

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

202

Date of decision: 14.08.2020

- (1) **CRM-M-14956-2020**
Balwinder SinghPetitioner
Versus
State of Punjab and anotherRespondents
- (2) **CRM-M-14966-2020**
Sukhwinder SinghPetitioner
Versus
State of Punjab and anotherRespondents
- (3) **CRM-M-14979-2020**
Kulwinder SinghPetitioner
Versus
State of Punjab and anotherRespondents
- (4) **CRM-M-14989-2020**
Sehajdeep SinghPetitioner
Versus
State of Punjab and anotherRespondents
- (5) **CRM-M-14990-2020**
Pardeep KumarPetitioner
Versus
State of Punjab and anotherRespondents
- (6) **CRM-M-15149-2020**
Gurjinder SinghPetitioner
Versus
State of Punjab and anotherRespondents
- (7) **CRM-M-15630-2020**
Harpreet SinghPetitioner
Versus
State of Punjab and anotherRespondents
- (8) **CRM-M-16041-2020 (O&M)**
Baljit SinghPetitioner
Versus
State of Punjab and anotherRespondents
- (9) **CRM-M-16390-2020**
Pankaj KumarPetitioner
Versus
State of Punjab and anotherRespondents

- (10) **CRM-M-15647-2020**
Harpreet SinghPetitioner
Versus
State of Punjab and anotherRespondents
- (11) **CRM-M-15655-2020**
Baljit SinghPetitioner
Versus
State of Punjab and anotherRespondents
- (12) **CRM-M-15695-2020**
Tarlochan SinghPetitioner
Versus
State of Punjab and anotherRespondents
- (13) **CRM-M-15806-2020**
Gursahib SinghPetitioner
Versus
State of Punjab and anotherRespondents
- (14) **CRM-M-15817-2020**
Gurpreet SinghPetitioner
Versus
State of Punjab and anotherRespondents
- (15) **CRM-M-15826-2020**
Swarn SinghPetitioner
Versus
State of Punjab and anotherRespondents
- (16) **CRM-M-16438-2020 (O&M)**
Baldev SinghPetitioner
Versus
State of PunjabRespondent
- (17) **CRM-M-16990-2020 (O&M)**
Tajinder Singh Singh and anotherPetitioners
Versus
State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Ferry Sofat, Advocate
for the petitioners in
CRM-M-14956-2020; CRM-M-14966-2020;
CRM-M-14979-2020; CRM-M-14989-2020;
CRM-M-14990-2020 and CRM-M-15149-2020.

Mr. Sumeet Pal Singh Khaira, Advocate
for the petitioner in CRM-M-15630-2020.

Mr. Amit Kumar Saini, Advocate
for the petitioners
in CRM-M-16041-2020; CRM-M-15806-2020;
CRM-M-15817-2020; CRM-M-15826-2020;
CRM-M-16438-2020 and CRM-M-16990-2020.

Mr. Ravinder Singh, Advocate
for the petitioner in CRM-M-16390-2020.

Mr. Onkar Rai, Advocate
for the petitioners in CRM-M-15647-2020;
CRM-M-15655-2020 and CRM-M-15695-2020).

Mr. M.S. Nagra, AAG Punjab
for the respondent-State with
Ms. Alka Meena, SSP, SBS Nagar and
Mr. Hareent Singh, DSP, SBS Nagar.

Mr. V.N. Zade, Director,
Department of Mines and Geology, Punjab
Respondent No.2-in person.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

1. The above-mentioned petitioners have filed above-mentioned petitions under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to them in case FIR No.52 dated 26.05.2020 registered under Section 379 of the Indian Penal Code, 1860 (for short 'the IPC') and Sections 21(1) and 4(1) of the Mines and Minerals (Development and Regulation) Act, 1957 (for short 'the MMDR Act') at Police Station Rahon, District SBS Nagar.

