

22.05.2023

Sl. No. 1.
Mithun/
G.S.Das
Ct.No.4.

In the High Court at Calcutta

Vacation Bench

CRM (A) 2133 of 2023

In Re: An application under Section 438 of the Code of Criminal Procedure, 1973 in connection with Gurguripal Police Station Case No 228 of 2022 dated 23.12.2022 under Sections 379/411/413/414 of the Indian Penal Code, 1860 and 21(4)/21(5) of Mines and Minerals (Development and Regulation) Act, 1957.

And

In the matter of : **Goutam Mahata & Ors.**

...petitioners.

Mr. Soumyadeep Ghosh

...for the petitioners.

Mr. Rudradipta Nandy
Mr. Suman De

...for the State.

This is an application under Section 438 of the Code of Criminal Procedure filed by as many as six petitioners alleging, *inter alia*, that the petitioners are either drivers or owners of some Engine Trolleys or pick-up vans on which they were carrying cow dung manure. However, police intercepted the said vehicles and lodged a false case under the above mentioned penal provisions resulting in registration of Gurguripal Police Station Case No. 228 of 2022.

Learned Advocate for the petitioners praying for anticipatory bail of the petitioners, submits that under the

provision of Section 22 of the Mines and Minerals (Development and Regulation) Act, 1957, no Court shall take cognizance of any offence under the said Act except upon the complaint made by a person authorised by the Central or the State Government.

Here, the Police Officer filed the complaint and the complaint *per se* is bad-in-law. Moreover, no items within the definition of mines and minerals were seized from the said vehicles. The petitioners are the only bread earners of their respective families. Therefore, they should be released on anticipatory bail.

Learned Public Prosecutor-in-charge has raised serious objection against the said prayer by producing the case diary. It is submitted by him that the issue whether the Learned Magistrate can take cognizance of offence under the Mines and Minerals Act can only be decided after filing of the charge-sheet.

Moreover, from the allegation itself, it is revealed that they are the habitual offenders. Illegal mining is a direct threat upon environment causing natural calamity, course of change of riverbed etc.

Therefore, we are not in a position to grant anticipatory bail to the petitioners.

Prayer for the anticipatory bail of the petitioners is **Rejected.**

CRM(A) 2133 of 2023 is thus **disposed of**.

All parties to act on a server copy of this order, duly obtained from the official website of the Hon'ble High Court, Calcutta.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Partha Sarathi Sen, J.)

(Bibek Chaudhuri, J.)