

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

CRM-M-31818-2022 (O&M)

Date of Decision:-8.8.2022

KUDRATDEEP SINGH @ LOVIE AND ANOTHER

... Petitioners

Versus

STATE OF PUNJAB

... Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by :-

Mr. Bipan Ghai, Senior Advocate with
Mr. Deepanshu Mehta, Advocate,
Mr. Paras Talwar, Advocate,
Mr. Tushan Rawal, Advocate
for the petitioners.

Mr. R.S. Rai, Senior Advocate;
Mr. Gaurav Garg Dhuriwala, Sr. DAG, Punjab and
Ms. Samina Dhir, DAG, Punjab for the respondent.

KARAMJIT SINGH, J.

The petitioners have filed the present petition under Section 482 Cr.P.C. for quashing of FIR No.73 dated 18.7.2022 (Annexure P-7) registered under Sections 379, 406, 420, 465, 468, 471, 120-B IPC and Sections 21(1) and 4(1) of Mines and Minerals (Regulation) of Development Act, 1957 and Section 15 of Environment Protection Act, 1986 at Police Station Rahon District S.B.S. Nagar and all the consequential proceedings

arising therefrom with further prayer that during the pendency of the present petition no coercive action be taken against the petitioners.

The challenge to the impugned FIR has been laid by the petitioners on the ground that earlier also FIR No.26 dated 7th March, 2018 was registered under Sections 379, 420, 465, 467, 468, 471 IPC and Sections 21(1) and 4(1) of Mines and Minerals (Regulation) of Development Act, 1957 (Annexure P-1) with regard to the same subject matter was registered against petitioner No.1-Kudratdeep Singh and 25 other persons.

Mr. R.S. Rai, Senior Advocate along with Mr. Gaurav Garg Dhuri, Senior DAG, Punjab and Ms. Samina Dhir, DAG, Punjab put in appearance on behalf of the respondent-State, they having advance notice of the present petition.

I have heard the counsel for the parties.

The learned senior Advocate for the petitioners submitted that FIR (Annexure P-1) was registered against 26 persons including the petitioner No.1. That petitioner No.2 was not named as accused in the said FIR. The Senior counsel for the petitioners further submitted that FIR (Annexure P-1) was relating to illegal sand mining in six sand mines in the area of SBS Nagar. The counsel for the petitioner further submitted that as per allegations in the said FIR, a team of mining department and civil administration inspected the said mines on 6th March, 2018 and at that time, it was found that certain persons were doing illegal mining and several machines and vehicles like poclain machines, JCBs, trucks and tippers were seized by the said team at the spot. That as per the allegations in the FIR (Annexure P-1) three forged weighment slips were also recovered at the spot

and consequently the aforesaid FIR was registered against petitioner No.1 and 25 other persons on the basis of the aforementioned spot inspection. The senior counsel for the petitioners further contended that it was also alleged in the FIR that petitioner No.1 was allotted Malikpur mining site through an e-auction conducted by the mining department on 25.5.2017. The senior counsel for the petitioners further contended that as per the allegations in the FIR (Annexure P-1), petitioner No.1 indulged in illegal mining for the period from 4.10.2017 till 7.3.2018. The Senior counsel for the petitioner further submitted that during the investigation of the said FIR (Annexure P-1), petitioner No.1 gave a representation regarding his innocence to the police authorities and the matter was inquired into by Superintendent of Police (Investigation) SBS Nagar. During the said inquiry, the statements of all the concerned persons were recorded and finally the aforesaid police officer gave his report dated 13.12.2018 (Annexure P-2) whereby petitioner No.1 was found to be innocent and accordingly he was not challaned in FIR (Annexure P-1). The senior counsel for the petitioners further submitted that in the said case, petitioner No.1 was granted anticipatory bail by the Court of Additional Sessions Judge, SBS Nagar vide order dated 5.4.2018, whose copy is taken on record. The senior counsel for the petitioner further contended that petitioner No.2 was not nominated as accused in the FIR (Annexure P-1) by the police. The senior counsel for the petitioners further submitted that on completion of investigation, the police presented challan in FIR (Annexure P-1) against 56 persons, while petitioner No.1 was placed in column No.2 of the said challan.

