



Crl.O.P.No.28177 of 2024

Crl.O.P.No.28177 of 2024

WEB COPY

A.D.JAGADISH CHANDIRA, J.

The petitioner, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 303(2) of BNS r/w. Section 21(4) Mines and Minerals (Development and Regulation) Act in Crime No.277 of 2024, seeks anticipatory bail.

2.The case of the prosecution is that the Petitioner, who is the driver of the vehicle had illegally transported four units of river sand in a tipper lorry without any permit. Hence, the case.

3.The learned counsel for the petitioner submitted that the petitioner is an innocent person. The learned counsel further submitted that the petitioner is a lorry driver and on instructions from the owner of the lorry that he has been holding permit to transport the river sand, the petitioner has transported the sand. He further submitted that the petitioner has no previous case against him and without prejudice to his contentions, the petitioner is prepared to deposit an amount of Rs.20,000/- towards any charitable organization or association. Therefore, the learned counsel prays for grant of anticipatory bail to the



Crl.O.P.No.28177 of 2024

petitioner.

WEB COPY

4.The learned Government Advocate (Crl. Side) appearing for the respondent Police while opposing the grant of anticipatory bail to the petitioner submitted that the quantity of river sand involved is four units. He further submitted that the petitioner has no previous case pending against him.

5.Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) for the respondent and perused the materials available on record.

6.In respect of grant or refusal of anticipatory bail to the person indulging in illegal sand mining, smuggling and theft of sand and minerals, the Apex Court in ***S.Mohamed Shahul Hameed Vs. State rep. by the Inspector of Police (Special Leave to Appeal (Crl.) No.6029 of 2020 dated 11.12.2020)***, while expressing disagreement with the sweep observation made by this Court on the aspect of continuous misuse of discretionary power by the offenders and the enforcers as well in an organised manner, has clarified that in consideration of anticipatory bail, the role assigned to a person would have to be considered.



Crl.O.P.No.28177 of 2024

WEB COPY

7. Taking into consideration the facts and circumstances of the case and the sand involved is small quantity and that there is no previous case pending against the petitioner, this Court is inclined to grant anticipatory bail to the petitioner. However, in order to curb illegal sand mining activities and taking into consideration the voluntary submission made by the petitioner offering to deposit a considerable amount to any charitable organization or association, this Court is of the opinion that as one of the conditions for grant of anticipatory bail, the petitioner may be directed to deposit a sum of Rs.20,000/- (Rupees twenty thousand only) to the credit of District Legal Services Authority, Nagapattinam District, without prejudice to his rights and contentions before the trial Court.

8. It is made clear that merely because the petitioner is depositing the amount, it would not amount to the petitioner admitting his guilt in the criminal case and such amount is being paid without prejudice to the right of the petitioner.

9. Accordingly, the petitioner shall make a non refundable deposit of **Rs.20,000/- (Rupees twenty thousand only)** by way of Demand



Crl.O.P.No.28177 of 2024

Draft/RTGS/NEFT to the credit of the **District Legal Services Authority,**

Nagapattinam District, and on such deposit and on receipt of proof of payment, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date on which the order copy made ready, before the *learned Judicial Magistrate, Kilvelur*, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten 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 conditions that:

[a] the petitioner shall report before the respondent police daily at 10.00 a.m., until further orders.

[b] the petitioner shall not tamper with evidence or witness either during investigation or trial;

[c] the petitioner shall not abscond either during investigation or trial.

[d] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the Petitioner in accordance with law as if the conditions have been imposed and the Petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble



Crl.O.P.No.28177 of 2024

Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR
SCW 5560]**;

[e] If the accused thereafter absconds, a fresh FIR can be
registered under Section 269 BNS.

12.11.2024

sai



WEB COPY



Crl.O.P.No.28177 of 2024

A.D.JAGADISH CHANDIRA, J.

sai

Crl.O.P.No.28177 of 2024

Dated: 12.11.2024