2. Briefly stated the facts relevant for disposal of the petition are that on 26.05.2020 S.I. Balwinder Singh, Incharge Police Post Sheikh Majra, Police Station Rahon with police party was present for patrolling duty at village Saidpur. Secret information was received about illegal mining of sand from bed of river Satluj in the area of Shamashpur. Written information was sent to S.H.O. Police Station

Rahon, S.B.S. Nagar on the basis of which the above-said FIR was registered. Information was also given to Harjinder Singh, Mining Officer, authorized by the Punjab Government to initiate legal action under Section 22 of the MMDR Act against the persons indulging in illegal mining who joined the police party at the time of raid. Raid was accordingly conducted. During raid 29 Tippers (out of which 8 Tippers were filled with sand), 2 Poclain machines, one tractor trolley and one motorcycle were seized on the spot. On seeing the police party, the owners/drivers of the above-said vehicles fled from the spot. On receipt of information regarding presence of two drivers of tippers namely Harjit Singh @ Jeeta and Manmohan Singh and parking of two Canters filled with sand near Mehfil One Dhaba, Sheikhan Majara, the police arrested Harjit Singh @ Jeeta and Manmohan Singh and also seized two canters and arrested their drivers namely Sikander Khan and Bikharjit Singh @ Bikkar. Harjit Singh @ Jeeta and Manmohan Singh disclosed names of the petitioners as being the drivers/owners respectively of the vehicles. Out of fifty five accused nominated in the case, thirty three have been arrested.

3. Apprehending their arrest, the petitioners have filed the present petitions for grant of anticipatory bail.

4. The petitioners were granted interim bail by this Court vide order dated 17.06.2020 with direction to joint investigation.

5. In view of the observations made by learned Additional Sessions Judge, SBS Nagar that "...It is very surprising that illegal mining at such large scale is going on in the area in unauthorised manner and entire State machinery is turning blind eye to it for the reasons best known to them...", this Court vide order dated 17.06.2020 ordered impleading of the Director, Department of Mines and Geology, Punjab as respondent No.2 and respondent No.2 was directed to file affidavit giving requisite details as to the instructions issued to the concerned officers and also action taken for preventing illegal mining in the State and apprehension and prosecution of the offenders.

6. The petitions have been opposed by learned State Counsel in terms of replies filed by way of affidavit of Sh. Harneel Singh, PPS,

Deputy Superintendent of Police, Sub Division Nawanshahr and affidavit of Alka Meena, IPS, Senior Superintendent of Police, SBS Nagar on behalf of respondent No.1-State in the respective petitions.

7. In the affidavits it has been submitted that the petitioners are drivers/owners of the vehicles involved in illegal mining; investigation is being carried out by the Special Investigating Team constituted vide order dated 22.06.2020 by the Senior Superintendent of Police, SBS Nagar and custodial interrogation of the petitioners is required in the case.

8. Affidavit of V.N. Zade, Director, Department of Mines and Geology, Punjab Chandigarh has been filed on behalf of respondent No.2 in the Registry which is taken on record.

9. In his affidavit, V.N. Zade, Director, Department of Mines and Geology, Punjab Chandigarh has enlisted the steps taken/to be taken by the State to curb illegal mining which may be summarized as follows:-

- (i) The Punjab Sand and Gravel Mining Policy, 2018 has been notified providing for auction of mining blocks keeping in view the demand of minerals in the State.
- (ii) For monitoring the movement of vehicles and ensuring that only authorized transportation of minor minerals is allowed, the Department is developing a portal with provisions for online booking of orders by consumers and online registration and tracking of vehicles for transportation of minor minerals.
- (iii) The Department has requested Ministry of Mines and Ministry of Electronics and Information Technology for implementing the Mining Surveillance System in the State of Punjab.
- (iv) The State of Punjab has framed the Punjab Minor Mineral Rules, 2013 providing for taking of action to prevent the illegal mining and unauthorized transportation of minerals.