The senior counsel for the petitioners further contended that petitioner No.2 is nephew of Charanjit Singh @ Channi Ex-Chief Minister, Punjab. The senior counsel for the petitioners further contended that the impugned FIR is result of political vendetta and has been registered with an ulterior motive for wreaking vengeance by the present Government. The senior counsel for the petitioners further contended that the impugned FIR is also relating to alleged illegal mining done in year 2017-2018, which period has already been covered in the earlier FIR (Annexure P-1). The senior counsel for the petitioners further contended that there can be no second FIR in respect of the same cognizable offences or the same incident which are already subject matter of FIR (Annexure P-1) and thoroughly investigated by the police and finally the police presented challan against the accused persons. The senior counsel for the petitioners further submitted that if during further investigation in FIR (Annexure P-1) something new has come to the notice of the investigating agency, there is no need to register a fresh FIR with regard to the same, as the investigating officer is empowered to make further investigation, normally with the leave of the Court and where during further investigation, he recovers or collects further evidence, oral or documentary, he is to forward the same to the Court concerned as per the provisions of Section 173(8) Cr.P.C. In support of his assertions the senior counsel for the petitioners referred to the law laid down by the Hon'ble Apex Court in **TT Antony vs. State of Kerala and Others, (2001)6 SCC 181**.

The senior counsel for the petitioners further contended that even Directorate of Enforcement, also investigated the subject matter covered under FIR (Annexure P-1), by invoking the provisions of

Prevention of Money Laundering Act, 2002 (in short 'PMLA') and effected recoveries of cash worth ₹9,97,52,700/- with regard to petitioner No.2 relateable to mining activities carried out in Malikpur Sand Mine, SBS Nagar allotted to petitioner No.1 and two mobile phones from petitioner No.1 and another amount of ₹1,99,17,200/- from one Sandeep Kumar, who was later on exonerated. The senior counsel for the petitioners further contended that petitioner No.2 was taken into its custody by Directorate of Enforcement and was later on granted regular bail by the Co-ordinate Bench of this Court vide order dated 1.7.2022 (Annexure P-6). The counsel for the petitioners further contended that aforesaid action of the Directorate of Enforcement was also result of political vendetta and the said action was taken when the Assembly Elections were declared in the State of Punjab. The counsel for the petitioners further submitted that with regard to the aforesaid recoveries of cash etc. Directorate of Enforcement filed complaint (Annexure P-5) against both the petitioners under Sections 44 & 45 of PMLA.

The senior counsel for the petitioners further submitted that even from the perusal of the contents of the said complaint (Annexure P-5), it could be easily made out that the same is also relateable to the incidents of illegal mining covered under FIR (Annexure P-1). In this context, the counsel for the petitioner referred to para No.6.4.1 (C) of the complaint (Annexure P-5), which reads as follows:-

- C. On being asked about the source of the aforesaid cash pertaining to him, Bhupinder Singh @ Honey stated that ₹6 to 7 crores out of the said cash were received by him during

the period of past six months from Sh. Rakesh Chaudhry and Sh. Mohanpal Singh for facilitating them in their mining related works and rest of the ₹3-4 crores were received by him, in lieu of arranging transfers of Punjab Government employees through his political connections.

The counsel for the petitioners also referred to para No.6.4.7 of the complaint, which reads as follows:-

6.4.7 On production of Bhupinder Singh @ Honey before the Hon'ble Judge of Special Court, PMLA (on officiating duty), Jalandhar on 04.02.2022, Directorate of Enforcement was granted custody of Bhupinder Singh @ Honey till 08.02.2022 which was further extended by Hon'ble Court vide order dated 08.02.2022 till 11.02.2022. Thereafter, vide order dated 11.02.2022 of Hon'ble Court, Bhupinder Singh @ Honey was sent to judicial custody and presently he is still lodged in the Judicial custody.

The senior counsel for the petitioners also referred to relevant portion of para No.6.4.9 of the complaint, which reads as follows:-

6.4.9 Statement dated 07.02.2022 of Bhupinder Singh @ Honey during remand period:-

E. Bhupinder Singh @ Honey stated that in march, 2020, he took 04 tippers on lease for transportation of crusher and mining material. Gradually, the number of tippers taken on lease and used in transportation of crusher and mining material increased to 9-10 and he also took 3 tractor-trolleys on lease.

- F. Bhupinder Singh @ Honey stated that Sh. Iqbal Singh arranged the vehicles and machines taken on lease by Bhupinder Singh @ Honey, Iqbal Singh used to handle all the operations of the said vehicles and machines and Iqbal Singh used to settle accounts with Sh. Rakesh Chaudhary on daily basis on behalf of Bhupinder Singh @ Honey.

