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Crl.O.P.No.5526 of 2023

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A.D.JAGADISH CHANDIRA, J.

The petitioners who apprehend arrest at the hands of the respondent police for the offences punishable under Section 379 of IPC, in Crime No.44 of 2023, seek anticipatory bail.

2. The case of the prosecution is that the 1st petitioner is an agriculturist aged about 84 years. While improving his agricultural land to cultivate and he had broken the rocks worth about Rs.3,500/- from his agricultural land and loaded it in a lorry. The 2nd petitioner is the owner of the vehicle. Hence the complaint.

3. The learned counsel for the petitioners would submit that the petitioners are innocent persons and the case of theft of stones has been fabricated against them. He would further submit that the petitioners have no previous case against them and without prejudice to their contentions, the petitioners are prepared to deposit an amount of



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Rs.5,000/- towards any charitable organization or association. Therefore, he prays for grant of anticipatory bail to the petitioners.

4. The learned Government Advocate (Criminal Side) for the respondent would submit that the 1st petitioner is an agriculturist and he thefted stones worth about Rs.3,500/- from his land and loaded it in a lorry. The 2nd petitioner is the owner of the vehicle. He would further submit that the petitioners have no previous case pending against them. However, he vehemently opposed to grant anticipatory bail to the petitioners.

5. This Court in a batch of petitions in Crl.O.P.No.13334 of 2020 dated 03.09.2020 had dismissed the earlier petitions expressing the opinion that the offenders despite several orders passed by various Benches of this Court regarding illegal sand mining and knowing fully well about the evil consequences affecting the environment and society at large and the implications thereon are indulging in the offences of illegal quarrying/mining, theft and smuggling of sand and minerals and that



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finding that the case comes under the category of cases of large magnitude affecting and impacting livelihood of a very large number of people knowingly and unknowingly, had dismissed the earlier petitions. Subsequently, the order of this Court in Crl.O.P.No.13334 of 2020 etc batch dated 03.09.2020 was clarified by the Hon'ble Supreme Court and the Hon'ble Supreme Court had not agreed with the broad sweep of the observation made by this Court in Paragraph 27 of the order in Crl.O.P.No.13334 of 2020 and connected matters decided on 03.09.2020 and had directed that the role assigned to the person would have to be considered on case to case basis.

6. It is the case of the petitioners that the quantity is minimum intended for their personal use and that they have no previous case, however in order to curb the illegal sand mining activities and taking into consideration the voluntary submission made by the petitioners offering to deposit a considerable amount to any charitable organization or association, this Court is of the opinion that the petitioners may be directed to deposit a sum of Rs.5,000/- (Rupees Five Thousand only) to



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credit of the concerned District Mineral Foundation Trust, without prejudice to their rights and contentions before the trial Court.

7. Taking into consideration the facts and circumstances of the case and the submissions made by the learned Counsel and also of the fact that there is no previous case pending against the petitioners, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

8. Accordingly, the petitioners shall make a non-refundable deposit of **Rs.5,000/- (Rupees Five Thousand only)** by way of Demand Draft/RTGS/NEFT each to the credit of the **District Mineral Foundation Trust concerned** and on such deposit and on receipt of proof of payment, the petitioners are ordered to be released on bail in the event of arrest or on their appearance, within a period of fifteen days from the date on which the order copy made ready, before **the learned Judicial Magistrate, Namakkal**, on condition that each of the petitioner shall execute separate a bond for a sum of Rs.25,000/- (Rupees Twenty Five



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Thousand only) with two sureties for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[a] the petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioners shall report before the respondent Police everyday at 10.30 a.m., for a period of two weeks and thereafter as and when required.

[c] the petitioners shall not tamper with evidence or witness either during investigation or trial;

[d] the petitioners shall not abscond either during investigation or trial;



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[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**;

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC;

10.03.2023

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