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Crl.O.P.No.31344 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-12-2024

CORAM

THE HONOURABLE MR JUSTICE A.D.JAGADISH CHANDIRA

CRL OP NO. 31344 of 2024

1.Thirumoorthy
2.Ajith

Petitioner(s)

Vs

The State Rep. By Inspector Of Police,
Kandili Police Station,
Thirupattur District.
(crime No.620 of 2024)

Respondent(s)

For Petitioner(s):

Mr.Kannadasan E

For Respondent(s):

Mr.S.Santhosh, Govt. Advocate (Crl.Side)

ORDER

The petitioners, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 305(e) and 326(a) of BNS in Crime No.620 of 2024, on the file of the respondent police, seeks anticipatory bail.



2. The case of the prosecution is that the petitioners were found to be in illegal transportation of two units of norambu sand in a lorry.

3. The learned counsel for the petitioners seeks permission of this Court to withdraw this petition in respect of first petitioner and he has also made an endorsement to that effect. Insofar as the second petitioner is concerned, he would submit that the second petitioner is an innocent person and that a case of sand theft has been fabricated against him. He would further submit that without prejudice to his contentions, he is prepared to deposit an amount of Rs.4,000/-, towards any charitable organization or association. Therefore, he prays for grant of anticipatory bail to the second petitioner.

5.The learned Government Advocate (Crl. Side) appearing for the respondent Police would submit that the quantity of norambu sand involved is 2 units. He would further submit that A1/first petitioner has got seven previous cases and there are no similar previous cases against the second petitioner. However, he opposed to grant anticipatory bail to the second



petitioner.

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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 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. In view of the submission and the endorsement made by the learned counsel for the petitioners, this Criminal Original Petition is



dismissed as withdrawn in respect of the **first petitioner**. Considering the facts and circumstances of the case and the sand involved is small quantity, 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 second 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 second petitioner may be directed to deposit a sum of Rs.4,000/- (Rupees Four Thousand only), to the credit of District Legal Services Authority, Tirupathur 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 second petitioner shall make a non refundable deposit of **Rs.4,000/- (Rupees Four Thousand only)**, by way of Demand Draft/RTGS/NEFT to the credit of the **District Legal Services Authority, Tirupathur 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 **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 daily at 10.00 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.



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Anu

[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.

16.12.2024

Anu

To

1.The Judicial Magistrate No.II, Thirupattur

2.The Inspector Of Police,
Kandili Police Station,
Thirupattur District.

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