

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-50359-2024
Reserved on: 04.11.2024
Pronounced on: 12.11.2024

Yogesh Kumar ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Ashwani Talwar, Advocate and
Mr. L.K.Narang, Advocate
for the petitioner.

Mr. Aashish Bishnoi, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
294	28.08.2024	Bilaspur, Yamuna Nagar	318(4) BNS, 2023 (Sections 316(2), 336(3), 338, 340(2)/61(2) BNS and 21 (4) of Mines and Minerals (Development and Regulation) Act added subsequently)

1. The petitioner incarcerated in the FIR captioned above had come up before this Court under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking regular bail.
2. In paragraph 11 of the bail petition, the accused declares that he has no criminal antecedents.
3. The facts and allegations are being taken from the reply filed by the State, which reads as follows:

“3. That in this regard, it is submitted that a letter/complaint No. SR/Mining/Yamunanagar/3037 dated 23.08.2024 moved by the mining officer Mines and Geology Department, Yamuna Nagar for legal action regarding misuse of H.M.G.I.S. portal was received from the office of the Superintendent of Police, Yamuna Nagar in the police station. Thereupon vide letters no.47781 and 47782 dated 27-08-2024 record was sought from Director General Mines and Geology Department, Haryana and on the basis of above said complaint/letter the above mentioned F.I.R. No. 294, dt. 28-08-2024, U/s 318 (4) of B.N.S was registered at Police Station Bilaspur, Distt. Yamunanagar. In this regard, the relevant portion of the contents of F.I.R. have been reproduced as

under:-

From Mining officer, Mines and Geology Department, Yamuna Nagar to the Station House Officer, P.S. Charmant Yamuna Yamuna Nagar. Memo No/Mining/Yamuna Nagar/3077 dated 23.08.2024. Subject: regarding misuse of HMGIS Portal and taking legal action in this regard. On the subject cited above, you are hereby informed that in this office, through a whatsapp bearing No.9116423647, a complaint was received that MRK Trading company village Jaitpur District Yamuna Nagar (Project number 230806001153, Mobile No.8569991815 Email ID-vishl/vnr/989@gmail.com (copy attached), have been misusing the portal and issuing wrong e-rawana (dispatch), notices and the details are as under: (copies of the e-rawana notices are attached.)"

4. The petitioner's counsel prays for bail by imposing any stringent conditions and contends that further pre-trial incarceration would cause an irreversible injustice to the petitioner and their family.
5. The State's counsel opposes bail and refers to the reply.
6. It would be appropriate to refer to the following portions of the reply, which read as follows:

"16. That as the aforesaid offence has been committed by the petitioner and his co-accused in a planned and organized manner and the petitioner is member of organized crime syndicate and falls within the definition of section 111 of B.N.S. therefore keeping in view the facts and circumstances of the case on 13-10-2024 section 111(3) of B.N.S. was added in the present case.

19. That with regard to the role of the petitioner in the present case it is submitted that as per investigation conducted by the investigating agency till today it was revealed that the petitioner is owner of M/s Yamuna Screening Plant Village Belgarh and having land adjoining to the said screening plant in the name of his wife namely Geeta. The copy of Patwari Report in this regard has been Annexed as Annexure R-18. As per due procedure of law the petitioner has to purchase the mining mineral through legal process and as per record the petitioner purchased mining mineral in the month of January-2024 and the last e-ravanna in this regard was issued on 26 January 2024 but even thereafter the petitioner continued to run the said screening plant by doing illegal mining from the land standing in the name of his wife and also from the banks/land of Yamuna river.

20. That it is pertinent to mention here that during investigation it was further revealed that the petitioner has supplied 9586.11 MT of mining material (Gatka) to M/s Bhagat Singh Stone Crusher in illegal manner without showing the same on the portal. In this regard, record from M/s Bhagat Singh Stone Crusher has been taken into the possession which shows the illegal supply of 1627 trucks of mining minerals by the petitioner to the M/s Bhagat Singh Stone Crusher. In this regard the record was verified by the C.A. and the report of the C.A. is annexed as Annexure R-19.

21. That it is also pertinent to mention here that M/s Bhagat Singh Stone Crusher has shown the purchase of above said mining material from R.K. Trading Company, Jaitpur, P.S. Bilaspur, Distt.

Yamuna Nagar but the said R.K. Trading Company is a fictitious firm and the said firm has no existence. Whereas the said mining material was actually supplied by the petitioner. Thus, the petitioner is party to the criminal conspiracy and in pursuance of said criminal conspiracy the petitioner and his co-accused used to make illegal material to be legal without payment of mining royalty to the state government and thereby caused loss to the tune of several crores to the government. The petitioner also supplied the mining material (Gatka) to the M/s Bhagat Singh Stone Crusher without payment of any royalty. Thus the petitioner actively participated in the commission of present offence.”

7. It shall be appropriate to mention para 3 of the bail petition, which reads as follows:

“3. That the present accused petitioner has nothing to do with any of the above i.e. the consigner, the consignee or the vehicles which have been allegedly used for transportation of the mining material. Similarly, the E-way Bills (Rawana Nos.) also do not belong to the petitioner and have not been generated for his concern. Infact the petition is having a screening plant which a partnership firm of the petitioner with one Sh. Amit Kumar which is named M/s Yamuna Screening Plant at village Bailgarh, Police Station Partap Nagar, Distt. Yamuna Nagar, which is in operation for the last about 4 years. It is relevant to mention the mining activities remain suspended in between the period from 30.06.2024 to 30.09.2024 and thus the petitioner is innocent and has no connection whatsoever with the allegations as levelled in the FIR.”

8. The explanation offered by the petitioner in the bail petition and as mentioned above is not prima facie satisfactory. There is sufficient prima facie evidence connecting the petitioner with the alleged crime. However, pre-trial incarceration should not be a replica of post-conviction sentencing. Per paragraph 10 of the bail petition, the petitioner has been in custody since 09.09.2024. Per the custody certificate dated 02.11.2024, the petitioner's total custody in this FIR is 01 month and 11 days. Given the penal provisions invoked viz-a-viz pre-trial custody, coupled with the prima facie analysis of the nature of allegations, and the other factors peculiar to this case, there would be no justifiability further pre-trial incarceration at this stage.

9. Without commenting on the case's merits, in the facts and circumstances peculiar to this case, and for the reasons mentioned above, the petitioner makes a case for bail. This order shall come into force from the time it is uploaded on this Court's official webpage.

10. Given above, provided the petitioner is not required in any other case, the petitioner shall be released on bail in the FIR captioned above subject to furnishing bonds to the satisfaction of the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

11. While furnishing a personal bond, the petitioner shall mention the following personal identification details:

1.	AADHAR number	
2.	Passport number (If available) and when the attesting officer/court considers it appropriate or considers the accused a flight risk.	
3.	Mobile number (If available)	
4.	E-Mail id (If available)	

12. This order is subject to the petitioner's complying with the following terms.

13. The petitioner shall abide by all statutory bond conditions and appear before the concerned Court(s) on all dates. The petitioner shall not tamper with the evidence, influence, browbeat, pressurize, induce, threaten, or promise, directly or indirectly, any witnesses, Police officials, or any other person acquainted with the facts and circumstances of the case or dissuade them from disclosing such facts to the Police or the Court.

14. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

15. A certified copy of this order would not be needed for furnishing bonds, and any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify its authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds.

16. **Petition allowed** in terms mentioned above. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

12.11.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.