

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No. 2549 OF 2015

ORDER:

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The petitioners, who are A-7 and A-8, filed the present application under Section 438 Cr.P.C. seeking release in the event of their arrest in connection with Crime No.485 of 2014 of Nellore (R) Police Station, Nellore District, registered against them and others for the offences punishable under Sections 447, 427, 379 and 120-B IPC, Section 21(1) and 21(4) of Mines and Minerals (Development and Regulation) Act, 1957 and Section 3 of Prevention of Damage to Public Property Act, 1984.

The gist of the allegations made in the panchanama and the First Information Report show that this is a case of illegal lifting of sand from river "Penna" and dumping of the same. The averments in the report show that on 31.01.2014 at about 11.00 hours the Tahasildar, Nellore conducted raid near Pottepalem sand reach and found sand being illegally lifted from Penna river with the help of two JCBs and 6 Hitachi vehicles. Basing these allegations, the above case came to be registered against the petitioners and others.

The learned counsel for the petitioners mainly submits that even accepting the allegations made in the panchanama and report to be true no offence is made out against the petitioners. According to him, the first petitioner is the owner of JCB, whereas the second petitioner is the driver of the said JCB, which was stationed near a sand heap and taken on hire by the State Government itself. He placed on record, the letter issued by Majji Suryakumari, counter signed by Administrative Officer, office of the Project Director, MEPMA, SPSR Nellore District, to show that the said vehicle was taken on hire and was used on behalf of the Government.

Learned Public Prosecutor on instructions submits that though the vehicle was taken on hire by the Government, the same was being used by the sand contractors for dumping sand.

A perusal of the statement of Suryakumari would show that the above Hitachi JCB

bearing No.A.P.26-A-3633 belonging to the first petitioner and the other vehicles were illegally mining sand from the Reach and storing them in four huge dumps. The quantity of sand was found to be equivalent to 485 full loads. The statement of Surya Kumari would show that inspite of warning given to her, the accused are continuing with illegal mining. When the same was informed to the Project Director, DWAMA, who in turn informed the same to the Tahasildar. In view of the statement given, the raid was conducted on 31.12.2014 and the above said vehicle was seized.

From the statement of Surya Kumari, it is clear that these petitioners along with others were indulging in illegal mining of sand and dumping the same. The rejection order discloses that earlier the letter given by Surya Kumari with regard to vehicles taken on hire was considered and their application for anticipatory bail was rejected by the trial court. Later on, a direction was given to them to surrender and on such surrender their application was directed to be considered. Thereafter they renewed their request before the said Court by filing another letter issued by Surya Kumari attested by Administrative Officer, Office of the Project Director, MEPMA, SPSR Nellore District but the same was rejected. The statement of Surya Kumari recorded by the police on 31.12.2014 shows the involvement of the petitioners in the crime. As contended by the learned counsel for the petitioner that all the accused and the officials might have colluded in transporting the sand illegally, but that by itself cannot be a ground to grant anticipatory bail when there is *prima facie* material on record to show the involvement of the petitioners. In fact the co-accused in this case, who stand on the same footing as that of the petitioners approached this Court seeking anticipatory bail vide CrI.P.No.1176 of 2015 and 555 of 2015. While dismissing their application, this Court directed them to appear before the trial Court and move an application for bail after giving prior notice to the Public Prosecutor concerned, in which event the same was directed to be considered either on the same day or atleast by the next day. The said order passed by this Court has become final and the accused therein surrendered before the Court concerned and were released on bail. Since the petitioners stand on the same footing as that of the other accused and in view of the statement of Surya Kumari, the request of the petitioners cannot be accepted. However, the petitioners, if so, advised shall surrender themselves before the concerned court and move an application seeking regular bail after giving prior notice to the Public Prosecutor and in which event the concerned Court shall consider the same and pass orders in accordance with law either on the same day or atleast on the next day.

With the above direction, the Criminal Petition is disposed of.

JUSTICE C. PRAVEEN KUMAR

Dt:08.04.2015

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