



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. 31050 of 2024

1.Kannusami
2.M.Vinothkumar

... Petitioners

Versus

The State,
Represented by
The Inspector of Police
Avinashipalayam Police Station,
Tiruppur District
Crime No.454 of 2024

...Respondent

Prayer : Criminal Original Petition filed Under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2024, praying to enlarge the petitioners on bail in the event of in Crime No. 454 of 2024 on the file of the respondent Police.

For Petitioners : Mr.Sudhakar Kannusamy

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



ORDER

The petitioners, who apprehend arrest at the hands of the respondent Police for the offences punishable under Sections 4(1) (1A), 21(1) of Mines and Minerals (Development & Regulation) Act, 1957 r/w Section 303 (2) of BNS 2023 in Crime No. 454 of 2024 on the file of the respondent Police, seek anticipatory bail.

2. The case of the prosecution is that the petitioners had transported 3 units of Stones [Odai Karkal] by using lorry bearing Registration No.TN-63-W-3520 without any valid license from the Government. Hence the case.

3.The learned counsel for the petitioners would submit that the petitioners are innocent and they have been falsely implicated in this case. He would further submit that no previous case against them and without prejudice to their contentions, the petitioners are prepared to deposit a sum of Rs.10,000/- 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 (Criminal Side) appearing for the respondent Police would submit that the quantity of river sand involved is 3 units. He would further submit that the first accused has one previous case and the second accused two previous cases are pending against them. Both the cases not similar in nature. However, he vehemently opposed for grant of anticipatory bail to the petitioners.

5.Heard the learned Counsel for the petitioners and the learned Government Advocate (Criminal 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 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.10,000/- each (Rupees Ten Thousand only) to the credit of District Legal Services Authority, Tiruppur District, without prejudice to their 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 amounts are being paid without prejudice to the right of the petitioners.

9.Accordingly, the petitioners shall make a non refundable deposit of **Rs.10,000/-each (Rupees Ten Thousand Only)** by way of Demand Draft/RTGS/NEFT to the credit of the **District Legal Services Authority, Tiruppur 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 learned **Judicial Magistrate, Palladam**, 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 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 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 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.

12.12.2024

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A.D.JAGADISH CHANDIRA, J.

MSM

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