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Crl.O.P.No.32329 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.01.2025

CORAM

THE HONOURABLE Mr. JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.O.P.No.32329 of 2024

1. R.Shanmugam
2. P.Dhanapalan

... Petitioners

Vs

The State rep by
The Inspector of Police,
Mecheri Police Station,
Salem District.
Crime No.89 of 2023.

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of of Bharatiya Nagarik Suraksha Sanhita, 2023, praying to enlarge the petitioners on bail in the event of their arrest by the pending investigation in Crime No.89 of 2023 on the file of the Inspector of Police, Mecheri Police Station, Salem District.

For Petitioners : Mr.R.Venkatesan
For Respondent : Mr.Santhosh
Government Advocate (Crl.Side)

ORDER

Apprehending arrest in connection with Crime No.89 of 2023 registered for the offences punishable under Section 379 of IPC r/w Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957, the



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present petition has been filed by the petitioners seeking anticipatory bail.

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2. Pleading innocence on the part of the petitioners, false implication in the case, learned counsel for the petitioners seeks indulgence of this Court. Learned counsel for the petitioners would submit that the petitioners are innocents and that a case of red sand theft has been fabricated against them. He also submits that the petitioners have no previous case against them and without prejudice to the defence and contention, they are ready and willing to deposit a sum of Rs.10,000/- each, as non-refundable deposit to any welfare scheme of the Government or any organization. He further submits that the petitioners are ready to abide by any stringent condition that may be imposed by this Court.

3. The case of the prosecution as putforth by the learned Government Advocate (Crl. Side) appearing for the respondent Police, opposing for grant of anticipatory bail, is that the quantity of red sand involved is 3 units. He would submit that the petitioners have no previous case pending against them.

4. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.side) for the respondent and perused the materials



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available on record.

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5. 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.

6. 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/- (Rupees ten thousand only) each, to the credit of District Legal Services Authority, Salem District, without prejudice to their rights and



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contentions before the trial Court.

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7. 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 right of the petitioners.

8. Accordingly, the petitioners shall make a non refundable deposit of **Rs.10,000/- (Rupees ten thousand only) each**, by way of Demand Draft/RTGS/NEFT to the credit of the **District Legal Services Authority, Salem 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 of receipt of a copy of this order, before the learned **Principal District Sessions Judge, Judicial Magistrate II, Mettur**, on condition that the petitioners shall execute a separate bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each, with two sureties, each 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 said Magistrate, on further condition that:



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[a] if the petitioners fail to surrender before the said Magistrate within a period of fifteen days, this Order shall stand automatically cancelled;

[b] the petitioners shall report before the respondent Police daily at 10.30 a.m for a period of two weeks, thereafter on every Saturday 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 absconds, a fresh FIR can be registered under Section 269 of BNS.

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Index : Yes/No
Internet : Yes/No
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A.D.JAGADISH CHANDIRA, J.

rts

To

1. The Inspector of Police,
Mecheri Police Station,
Salem District.
- 2.The Public Prosecutor,
High Court, Madras.

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