

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

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CRM-M-49764-2021.

Date of Decision: 29.11.2021.

Sukhwinder Singh @ Sukha

....Petitioner.

Versus

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Sukhmeet Singh, Advocate for petitioner.

Lalit Batra, J.(Oral)

This petition under Section 438 Cr.P.C. for grant of pre-arrest bail has been moved by petitioner-**Sukhwinder Singh @ Sukha** in case FIR No.115 dated 26.08.2021 under Section 379 IPC and Section 21(1) of Mines and Minerals (Development and Regulation) Act, 1957, registered at Police Station Sidhwan Bet, District Ludhiana Rural.

Learned counsel for the petitioner *inter alia* contends that allegations levelled against the petitioner in the FIR are altogether concocted, false and frivolous and there is no iota of truth therein. He further submits that allegedly during intervening night of 25/26.08.2021, petitioner was found mining and loading the sand illegally from river Satluj and after having seen the officials of Phillaur Dam, petitioner had sped away his tractor while leaving half-loaded trolley with sand on the spot, which trolley was later on impounded by the police. He further urges that version, as alleged, does not appear to be plausible. He further urges that FIR is silent about registration number of the tractor, which shows false

involvement of petitioner in the instant case. He further urges that petitioner has been involved in the instant case simply for the reason that previously case FIR No.19 dated 03.02.2020 under Section 379 IPC and Section 22 of Mines and Minerals (Development and Regulation) Act, 1957, was registered against him at Police Station Bilga, District Jalandhar. He further urges that nothing incriminating is to be recovered at the instance of petitioner. He further submits that though petitioner has no nexus whatsoever with the alleged offence, he is ready to join investigation as and when called upon to do so by the Investigating Agency, thus, concession of pre-arrest bail may be extended to him.

Notice of motion.

At the asking of Court, Mr. Anmol Singh Sandhu, Assistant Advocate General, Punjab, accepts notice on behalf of respondent-State. Complete copy of paperbook has been supplied to him.

Learned State counsel while opposing the cause of petitioner has vehemently argued that during intervening night of 25/26.08.2021, petitioner was found mining and loading the sand illegally from river Satluj. He further submits that though half loaded trolley with sand was recovered from the spot, whereas petitioner had sped away the tractor from the spot. He further urges that petitioner is habitual offender as another case FIR No.19 dated 03.02.2020 under Section 379 IPC and Section 22 of Mines and Minerals (Development and Regulation) Act, 1957, has already been registered against him. He further urges that in view of nature of offence committed by the petitioner, his custodial interrogation is required to unveil the truth and as such he is not entitled to the concession of pre-arrest bail.

I have heard learned counsel for the parties and have carefully gone through the record of the case.

Without commenting anything on the merits of the case, lest it may prejudice the case of either of the parties, allegedly during intervening night of 25/26.08.2021, petitioner was found mining and loading the sand illegally from river Satluj. As pointed out by learned State counsel, petitioner is habitual offender involved in one more case of similar nature. Pre-arrest bail is not to be granted as a matter of routine/course in all cases. The grant or refusal of such bail depends on the variety of circumstances, the cumulative effect of which, should enter the judicial verdict. The power under Section 438 Cr.P.C. is to be exercised sparingly and in exceptional cases keeping into focus the facts and circumstances of each case. At the same time, it is now well-settled proposition of law that the order of anticipatory bail cannot be allowed to circumvent normal procedure of arrest and investigation by the Police. The Court has also to see that the investigation is in the province of the Police and an order of anticipatory bail should not operate as an in-road into the statutory investigational powers of the Police, in exercising the judicial discretion in granting the anticipatory bail. The Court should not be unmindful of the difficulties likely to be faced by the Investigating Agency and the public interest likely to be affected thereby in this relevant connection. In a given situation, custodial interrogation of petitioner is certainly required for complete and effective investigation. In case, same is denied to the Investigating Agency that shall leave many glaring loopholes and gaps, adversely affecting investigation, which is uncalled for. Keeping in view totality of entire

scenario and nature of offence, no extra-ordinary ground has been made out in favour of petitioner for his entitlement to pre-arrest bail.

As a sequel to above, instant petition for grant of pre-arrest bail moved by the petitioner, is dismissed.

(LALIT BATRA)
JUDGE

29.11.2021
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Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No