

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

208

CRM-M-61164-2022
Date of decision : 06.02.2023

Gurbaj Singh @ Baja

....Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Raj Kumar Arya, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, Asstt. A.G., Punjab
for the respondent-State.

ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 438 of the Cr.P.C. for grant of anticipatory bail in case FIR No.68 dated 25.06.2022 registered under Sections 379, 353, 186 and 34 of the Indian Penal Code, 1860 and Section 21(1) of the Mines and Minerals Act, 1957 at Police Station Bhindi Saidan, District Amritsar Rural.

The above-said FIR was registered on the basis of complaint made by complainant-Pankaj Prashar, Junior Engineer-cum-Mining Inspector Riverworks, Sub Division, Amritsar alleging that on 25.06.2022 he received information from Additional SHO, Police Station Bhindi Saidan that in the area of Village Kot Sidhu illegal mining was going on. When he along with ASI Tajinder Singh and police force reached at the spot, they saw that with JCB machine the sand was filled in the tractor trolley. On seeing the police party, the accused tried to ran away from the spot along with tractor trolley and JCB machine. The driver of the JCB machine was managed to fled from

the spot. Later on name of the driver of the JCB machine was known as Gurbaj Singh @ Baja (the petitioner).

Learned counsel for the petitioner has argued that the petitioner has been falsely implicated in the present case. The petitioner was not apprehended on the spot and nothing has been recovered from him. The stock of sand was found in the Haveli of Pratap Singh, leader of Kishan Union which is adjacent to the house of the petitioner. The said Partap Singh in connivance with concerned SHO has falsely implicated the petitioner in the present case. The offence under Section 21(1) of the Mines and Minerals Act is bailable one. Nothing is to be recovered from the petitioner and his custodial interrogation is not required in the case. The petitioner is also ready and willing to join investigation.

On the other hand, learned State counsel has vehemently opposed the present petition and submits that for thorough investigation of the case and for recovery of vehicle indulged in the illegal mining, the custodial interrogation of the petitioner is required in the case. The petitioner is a habitual offender and is also involved in one another case of similar nature.

Having heard learned counsel for the parties, I am of the view that the allegations against the petitioner are serious in nature.

Moreover, the antecedents of the petitioner are also not good as he is already involved in 01 other case of similar nature. It has been observed by the Hon'ble Supreme Court in case ***Gudikanti Narasimhulu Vs. Public Prosecutor, High Court of A.P. : (1978) 1***

SCC 240 that deprivation of freedom by refusal of bail is not for

punitive purposes but for the bifocal interests of justice. It has further been observed that it is rational to enquire into the antecedents of the man who is applying for bail to find out whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

Furthermore, investigation is still going on in the present case and for thorough investigation of the case, custodial interrogation of the petitioner is necessary. 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 deserve the concession of anticipatory bail. Hence, the present petition is hereby dismissed.

06.02.2023

kothiyal

(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No