused is essential for complete and effective investigation. 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.

In case of *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

Furthermore, the petitioner is said to be involved in three more cases under Mines and Mineral (Development and Regulation) Act, 1957, which means that he is a habitual criminal not desisting from illegal removal of sand despite being booked in three criminal cases in that regard.

Finding no merits in the petition, the same stands dismissed accordingly.

2.3.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No