

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

CRM-M-51376-2022

Date of Decision: 17.11.2022

Barkat Singh

... Petitioner

Versus

State of Punjab

... Respondent

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

Present: Mr.Amit Arora, Advocate for the petitioner

Mr.Jaspal Singh Guru, AAG, Punjab

...

Notice of motion.

On the asking of this Court, Mr. Jaspal Singh Guru, AAG, Punjab accepts notice.

The petitioner has approached this Court by filing this petition under Section 438 of the Cr.P.C. for grant of anticipatory bail in FIR No.0367 dated 28.9.2022 under Section 379 of the IPC and Section 21 (1) of the Mines and Minerals (Development and Regulation) Act, 1957 registered at Police Station Goindwal Sahib, District Tarn Taran.

As per prosecution story, FIR was registered at the instance of ASI Manjeet Singh on the basis of secret information that the petitioner is involved in illegal mining with the use of tractor and trolley. The petitioner alongwith other accused was filling the sand in two trolleys and on seeing the police party, he fled away from the spot and tractor trolley has been taken into possession.

Learned counsel for the petitioner, *inter alia*, contends that as per the alleged story of the prosecution at the time of alleged raid the petitioner and other co-accused persons ran away from the spot and the recovery of tractor trolley was made from the spot. It is highly

unbelievable that police party consisting of 5 police officers could not manage to arrest the accused persons at the spot and they managed to escape. Learned counsel further submits that nothing is to be recovered from the petitioner and as such his custodial interrogation is not required. He is already ready and willing to join the investigation. Learned counsel vehemently argues that in the presence of Mines and Minerals (Development and Regulation) Act, 1957 which is a special enactment, no offence under Section 379 of the IPC is made out. The offence under Section 21 of the aforesaid Act is also not made out. Even otherwise cognizance thereof cannot be taken by the court except on written complaint of the person authorized by the Central/State Government as provided by Section 22 of the aforesaid Act. The police cannot register FIR and cannot investigation the case. In support of the aforesaid submissions, learned counsel relies on **Harmela Ram vs. State of Haryana (CRM-M-526-2012 decided on 29.4.2013)**, **Labh Singh and others vs. State of Punjab (CRR-3850-2013 decided on 18.5.2015)**, **Nachattar Singh vs. State of Punjab (CRM-M-17708-2016 decided on 30.11.2018)** and **Darbara Singh vs. State of Punjab (CRM-M-33782-2015 decided on 30.8.2018)**.

On the contrary, learned counsel for the State submits that the petitioner is a habitual offender and there are other cases registered against him including a case registered under the Punjab Excise Act. Learned counsel further submits that in one of the cases i.e. FIR No.197 dated 5.11.2014 registered at Police Station Amritsar Rural, the petitioner has been declared Proclaimed Offender vide order dated 12.9.2022 passed by the Judicial Magistrate 1st Class, Amritsar.

of the view that the petitioner has been declared a proclaimed offender in one of the cases i.e. FIR No.197 dated 5.11.2014 registered at Police Station Amritsar Rural vide order dated 12.9.2022 passed by the Judicial Magistrate 1st Class, Amritsar. The aforesaid FIR has been registered way back in the year 2014 and he is absconding till date. It is settled proposition of law that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Cr.P.C, he is not entitled to the relief of anticipatory bail. This view of mine is fortified by the judgment of the Hon'ble Supreme Court in case **State of M.P. vs. Pradeep Sharma, 2014 (1) RCR (Criminal) 269.**

Moreover, the antecedents of the petitioner are not good as he is involved in several other cases including a case registered under the Punjab Excise Act. It has been observed by the Hon'ble Supreme Court in case **Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P, (1978) 1 SCC 240** that deprivation of freedom by refusal of bail is not for punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

Moreover, in the present case, Investigation is still going on and, therefore, custodial interrogation of the petitioner is necessary for finding out the modus operandi of commission of 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 the above, the present petition being devoid of any merit is dismissed. Nothing said herein shall be construed as an expression of opinion on the merits of the case.

(ASHOK KUMAR VERMA)
JUDGE

17.11.2022
MFK

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>