

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

206

CRM-M-28493-2020

Date of decision : 12.01.2021

Bittu Ram

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Ferry Sofat, Advocate
for the petitioner.

Mr. Rana Harjasdeep, DAG, Punjab
for the respondent-State.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.0144 dated 25.08.2020 registered under Section 379 of the Indian Penal Code, 1860 (for short 'the IPC') and Sections 21 of the Mines and Minerals (Development and Regulation) Act, 1957 (for short 'the MMDR Act') in Police Station Koom Kalan, District Police Commissionerate Ludhiana.

As per the prosecution version on 25.08.2020 the police party headed by ASI Kamaljit Singh received secret information that the petitioner is carrying illegally mined sand in his tractor trolley near Bridge Mand Chouta and could be apprehended if nakabandi was conducted. nakabandi was conducted accordingly and the petitioner was seen driving the tractor trolley. The petitioner was signalled to stop

but the petitioner stopped the tractor trolley at the distance from the police party and fled from the spot. Pursuant to registration of FIR, the matter is under investigation.

Apprehending his arrest, the petitioner has filed the present petition for grant of anticipatory bail.

The petition has been opposed by the respondent-State in terms of reply filed by way of affidavit of Sh. Balwinder Singh, PPS, Additional Deputy Commissioner of Police, Zone-IV, Ludhiana in the Registry which is taken on record.

I have heard learned Counsel for the petitioner and learned State Counsel and gone through the relevant record.

Learned Counsel for the petitioner has argued that the petitioner has been falsely implicated in the case. In the presence of the MMDR Act which is a special enactment, no offence under Section 379 of the IPC is made out. The offence under Section 21 of the MMDR Act is also not made out. Even otherwise cognizance thereof cannot be taken by the Court except on written complaint of the person authorized by the Central/State Government as provided by Section 22 of the MMDR Act. The police could not register FIR and cannot investigate the case and the FIR and subsequent proceedings are wholly illegal. The petitioner is ready to join the investigation and his custodial interrogation is not required. Therefore, the petitioner may be granted anticipatory bail.

On the other hand, learned State Counsel has argued that the petitioner is was carrying illegally mined sand in his tractor trolley. As provided by Section 21(6) of the MMDR Act offence under Section

21(2) of the MMDR Act is cognizable and FIR could be registered by the police. Further illegal mining of sand from bed of river bridge/nala without consent of the State/grant of licence by the State constitutes theft under Section 378 of the IPC punishable under Section 379 of the IPC and the police was not debarred by the provisions of Section 22 of the MMDR Act from taking action against persons who had committed theft of sand and could register FIR and investigate the case and submit final report regarding the same in accordance with the provisions of the Cr.P.C. Filing of written complaint under Section 22 of the MMDR Act by the authorized officer is required only at the time of taking of cognizance of offence under Section 21(1) of the MMDR Act by the Judicial Magistrate First Class. Custodial interrogation of the petitioner is required to unearth the nexus with the mafia indulging in illegal mining. The petitioner was convicted in three cases and is facing trial in two cases of similar nature. The petitioner does not deserve grant of anticipatory bail. Therefore, the petition may be dismissed.

The legal position which emerges from analysis of the relevant statutory provisions is that in view of the provisions of Section 21(6) of the MMDR Act as to offence under Section 21(1) of the MMDR Act being cognizable, FIR for the commission of said offence can be registered and case can be investigated by the Police but in view of Section 22 of the MMDR Act cognizance cannot be taken by the Court except on the complaint of the authorized officer. Report under Section 173(2) of the Cr.P.C. can be filed along with the complaint of the authorized officer and cognizance can be taken by the Court on the basis of complaint filed in accordance with Section 22 of the MMDR

Act. Section 22 of the MMDR Act is not a complete and absolute bar for taking of action by the police for illegally and dishonestly committing theft of minerals including sand from the river bed/nala and the ingredients constituting the offence under Section 21(1) of the MMDR Act and the ingredients of dishonestly removing sand and gravel from the river bed/nala, which is the property of the State, without its consent constituting theft under Section 378 punishable under Section 379 of the IPC are different and on receipt of the police report, the Judicial Magistrate having jurisdiction can take cognizance of the offence of theft punishable under Section 379 of the IPC without awaiting the receipt of complaint that may be filed by the authorized officer for taking cognizance in respect of violation of various provisions of the MMRD Act. Reference in this regard may be made to judgments in *State of NCT of Delhi Vs. Sanjay : 2014(4) RCR (Criminal) 211* and *CRM-M-4211-2014 Hardeep Singh and another Versus State of Haryana and others decided on 04.12.2014* and *order dated 14.08.2020 passed by this Court in CRM-M-14956-2020 titled as 'Balwinder Singh Vs. State of Punjab and others'.*