The senior counsel also referred to para No.6.9 (C and D) of the complaint, which reads as follows:-

- C. Sh. Iqbal Singh @ Iqbal Singh Sarpanch stated, inter-alia, that in the year 2019, he had leased his one Hyundai 210 Poclain machine, one JCB 3DX machine and one Tipper PV12Q7522 to Bhupinder Singh @ Honey. The said machines and vehicles were used by Bhupinder Singh @ Honey at Jindapur mining site allotted to Sh. Rakesh Kumar Chaudhary. Jindapur mine include mining sites of Village Malana, Raillon, Gobindgarh Kulchian and Rashidpur etc. Bhupinder Singh @ Honey offered Sh. Iqbal Singh to work for him for ₹20,000/- per months and Sh. Iqbal Singh started working for Bhupinder Singh @ Honey. During further course, Sh. Iqbal Singh leased on JCB machine, one Poclain machine and one tipper (all owned by him), one tipper owned by his son Sh. Surinder Singh, 02 Poclain machines owned by his brother-in-law and 02 tippers of Sh. Navi, who was a friends of Sh. Iqbal Singh's son.
- D. Sh. Iqbal Singh further provided details of rend paid by Bhupinder Singh @ Honey in lieu of lease of machines and vehicles, which is as follows:

TABLE-K

Sr. No.	Vehicle Information	Rent/ month (in ₹)
1	2 Poclain Machines (Owned by Kulwinder Singh, son-in-law of Sh. Iqbal Singh)	Approx. 2,50,000/-
2	1 Hyundai 210 Poclain Machine (Owned by Sh.Iqbal Singh)	Approx. 70,000/-
3	1 JCB 3DX, 2019 Model (Owned by Sh. Iqbal Singh)	Approx. 60,000/-
4	Tipper PB12Q	Approx. 50,000/-
5	Tipper PB23J819	Approx. 50,000/-
6	2 Tippers HR 97 0044 & PC 23 6817 (Owned by Sh. Navi)	Approx. 1,25,000/-
Total		Approx. 6,25,000/-

The counsel for the petitioners also referred to para No.6.10

Table-L of the complaint, which reads as follows:-

S. No.	Name	Address	Partnership percentage
1.	Kudratdeep Singh @ Lovie S/o Late Sh. Kanwaljeet Singh	D-304, Jal Vayu Tower, Kharar, Mohali, Punjab	10%
2.	Sh. Amandeep Singh S/o Dr. Jatinder Singh	H. No.656, Punjab Mata Nagar, Ludhiana, Punjab	45%
3.	Sh. Gurvinder Pal Singh S/o Sh. Nirmal Singh	H. No.98, Kartar Nagar, Ludhiana	22%
4.	Sh. Rajat Kapur S/o Sh. Ravi Kapur	H. No.1745, Sector 4, Panchkula	11.5%
5.	Sh. Trivikram S/o Sh. Kanwaljeet	H. No.2040, Phase 10, Mohali	11.5%

Further reference is made to para No.7.4(B and E) of the complaint, which reads as follows:-

B. Sh. Kudratdeep Singh @ Lovie in his statement dated 24.01.2022 and 04.03.2022 sated that 73 weighment slips recovered and seized from the residential premises of Sh. Bhupinder Singh @ Honey i.e. H. No.390-E, Shaheed Bhagat Singh Nagar were genuine. On 04.03.2022, Sh.

Kudratdeep Singh @ Lovie further stated that the aforesaid weighment slips were generated by computer operator at Malikpur mining site on Kudratdeep Singh @ Lovie's directions. Kudratdeep Singh @ Lovie further stated that the weighment slips were used to be generated in triplicate and one copy was used to be given to vehicle driver carrying the extracted sand and two copies were used to be kept by the computer operator at mining site.

- E. FORMs-N as submitted by the Kudratdeep Singh @ Lovie was supposed to include the quantity of sand output of 10.11.2017 for the reporting period from 01.11.2017 to 15.11.2017. However, on contrary, it is observed that quantity of sand output declared by Kudratdeep Singh @ Lovie in FORM-N for the period 01.11.2017 to 15.11.2017 was 827.5 Whereas, as per 73 weighment slips dated 10.11.2017, quantity of sand output on 10.11.2017 i.e. for a few hours on a single day only was 902.7 MT.