- (v) Plan for monitoring and prevention of illegal mining of minerals in the State of Punjab has been notified vide Notification dated 14.03.2016.
- (vi) In view of amendment made in the MMDR Act, the District Legal Committee and the District Level Environment Management Cell are being substituted by District Mineral Foundation.
- (vii) The Deputy Commissioners have been asked to conduct review meetings of District Mineral Foundation to monitor the status of complaints, FIRs registered, ensure timely completion/filing of challan etc. and Additional Deputy Commissioners and Superintendent of Police (D) in each districts have been appointed as Nodal Officers.
- (viii) The officers of various departments have been authorized to act against illegal miners and Sub Divisional Magistrates have been appointed as Sub Divisional Mining Officers.
- (ix) The Department has also implemented directions of Hon'ble National Green Tribunal for enhancing the penalty on the vehicles indulging in illegal mining activities.
- (x) In the meeting dated 31.07.2020 issue of non-filing/delay in filing of FIRs by Police Department in some cases was noticed and vide order dated 06.08.2020 concerned Deputy Commissioners have been directed to take action against concerned officials for non filing/delay in filing of FIRs on the complaints of officers/officials of the Mines and Geology Department
- (xi) In view of the fact that most of the illegal mining activities are carried out in river bed which is managed by Drainage Wing of the Water Resources Department, the Council of Ministers in its meeting

dated 15.07.2020 has taken a decision to merge the Mines and Geology Department in the Drainage Wing of the Water Resources Department for better monitoring of mining activities and preventing illegal mining.

It has also been mentioned in the affidavit that since April, 2020, 201 FIRs have been registered and 299 vehicles have been confiscated in the State of Punjab.

10. I have heard learned Counsel for the petitioners and learned State Counsel and gone through the relevant record.

11. Learned Counsel for the petitioners have argued that the petitioners have been falsely implicated in the case registered on the basis of secret information. There is no specific allegation against the petitioner to connect the petitioners with the alleged offences. In the presence of the MMDR Act which is a special enactment, no offence under Section 379 of the IPC is made out. The offence under Section 21 of the MMDR Act is also not made out. Even otherwise Cognizance thereof cannot be taken by the Court except on written complaint of the person authorized by the Central/State Government as provided by Section 22 of the MMDR Act. The police could not register FIR and can not investigate the case and the FIR and subsequent proceedings are wholly illegal. The petitioners have joined the investigation. Nothing is to be recovered from them and their custodial interrogation is not required. Therefore, the petitioners may be ordered to be released on anticipatory bail. In support of their arguments, learned Counsel for the petitioners have placed reliance on judgments of this Court in **CRM-M-526-2012 Harmela Ram v. State of Haryana decided on 29.4.2013; CRR No.3850 of 2013 Labh Singh and others v. State of Punjab decided on 18.05.2015; CRM-M-17708-2016 Nachattar Singh v. State of Punjab decided on 30.11.2018 and CRM-M-33782-2015 Darbara Singh v. State of Punjab decided on 30.08.2018.**

12. On the other hand, learned State Counsel has argued that the petitioner are owners/drivers of the vehicles used for illegal mining from unauthorized place. As provided by Section 21(6) of the MMDR

Act offence under Section 21(2) of the MMDR Act is cognizable and FIR could be registered by the police on the basis of secret information received. Further illegal mining of sand from bed of river Satluj without consent of the State/grant of licence by the State constitutes theft under Section 378 of the IPC punishable under Section 379 of the IPC and the police was not debarred by the provisions of Section 22 of the MMDR Act from taking action against persons who had committed theft of sand and could register FIR and can investigate the case and submit final report regarding the same in accordance with the provisions of the Cr.P.C. Harjinder Singh, Mining officer had joined the team which conducted the raid. Filing of written complaint under Section 22 of the MMDR Act by the authorized officer is required only at the time of taking of cognizance of offence under Section 21(1) of the MMDR Act by the Judicial Magistrate First Class. Custodial interrogation of the petitioners is required to unearth the nexus with the mafia indulging in illegal mining on such a large scale. The petitioners do not deserve grant of anticipatory bail. Therefore, the petition may be dismissed. In support of his arguments, learned State Counsel has placed reliance on the observations made by Hon'ble Supreme Court in its judgment in ***State of NCT of Delhi Vs. Sanjay : 2014(4) RCR (Criminal) 211.***

13. A reference to the relevant statutory provisions is essential for adjudicating upon the submissions made by learned Counsel for the petitioners challenging the legality of registration of FIR and investigation of the case by the police.

14. Section 378 of the IPC, which defines theft (of moveable property) reads as under:-

“378.Theft.—Whoever, intending to take dishonestly any movable property out of the possession of any person without that person’s consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.—A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which effects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving

or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.”

