

**219 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH****CRM-M-7018-2024 (O&M)****Date of Decision: 15.02.2024****PREM SINGLA****...Petitioner****V/S****STATE OF PUNJAB****...Respondent****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Arnav Ghai, Advocate and
Mr. Saurav Dogra, Advocate for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. This is the first petition filed under Section 439 of Cr.P.C. seeking grant of regular bail to the petitioner in the case bearing FIR No. 88 dated 03.07.2023 registered under Sections 21(1) and 4(1) of Mines and Minerals (Regulation of Development) Act 1957 and Section 379 IPC at Police Station Nangal District Rupnagar.

2. Brief facts of the prosecution case are that on 02.07.2023 at 11:42 pm a complaint was received from Sub Divisional Officer Water Drainage-cum-Mining Sub-Division Nangal and in order to resolve the complaint it was ordered to check the Ganga Stone Crusher Nangran, which was acted upon and on reaching the said crusher on 03 July, 2023 at 12:25 am it was seen that one mining team was in operation and the machine operator and his partner were at the hill, who had fled away after leaving the machine. The color of the machine was yellow JCB brand, JCB NXT whose Co-ordinate is (N-31.1643944) (E-76.192176) and according to the above mentioned facts, that machine seemed to be carrying out illegal mining. In view of the aforesaid allegation, present FIR was lodged.

3. Learned counsel for the petitioner *inter alia* contends that any contravention under the Mines and Minerals (Regulation of Development) Act 1957 is a cognizable offence and punishable under Section 21 the aforesaid Act, which provides maximum sentence upto 05 years and Section 379 of Indian Penal Code has been added just to aggravate the offence and the registration of the FIR under the provisions of Indian Penal Code is illegal in view of the provisions contained in Section 4(2) of the Cr.P.C. as Mines and Minerals (Regulation of Development) Act 1957 is a special enactment and regulating the extraction of Mines and Minerals and any contravention of the of the Act and Rules made therein are squarely dealt with by the provisions of the above Act and it is a trite law that if a special statute laid down procedure, the one laid under the general provisions of IPC would not be attracted as authoritatively held by the Apex Court in ***Jeewan Ram and Another Vs. Central Bureau of Investigation 2009(7) SCC 526*** and judgment of this Court passed in CRM-M-29708-2014 titled as ***Ajay Kumar Sandhu Vs. State of Haryana*** decided on 11.09.2015 and the petitioner has been fastened in five more cases while he was in judicial custody in the present FIR. Learned counsel further contends that petitioner is not named in the FIR nor he was arrested at the spot and no gravel or sand was recovered from the possession of the petitioner.

4. Per contra, learned State counsel opposes the prayer for grant of regular bail to the petitioner on the ground that he is owner of the crusher and one poclain machine of JCB Company was recovered, which clearly indicates that the petitioner has indulged into illegal mining and he is is a habitual offender and involved in 7 more cases of similar nature.

5. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that petitioner is behind the bars since 06.12.2023. Investigation of the case has been concluded by the Investigating Agency and the final report under Section 173 of Cr.P.C. has been submitted on 01.02.2024. Trial of the case has not commenced as none out of 15 prosecution witnesses, has been examined so far. So further incarceration of the petitioner without there being the prospect of the conclusion of the trial in the near future, would be violative of Article 21 of the Constitution of India. Culpability, if any, would be determined at the time of the trial.

A two Judge Bench of Hon'ble Supreme Court in '**Satender Kumar Antil v. CBI**' (2022) 10 SCC 51, with respect to prevailing conditions of undertrial prisoner in India has observed:

"6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other."

6. In view of the ratio of law laid down by Hon'ble Supreme Court in **Prabhakar Tiwari Vs. State of UP and Anr.** 2020(1) RCR (Criminal) 831 and **Maulana Mohd. Amir Rashadi Vs. State of U.P. and Others** 2012(2) SCC 382, the involvement of accused in other criminal cases

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cannot be the sole ground to deny him the concession of bail.

7. Therefore, without commenting upon the merits of the case, lest it may prejudice the outcome of the trial, the present petition is allowed and the petitioner- Prem Singla is ordered to be released on regular bail during trial on his furnishing bail bonds/surety bonds to the satisfaction of Illaqa Magistrate/Trial Court.

8. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

15.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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