

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(201)

CRM-M-5505-2021

Date of decision: - 14.02.2022

Soni

....Petitioner

Versus

State of Haryana

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Satish Saini, Advocate
for Mr. G.C. Shahpuri, Advocate, for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is the first petition under Section 438 of Cr.P.C. for grant of anticipatory bail to the petitioner in case FIR No.309 dated 16.12.2020, under Sections 148, 149, 332, 353 and 379-B IPC and Section 21(4) of Mines and Minerals (Regulation of Development) Act, 1957 (added later on), registered at Police Station Chhahhraul, District Yamuna Nagar.

On 05.02.2021, a Co-ordinate Bench of this Court was pleased to pass the following order:-

“The matter has been taken up for hearing through video conferencing due to outbreak of COVID-19.

Learned counsel for the petitioner submits that there is no

allegation against the petitioner in the FIR and he has falsely been implicated in the case.

Notice of motion.

At this stage, Mr. Bhupender Singh, D.A.G., Haryana, has put in appearance and accepts notice on behalf of the respondent-State and submits that the petitioner was found involved in the incident and he was owner of the tractor.

Adjourned to 16.03.2021.

The Superintendent of Police, Yamuna Nagar shall remain present on the next date of hearing through video conferencing, so as to evolve some mechanism in such like cases, where the accused managed to flee from the scene of occurrence despite presence of police patrolling party.

Till next date of hearing, arrest of the petitioner shall remain stayed.”

Thereafter, on 16.03.2021, a Co-ordinate Bench of this Court was pleased to pass the following order:-

“Pursuant to the previous order dated 05.02.2021, the Superintendent of Police, Yamuna Nagar is present through video conferencing (though today, the cases are being taken up through physical hearing). He has apprised this Court that in order to control the illegal mining, there are 24 police personnel including two Deputy Superintendent of Police left at the disposal of the Mining Department in the entire State. He suggested that in order to curb such illegal mining, not only the number of police personnel is required to be increased, rather, some mechanism should be adopted so as to confiscate the vehicles involved in such illegal mining.

Adjourned to 28.04.2021.

Interim order to continue.

However, the Director General of Police, Haryana is directed to constitute a Committee headed by either himself or any other IPS officer in the rank of Additional Director General of Police to work out some modality so as to curb such illegal mining including the confiscation of the vehicles involved in illegal mining and to increase the number of police force. The Director General of Police may include any other officer which he deems necessary to curb such

illegal mining.

The Director General of Police, Haryana is further directed to submit a report about the steps taken in furtherance of stoppage of illegal mining.”

In compliance of the above-said orders, a detailed report dated 10.02.2022, by way of affidavit of Prashanta Kumar Agrawal, Director General of Police, Haryana, has been submitted. The relevant portion of the said report is as under: -

“4. That it is submitted that the committee has identified following areas where more emphasis should be laid in order to curb illegal mining:

*i) **Capacity enhancement of Mining department:** The sanctioned strength of Mining department officials needs to be enhanced and vacant posts need to be filled up. Mining department has been requested through Chief Secretary, Haryana to do the needful early.*

*ii) **Co-ordination:** - Proper co-ordination between Mining department and Special Enforcement Teams (consisting of Police Officials) needs to be maintained as sometimes it has been reported that mining officials do not reach at the spot for completing legal formalities. Mining department being the Nodal Agency has been asked to do the needful so that maximum co-ordination is achieved.*

*iii) **Availability of space for parking of seized vehicles:** Mining department has been asked through Chief Secretary, Haryana to search for space and get it notified according to procedure for parking of seized vehicles in each district.*

*iv) **Setting up of Task Force:** The State Government has constituted District Level Task Force (DLTF) under the Chairmanship of the respective Deputy Commissioner along with the concerned Superintendent of Police and other senior functionaries as members in each district to monitor/check the incidence of illegal mining. These Task Forces are responsible for maintaining regular vigil and taking appropriate action in accordance with law. Further, the action taken by these Task Forces is also periodically reviewed by the State Level Task Force (SLTF) constituted under the Chairmanship of the Chief*

Secretary, Haryana. Meetings of DLTF must be held regularly for ensuring proper coordination among various stakeholder departments.

It is further submitted that one of the members of the Committee Shri Amitabh Singh Dhillon, IPS (the then IGP, STF, Haryana) has earlier remained posted as Director General, Mines Geology Department, Haryana. On the basis of his experience gained in Mining department, he has submitted following suggestions to which the Committee also agrees: -

(i) The Mining department needs to adopt a model format for seizure of vehicles/equipments involved in transportation of illegally mined mineral/ illegal excavation of mineral.

(ii) The Mining department needs to gather maximum evidence at the time of detection of illegal excavation/ transportation of illegally mined mineral to aid the subsequent investigation. Photographic/ Video-graphic evidence should be collected from the site. In case of detection of major instances of major instances of illegal excavation, the pit should be mapped with the aid of GPS to fix its location and estimate quantum of illegal excavation. Independent private/ official witnesses may be associated to the extent possible.

(iii) The Mining department needs to adopt a model format for filing of complaint for registration of FIR in consultation with the police department in order to ensure that the FIR is registered on the complaint without delay.

(iv) The Revenue department needs to appoint an appropriately senior nodal officer for coordinating with District Revenue Authorities for obtaining records pertaining to the ownership of illegally excavated areas as well as the work of on-site demarcation (Nishandehi) of illegally excavated pits.

(V) HARSEC needs to appoint a Nodal officer for providing satellite imagery of the illegally excavated area to help establish the age of excavation, extent of excavation etc.