It may be observed here that the Courts have been granted power to grant anticipatory bail to protect against motivated criminal litigation instituted at the instance of unscrupulous litigants animated by malice or political vendetta. Grant of anticipatory bail is an extraordinary remedy and is not, therefore, intended to be granted in every case. Number of factors including nature and gravity of the offences, quantum of sentence, likelihood of the accused absconding, intimidating or influencing the witnesses or tempering with the

evidence or committing similar offences have also to be taken into consideration. Further, socio-economic offences constitute a class apart and need to be visited with different approach in matter of bail. Since socio-economic offences have deep rooted conspiracies affecting the moral fibre of society and causing irreparable harm, the same have to be viewed seriously. Reference in this regard may be made to ***State of Bihar and another Vs. Amit Kumar @ Bachaha Rai : 2017 (13) SCC 751*** and ***Rohit Tandon Vs. Directorate of Enforcement : 2018(11) SCC 46***. Illegal mining/theft of sand from river bed/nala not only involves loss of public exchequer but also endangers ecological balance resulting in enundating floods causing huge loss of lives and property and other devastating consequences as noticed by Hon'ble Supreme Court in its judgment in ***State of NCT of Delhi Vs. Sanjay : 2014(4) RCR (Criminal) 211***. Persons involved have to be sternly dealt with and effective steps have also to be taken to deny the fruits of crime to them. Therefore, the Courts cannot be liberal in the matter of grant of anticipatory bail to persons allegedly involved in offence of illegal mining/theft of sand.

Keeping in view the facts and circumstances of the case, the fact that the petitioner was previously convicted in three cases of similar nature, custodial interrogation of the petitioner is required for thorough investigation of the crime committed and to unearth his nexus with the mafia indulging in illegal mining, the possibility of the petitioner influencing the witnesses or tempering with evidence and fleeing from justice, I am of the considered view that the petitioner does not deserve the concession of anticipatory bail.

In view of the above discussion, the present petition for grant of anticipatory bail to the petitioner is dismissed and order granting interim anticipatory bail to the petitioner is vacated.

Before parting with this case, it may be observed that this Court had observed in its order dated 18.09.2020 as under:-

“It may be observed here that almost in all cases under the Mines and Minerals (Development and Regulations) Act, 1957 and the Punjab Excise Act, 1914 which have come before this Court regarding conducting of raid by the Punjab Police on the basis of secret information, the offenders were alleged to have fled from the spot at the time of raid. This coincidence in all such cases is very strange and is suggestive of either leakage of information regarding the raid to the offender by some police officer/official or manipulation of record by the police officers/officials conducting the raid who allow the offenders to escape or inefficiency of the raiding police officers/officials in suffering escape of the offenders despite their empowerment by law to use reasonable force for preventing such escape. In any of the above referred eventuality remedial measures are required to be taken for ensuring efficient administration of criminal justice by arrest of the offenders on the spot in case of such raids. Further, in such cases, the police officers/officials are also expected to use audio video electronic means including still/video cameras which are readily available as part of the smart phones possessed even by the police officers/officials but such audio video electronic means are not deliberately used for some ulterior motive/extraneous considerations.

In view of the above, the Director General of Police, Punjab is directed to look into the matter personally and issue appropriate instructions for taking of appropriate

remedial measures for conducting of such raid with requisite secrecy, co-ordination and communication with the concerned SHO/higher police officers to prevent escape of offenders in such cases.”

In compliance with order dated 18.09.2020, the Director General of Police, Punjab examined the matter and vide order dated 01.10.2020, constituted a Committee of the following officers to draft an SOP laying down procedures to be followed by police officers while conducting raids in cases involving illegal sand mining so that offenders do not escape the raiding party:-

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|-------|---|----------|
| (i) | Sh. Jatinder Singh Aulakh, IPS, Inspector General of Police, Patiala Range, Patiala | Chairman |
| (ii) | Senior Superintendent of Police, Ropar | Member |
| (iii) | Senior Superintendent of Police, SBS Nagar | Member |

Affidavit of Sh. Dinkar Gupta, IPS, Director General of Police, Punjab, Chandigarh has been filed through e-mail print out of which is taken on record.

In the affidavit Sh. Dinkar Gupta, IPS, Director General of Police, Punjab, Chandigarh has submitted as under:-

“5. That the aforesaid Committee prepared an SOP for conducting raids in cases of illegal mining and submitted the same to the office of Director, Bureau of Investigation, Punjab, Chandigarh. Upon examination of the matter and in view of the fact that matter involved inter-departmental coordination, the draft Standard Operating Procedure (SOP) has been forwarded to the Principal Secretary to Government of Punjab, Department of Mining and Geology, as well as the Director, Department of Mining and Geology for their comments. The response from the above authorities is awaited.

6. *That as soon as response is received from the Department of Mining and Geology, the SOP shall be finalized and issued for compliance to all the field units in the State of Punjab.”*

In view of the submissions made in the affidavit it is expected that the SOP would be finalized at the earliest and appropriate instructions would be issued to all the field units in the State of Punjab at the earliest.

The Director General of Police, Punjab is directed to ensure that as and when the SOP so finalized, a compliance report along with copy of the SOP is sent to this Court and the Registry is directed that on receipt of such report the same be placed before this Court on the judicial side so that appropriate orders can be passed in the matter, if so required.

(ARUN KUMAR TYAGI)
JUDGE

12.01.2021
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No