The counsel for the petitioners also referred to para No.7.4

Table-P of the complaint, which reads as follows:-

TABLE-P

Particulars	Calculations of sand delivered through Tractor-Trollies	Calculations of sand delivered through Truck/tippers
Total Output of sand (Average output in tractor-trolley or truck/tipper in a day x No. of days of operations of mine)	8.8 x 153=1346.4 MT	893.9 x 153=136766.7MT
Number of deliveries (Total Output divided by Average sand delivered in one vehicle)	1346.4 divided by 2.2=612	136766.7 divided by 13.95=10,561
Maximum amount of proceeds of sale of	612 x 2,000 = Rs.12,24,000/-	10561 x 10000 = Rs.10,56,10,000/-

sand delivered (Number of deliveries x maximum price of vehicle)		
Total	12,24,000 +10,56,10,00 =10,68,34,000/-	

Reference is also made to Question No.6 put to petitioner No.2 by Directorate of Enforcement in his statement dated 3.2.2022 with regard to his share in Malikpur Sand Mine.

Reference is also made to Question No.6 put to petitioner No.2 by Directorate of Enforcement in his another statement dated 4.2.2022, which was again relating to benefits received by him from the mining work carried out at Malikpur Mining site.

Reference is also made to Question Nos.8 and 10 put to petitioner No.1 by Directorate of Enforcement in his statement dated 4.3.2022 with regard to generation of weighment slips relating to Malikpur Mining site.

The senior counsel for the petitioners also brought to the notice of the Court various recommendations made by the Punjab Government at the instance of different authorities, which are at page No.273 to 278 of the present petition.

The counsel for the petitioners while referring to bail order (Annexure P-6) submitted that while giving benefit of bail to petitioner No.2, the Court concerned observed as follows:-

- (b) It is the admitted case of ED that after registration of the aforesaid FIR in 2018, a complaint has been filed by ED in 2022 i.e. after a period of about 04 years and in the intervening period, there was no further complaint or FIR

regarding illegal mining to suggest that the petitioner is a habitual offender and is involved in any other case even prior to registration of the aforesaid FIR, especially when he is not named either in FIR No. 26 or report submitted under Section 173(2) Cr.P.C.

- (c) As per own investigation of ED, the petitioner was helping Kudratdeep Singh @ Lovie, who was allotted the lease license, in his mining work and there is no direct allegation against him that he was looking into the finance of the Kudratdeep Singh @ Lovie, therefore, the Court is convinced that the petitioner qualify the triple test laid down under Section 45 of PMLA as the Court has nothing to presume adverse to the conduct of the petitioner and since all the documents are already in the custody of the investigating agency, therefore, there is no possibility for the petitioner to tamper with the same.
- (d) A perusal of the ECIR dated 30.11.2021 reveals that the same is registered under Sections 420, 467 and 471 of the IPC with reference to FIR No. 26 dated 07.03.2018 as scheduled offence, however, nothing could be found regarding the role of the then Chief Minister and the proceedings under the PC Act were dropped.
- (e) Even there is a force in the arguments raised by learned senior counsel regarding the timing of registration of the FIR i.e. after 04 years of the registration of FIR No. 26 dated 07.03.2018, is due to political reasons especially in view of the fact that the same has been registered after the uncle of the petitioner took over as Chief Minister of the

State of Punjab and also in view of the fact that from 2018 till 2022, neither any further FIR was registered nor any proceedings were initiated by ED.

The senior counsel for the petitioners further contended that admittedly there are no allegations of any illegal mining after the registration of FIR (Annexure P-1).

The counsel for the petitioners further contended that as per Enforcement Case Information Report (ECIR) dated 30.11.2021 (Annexure P-4), the name of petitioner No.2 was not included in the list of suspected persons and only petitioner No.1 was named as suspected person along with some other unknown persons, he being stated to be owner of Malikpur Mining site.

The senior counsel for the petitioners further submitted that in the detail of mining sites given in ECIR (Annexure P-4) even the mining site of Malikpur was also there in the said list.

The senior counsel for the petitioners further submitted that petitioner No.1 has already been arrested in complaint (Annexure P-5) lodged by the Directorate of Enforcement and later on formally taken into custody in the impugned FIR (Annexure P-7), on the basis of the production warrants issued by the Court concerned. The senior counsel for the petitioners further submitted that petitioner No.2 has already explained/accounted for the cash and weighment slips which were recovered from his premises relateable to mining for 2017-18, to the Directorate of Enforcement as has already been stated above.