15. Section 379 of the IPC which prescribes the punishment for theft reads as under:-

“379. Punishment for theft.—Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

16. The relevant provisions of Sections 4, 21 and 22 of the MMDR Act are reproduced as under:-

"4. Prospecting or mining operations to be under licence or lease. (1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules made thereunder :

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement.

Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, 6 [the Atomic Minerals Directorate for Exploration and Research] of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited., a Government company within the meaning of 7 [clause (45) of section 2 of the Companies Act, 2013 (18 of 2013), and any such entity that may be notified for this purpose by the Central Government.

Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the

Union Territory of Goa, Daman and Diu.

(1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(2) No reconnaissance permit, prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(3) Any State Government may, after prior consultation with the Central Government and in accordance with the rules made under Section 18, undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not already held under any reconnaissance permit, prospecting licence or mining lease.

Penalties 21. (1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty-five thousand rupees, or with both.

(2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(3) Where any person trespasses into any land in contravention of the provisions of sub-section (1) of section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such

court.

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under sub-section (1) shall be cognizable.

22. Cognizance of offences : No court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government."

17. So far as the offence punishable under Section 21 (1) read with section 4 (1) of the MMDR is concerned, due to the same being cognizable under Section 21(6) of the MMDR Act the police could register FIR and investigate the case in accordance with the provisions of the Cr.P.C. No doubt Section 22 of the MMDR Act mandates that no Court shall take cognizance of any offence punishable under the MMDR Act, or any rules made thereunder except upon complaint in writing made by a person authorized in this behalf by the Central Government or of the State Government but the question of making of such complaint will arise only at the time of taking of cognizance by the Court and Section 22 of the MMDR Act does not bar registration of FIR and investigation of the case by the police. It may also be added here that in his affidavit filed by Mr. V.N. Zade, Director, Department of Mines and Geology, Punjab Chandigarh on behalf of respondent No.2 it has been mentioned that complaint was submitted by Mining Officer, SBS Nagar to the police authority on 26.05.2020 for initiating proceedings under Section 21(1) and 4(1) of the MMDR Act for confiscating vehicles on the spot and taking criminal action against the culprits.

18 In *CRM No.M-4211 of 2014 Hardeep Singh and another Versus State of Haryana and others decided on 04.12.2014* similar questions as to legality of registration of FIR and investigation by the

police and bar to taking of cognizance except on the basis of the complaint were raised in the context of the provisions of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and the rules made thereunder. Hon'ble Division Bench answered the questions as under :-

“In the circumstances, the questions as formulated in the reference are answered in the following manner, that:-

- (1) FIR for the offence committed under the Act can be registered on the complaint of the Appropriate Authority and can be investigated by the Police; however, cognizance of the same can be taken by the Court on the basis of a complaint made by one of the persons mentioned in Section 28 of the Act.
- (2) A report under Section 173 CrPC along with the complaint of an appropriate authority can be filed in the Court. However, cognizance would be taken only the complaint that has been filed in accordance with Section 28 of the Act.
- (3) FIR can be lodged and offences can be investigated by the Police but cognizance only of the complaint is to be taken by the Court.”

19. So far as the offence of theft as defined by Section 378 and punishable under section 379 of the IPC is concerned, in ***State of NCT of Delhi Vs. Sanjay : 2014(4) RCR (Criminal) 211*** Hon'ble Supreme Court held that Section 22 of the MMDR Act is not a complete and absolute bar for taking of action by the police for illegal and dishonestly committing theft of minerals including sand from the river bed and that the ingredients constituting the offence under Section 21(1) of the MMDR Act and the ingredients of dishonestly removing sand and gravel from the river beds which is the property of the State, without its consent constituting theft under Section 378 punishable under Section 379 of the IPC are different and on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the offence of theft punishable under Section 379 of the IPC without awaiting the receipt of complaint that may be filed by the authorized officer for taking cognizance in respect of violation of various provisions of the MMRD Act. The relevant paragraphs of the judgment are reproduced as under:-

“66. Considering the principles of interpretation and the

wordings used in Section 22, in our considered opinion, the provision is not a complete and absolute bar for taking action by the police for illegal and dishonestly committing theft of minerals including sand from the river bed.

