



Crl.O.P.No.30167 of 2024

A.D.JAGADISH CHANDIRA, J.

The petitioner/A1, who apprehends arrest at the hands of the respondent police for the offences punishable under Section 303(2) of BNS, 2023 r/w Section 21(1) of Mines and Minerals (Development & Regulation) Act, 1957, in Crime No.389 of 2024, on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution as per the de facto complainant viz., Ashok, who is working as a Manager under one Thambiraja is that the petitioner along with other accused were involved in the theft of three units of building sand worth about Rs.15,000/-, which was stored on Thambiraja's land by using JCB bearing Registration No.TN 16 C 2435. Hence, the case.

3.The learned counsel for the petitioner would submit that the petitioner is innocent and that a case of sand theft has been fabricated against him. He would further submit that he has no previous case against him and without prejudice to his contentions, the petitioner is 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 petitioner.

4.The learned Government Advocate (Crl. Side) appearing for the



respondent Police, while opposing for the grant of anticipatory bail to the petitioner, would submit that the quantity of building sand involved is three units.

He would further submit 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 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 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.5,000/- (Rupees Five Thousand only) to the credit of District Legal Services Authority, Villupuram 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.5,000/- (Rupees Five Thousand only)** by way of Demand Draft/RTGS/NEFT to the credit of the **District Legal Services Authority, Villupuram 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 No.I, Tindivanam***, on condition that the petitioner

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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 everyday at 10.30 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 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.

03.12.2024

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