The counsel for the petitioners further contended that the allegations which are recorded in the impugned FIR (Annexure P-7) are relateable to mining and weighment slips of year 2017-18 and the entire subject matter is already covered under earlier FIR (Annexure P-1), which was investigated by the police as well as the Enforcement Directorate and as such the impugned FIR on same set of allegations, is totally illegal and is not valid and consequently the Investigating Agency has no authority to conduct any investigation pursuant thereto. The senior counsel for the petitioners further contended that the registration of FIR (Annexure P-7) clearly amounts to abuse of the process of law. The senior counsel for the petitioners further submitted that the impugned FIR (Annexure P-7) has been lodged with vengeance and *mala-fide* motive and thus deserves to be quashed.

On the other hand, Mr. R.S. Rai, Senior Advocate who is representing the State, has submitted that the impugned FIR (Annexure P-7) was registered on 18.07.2022 whereas the present petition has been filed on 20.07.2022 and the investigation has just commenced and is at a nascent stage. The learned Senior Advocate has further contended that earlier to the registration of FIR (Annexure P-7), Directorate of Enforcement conducted raid in the house of petitioner No.2 as a result of which approximately ₹10 crore and 73 weighment slips were recovered and the check period of the said recovery was from 01.11.2017 to 06.02.2018. After the recovery of aforesaid cash etc., the Directorate of Enforcement had sent letter dated 09.05.2022 to the Police Department, Punjab and thereafter Special Investigation Team(for brevity, SIT) was constituted and the matter was

enquired into for about one month and during the said enquiry it was found that the aforesaid 73 weighment slips are forged documents and relatable to illegal mining of sand worth ₹18 crore.

The Senior counsel has further submitted that the earlier FIR (Annexure P-1) dated 07.03.2018 was relating to incidents of illegal sand mining from 06.03.2018 to 07.03.2018 only. It is further contended that the said FIR (Annexure P-1) was pertaining to the particular incidents of illegal sand mining which took place during aforesaid period of 24/48 hours. The Senior counsel has further submitted that during the investigation of the FIR (Annexure P-1), petitioner No.1 moved an application whereby he pleaded innocence and the prayer made by the said petitioner was accepted and he was found innocent during the enquiry and the concerned enquiry report is Annexure P-2. The Senior counsel has further submitted that even from the perusal of Annexure P-2, it is evident that the FIR (Annexure P-1) was relating to incidents of a particular date and petitioner No.1 was declared innocent as it was found that on the date of said occurrence, petitioner No.1 was not found present at the spot of Malikpur Sand Mine. The Senior counsel has further submitted that the impugned FIR (Annexure P-7) which has been registered after due enquiry conducted by SIT is relating to check period 01.11.2017 to 06.02.2018. The Senior counsel has further submitted that the impugned FIR (Annexure P-7) was registered on the basis of ECIR/JLZO/21/2021/DD(3)/AD(2)/ 2873 dated 09.05.2022 and the same is relating to incidents of illegal mining prior to the period covered under FIR (Annexure P-1) dated 07.03.2018. The Senior counsel has further submitted that the subject matter of impugned FIR (Annexure P-7) is totally different

from that of FIR (Annexure P-1) and both the said FIRs are not based on same cause of action and as such the law laid down in **T.T. Antony's** case (supra) referred by the senior counsel for the petitioner is not applicable to the facts of instant case.

The Senior counsel has further submitted that after the registration of FIR (Annexure P-1), investigation was also commenced under PMLA by Directorate of Enforcement against the accused persons after recording brief facts of scheduled offence in the ECIR No. ECIR/JLZO/21/2021 dated 30.11.2021, which resulted in recovery of proceeds of crime to the tune of ₹10 crore (approximately) and 73 weighment slips with regard to petitioner No.2 relatable to illegal sand mining carried out in Malikpur Sand Mine which was allotted to petitioner No.1 and was also related to the ancillary activities of illegal sand mining carried out by petitioner No.2 at different mining sites. The Senior counsel has further submitted that Directorate of Enforcement filed complaint (Annexure P-5) under Section 44 and 45 of PMLA against both the petitioners, wherein in para No. 7.3 the following was mentioned:-

“N. However, as per the conditions set by State Level Environment Impact Assessment Authority, Punjab mineral extraction was permissible from 08:00 am to 08:00 pm on an operational day. However, output of sand on 10.11.2017 as per 73 weighment slips is of duration from 08:00 AM to 02:48 PM which is only 56.67 percent of permissible period of an operational day. Hence, it is assessed that calculated maximum proceeds generated by sale of sand as per Table P is only 56.67 percent of actual maximum proceeds

generated at Malikpur sand mine. Therefore, actual maximum proceeds to the tune of Rs.18,85,19,498/- were generated by sale of sand at Malikpur sand mine.

