



Crl.O.P.No.29933 of 2024

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A.D.JAGADISH CHANDIRA, J.

The petitioners, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 305(e), 326(a) of Bharathiya Nyaya Sanhitha, 2023 in Crime No.603 of 2024, on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution is that when the respondent police were routine check up near Anna Nagar, they intercepted a lorry bearing Registration No.TN 54 P 7419 and found the petitioners in illegal possession of two units of ordinary sand. Hence, the case.

3.The learned counsel for the petitioners would submit that the petitioners are innocent and that a case of sand theft has been fabricated against them. He would further submit that without prejudice to his contentions, the petitioners are prepared to deposit an amount of Rs.20,000/- 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 would submit that the quantity of ordinary sand involved is 2 units. The petitioners are driver and owner of the vehicle. He would further submit that the first petitioner has three previous cases and the second petitioner has one previous case pending against them. However, he vehemently opposed to grant anticipatory bail to the petitioners.

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



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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 that the first petitioner has three previous cases similar in nature. Hence, this Court is not inclined to grant anticipatory bail to the petitioner. Accordingly, this petition is dismissed as against the first petitioner alone. Insofar as the second petitioner is concerned, the sand involved is small quantity and that there is one previous case pending against the second petitioner, this Court is inclined to grant anticipatory bail to the second petitioner. 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.20,000/- (Rupees Twenty Thousand only) to the credit of District Legal Services Authority, Thirupattur District, without prejudice to his rights and contentions before the trial Court.



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

9.Accordingly, the second petitioner shall make a non refundable deposit of **Rs.20,000/- (Rupees Twenty Thousand only)** by way of Demand Draft/RTGS/NEFT to the credit of the **District Legal Services Authority, Thirupattur District**, and on such deposit and on receipt of proof of payment, the second 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 **Judicial Magistrate No.II, Thirupattur**, on condition that the second 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 second petitioner shall report before the respondent police



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daily at 10.30 a.m., until further orders.

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

[c] the second 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 second petitioner in accordance with law as if the conditions have been imposed and the second 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 absconds, a fresh FIR can be registered under Section 269 of BNS.

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