68. There cannot be any dispute with regard to restrictions imposed under the MMDR Act and remedy provided therein. In any case, where there is a mining activity by any person in contravention of the provisions of Section 4 and other sections of the Act, the officer empowered and authorised under the Act shall exercise all the powers including making a complaint before the jurisdictional magistrate. It is also not in dispute that the Magistrate shall in such cases take cognizance on the basis of the complaint filed before it by a duly authorised officer. In case of breach and violation of Section 4 and other provisions of the Act, the police officer cannot insist Magistrate for taking cognizance under the Act on the basis of the record submitted by the police alleging contravention of the said Act. In other words, the prohibition contained in Section 22 of the Act against prosecution of a person except on a complaint made by the officer is attracted only when such person sought to be prosecuted for contravention of Section 4 of the Act and not for any act or omission which constitute an offence under Indian Penal Code.

69. However, there may be situation where a person without any lease or licence or any authority enters into river and extracts sands, gravels and other minerals and remove or transport those minerals in a clandestine manner with an intent to remove dishonestly those minerals from the possession of the State, is liable to be punished for committing such offence under Sections 378 and 379 of the Indian Penal Code.

70. From a close reading of the provisions of MMDR Act and the offence defined under Section 378, I.P.C., it is manifest that the ingredients constituting the offence are different. The contravention of terms and conditions of mining lease or doing mining activity in violation of Section 4 of the Act is an offence punishable under Section 21 of the MMDR Act, whereas dishonestly removing sand, gravels and other minerals from the river, which is the property of the State, out of State's possession without the consent, constitute an offence of theft.

71. Hence, merely because initiation of proceeding for commission of an offence under the MMDR Act on the basis of complaint cannot and shall not debar the police from taking action against persons for committing theft of sand and minerals in the manner mentioned above by exercising power under the Code of Criminal Procedure and submit a report before the Magistrate for taking

cognizance against such person. In other words, in a case where there is a theft of sand and gravels from the Government land, the police can register a case, investigate the same and submit a final report under Section 173, Cr.P.C. before a Magistrate having jurisdiction for the purpose of taking cognizance as provided in section 190 (1)(d) of the Code of Criminal Procedure.

72. After giving our thoughtful consideration in the matter, in the light of relevant provisions of the Act vis-a-vis the Code of Criminal Procedure and the Indian Penal Code, we are of the definite opinion that the ingredients constituting the offence under the MMDR Act and the ingredients of dishonestly removing sand and gravel from the river beds without consent, which is the property of the State, is a distinct offence under the IPC. Hence, for the commission of offence under Section 378 Cr.P.C., on receipt of the police report, the Magistrate having jurisdiction can take cognizance of the said offence without awaiting the receipt of complaint that may be filed by the authorised officer for taking cognizance in respect of violation of various provisions of the MMRD Act....”

20. It follows from the above discussion that the challenge to the legality of action of the police in registration of FIR and investigation of the case is devoid of any merit.

21. Since none of the cases ***CRM-M-526-2012 Harmela Ram v. State of Haryana decided on 29.4.2013; CRR No.3850 of 2013 Labh Singh and others v. State of Punjab decided on 18.05.2015; CRM-M-17708-2016 Nachattar Singh v. State of Punjab decided on 30.11.2018 and CRM-M-33782-2015 Darbara Singh v. State of Punjab decided on 30.08.2018***, relied upon by learned Counsel for the petitioners, pertained to allegations of illegal mining from river bed, observations therein are not applicable to the facts of present case and are not of any help to the petitioners.

22. In the present case, the petitioners are alleged to be owners/drivers of the vehicles i.e. 29 Tippers (out of which 8 Tippers were filled with sand), 2 Poclain machines, 2 Canters and one motorcycle found on the unauthorized site for illegal mining of sand from the river bed.

23. Ill effects of illegal mining of sand from river beds were noticed by Hon'ble Supreme Court in ***State of NCT of Delhi Vs. Sanjay***

: 2014(4) RCR (Criminal) 211 and the relevant paragraphs are reproduced as under:-

“29. The Court cannot lose sight of the fact that adverse and destructive environmental impact of sand mining has been discussed in the UNEP Global Environmental Alert Service report. As per the contents of the report, lack of proper scientific methodology for river sand mining has led to indiscriminate sand mining, while weak governance and corruption have led to widespread illegal mining. While referring to the proposition in India, it was stated that Sand trading is a lucrative business, and there is evidence of illegal trading such as the case of the influential mafias in our Country.