O. xxxxx

P. Hence, no Form-N had been submitted by Sh. Kudratdeep Singh @ Lovie for the period after 30.11.2017, however he continued with mining activities even after 30.11.2017.”

The senior counsel for the State has further contended that the aforesaid illegal acts/ommissions which were detected by the Directorate of Enforcement were not subject matter of FIR (Annexure P-1), are now covered under the impugned FIR (Annexure P-7).

The senior counsel for the State has further submitted that during the enquiry it also transpired that petitioner No.2 misused his proximity to Charanjeet Singh Channi, Ex-CM Punjab and he facilitated petitioner No.1 to indulge in illegal sand mining and thereby both of them earned crores of rupees.

The learned Senior counsel has further submitted that the impugned FIR is not as a result of political vendetta. Moreover, the criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 Cr.P.C. It is further contended that in case petitioner No.2 is apprehending his arrest, he should have filed application under Section 438 Cr.P.C. to seek anticipatory bail in accordance with law. The learned Senior counsel has further submitted that the Hon'ble Apex Court in **Neeharika Infrastructure Private Limited Vs. State of Maharashtra & Ors. 2021 SCC Online SC 315** and recently in **CrI. Appeal No. 1044 of 2022 (Siddharth Mukesh Bhandari Vs. State of Gujarat & Anr.)** decided on

02.08.2022 has emphasized that grant of any stay of investigation or any interim relief while exercising powers under Section 482 Cr.P.C. would be only in the rarest of rare cases. Learned Senior counsel while concluding his arguments has submitted that the facts and circumstances under which the impugned FIR (Annexure P-7) has been registered are totally different from that of FIR (Annexure P-1) and as such the present petition deserves to be dismissed.

I have considered the submissions made by counsel for the parties.

A bare perusal of Annexure P-1 shows that FIR No.26 dated 7.3.2018 was registered under Sections 379, 420, 465, 467, 468, 471 IPC and Sections 21(1) and 4(1) of Mines and Minerals (Regulation) of Development Act, 1957 on the complaint of Surinderjit Singh SIPO against petitioner No.1 and 26 other persons. As per column No.3 of FIR (Annexure P-1), it appears that the said FIR was registered with regard to incidents intervening from 6.3.2018 to 7.3.2018 with regard to which information was received in the police station on 7.3.2018 at about 13:36 hours. As per the contents of FIR (Annexure P-1), it is clear that the same was recorded regarding illegal mining carried out in 6 sand mines, which were checked by the committee constituted under District Administration/Police Administration and Mining Department and at the time of said checking 12 poclain machines, 2 JCB machines, 1 tractor, 1 water tanker, 30 tippers/trucks used in illegal sand mining were seized. The drivers of the aforesaid tippers/trucks were also apprehended at the spot. That the weighment slips recovered at the spot were not approved from the office of

the Department of mining. The said checking was carried out in the following sand mines:-

1. Burj Tehaldas – Jagvir Inder Singh
2. Bairsaal – Randeep Singh
3. Lalewal – Poonam Aggarwal
4. Mandlaha – Sunil Kumar Joshi
5. Malikpur – Kudratdeep Singh (petitioner No.1)
6. Khoja P – Pinjore Reality Co.Mohali

