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

CRM-M-9098-2022

Date of decision : 04.03.2022

Rajeev Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ram Darshan Yadav, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

Prayer in the present petition is for grant of anticipatory bail to the petitioner in FIR No.400 dated 27.11.2021 registered under Sections 188/379 of the Indian Penal Code, 1860 and Section 21(1) of the Mines and Minerals Act, 1957 (Section 120-B of IPC has been added later on) at Police Station Nangal Chaudhary, District Mahendergarh (Haryana).

Learned counsel for the petitioner has submitted that in the present case, the vehicle in question is although owned by the petitioner but had been given by the petitioner to his power of attorney holder namely Ramveer Singh son of Dharam Singh, resident of Village Bolkhera, Tehsil Kaman, District Bharatpur (Rajasthan) and it was the said person who was

using and maintaining the said vehicle. It is further submitted that as per the provision of Section 22 of the Mines and Minerals Act, 1957, no Court can take cognizance of the offence punishable under Section 21 of the said Act and without filing of the criminal complaint, no cognizance can be taken by the Court under Section 188 of IPC. It is argued that the vehicle in question as well as the alleged material i.e. 34 metric tonne (stones) are in the possession of the authorities. It is further argued that petitioner is not an accused in any other FIR and the custodial interrogation of the petitioner is not required in the said circumstances.

Learned counsel for the petitioner has also submitted that the proceedings with respect to recovery of fine/penalty have been initiated by the Mining Officer, Narnaul and without admitting his liability and in order to show his bona fide, the petitioner is ready to deposit an amount of Rs.1 lac within a period of one month from today with the said Mining Officer, Narnaul.

Notice of motion.

On advance notice, Mr. Praveen Bhadu, AAG, Haryana, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition for grant of anticipatory bail to the petitioner and has submitted that the question whether cognizance can be taken or not without filing of criminal complaint, would be considered only at the stage when the Court is to take cognizance. It is further contended that the vehicle of the petitioner was earlier also involved in a similar offence for which penalty of Rs.4,21,000/- had been earlier paid.

This Court has heard the learned counsel for the parties and has perused the paper book.

It is not in dispute that the vehicle in question alongwith other materials, is in the possession of the Mines Department. It is the case of the petitioner that the petitioner was although the owner of the vehicle in question but he had given the same by virtue of power of attorney to Ramveer Singh son of Dharam Singh resident of Village Bolkhera, Tehsil Kaman, District Bharatpur (Rajasthan) who was managing and maintaining the vehicle and who was responsible for the alleged offence. The said argument as well as other arguments raised by the learned counsel for the petitioner would be debatable points to be decided during the course of trial. Additionally, the petitioner, in order to show his bona fide, is ready to deposit a sum of Rs.1 lac with the Mining Officer, Narnaul within a period of one month from today.

Keeping in view the abovesaid facts and circumstances, the present petition for anticipatory bail is allowed, and in the event of arrest, the petitioner is granted the concession of anticipatory bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer and the conditions envisaged under Section 438(2) of Cr.P.C. and also subject to the petitioner depositing an amount of Rs.1 lac with the Mining Officer, Narnaul within a period of one month from today.

The said deposit would not be considered as an admission of liability by the petitioner and it would be open to the petitioner to take up all the points in the proceedings initiated against the petitioner by the Mining

Officer, Narnaul. In case, the petitioner is able to show that he is not liable to pay the said penalty, then the said amount of Rs.1 lac would be returned to him. However, in case, the authorities find that the petitioner is liable to pay an amount of penalty/fine i.e. more than one lac then, the said amount would be adjusted in the final payment that would be required to be paid by the petitioner. However, the petitioner shall join the investigation as and when called upon to do so.

It is made clear, in case, the petitioner fails to join the investigation or does not cooperate with the investigation, then the State would be at liberty to move an application for cancellation of the present anticipatory bail granted to the petitioner.

Nothing stated above shall be construed as an 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.

In case, the said amount of Rs.1 lac is not deposited by the petitioner within a period of one month from today with the Mining Officer, Narnaul, then the present petition would be deemed to have been dismissed.

04.03.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**