



Crl.O.P.No.28314 of 2024

A.D.JAGADISH CHANDIRA, J.

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The petitioners apprehend arrest at the hands of the respondent police for the offences punishable under Sections 303(2) and 326(A) of The Bharatiya Nyaya Sanhita (BNS), 2023 r/w 21(1) of Mines and Minerals Act, 1957 in Crime No.345 of 2024, on the file of the respondent police, seek anticipatory bail.

2. The case of the prosecution is that when the respondent police were on their routine night inspection duty, they found the petitioners were involved in illegal theft of 1/2 unit of river sand and on seeing the police, some accused fled from the scene and these petitioners had intentionally drove their vehicle in a rash and negligent manner to threaten the cops, who were discharging their duty. Hence, this case.

3. Learned counsel for the petitioner would submit that the petitioners are innocent and they have been falsely implicated in this case. He further submitted that the petitioners had not committed any offence as alleged by the prosecution and without prejudice to their contentions, the petitioners are prepared to deposit an amount of Rs.5,000/- each towards any charitable



organization or association. Therefore, he prays for grant of anticipatory bail to the petitioners.

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4. Learned Government Advocate (Crl. Side) appearing for the respondent Police vehemently opposed for grant of anticipatory bail to the petitioners by stating that the quantity of river sand involved is 1/2 unit. He would further submit that the first accused is the owner, second accused is the driver of the vehicle, in which the river sand has been theft and other accused are associates of the offence.

5. Heard the learned counsel for the petitioners 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 persons 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.

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7. Taking into consideration the facts and circumstances of the case and the quantity of river sand involved in this case, this Court is inclined to grant anticipatory bail to the petitioners. 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 petitioners may be directed to deposit a sum of Rs.5,000/- (Rupees Five Thousand only) each to the credit of District Legal Services Authority, Vellore District, without prejudice to their rights and contentions before the trial Court.

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

9. Accordingly, the petitioners shall make a non refundable deposit of **Rs.5,000/- (Rupees Five Thousand only)** by way of Demand Draft/RTGS/NEFT to the credit of the **District Legal Services Authority,**



Vellore District, 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 **Judicial Magistrate, Katpadi** on condition that the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each 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 petitioners shall report before the respondent police daily at 10.30 a.m., until further orders.

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

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



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

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