

CRM-M-49915 of 2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr.No.102

CRM-M-49915 of 2022 (O&M)
Date of Decision: 22.12.2022

Lakhwinder Singh
Versus
State of Punjab

...Petitioner

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Rajesh Bhateja, Advocate for the petitioner.
Mr. Manipal Singh Atwal, DAG

AMAN CHAUDHARY, J.

Present petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail in FIR No. 143 dated 27.09.2022 under Section 307, 353, 186, 332, 148, 149, 427, 379 IPC and Section 21 (1) and 4 (1) of Mines and Mineral (Regulation and Development) Act, 1957 and Section 70 of Northern Indian Canal and Drainage Act, 1873, registered at registered at Police Station Sadar Jalalabad, District Fazilka.

The case of the prosecution is that when on 26.09.2022, official of mining department were checking regarding the illegal mining then they found illegal mining was going on at Village Chak Khun Wala and when they tried to stop the persons who were doing illegal mining but on being so stopped, the said persons attacked the complainant and his associates JE Malkiat Singh and Baildar Sandeep |Singh with intention to kill them. They also caused damage to the official vehicle of the complainant SDO and his officials. Three of the assailants were identified as Lakhwinder Singh-petitioner owner of the tractor, his brother Surjit Singh @ Shammi and one labourer whereas remaining assailants remained unidentified. On the

basis of the complaint of SDO, the FIR was registered against the petitioner and two other applicants in addition to 10-12 unknown persons.

Learned counsel for the petitioner submits that there was delay of lodging the FIR and false allegation proved from the fact that no phone call was made to the police station immediately after the occurrence infact no such occurrence had taken place. He further submits that there was no evidence available to show that from where they came to know about the name of the petitioner infact there was no independent witness to the allged occurrence. Learned counsel for the petitioner contends that nothing was recovered from the petitioner and no specific injury or role attributed to the petitioner and no offence under Section 307 IPC made out.

Learned State counsel opposes the bail application of the petitioner on the ground that the petitioner along with other have obstructed the government officials for doing their duties and also caused injuries to them.

Heard.

It is apposite to refer to the judgement of Hon'ble The Supreme Court of India in the case of “**Jai Parkash Singh vs. State of Bihar**” (2012) 4 SCC 379 wherein it has been held thus:

“6. We have considered the rival submissions made by the learned counsel appearing for the parties and perused the record. 7. The provisions of Section 438 Cr.P.C. lay down guidelines for considering the anticipatory bail application, which read as under:

“438. Direction for grant of bail to person apprehending arrest.-(1) Where any person has reason to believe that

he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail; and that court may, after taking into consideration, inter alia, the following factors, namely:- (i) The nature and gravity of the accusation; (ii) The antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence; (iii) the possibility of the applicant to flee from justice; and (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail.” 8. In view of the above, it is mandatory on the part of the court to ensure the compliance of the pre-requisite conditions for grant of anticipatory bail including the nature and gravity of the accusation.

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13. There is no substantial difference between Sections 438 and 439 Cr.P.C. so far as appreciation of the case as to whether or not a bail is to be granted, is concerned. However, neither anticipatory bail nor regular bail can be granted as a matter of rule. The anticipatory bail being an extraordinary privilege should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind to decide whether it is a fit case for grant of anticipatory bail.

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21. In the facts and circumstances of this case, we are of the considered opinion that it was not a fit case for grant

of anticipatory bail. The High Court ought to have exercised its extraordinary jurisdiction following the parameters laid down by this Court in above referred to judicial pronouncements, considering the nature and gravity of the offence and as the FIR had been lodged spontaneously, its veracity is reliable. The High Court has very lightly brushed aside the fact that FIR had been lodged spontaneously and further did not record any reason as how the pre-requisite conditions incorporated in the statutory provision itself stood fulfilled. Nor did the court consider as to whether custodial interrogation was required .”

In the present case, there are specific allegations against the petitioner, who is the owner of the tractor, that he alongwith his brother Surjit Singh @ Shammi and labourer Joginder Singh @ Modu were identified at the spot itself and they alongwith 10-12 assailants, who though remained unidentified, when were stopped from their activity of illegal mining, attacked the complainant- Gitesh Upveja, SDO and his associate and his associate JE Malkit Singh, Beldar Mohd. Hanif and Sandeep Singh, upon which, JE Malkit Singh received injury on his left eye and left hand, when he tried to stop the blow aimed at his head. They all had caused obstruction in the performance of their official duty.

The manner in which the crime is committed, gravity of the offence, age, impact on public confidence in the justice delivery system, etc. are the factors relevant to be considered at the time of grant of anticipatory bail. Considering the allegations and the fact that the petitioner had alongwith his accomplices had not only obstructed the government officials,

who were on duty of checking illegal mining but had also launched attack on them resulting in causing serious injuries, as such keeping in view the gravity of offence and the manner of committing the same, coupled with the fact that the petitioner was allegedly indulging in illegal mining, deserves no concession of anticipatory bail. The petition being devoid of merit, is hereby dismissed.

22.12.2022
Harish Kumar

(AMAN CHAUDHARY)
JUDGE

Whether reasoned/speaking:	Yes /No
Whether reportable:	Yes /No