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Crl.O.P.No. 30967 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No. 30967 of 2024

A.Sakthivel

... Petitioner

Versus

**The State Represented by
The Inspector of Police
Bommidi Police Station
Dharmapuri District.
(In Crime No. 239 of 2024)**

...Respondent

Prayer : Criminal Original Petition filed Under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying to enlarge the petitioners on bail in the event of arrest in Crime No. 239 of 2024 by the respondent police pending investigation and grant anticipatory bail.

For Petitioners : Mr.Bharanidharan S.

**For Respondent : Mr.S.Santhosh
Government Advocate
(Criminal Side)**



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ORDER

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The petitioner, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 303(2) of BNS, Act, 2023, and Section 21(4) of Mines and Minerals (Development & Regulation) Act, 1957, in Crime No. 239 of 2024, on the file of the respondent police, seek anticipatory bail.

2. The case of the prosecution is that the petitioner had transported 2 units of red sand by using unregistered JCB bearing SI.No.1257850, Engine No.4H-218010700619 and Chasis No.1257850D2007 without any valid licence from the Government. Hence the Complaint.

3. The learned counsel for the petitioner would submit that the petitioner is innocent person. 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.10,000/- towards any charitable organization or association. Therefore, he prays for grant of anticipatory bail to the petitioner.



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4.The learned Government Advocate (Crl. Side) appearing for the respondent Police would submit that the petitioner had transported 2 units of red sand by using unregistered JCB bearing SI.No.1257850, Engine No.4H-218010700619 and Chasis No.1257850D2007 without any valid licence from the Government. He would further submit that the petitioner has no previous case pending against him. However, he vehemently opposed to grant anticipatory bail to the petitioner.

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



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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.10,000/- [Rupees Ten Thousand only] to the credit of District Legal Services Authority, Dharmapuri 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 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 rights of the petitioners.

9.Accordingly, the petitioners shall make a non refundable deposit of **Rs.10,000/- (Rupees Ten Thousand only)** by way of Demand Draft/RTGS/NEFT to the credit of the **District Legal Services Authority, Dharmapuri 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, Pappireddipatty, Dharmapuri District**, on condition that the 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:



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[a] the petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

[b] the petitioner shall report before the respondent police everyday at 10.30 a.m., until further orders.

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner 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 petitioner 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].

[f] If the accused thereafter abscond, a fresh FIR can be registered under Section 269 B.N.S.

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A.D.JAGADISH CHANDIRA, J.

MSM

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