

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-16938-2023

Date of decision : 11.04.2023

Bachittar Singh

Petitioner

V/S

State of Punjab

Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Hoshiar Singh, Advocate for the petitioner.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail in case FIR No.243 dated 20.09.2022 registered under Section 379 of the Indian Penal Code, 1860 and Section 21(3) of the Mines and Minerals (Development and Regulation) Act, 1957 at Police Station Guru Harsahai, District Ferozepur.

The above-said FIR was registered on the complaint made by the Mining Officer alleging that on receipt of secret information regarding illegal mining, raid was conducted at the disclosed place where some persons were loading the sand out of the drain. At the spot one tractor trolley loaded with the sand was recovered. However, driver of the same was fled from the spot.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. The FIR was registered against unknown persons. The petitioner was not

apprehended on the spot. Due to political vendetta, the petitioner has been dragged in the present FIR. No offence under Section 379 of the IPC is made out against the petitioner and offence under Section 21(3) of the Mines and Minerals Act is non-cognizable offence. Nothing is to be recovered from the petitioner and his custodial interrogation is not required in the case. The petitioner is already ready and willing to join the investigation.

Notice of motion.

On the asking of this Court, Mr. Jaspal Singh Guru, Asstt. A.G., Punjab, who is present in the Court, accepts notice on behalf of the respondent-State. He opposes the present petition for grant of anticipatory bail to the petitioner on the ground that though the petitioner is not named in the FIR but he is the owner of the tractor trolley recovered from the spot. For thorough investigation of the case custodial interrogation of the petitioner is required. Therefore, the present petition may be dismissed.

Having heard learned counsel for the parties, I am of the view that the allegations against the petitioner are serious in nature. Moreover, the investigation is still going on and therefore, custodial interrogation of the petitioner is necessary for finding out the modus operandi of commission of the 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.

The Hon'ble Supreme Court in *State Vs. Anil Sharma : (1997) 7 SCC*

187 held as under:-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

Keeping in view the aforementioned facts and circumstances and nature of averments, the petitioner does not deserves the concession of anticipatory bail. Hence, the present petition is hereby dismissed.

11.04.2023

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**(ASHOK KUMAR VERMA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No