30. The mining of aggregates in rivers has led to severe damage to river, including pollution and changes in levels of pH. Removing sediment from rivers causes the river to cut its channel through the bed of the valley floor, or channel incision, both upstream and downstream of the extraction site. This leads to coarsening of bed material and lateral channel instability. It can change the riverbed itself. The removal

of more than 12 million tonnes of sand a year from the Vembanad Lake catchment in

India has led to the lowering of the riverbed by 7 to 15 centimetres a year. Incision can also cause the alluvial aquifer to drain to a lower level, resulting in a loss of aquifer storage. It can also increase flood frequency and intensity by reducing flood regulation capacity. However, lowering the water table is most threatening to water supply exacerbating drought occurrence and severity as tributaries of major rivers dry up when sand mining reaches certain thresholds.

31. Illegal sand mining also causes erosion. Damming and mining have reduced sediment delivery from rivers to many coastal areas, leading to accelerated beach erosion.

32. The report also dealt with the astonishing impact of sand mining on the economy. It states that the tourism may be affected through beach erosion. Fishing, both traditional and commercial can be affected through destruction of benthic fauna. Agriculture could be affected through loss of agricultural land from river erosion and the lowering of the water table. The insurance sector is affected through exacerbation of the impact of extreme events such as floods, droughts and storm surges through decreased protection of beach fronts. The erosion of coastal areas and beaches affects houses and infrastructure. A decrease in bed load or channel shortening can cause downstream erosion including bank erosion and the undercutting or undermining of engineering structures such as bridges, side protection walls and structures for water supply.

33. Sand is often removed from beaches to build hotels, roads and other tourism related infrastructure. In some locations, continued construction is likely to lead to an unsustainable situation and destruction of the main natural attraction for visitors beaches themselves.

34. Mining from, within or near a riverbed has a direct impact on the stream's physical characteristics, such as channel geometry, bed elevation, substratum composition and stability, in stream roughness of the bed, flow velocity, discharge capacity, sediment transportation capacity, turbidity, temperature, etc. Alteration or modification of the above attributes may cause hazardous impact on ecological equilibrium of riverine regime. This may also cause adverse impact on in stream biota and riparian habitats. This disturbance may also cause changes in channel configuration and flow-paths.

67. The Court shall take judicial notice of the fact that over the years rivers in India have been affected by the alarming rate of unrestricted sand mining which is damaging the eco-system of the rivers and safety of bridges. It also weakens river beds, fish breeding and destroys the natural habitat of many organisms. If these illegal activities are not stopped by the State and the police authorities of the State, it will cause serious repercussions as mentioned hereinabove. It will not only change the river hydrology but also will deplete the ground water levels.”

24. Due to undesirable human interference with forces of nature, the calamities, which were a few years back considered to be un-scientific fiction or remote possibilities, have turned into harsh realities and become nightmares in many parts of the world endangering human life and even posing a threat to the very existence of mankind if remedial measures are not taken. Sustainable development with ecological balance is the only permissible way of life. There is urgent need for creating widespread awareness and generating public commitment and support for the cause.

25. It is evident from the affidavit filed by Sh. V.N. Zade, Director, Department of Mines and Geology, Punjab Chandigarh that good number of effective steps have been/are being taken by the Government/department for checking of illegal mining in the State. However, economic offence of illegal mining, which thrives on unlawful enrichment, can be prevented only with public cooperation, participation, commitment and support by not purchasing such

sand/minor minerals from illegal miners/unauthorized source and effective ground level implementation of the steps taken by the Government/department. For this purpose it will be appropriate that a provision be also made for making of complaints by the members of Public with photographs of the sites of illegal mining and the vehicles illegally transporting minerals on the portal of the Department and prompt action be taken on such complaints by concerned Police/Mining Officers in accordance with law and in case of gross neglect, unreasonable delay or culpable misconduct on the part of the Mining Officers or Police Officers in filing of complaints, registration of FIRs and investigation of the cases, action for their prosecution in appropriate cases be also taken in accordance with law, besides initiation of disciplinary proceedings against them. Appropriate instructions be also issued in this regard.