All above recommendations have been sent to the Chief Secretary to the Govt. Haryana vide this office memo No. 17445/L&O-2 dated 30.09.2021 with the request that the above mentioned suggestions may kindly be considered and necessary directions be issued to all concerned for taking necessary action to check illegal mining and related activities.

5. *That it is submitted that for effective check on illegal mining, Police Department has taken following steps: -*

(a) Two Additional Superintendent of Police/ Deputy Superintendent of Police rank officers are heading Special Enforcement Teams (consisting of Police officials) for checking illegal mining and related activities.

(b) Maximum possible manpower including State Armed Police personnel has been provided to the Mining department as per availability.

(c) Inter-state and inter-district nakas are being placed time to time as per requirement and intelligence input to check illegal mining and related activities.

(d) Home Guard Volunteers have also been deployed in the vulnerable areas) for the purpose for which payment is being made by Police department.

(e) As and when demanded, more manpower is being provided to Mining department for conducting raids/checking/ special drive etc.

(f) Prompt action on complaints received from Mining Department is being taken by Police Department and complaints on which cognizable offence is made out. FIRs are being registered without any inordinate delay.

(g) For quality investigation in such cases, order has been issued by this office for establishment of Special Police Units in the district Panchkula, Ambala, Yamunanagar, Karnal, Panipat, Sonipat, Narnaul, Nuh, Bhiwani and Faridabad.

(h) A Standard Operating Procedure to conduct investigation has also been issued by Police Head Quarters, Haryana vide Standing Order No.153 of 2019.

6. *That it is submitted that the committee vide its report dated 29.11.2021 has conveyed that the vehicles involved/used in illegal mining are being confiscated by the Mines and Geology Department, Haryana as per applicable law. The committee sought following information from the Mines and Geology Department, Haryana: -*

i) Whether the legal provisions pertaining to confiscation of vehicles involved in illegal mining are being followed by the Mining

Department.

ii) *What is the procedure of confiscation being followed?*

Iii) *Total number of vehicles confiscated in the year 2021 till date.*

Information on aforementioned issues has been received from Mines and Geology Department, Haryana. After examination of the information, committee has conveyed that procedures/rules regarding confiscation of vehicles involved in illegal mining/transportation of illegal minerals already exist. The applications are being filed before the competent court as per orders dated 15.10.2020 passed by the Hon'ble High Court in CRM No.19322 of 2020 titled as Irfan V/s State of Haryana and ors, and the provisions of MMDR Act, 1957. The Hon'ble National Green Tribunal has also issued directions regarding confiscation of vehicles and these directions/rules/regulations are being-followed by the Mining Department as well as enforcement teams of Haryana Police constituted to check illegal mining/transportation of illegal minerals. Legal provisions pertaining to confiscation are being following by Mining Department by seeking orders of Ld. Judicial/Illaquia Magistrates as per requirement. In total, 6 vehicles involved in illegal mining have been confiscated by the Mines and Geology Department, Haryana as per orders of competent Court(s). A copy of detailed report dated 26.11.2021 received from the Director General, Mines and Geology Department, Haryana is annexed as Annexure R-1.

7. *That it is submitted that at present, 52 police officials (Inspector-1, Sub Inspector-4, Asstt. Sub Inspector-8, Head Constable-14 and Constable 25) are posted on temporary basis in the Mines and Geology Department, Haryana. Now, the State Government has created following 78 posts for various categories of police personnel vide memo No. 1/2/2021-21b-II dated 10.08.2021: -*

<i>Sr. No.</i>	<i>Description of Posts</i>	<i>Number of Posts</i>
<i>1.</i>	<i>Deputy Superintendent of Police at Headquarters</i>	<i>01</i>
<i>2.</i>	<i>Inspector</i>	<i>01</i>
<i>3.</i>	<i>Sub Inspector</i>	<i>14</i>
<i>4.</i>	<i>Head Constable</i>	<i>14</i>
<i>5.</i>	<i>Constable</i>	<i>48</i>
	<i>Total</i>	<i>78</i>

It is submissions that process of placing services of Police

personnel on deputation basis on above sanctioned posts in the Mines and Geology Department, Haryana is under way.

Above report by way of affidavit is submitted for kind consideration of this Hon'ble Court.”

A perusal of the above said report would show that the entire issued has been considered threadbare and even the opinion/suggestions of various persons including Amitabh Singh Dhillon, IPS, have been taken. It has also been submitted that the State Government in addition to 52 police officials, who are posted on temporary basis in the Mines and Geology Department, Haryana, has also created 78 posts for various categories of police personnel, vide memo dated 10.08.2021 and the process of placing services of police personnel on deputation basis on above sanctioned posts in the Mines and Geology Department, Haryana is underway.

This Court, after perusing the above-said affidavit, feels that sufficient efforts are being made by the State Government of Haryana to curb illegal mining. This Court is also sanguine that future efforts will also be made by the State Government with regard to the same.

Learned State counsel submitted that the petitioner has not joined the investigation in pursuance of the above-said order.

Learned counsel for the petitioner undertakes that the petitioner will join the investigation as and when called upon to do so.

With respect to the merits of the present case, the petitioner has already been granted interim bail and since the petitioner was not apprehended at the spot and co-accused Aasik has already been granted the anticipatory bail, vide order dated 04.10.2021 by this Court, the

present petition for anticipatory bail to the petitioner is allowed and the interim order dated 05.02.2021 is made absolute.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present bail application.

It is however made clear that in case the petitioner does not join or cooperate with the investigation, it will be open for the State to move an application for cancellation of present bail petition.

February 14, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No