Whereas impugned FIR (Annexure P-7) has been lodged by the police after receipt of ECIR/JLZO/21/2021/DD(3)/AD(2)/2873 dated 9.5.2022 from office of Assistant Director Unit-3(2) against both the petitioners under Sections 379, 406, 420, 465, 468, 471, 120-B IPC and Sections 21(1) and 4(1) of Mines and Minerals (Regulation) of Development Act, 1957 and Section 15 of Environment Protection Act, 1986. FIR (Annexure P-7) is relating to check period from 1.11.2017 to 6.2.2018. As per the allegations recorded in the said FIR (Annexure P-7), Directorate of Enforcement had recorded an ECIR having No.ECIR/JLZO/21/2021 on the basis of **(i)** FIR (Annexure P-1) against the illegal sand mining being carried out at 6 sand mining sites and **(ii)** during the course of investigation under the provisions of PMLA searches were conducted at the premises of petitioner No.1 and at the premises of persons related to him, during which cash to the tune of ₹9.97 crore relateable to the proceeds of crime generated by indulging in illegal sand mining at Malikpur Sand mining site were recovered and seized and **(iii)** further 73 weighment slips dated 10.11.2017 pertaining to sand mining activities in Malikpur Sand Mine for the duration of less than 7 hours from 8:00 am to 2:48 pm on that day were also

recovered and seized from the residential premises of petitioner No.2 and **(iv)** the Chief Engineer Mines-2, Mines and Geology Department, Punjab vide his e-mail dated 11.2.2022 forwarded certified copies of forms-N for the period from 8.10.2017 to 31.10.2017; 1.11.2017 to 15.11.2017 and from 16.11.2017 to 30.11.2017 as submitted by the contractor viz. Petitioner No.1 vide which details of output of sand at the Malikpur Mining site was declared for the respective time and **(v)** forms-N as submitted by petitioner No.1 were supposed to include the quantity of sand output of 10.11.2017 for the reporting period from 1.11.2017 to 15.11.2017, however, on the contrary it was found that quantity of sand output declared by petitioner No.1 in form-N for the period from 1.11.2017 to 15.11.2017 was 827.5 MT only which was for 15 days of mining operation period, whereas, as per 73 weighment slips dated 10.11.2017 quantity of sand output on 10.11.2017 i.e. for a few hours on a single day only was 902.7 MT and **(vi)** that it is therefore established that actual output of sand at Malikpur mining site was at least 15 times more than the output reported to the Mining Department and **(vii)** as per e-mail dated 11.2.2022 of Chief Engineer Mines-2, petitioner No.1 submitted forms-N only for period from 8.10.2017 to 30.11.2017 and he did not submit any forms-N for the period after 30.11.2017 but he continued mining activities even thereafter and **(viii)** petitioner No.1 being contractor of Malikpur sand mine was found involved in illegal sand mining, with the assistance of petitioner No.2 and **(ix)** violations of the conditions set by State level Environment Impact Assessment Authority.

Undoubtedly petitioner No.2 was not nominated as accused in FIR (Annexure P-1). Further petitioner No.1 was found innocent in FIR

(Annexure P-1), during the inquiry conducted by Superintendent of Police (Investigation) SBS Nagar as is evident from Annexure P-2, on the ground that on the date of occurrence he was not found present at the spot of Malikpur sand mine. So it is clear that FIR (Annexure P-1) was relating to the incidents which took place on particular date(s) i.e. 6.3.2018 to 7.3.2018 as has already been discussed above. As petitioner No.1 was declared as innocent, the police did not present any challan under Section 173 Cr.P.C. against him in FIR (Annexure P-1). From the perusal of Annexure P-3 it transpires that in FIR (Annexure P-1), police presented challan against 56 persons but the names of the petitioners were not there in the said list. Even thereafter the prosecution did not invoke provisions of Section 319 Cr.P.C. for summoning of the petitioners as additional accused in the said challan relating to FIR (Annexure P-1).

After the registration of FIR (Annexure P-1) the Directorate of Enforcement initiated proceedings under Sections 44 and 45 of PMLA against both the petitioners and searches were conducted and cash to the tune of ₹10 crore (approximately), 73 weightment slips pertaining to Malikpur Mining site and other articles were recovered from the premises of petitioner No.2, while two mobile phones were recovered from the premises of petitioner No.1 and petitioner No.2 was arrested by Directorate of Enforcement on 3.2.2022 and later on released on bail vide order dated 1.7.2022 (Annexure P-6) by the Co-ordinate Bench of this Court. After the completion of investigation, the Directorate of Enforcement lodged complaint (Annexure P-5) against both the petitioners under Sections 44 and 45 of PMLA.

