

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

**CRM-M-17013-2023 (O&M)
Date of decision : 02.08.2023**

Harbans Singh

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Manu Loona, Advocate for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab for the respondent.

MAHABIR SINGH SINDHU, J.

Present petition under Section 438 of the Code of Criminal Procedure has been filed for grant of pre-arrest bail to the petitioner in FIR No.46 dated 19.03.2023, under Section 379 of the Indian Penal Code, 1860 and Section 21 of the Mines and Minerals (Development & Regulations) Act, 1957, registered at Police Station Sadar, District Fazilka.

(2) It transpires that above FIR was registered on the basis of secret information that petitioner-Harbans Singh is excavating sand from river and selling in the market at higher rates without any licence or permit.

(3) The Coordinate Bench, vide order dated 11.04.2023, granted interim bail to petitioner and the same reads as under:-

“Petitioner has approached this Court praying for grant of anticipatory bail in case FIR No.46 dated 19.03.2023, under Section 379 of IPC and Section 21 of Mines and Minerals (Development & Regulations) Act, 1957, registered at P.S. Sadar, Fazilka.

It has been contended by counsel for the petitioner that the petitioner has been falsely implicated in this case. He has submitted that neither the petitioner was arrested on spot nor there is any recovery to be effected from him. He has submitted that the tractor trolley recovered by the investigating agency also does not belong to the petitioner. He submits that the petitioner approached the Court of Learned Sessions Judge praying for grant of anticipatory bail, however, the same has been declined simply on the ground that the petitioner is involved in one more case under the Mines and Minerals Act. He submits that however, the petitioner was released on bail in that case. He has relied upon judicial precedent of the Hon'ble Apex Court in Arnesh Kumar vs State of Bihar and another, 2014(3) SCC (Cr.) 449 and submits that no prima facie case is made out for custodial interrogation of the petitioner. However, petitioner is ready to join investigation.

Notice of motion for 02.08.2023.

In the meantime, in the event of arrest, the petitioner shall be released on interim bail subject to the satisfaction of the Arresting Officer/Investigating Officer. The petitioner shall join investigation before the Investigating Agency/Officer. He shall abide by the following conditions as envisaged under Section 438(2) Cr.P.C:-

(i) That the petitioner shall make himself available for interrogation by a police officer as and when required to do so.

(ii) That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer.

(iii) That the petitioner shall not leave India without prior permission of the court.”

- (4) Learned counsel submits that in pursuance of the aforesaid order, petitioner has already joined the investigation and his custodial interrogation is not required.
- (5) Learned State Counsel, on instructions from ASI Gurmail Singh, submits that petitioner has joined investigation and as on today, his custodial interrogation is not required.
- (6) In view of above, interim order dated 11.04.2023 is made absolute subject to the conditions as envisaged under Section 438(2) Cr.P.C.
- (7) It is also made clear that petitioner shall fully co-operate with the Investigating Officer as and when called for further investigation.
- (8) The above observations may not be construed as an expression of opinion on merits of the case; rather confined only to decide the present bail matter.
- (9) Disposed off accordingly.

August 2nd, 2023
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

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