



Crl.O.P.No.29264 of 2024

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A.D.JAGADISH CHANDIRA, J.

The petitioners/Accused No.2 & 3, who apprehend arrest at the hands of the respondent police for the offence punishable under Section 303(2) of IPC read with Section 21(1) of the Mines and Minerals (Development & Regulation) Act, 1957 in Crime No.335 of 2024, on the file of the respondent police, seek anticipatory bail.

2. The case of the prosecution is as per the defacto complainant is that, on 18.11.2024 at about 13.00 hours, based on a secret information, the defacto complainant and his team conducted a search, during which, they found that the accused had without any permission from the Government, dug and taken one unit of gravel sand by using JCB and tipper lorry. Hence, the complaint.

3. The learned counsel for the Petitioners would submit that the petitioners are innocent and they have been falsely implicated in this case. He further would further that the petitioners are the owners of the



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said vehicles and without their knowledge, the JCB and the tipper lorry were used for the alleged offence. He would further submit that the petitioners are ready to abide by any condition that may be imposed by this Court. Hence, he prays for grant of anticipatory bail to the petitioners.

4. The learned Government Advocate (Crl. Side) for the respondent Police, while opposing the grant of anticipatory bail to the petitioners, would submit the the petitioners without permission from the Government, had dug the land and taken sand and thereby degraded the environment and caused damages to the ecology. He would further submit that the there is no previous cases pending as against the petitioners.

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



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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.

7. Taking into consideration the facts and circumstances of the case and the sand involved is small quantity and that there are no previous cases pending against the petitioner, 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



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petitioners may be directed to deposit a sum of Rs.5,000/- (Rupees Five Thousand only) to the credit of District Legal Services Authority, Coimbatore 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.

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, Coimbatore 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 *learned Judicial Magistrate No.II, Pollachi, Coimbatore District*, on condition



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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 and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of his 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., until further orders;

[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;

[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



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down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**;

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

22.11.2024

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