As per the senior counsel for the State, FIR (Annexure P-7) was registered after thorough inquiry conducted by SIT. One cannot say that subsequent FIR (Annexure P-7) is based on the same cause of action as the same is covering different period then that covered under FIR (Annexure P-1). The recovery and seizure of 73 unaccounted weighment slips which as per the learned senior counsel for the State, is relateable to illegal mining worth ₹18 crore approximately, was not subject matter of earlier FIR (Annexure P-1). In the subsequent FIR (Annexure P-7) there are also allegations that the quantity of sand output declared by petitioner No.1 in form-N for the period from 1.11.2017 to 15.11.2017 as 827.5 MT was under-reported as quantity of sand output on a particular day for a few hours was assessed as 902.7 MT. There are also allegations that calculated maximum proceeds generated by sale of sand as per Table-P is only 56.67% of actual maximum proceed generated at Malikpur sand mine and thereafter actual maximum proceeds to the tune of ₹18,85,19,498/- were generated by sale of sand in Malikpur sand mine. Thus the subsequent FIR (Annexure P-7) is having wider horizon as compared to earlier FIR (Annexure P-1) which was confined to illegal mining carried out on 6.3.2018 to 7.3.2018.

Ever-growing menace of rampant illegal sand mining is there in the State of Punjab. Undoubtedly illegal mining being carried out by well-connected unscrupulous individuals has degraded entire environmental set-up, thus causing great harm to the environment and ecological system of the region. So offence under Section 15 of Environment Protection Act, 1986 has also been added in FIR (Annexure P-7).

Petitioner No.2 is closely related to Charanjit Singh @ Channi, Ex-Chief Minister, Punjab, who belongs to Congress Party. At the time of registration of FIR (Annexure P-1), Congress Party was in power in the State of Punjab. As per statement of petitioner No.2 dated 18.1.2022 (Annexure P-8) recorded by Directorate of Enforcement, petitioner No.2 stated that ₹6/7 crore out of the recovered cash were received by him during the period of past 6 months from Rakesh Chaudhary and Mohan Pal for facilitating them in their mining related works and rest of ₹3-4 crore were received by him in lieu of arranging transfers of Punjab Government Employees through his political connections. Thus making it clear that petitioner No.2 was well-connected with the ruling government at the relevant time, when FIR (Annexure P-1) was registered. In these circumstances registration of FIR (Annexure P-1) relating to incidents of illegal sand mining dated 6/7.3.2018 when Congress Party was in power in Punjab and further no action being taken by the police against petitioner No.1, who was specifically named in the said FIR, shows that the State Government and police authorities were having no 'political will' to investigate the said FIR (Annexure P-1) in right earnest and only drivers etc. were challaned, while the key accused were let off. Further the second FIR (Annexure P-7) enumerates so many illegalities, alleged to have been committed by petitioners during the period from 1.11.2017 to 6.2.2018. It cannot be said that FIR (Annexure P-7) is based on the same set of allegations which are already made in FIR (Annexure P-1) and further it cannot be said that the subsequent FIR (Annexure P-7) is also with regard to the incidents relateable to earlier FIR (Annexure P-1) which

was restricted to illegal mining carried out during the period from 6.3.2018 to 7.3.2018.

It is pertinent to note that the present petition has been filed just within a week of the registration of FIR (Annexure P-7). The Hon'ble Apex Court in **State of Telengana vs. Habib Abdullah Jaalani and Ors. (2017) 2 SCC 779**; **Niharika Infrastructure Pvt. Ltd.** case (supra) and **Sidharath Mukesh Bhandari's** case (supra) has clearly held that grant of any stay of investigation and/or any interim relief while exercising powers under Section 482 Cr.P.C. would be only in rarest of rare cases. This Court is of the view that the petitioners have *ex-facie* failed to establish that FIR (Annexure P-7) is result of political vendetta or revenge. Further, the Hon'ble Supreme Court in **Ramveer Upadhyay and Another vs. State of U.P. and Another 2022(2) RCR (Criminal) 943** has held criminal proceedings cannot be quashed only because the complaint has been lodged by the political rival.

In the light of the above, this Court is of the view that the facts and circumstances of the present case are distinguishable from that of **T.T. Antony's** case (supra). Further at present investigation is going on in the impugned FIR (Annexure P-7).

In the backdrop of the aforesaid facts and circumstances, this Court finds no reason to interfere at this point of time.

As a sequel to the above, the present petition fails and is hereby dismissed. However, the petitioners are at liberty to seeks bail in accordance with law by approaching the appropriate Court.

Observations, if any made hereinabove shall not be construed as
expression of opinion on the merits of the case.

8.8.2022
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?
Whether reportable?

Yes / No
Yes / No