

CRM-M-43190-2023 (O & M)
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-43190-2023 (O & M)
Date of decision:07.02.2024

Gurdeep Singh and anr.

..... Petitioners

V/s

State of Punjab

...Respondent

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. G.S. Jagpal, Advocate,
for the petitioners.

Mr. Kirat Singh Sidhu, DAG, Punjab.

Mr. A.P. Kaushal, Advocate, for the complainant.

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 petitioners in case FIR No.70 dated 30.05.2023 under Sections 379 IPC (later on offence under Section 201, 506, 341 and 384 IPC were added) and Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 registered at Police Station Meharban, Distt. Ludhiana.

2. The present FIR came to be registered at the instance of Aman Thakur, JE-cum-Mining Inspector, Ludhiana, Water Drainage, Sub Division Ludhiana, and reads as under:-

“One letter No.1-2/SPL/Meharban dated 29.5.2023 to SHO P.S. Meharban Ludhiana. Subject: Regarding illegal mining which occurred last night in village Sasrali Colony. In regard to above subject on receipt of the complaint from the complainant undersigned and police party visited the spot regarding which coordinate are 31.007221, 75.931659. There was no machinery

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and tractor trolley present at the spot. However regarding the illegal done at the spot, signs of the same have been removed with the help of agricultural disc which has also been confirmed by the complainant. Thereafter statement of complainant was recorded. As per statement of the complainant last night mining was being done by Paramjit Singh Pamma, Gurdeep Singh Thandu, Tarlochan, Akashdeep and thereafter they have removed the signs of illegal mining by the help of discs. Keeping forth the statement of the complainant it is written to you to inquire the complaint and spot and land owners be identified and FIR against them be registered under Section 21 of PMMR 1957 and 379 IPC and the directions of NGT be complied with. This office be informed regarding the action taken. Copy to SDM- Cum-Assistant District Mining Officer, Phillaur Division, Sub Division Ludhiana. Sd/- Aman Thakur J.E.-Cum-Mining Inspector Ludhiana, Water Drainage, Sub Division Ludhiana”.

3. During investigation, the statement under Section 161 Cr.P.C. of the informer-Sourav Batra was recorded who stated that on 28.05.2023 at about 10.00 p.m., while he was going in his car in the area of village Sasrali, he saw illegal mining being done by the petitioners and their co-accused from the river with a JCB machine. He gave the information of the same to the police. He also prepared a video on his mobile phone of the illegal mining. On seeing him doing the same, the petitioners and their co-accused waylaid his car, brought him out of the same and deleted the video from his mobile phone. They also forcibly got him to sign certain blank papers under threat of life. Thereafter, he had moved the complaint with the Mining Department leading to the registration of the instant FIR.

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On account of the aforementioned statement under Section 161 Cr.P.C., offences under Sections 201, 341, 384 and 506 IPC were added in this case on 21.06.2023.

The CCTV footage of the cameras installed outside a house were produced by the informer where a trolley of the petitioners loaded with sand can be seen.

4. The learned counsel for the petitioners contends that the petitioners have been falsely implicated in the present case. In fact, a complaint dated 01.06.2023 was submitted against the misbehavior of Sourav Batra who had entered entered the house of a close relative of the petitioners on the night of 28.05.2023. On the said night itself, Sourav Batra had given in writing in the presence of the Sarpanch and other respectables of the village that he had been caught at the spot while entering the residence of Sukhvir Singh. Statements of the petitioner No.1-Gurdeep Singh @ Thandu and Charanjit Singh were recorded in support of their complaint dated 01.06.2023. In fact, the petitioners had been falsely implicated in the present case on account of numerous other false cases which had been registered against them earlier for allegedly committing similar offences. As the petitioners had joined investigation and co-operated with the same, they were entitled to the concession of anticipatory bail.

5. The learned counsel for the State alongwith the counsel for the *de facto* complainant-Sourav Batra, on the other hand, while referring to the reply dated 05.12.2023 contend that the petitioners are habitual offenders with multiple cases registered against them, the details of which are as under:-

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The FIRs/cases registered against petitioner No.1-Gurdeep Singh @ Thandu:-

Sr. No.	FIR No. & Date	Under Section	Police Station	Status
1.	159/13.10.2023	21 of the Mining Act and Section 379 IPC	Meharban	Convicted
2.	128/30.08.2014	21 of the Mining Act and Section 379 IPC	Meharban	Convicted
3.	10/17.01.2015	21 of the Mining Act and Section 379 IPC	Meharban	Acquitted
4.	06/20.01.2019	323, 324, 506 and 34 IPC	Meharban	Acquitted
5.	279/21.09.2014	21 of the Mining Act and Section 379 IPC	Focal Point, Ludhiana	Convicted

The FIRs/cases registered against petitioner No.2-Paramjit Singh @ Pamma:-

Sr. No.	FIR No. & Date	Under Section	Police Station	Status
1.	141/02.12.2012	307, 148, 149, 25 of the Arms Act	Meharban, Ludhiana	Cancelled
2.	93/11.07.2014	21 of the Mining Act and Section 379 IPC	Meharban, Ludhiana	Convicted
3.	214/21.11.2015	21 of the Mining Act and Section 379 IPC	Meharban, Ludhiana	Acquitted
4.	62/07.05.2016	21 of the Mining Act and Section 379 IPC	Meharban, Ludhiana	Acquitted
5.	38/10.02.2017	21 of the Mining Act and Section 379 IPC	Meharban, Ludhiana	Acquitted
6.	157/25.12.2013	21 of the Mining Act and Section 379 IPC	Jamalpur, Ludhiana	Convicted
7.	308/28.11.2014	21 of the Mining Act and Section 379 IPC	Phillur, Jalandhar	Convicted
8.	184/05.08.2017	21 of the Mining Act and Section 379 IPC	Meharban, Ludhiana	Acquitted

6. They contend that on being video-graphed, the petitioners alongwith others waylaid the informer, threatened him and forcibly got his signatures on blank papers admitting to him (informer) having entered into the house of a relative of the petitioners. Merely because the petitioners had

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joined investigation at an earlier stage, did not entitle them to the grant of anticipatory bail when the offence was *prima facie* established not only from the statement of the informer but also from the CCTV footage of the cameras showing the trolley of the petitioners loaded with sand.

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

8. 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***

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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.”

9. Admittedly, the evidence available on the record would suggest that Sourav Batra had seen the petitioners at the spot where the illegal mining was being done and had videographed the same. He, however, was waylaid by the petitioners who not only deleted the video from his mobile phone but also got him to sign certain documents inculcating him. Further, the trolley of the petitioners was seen loaded with sand in a CCTV footage of the area. Thus, as the offence stands *prima facie* established and the investigation is to be taken to its logical conclusion, the petitioners are not

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entitled to the concession of anticipatory bail, moreso, when they are habitual offenders with multiple cases registered against them.

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

11 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 Court is free to adjudicate upon the matter on the basis of the evidence lead before it uninfluenced by any such observations made.

February 07, 2024
sukhpreet

(JASJIT SINGH BEDI)

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