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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision:31.07.2023

Akram Khan

..... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Deepak Sonak, , Advocate,
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioner in case FIR No.116 dated 23.03.2023 under Sections 379, 411, 420,120-B, 186 and 201 IPC and Sections 21(1) of the Mining Act registered at Police Station Bilaspur, District Yamuna Nagar.

2. The brief facts of the prosecution case are that on 23.02.2023, telephonic information was received from SI Rajesh Kumar, member of the Chief Minister Flying Squad, Panchkula, etc. who stated that he alongwith other police officials had reached at screening plant, Ranipur where SI Hitender Kumar submitted a complaint stating that on that day, he alongwith other police officials were present on secret duty at Dosarka Chowk where they received secret information regarding illegal mining being conducted without E-ravana. Certain WhatsApp groups in the names of “Jai Shree

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and owners of other vehicles regarding raids to be conducted by RTA and CM Flying Squad and their locations and in lieu of which Rs.1500/- to Rs.2,000/- p.m. were charged by the Administrators of the said groups.

On receipt of the said information, a raiding party was formed which reached village Ranipur Kalan where they met Surender Singh, Mining Guard. Thereafter, the raiding team alongwith the said mining guard reached Mahadev Screening Plant, where a tractor trolley was found loaded with sand. The Clerk/Munshi Satbir Singh disclosed that the said tractor trolley was not belonging to them. On seeing the raiding party, the driver of the said tractor trolley had fled away from the spot after leaving the same behind. Thereafter, the raiding team reached at Salasar Screening Plant and in the meantime, a tractor trolley driver unloaded gravel from his tractor trolley in the passage and tried to flee away. However, he was apprehended and on enquiry, he disclosed his name as Imran son of Ramjan. He also disclosed the name of the owner of the tractor trolley bearing registration No.HR-71B-3063 make Sonalika as Akram (petitioner) son of Suleman. He also disclosed that he had got loaded gravel from Mata Bhagwati Screening Plant after paying Rs.2,000/- to Mahavir who did not give him any receipt or E-ravana and that he was trying to flee away after unloading the trolley at the instance of his owner Akram (petitioner). He also disclosed that in a car make Swift bearing registration NO.HR-71B-7253, standing near the Mahavir Screening Plant, there was one Kura Mohammad who used to send information/location of Government vehicles to his employer Akram. The said person was, thereafter, apprehended, who disclosed his name as Kura Mohammad. The mobile phone recovered from his revealed that he was a

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member of 09 WhatsApp groups wherein location of Government vehicles was shared. Akram Khan (petitioner) was the Administrator of a group called "KTC Group".

On the basis of the aforementioned complaint, the instant FIR came to be registered. The WhatsApp chats of the aforesaid WhatsApp groups were obtained through Cyber Forensic Lab. The tractor trolley and the car in question were taken into police possession. Accused-Imran, Kumar Mohammad and Mahavir were arrested and during their interrogation, their disclosure statements were recorded, pursuant to which, they got recovered money and gravel etc.

3. The learned counsel for the petitioner contends that the petitioner was a supplier of gravel and sand. He had not committed any theft nor had he been involved in any kind of illegal mining. In fact, he had purchased gravel by paying Rs.2000/- from the Mahavir Screening Plant who had not provided any E-ravana at that time. The three co-accused of the petitioner, namely, Mahavir, Kura and Imran had been granted the concession of regular bail. Even otherwise, the custodial interrogation of the petitioner was not required as the offending vehicles has already been recovered. He, therefore, prays for the grant of anticipatory bail to the petitioner.

4. The learned counsel for the State while referred to the reply dated 09.07.2023 contends that the tractor trolley bearing registration No. HR-71B-3063 was owned by the petitioner. The WhatsApp chats recovered from the mobile phones of the Kura Mohammad and Mahavir clearly

established that the petitioner had played an active role in the commission of

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the offence. In fact, he was the Administrator of one of the groups which had been tracing the location of the various officers who were conducting raids to stop illegal mining. The CDRs of the mobile phones recovered also showed that the petitioner was in regular contact with his co-accused. As the mobile phone of the petitioner was to be recovered and the names of the other persons involved in the commission of the offence were to be revealed, the custodial interrogation of the petitioner was necessary, moreso, as the offence had been *prima facie* established.

5. I have heard the learned counsel for the parties.

6. The Hon'ble Supreme Court in the case of '***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022(4) RCR (Criminal) 977***' held that merely because custodial interrogation was not required by itself could not be a ground to grant anticipatory bail. The first and the foremost thing the Court hearing the anticipatory bail application is to consider is the *prima facie* case against the accused. The relevant extract of the judgment is reproduced hereinbelow:-

"It may be true, as pointed out by learned counsel appearing for Respondent No.1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No.1 for custodial interrogation for the purpose of further investigation.

Be that as it may, even assuming it a case where Respondent No.1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court

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*praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. **In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.***

7. Admittedly, the tractor trolley recovered from the place of the occurrence belongs to the petitioner. He alongwith the others was indulging in illegal mining without E-ravana. He was operating a WhatsApp group

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namely “KTC Group”by virtue of which he was informing the transporters and owners of other vehicles regarding raids to be conducted by RTA and CM Flying Squad with their locations in lieu of money. It was the petitioner, who had actually engaged the co-accused for the purpose of tracing the locations of the officials and to facilitate illegal mining. The mobile phone of the petitioner was also required to be recovered. The names of other co-accused are also to be disclosed by the petitioner. The investigation conducted so far *prima facie* establishes the commission of the offence on the part of the petitioner who seems to be the master-mind. Therefore, the custodial interrogation of the petitioner is certainly required to take the investigation to its logical conclusion.

9. In view of the above, I find no merit in the present petition and the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

July 31, 2023
sukhpreet

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