



Crl.O.P.No.28448 of 2024

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A.D.JAGADISH CHANDIRA. J.

The petitioners/A4&A5, who apprehend arrest at the hands of the respondent police for the offence punishable under Sections 303(2) and 326(a) of BNS Act,2023 r/w 21(1) of MM Act, in Crime No.345 of 2024 on the file of the respondent police, seek anticipatory bail.

2. The case of the prosecution is that the petitioners phave transported 1/4 unit of river sand, without having any valid license. Hence the case.

3. The learned counsel for the petitioners would submit that the petitioners are innocent persons and that a case of sand theft has been fabricated against them. He would further submit that they have no previous case against them and without prejudice to his contentions, the petitioners are prepared to deposit an amount of Rs.5,000/- towards any charitable organization or association. Therefore, he prays for grant of anticipatory bail to the petitioners.



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4.The learned Government Advocate (Crl. Side) appearing for the respondent Police opposed for grant of anticipatory bail to the petitioners stating that the quantity of river sand involved is 1/4 unit. However, he submitted that the petitioners have no previous case pending against them.

5.Heard the learned counsel for the petitioners, the learned Advocate (Crl.side) appearing 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, the sand involved is small quantity and the vehicle involved is only bullock cart and that there is no previous case pending against the petitioners, 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 petitioners 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) to the credit of District Legal Services Authority, Cheyyar District, without prejudice to his 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 his guilt in the criminal case and such amount is being paid without prejudice to the right of the petitioners.



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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, Cheyyar 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 his 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 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 10.00 a.m., until further orders.

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



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[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 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]**;

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

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