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Crl.O.P.No.32025 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.32025 of 2024

Shanmugam

... Petitioner

Vs

The State rep by
The Inspector of Police,
Mangalampet Police Station,
Cuddalore District.
Crime No.266 of 2024.

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of of Bharatiya Nagarik Suraksha Sanhita, 2023, praying to enlarge the petitioner on anticipatory bail in the event of his arrest in Crime No.266 of 2024 on the file of the respondent police.

For Petitioner : Mr.S.Nishanthi

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



ORDER

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Apprehending arrest in connection with Crime No.266 of 2024 registered for the offences punishable under Sections 303(2), 323 of the Bharatiya Nyaya Sanhita, r/w Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957, the present petition has been filed by the petitioner seeking anticipatory bail.

2. The case of the prosecution is that based on the information, the respondent police found that the petitioner illegally transported 3 bags of river sand using vehicle bearing registration No.TN65R1094. Hence, the case.

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



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4. The case of the prosecution as put forth 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 $\frac{1}{2}$ unit. He would 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.2,000/- (Rupees two Thousand only), to the credit of District Legal Services Authority, Cuddalore 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.2,000/- (Rupees two thousand only)**, by way of Demand Draft/RTGS/NEFT to the credit of the **District Legal Services Authority**,



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Cuddalore 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 of receipt of a copy of this order, before the learned **Judicial Magistrate II, Virudhachalam**, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only), 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:

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

[b] the petitioner 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 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 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



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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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To

1. The Inspector of Police,
Mangalampet Police Station,
Cuddalore District.
2. The Public Prosecutor,
High Court, Madras.



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A.D.JAGADISH CHANDIRA, J,

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