26. Even though under Section 21(4A) of the MMDR Act vehicles used for illegal mining are liable to confiscation but such vehicles are generally released on sapurdari during investigation/trial. In the absence of separate mechanism for confiscation of the vehicles with provision of appeal in the special enactment, applicability of the provisions of Cr.P.C. for release of the vehicles on sapurdari is not excluded. However, as is the common experience in some cases no proceedings are initiated at the time of filing of complaint/challan and even after decision of the case for confiscation of the vehicles. In the present case also in the course of arguments it has been mentioned that some of the vehicles involved have been released on sapurdari on the basis of **no objection report** submitted by the police. It will, therefore, be appropriate that appropriate proceedings are initiated for confiscation of the vehicles at the time of filing of the complaint/challan. It may also be added here that the confiscation of the vehicles will not be dependent solely on the basis of conviction of the accused who may be granted benefit of doubt on the grounds such as non-identification of the driver/user of the vehicle particularly when use of the vehicles for illegal mining may be proved by documentary evidence comprising of videography/photographs of the same, although

reasonable opportunity before such confiscation will have to be provided to the registered owners of such vehicles. Appropriate instructions be issued in this regard also.

27. So far as the question of grant of anticipatory bail to the petitioners is concerned, it is pertinent to observe that the Courts have been granted power to grant anticipatory bail to protect against motivated criminal litigation instituted at the instance of unscrupulous litigants animated by malice or political vendetta. Grant of anticipatory bail is an extra-ordinary remedy and is not, therefore, intended to be granted in every case. Number of factors including nature and gravity of the offences, quantum of sentence, likelihood of the accused absconding, intimidating or influencing the witnesses or tempering with the evidence or committing similar offences have also to be taken into consideration. Further, socio-economic offences constitute a class apart and need to be visited with different approach in matter of bail. Since socio-economic offences have deep rooted conspiracies affecting the moral fibre of society and causing irreparable harm, the same have to be viewed seriously. Reference in this regard may be made to *State of Bihar and another Vs. Amit Kumar @ Bachaha Rai : 2017 (13) SCC 751* and *Rohit Tandon Vs. Directorate of Enforcement : 2018(11) SCC 46*. Illegal mining/theft of sand from river beds not only involves loss of public exchequer but also endangers ecological balance resulting in enundating floods causing huge loss of lives and property and other devastating consequences. Persons involved have to be sternly dealt with and effective steps have also to be taken to deny the fruits of crime to them. Therefore, the Courts cannot be liberal in the matter of grant of bail to persons allegedly involved in offence of illegal mining/theft of sand.

28. Even though in the present case the petitioners are stated to have joined investigation under orders granting interim anticipatory bail yet custodial interrogation of the petitioners is necessary for proper, thorough investigation of the case, ascertaining modus operandi of commission of the offence from initiation of illegal mining till disposal of the sand/minerals, discovering the identity of the other persons

involved, patronage if any enjoyed and collection of the material evidence as to all material aspects of the case.

29. Keeping in view the facts and circumstances of the case, the fact that custodial interrogation of the petitioners is required for thorough investigation of the crime committed and also keeping in view the possibility of the petitioners influencing the witnesses or tempering with evidence and fleeing from justice, I am of the considered view that the petitioners do not deserve the concession of anticipatory bail.

30. In view of the above discussion, all the present petitions for grant of anticipatory bail to the petitioners are dismissed and interim anticipatory bail orders are vacated.

31. Due to larger public interest involved in preventing illegal mining, the requisite steps as mentioned in the affidavit of Sh. V.N. Zade, Director, Department of Mines and Geology, Punjab and in para Nos. 25 and 26 above be taken and appropriate instructions be issued and report be also filed before this Court in this regard expeditiously preferably within a period of three months.

32. A copy of this order be sent to the Director General of Police, Punjab and the Director, Department of Mines and Geology, Punjab for requisite compliance.

सत्यमेव जयते

14.08.2020
kothiyal

(ARUN KUMAR TYAGI)
JUDGE

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