

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-50875-2024
Reserved on: 13.01.2025
Pronounced on: 27.01. 2025

Kala Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Argued by: Mr. Kuldip Singh, Advocate,
for the petitioner.

Mr. Jasjit Singh, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
98	31.08.2024	Arniwala, District Fazilka	303 (2) BNS, 21 (1) and 4(1) of Mines and Minerals (Development and Regulation) Act, 1957

1. The petitioner apprehending arrest in the FIR captioned above has come up before this Court under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023, [BNSS], seeking anticipatory bail.
2. In paragraph 16 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 the facts of the case are as under:-
(i) The FIR in question was registered against the petitioner-accused on the basis of recovery of stolen sand. Brief facts of the case are that on 31.08.2024, when the police party headed by ASI Malkeet Singh, in Govt. vehicle No.PB-22K-9057 Bolero was present at Bus Stand Mandi Roran Wali, for the patrolling purposes and checking suspicious persons, then an information was received by the police that Kala Singh son of Khushal Singh resident of Village Paliwala who is habitual of indulging in the illegal mining, is today also carrying sand in the tractor Tractor Swaraj 744 attached with trolley from the side of Village Sarrian Wala and if naka is established on link road near Pipe Factory, then the said person can be*

apprehended with stolen sand. The information being reliable and solid and fulfilling the ingredients of Section 303(2) of BNS, 2023 and Sections 21(1) & 4(1) of Mines and Minerals (Development and Regulation) Act, 1957, the FIR in question was got registered against the petitioner-accused by sending ruqa to the police station.

(ii) On the same day i.e. 31.08.2024, ASI Malkeet Singh alongwith fellow police officials established a naka at the place indicated by the informant. After some time, a tractor trolley Swaraj blue and white colour, attached with trolley loaded with sand was seen coming from the side of Village Sarrian Wala which was being driven by a clean shaven person. On seeing the police, the said person stopped the tractor trolley at a distance and after leaving the tractor trolley there, he succeeded in running away from the spot. ASI Malkeet Singh identified the said person as Kala Singh (present petitioner) as he already knew him. The tractor and trolley (loaded with sand) were taken into police custody by following proper procedure.”

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:

“4. That during the investigation, the incriminating evidence came on the file against the petitioner. During the investigation, it was found that the said tractor Swaraj (No.PB-57A-9727) and trolley which were used in commission of crime, belonged to the petitioner-accused. The petitioner indulged into illegal mining of sand from the land and stolen the same. The challan is yet to be filed in the learned court.”

7. The Police did not arrest the petitioner; if they intended to arrest the petitioner, it was not impossible. A perusal of the reply does not point out the steps taken to arrest the accused.

8. Pre-trial incarceration should not be a replica of post-conviction sentencing. The evidence might be prima facie sufficient to launch prosecution or to frame charges, but this Court is not considering the evidence at that stage but is analyzing it for the stage of anticipatory bail. An analysis of the above does not justify custodial interrogation or pre-trial incarceration.

9. Given the above, the penal provisions invoked coupled with the prima facie analysis of the nature of allegations and the other factors peculiar to this case, there would be no justifiability for custodial interrogation or the pre-trial incarceration at this stage, subject to the compliance of terms and conditions mentioned in this order.

10. 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.

11. 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 Arresting Officer, and if the matter is before a Court, then the concerned Court and due to unavailability before any nearest Ilaqa Magistrate/duty Magistrate. Before accepting the surety, the concerned Officer/Court must be satisfied that if the accused fails to appear, such surety can produce the accused.

12. 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)	

13. This order is subject to the petitioner's complying with the following terms. 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. The petitioner is directed to join the investigation within seven days of uploading this order on the official webpage of the High Court of Punjab and Haryana and as and when called by the Investigator. The petitioner shall be in deemed custody for Section 27 of the Indian Evidence Act, 1872/ Section 23 of BSA, 2023. The petitioner shall join the investigation as and when called by the Investigating Officer or any Superior Officer and shall cooperate with the investigation at all further stages as required. In the event of failure to do so, the prosecution will be open to seeking cancellation of the bail. During the investigation, the petitioner shall not be subjected to third-degree, indecent language, inhuman treatment, etc.

15. In case the Investigator/Officer-In-Charge of the concerned Police Station

arraigns another section of any penal offense in this FIR, and if the new section prescribes a maximum sentence that is not greater than the sections mentioned above, then this bail order shall be deemed to have also been passed for the newly added section(s). However, suppose the newly inserted sections prescribe a sentence exceeding the maximum sentence prescribed in the sections mentioned above; then, in that case, the Investigator/Officer-In-Charge shall give the petitioner notice of a minimum of seven days, providing an opportunity to avail the remedies available in law.

16. **This bail is conditional, and the foundational condition is that if the petitioner indulges in any non-bailable offense, the State shall file an application for cancellation of this bail before the Sessions Court, which shall be at liberty to cancel this bail.**

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

18. 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.

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

(ANOOP CHITKARA)
JUDGE

27.01., 2025
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Whether speaking/reasoned: Yes
Whether reportable: No.