



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-19094-2024

Date of Decision:-21.05.2024

Rajesh Kumar.

.....Petitioner.

Vs.

State of Haryana.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Brijender Kaushik, Advocate for the Petitioner.

Mr. Kanwar Sanjiv Kumar, AAG Haryana.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in this petition under Section 438 Cr.PC is for the grant of anticipatory bail in case FIR No.77 dated 15.01.2024 under Sections 379 IPC and 21(1), 21(4)(A) of Mines and Minerals (Regulations of Development) Act, 1957 registered at Police Station Haryana State Enforcement Bureau, Ambala.

2. The present FIR came to be registered at the instance of Sonu, Mining Inspector and the same reads as under:-

“ Sir. Copy of the complaint is as such: From, Mining Officer, Mining and Geology Department, Ambala, to, Police Station Incharge, Police Station Enforcement Police Station, Ambala, District Ambala vide Serial/Mining/Amb/141 dated 11.01.2024. Subject: For taking action against owner of Dumper Reg. No. HR-58A- 1482 in regard to illegal mining/transporting of gravel (Minor Mineral) in the area of Rola Heri in violation of National Green Tribunal, New Delhi orders dated 23.04.2019 and 19.02.2020 for committing theft



of mineral under section 379 of IPC. In reference to letter from this office serial Mining/Ambala SPL-2 dated 05.12.2023 1. In this regard you are informed that on 05.12.2023, during inspection by the team members namely ASI Ravinder Singh, HC Sandeep in the area of Rola Heri apprehended Dumper Reg. No. HR-58A-1482 involved in illegal mining/transportation of Gatki (Minor Mineral), on which Enforcement Team informed this office to Mining Guard Sh. Hira Singh, during inspection the above dumper was checked. During checking driver was not having any e- rawana/bill of gravel (Minor Mineral) and found to be involved in illegal mining then the Mining Guard Sh. Hira Singh confiscated the truck Reg. No. HR-58A-1482 and kept seized in Police Station Mullana (Copy Enclosed). You are informed that in view of Rule 101(10) and Rule 106 of Haryana Minor Mineral Concession, Stocking. Transportation of Minerals and Prevention of Illegal Mining Rules, 2012, if any vehicle, Machinery or any other machine is found involved in illegal mining then the same can be taken into possession and seized with the local police station/Chowki. In view of order dated 19.02.2020 of National Green Tribunal (NGT) vehicle involved in illegal. mining the vehicle is released on payment of compensation for damage to the Environment and Royalty, Cost, Fine by the owner/driver of the. If the Royalty and fine and cost of mineral recovered from the owner of seized vehicle is not deposited as per sub Rule 101(10) with one month and as per Sub Rule 106 within 3 months, then the legal action will be taken against the owner/driver involved. In this regard Hon'ble high court of Punjab and Haryana vide order dated 04.02.2021 in CWP No.23190 of 2020 had issued directions to take action as per Rules. 2. You are also informed that the said Dumper Reg. No. HR-58A-1482 was also involved earlier on 021.12.2022 in illegal mining and transportation and apprehended in compliance of orders dated 23.04.2019 and 19.02.2020 of National Green Tribunal, New Delhi and kept seized with Police Station Yamuna Nagar, and was released on Superdari by the court. 3. Owner of aforementioned Dumper Sh. Rajesh Kumar son of Sh. Bal Krishan, resident of House no.155 B, Preet Nagar, Barara, district Ambala and



driver Gopi son of Sh. Arun Kumar, address not known has not yet deposited the Penalty, Royalty and cost of mineral amounting to Rs.12,20,000/- as per Rule Sub Rule 104 of Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012, and as per order dated 23.04.2019 and 19.02.2020 issued by National Green Tribunal, New Delhi with the government treasury. Department has written to deposit Fine, Royalty and cost of mineral for violation of order dated 23.04.2019 and 19.02.2020 issued by National Green Tribunal, New Delhi. Therefore, you are requested to register case against owner/Driver of Dumper Reg. No. HR-58A-1482 Sh. Rajesh Kumar son of Sh. Bal Krishan, resident of House no.155 B, Preet Nagar, Barara, district Ambala and driver Gopi son of Sh. Arun Kumar, address not known for violation of orders dated 23.04.2019 and 19.02.2020 issued by Hon'ble National Green Tribunal, New Delhi and for violation of section 21(1) 21(4A) of Mining Act, 1957 and under section 379 of IPC for committing theft of mineral and to take legal action so that the orders of the Hon'ble High Court are complied with strictly and to recover the government revenue. Sd/- Sonu, Mining Inspector, Mining and Geology Department, Ambala."

3. The Counsel for the petitioner contends that the petitioner has been falsely implicated in the present case as he is the owner of the dumper in question which was allegedly found to contain gravel. In fact he had handed over the same to Gopi son of Arun Kumar who had been caught. The petitioner had nothing to do with the recovery from Gopi. As he was ready and willing to join the investigation, he was entitled to the concession of anticipatory bail.

5. The Counsel for the State on the other hand has filed a reply by way of affidavit dated 07.05.2024 of Mr. Adarshdeep Singh, HPS. Deputy Superintendent of Police, Haryana State Enforcement Bureau, Ambala in the court today, which is taken on record. While referring to the said reply he



contends that during the course of the investigation, the dumper bearing registration number HR-58A-1482 was taken into possession. The petitioner was summoned through a notice but sought the concession of anticipatory bail. It transpired that the vehicle had been earlier involved in illegal mining and transportation on 21.12.2022 and had been seized by the police station Yamuna Nagar but was later released on superdari. There was nothing on record to suggest that the petitioner being the owner had loaned the same to Gopi, the driver. Therefore, *prima facie* the offence against the petitioner stood established and he was not entitled to the concession of anticipatory bail as the investigation was to be taken to its logical conclusion.

6. I have heard learned Counsel for the parties.

7. The Hon'ble Supreme Court in the case of "***Sumitha Pradeep Vs. Arun Kumar C.K. & Anr. 2022 Livelaw (SC) 870***", has 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 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

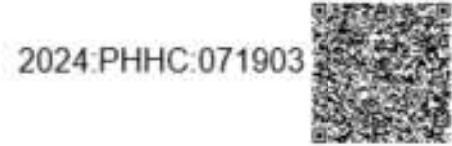


*High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. **There appears to be a serious misconception 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***”.

8. A perusal of the record would reveal that the driver of the petitioner was apprehended driving the dumper owned by the petitioner. He was found carrying gravel in the dumper without any bill. It also transpired that the vehicle was also used in the commission of a similar offence of illegal mining and transportation on 21.12.2022. Apparently, the conduct of the petitioner being the owner of the vehicle is incorrigible as he is serial offender. There is nothing on record to substantiate his argument that the vehicle had been handed over to Gopi for his use. Therefore, *prima facie* the offence is established against the petitioner. Even otherwise, the investigation is to be taken to its logical conclusion for which the custodial interrogation of the petitioner is certainly necessary.

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

10. However, the observations made hereinabove are only for the



purposes of deciding this anticipatory bail petition and the Trial Court is free to adjudicate upon the matter on the basis of the evidence lead before it uninfluenced by any such observations made.

(JASJIT SINGH BEDI)
JUDGE

May 21, 2024
Vinay

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