

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

CRM-M-39709-2022

Date of Decision: 2.9.2022

Jaswinder Singh and another

... Petitioners

Versus

The State of Punjab

... Respondents

CORAM:-HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr.Vipul Aggarwal, Advocate for the petitioners

Mr.GS Sandhu, DAG, Punjab

...

The petitioners have approached this Court by filing this petition under Section 438 of the Cr.P.C. for grant of anticipatory bail to them in FIR No.98 dated 4.6.2021 under Sections 353, 186, 379 of the IPC and under Sections 21(1), 4(1) of the Mines and Mineral Regulation Development Act, 1957 registered at Police Station Julkan, District Patiala.

Learned counsel for the petitioners, *inter alia*, submits that present FIR has been lodged against unknown persons. The petitioners have been made accused because of party faction, on the basis of a statement of the Sarpanch who is inimical towards the petitioners as one FIR has earlier been lodged by Shiv Chand who is one of the accused in the present FIR. Learned counsel also submits that the petitioners have no concern or connection with the alleged incident as the petitioners are neither the owner nor the driver of the alleged tractor-trolley or JCB machine.

On the contrary, learned counsel for the State vehemently submits that the present FIR has been lodged with regard to an

occurrence which took place on 4.6.2021 at village Bhambua Tehsil Dudhan Sadhan qua illegal mining which was being done with the aid of JCB machine. Mining Inspector who is the complainant alongwith other officials had reached at the spot. On the basis of statement of the Sarpanch, the petitioners alongwith others have been named in the FIR. Even the driver of the JCB machine tried to run over the officials of mining department and also caused obstruction in the performance of official duty. Moreover, alleged machine used in the illegal mining alongwith the activa used during the commission of offence are yet to be recovered and as such custodial interrogation of the petitioners are required.

I have given my thoughtful consideration to the submissions of the learned counsel for the parties and have gone through the paper-book.

In the present case, FIR has been lodged on the complaint moved by Mining Inspector with regard to the occurrence on the fateful day of 4.6.2021, though against the unknown persons. But during investigation, on the basis of statement of Sarpanch, the petitioners alongwith others have been named. The allegations are serious in nature. The driver of the JCB machine tried to run over the officials of mining department. The role of the petitioners are allegedly writ large. Petitioner no.2-Nirmal Singh was riding a scooty bearing No.PB11CW 7263 and after getting off the scooty, he instigated the driver of the machine to take away the machine and the driver of the machine tried to run over the concerned Mining Inspector. It is alleged that the petitioner no.1-Jaswinder Singh was driver of the JCB Machine who was present at the spot and he tried to run over the concerned Mining Inspector.

Petitioner no.2-Nirmal Singh while riding on the scooty abused the concerned Mining Inspector and for causing harm to his life tried to hit him with a wooden danda/rod. In the meanwhile, the Mining Inspector in order to save his life stepped backward and the driver of the JCB machine ran away from the stop alongwith the machine. Investigation is still going on and, therefore, custodial interrogation of the petitioners is necessary for finding out the whole truth and for recovery of the alleged vehicle and machines used in the commission of alleged offence. It is settled proposition of law that power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is to be exercised in exceptional cases. This view of mine finds support from the judgment of Hon'ble Supreme Court in **Madhya Pradesh vs. Pradeep Sharma, (2014) 2 SCC 171.**

In view of seriousness of allegations and gravity of offence, I find that this is not a fit case for grant of anticipatory bail to the petitioner. The petition is dismissed.

(ASHOK KUMAR VERMA)
JUDGE

2.9.2022
MFK

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No