

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-51719-2022
Date of Decision: 03.03.2023

TARSEM SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CRM-M-56921-2022

JASSA SINGH

... Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Lakhan Paul Garg, Advocate for
Mr. G.S. Saini, Advocate
for the petitioner in CRM-M-51719-2022.

Mr. A.S. Khosa, Advocate for
Mr. H.P.S. Sidhu, Advocate
for the petitioner in CRM-M-56921-2022.

Mr. Shubham Kaushik, Asstt. A.G., Punjab.

JASJIT SINGH BEDI, J.

This order shall dispose of two petitions bearing No.CRM-M-51719-2022 titled as Tarsem Singh Versus State of Punjab and CRM-M-56921-2022 titled as Jassa Singh Versus State of Punjab. For the sake of convenience, the facts are being taken from CRM-M-51719-2022 as both these petitions are arising out of the same FIR.

2. The prayer in the present petition under Section 438 Cr.P.C. is for the grant of anticipatory bail to the petitioners in case bearing FIR

No.0136 dated 20.08.2022 registered under Section 379 of the IPC, 1860 and Section 21 of Mines and Mineral (Development and Regulation) Act, 1957 at Police Station Mallanwala, District Ferozepur.

3. The brief facts of the case are that during the course of checking for illegal mining, information was received that illegal mining was going on in the area of the Satluj river at Village Tanna Bagga. When the Mining Inspector reached the spot, he found illegal mining taking place. Two trolleys and one JCB Machine were recovered from the spot.

Based on the said information, the instant FIR came to be registered.

After the registration of the FIR, the investigation was conducted and during the course of the same, Baljit Singh son of Mehar Singh and Jassa Singh (petitioner in CRM-M-56921-2022) son of Kala along with one Gurpreet @ Judge son of Didar Singh came to be nominated as accused. Baljit Singh was arrested on 28.08.2022.

Thereafter, during the course of further investigation one of the trolleys recovered at the spot was found to be owned by Tarsem Singh (petitioner in CRM-M-51719-2022) and the other by Jassa Singh (petitioner in CRM-M-56921-2022). Thereafter, Gurpreet Singh @ Judge was declared innocent whereas Tarsem Singh (petitioner in CRM-M-51719-2022) was nominated as an accused.

4. The learned counsel for the petitioner-Jassa Singh (CRM-M-56921-2022) contends that he has not been named in the FIR nor has he any role to play in the incident in question. He was not present at the spot and

was nominated as an accused only on the basis of the disclosure statement of his co-accused namely, Baljit Singh. Since the recoveries of the trolleys and JCB already stood effected, no case for custodial interrogation was made out. He thus, prays that since he was ready and willing to join the investigation, he be granted the concession of anticipatory bail.

5. The learned counsel for the petitioner-Tarsem Singh (CRM-M-51719-2022) has raised similar arguments. In addition he contends that the petitioner has clean antecedents and has not been involved in any other case other than the present one and therefore, he too was entitled to the grant of anticipatory bail.

6. A reply dated 02.12.2022 has already been filed in CRM-M-51719-2022 and a separate reply dated 27.02.2023 by way of an affidavit of Palwinder Singh, PPS, Deputy Superintendent of Police, Zira, District Ferozepur in CRM-M-56921-2022 has been filed on behalf of the State by the learned counsel for the State which is also taken on record.

7. With respect to the contentions raised by the counsel for the petitioner-Jassa Singh (CRM-M-56921-2022), the learned counsel for the State contends that during the course of investigation, it transpired that the petitioner was the owner of one of the trolleys. There were two other FIRs pending against him including one under the Mining Act. Thus, the criminal antecedents of the petitioner did not entitle him to the grant of anticipatory bail. Even otherwise, his custodial interrogation was necessary to take the investigation to its logical conclusion.

8. With respect to the petitioner-Tarsem Singh (CRM-M-51719-2022) it is the contention of the learned counsel for the State that during the course of investigation, it was found that one of the trolleys at the spot belongs to him. Offences of such kind were on the rise and for taking the investigation to its logical conclusion, the custodial interrogation of the petitioner was certainly necessary.

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

10. Illegal mining is rampant across the State of Punjab and Haryana causing loss to the State exchequer on the one hand and being an ecological disaster on the other. Therefore, all possible efforts must be made to curtail the commissions of such offences.

11. The contention that because custodial interrogation was not required, the petitioners could be granted the concession of interim anticipatory bail has been considered and negated in the case of ***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr.*** 2022 Live Law (SC) 870 wherein, it was held as under:-

“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

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.

12. In view of the grave nature of the allegations levelled against the petitioners as also the need for custodial interrogation to take the

investigation to its logical conclusion, the petitioners are not entitled to the grant of anticipatory bail and therefore, the present petitions are dismissed.

13. However, it is made clear that the observations in this order are only for the purposes of deciding these bail applications and the Trial Court is free to adjudicate upon the matter in accordance with law.

(JASJIT SINGH BEDI)
JUDGE

03.03.2023

JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No