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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(208)

CRM-M-21414-2024 (O & M)
Date of decision: 06.08.2024

Madan Lal Petitioner

V/s

State of Haryana ...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Nitin Rathee, Advocate,
for Mr. P.C. Yadav, Advocate, for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, 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.1940 dated 28.02.2024 under Section 379 IPC and Sections 21(1) & 21(4) of the Mines and Mineral Act, 1957 registered at Police Station Haryana Estate Enforcement Bureau, Hisar.

2. The present FIR came to be registered on the complaint of Rajesh Kumar, Mining Officer, Mining and Geology Department, Hisar and reads as under:-

*From: Mining Officer, Mining and Geology Department Hisar.
To The SHO, Police Station Haryana State Enforcement Bureau, Hisar. Memo No. Mining/Hisar/2045 dated 27.02.2024
Subject: Regarding taking legal action against the owner/driver of tractor- trolley No.HR-16V-1521, being found involved in Illegal Mining/Transportation. On the above subject, you are*



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informed that on date 09.11.2023, undersigned Inspector Rajesh Kumar, Mining Officer alongwith team of this office consisting of Mrs. Sudesh Rani, Mining Guard and Sh. Sunil Kumar, Driver and Sh. Kuldeep Singh, Sub-Inspector from PS HSENB, Hisar in Government vehicle No. HR-70-GV-7378 of this office were conducting checking. During the checking, the above said tractor-trolley No.HR-16V-1521 was checked at 08:03 AM, at Tosham Road, near canal, in the area of Hansi, Police District Hansi, the said tractor trolley was found loaded with illegal minerals (stone dust) and the owner/driver of the abovesaid tractor trolley did not have the e-Ravana/e-Transit, issued by the Mines and Geology Department. Therefore, the said tractor-trolley was seized/impounded, vide Endst No.Spl.1-2, dated 09- 11-2023, by the checking team, as per the rules 102/104 of Haryana Minor Minerals Concession Stocking Transportation and Prevention of Illegal Mining Rules 2012 and orders of Hon'ble National Green Tribunal, New Delhi dated 23.04.2019 and 19.02.2020 and under section 21 (4) of the Mines and Minerals (Development and Regulation) Act, at City Police Station, Hansi, Police District Hansi, copy thereof is enclosed. Owner of said tractor-trolley, Sh. Madan Lal son of Sh. Chhitar Lal, resident of Kirawad, Tehsil Tosham, District Bhiwani, was issued notices for depositing the environmental compensation amount, royalty and penalty amount for the price of the mineral, vide notices No.Mining/HSR/1807-08, dated 06.12.2023 and Mining/HSR/1993-94, dated 11.01.2024, in accordance with Rule 102/104 of the Haryana Minor Minerals Concession, Stocking, Transportation and prevention of illegal Mining Rules, 2012 and orders of Hon'ble National Green Tribunal New Delhi, dated 23.04.2019 and 19.02.2020, but the abovesaid owner of tractor- trolley has not deposited the amount of fine in the Mines and Geology Department, Hisar for the release of the above mentioned tractor-trolley, copies of which are attached herewith. Therefore, you are requested to



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take appropriate further legal action against the driver of the above mentioned tractor-trolley No.HR-16-V-1521, Sh. Arun son of Sh. Madan Lal, resident of village Kirawad, Tosham District, Bhiwani who was found at the spot and as per the photocopy of the RC received in the office the owner of the said vehicle is Sh. Madan Lal son of Sh. Chhitar Lal R/o village Kirawad, Tehsil Tosham, District Bhiwani, and a case be registered & thoroughly investigated U/s 379 IPC for taking in possession stolen mineral (stone dust) and for transportation of illegal minerals U/s 21 (1) and 21 (4) of the Mines & Minerals (D&R) Act 1957, for illegal mining and for violation of the orders of Hon'ble National Green Tribunal, New Delhi and further take legal action as per the rules. Sd/-Rajesh Kumar, Mining Officer, Mines and Geology Department, Hisar. Mob. No.97299-56812, No./Mining/Hisar/Date.

3. The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case. Nothing is to be recovered from his possession. He was of the age of 43 years old and largely remained at home. As he was ready and willing to join the investigation, he was entitled to the concession of anticipatory bail.

4. The learned counsel for the State, on the other hand, while referring to the reply dated 09.05.2024 contends that the petitioner was the owner of the offending tractor-trolley carrying illegal stone dust which impounded/seized by the Department. As per the investigation conducted, it had come on record that the petitioner had come to his residence on 08.11.2023 with the loaded tractor-trolley and on account of ill-health had directed his son i.e. co-accused/Arun to dump the same at the stone crusher.

Thus, as the offence was established beyond doubt, he was not entitled to the



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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***', 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***



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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. As per the allegations, the offending tractor-trolley was seized with illegal stone dust. The same was being driven by the son of the petitioner, namely, Arun and the owner thereof is the petitioner. As per the investigation, it was the petitioner who had come to his residence with the loaded tractor-trolley and had directed his son to dump the same at a stone crusher at Hasangarh. Therefore, the offence stands *prima facie* established. Further, the investigation is to be taken to its logical conclusion for which the custodial interrogation of the petitioner is certainly necessary and therefore, he is not entitled to the concession of anticipatory bail.

8. In view of the above discussion, I find no merit in the present petition. Therefore, the same stands dismissed.

9. However, it is made clear that the observations made in this order are only for the purpose of deciding this bail application and the Trial



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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

August 06, 2024
sukhpreet

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