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Crl.O.P.No.32069 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.32069 of 2024

1. Saravanan
2. Sobanbabu

... Petitioners

Vs

The State rep by
The Inspector of Police,
Pernampet Police Station,
Vellore District.
Crime No.495 of 2024.

... 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 in Crime No.495 of 2024 pending investigation on the file of the respondent.

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

ORDER

Apprehending arrest in connection with Crime No.495 of 2024 registered for the offences punishable under Sections 303(2) & 326(a) of the Bharatiya Nyaya Sanhita, the present petition has been filed by the petitioners seeking anticipatory bail.

2. The case of the prosecution is that based on the information, the



respondent police found that the petitioners illegally transported one unit of river sand using unregistered Tractor. Hence, the case.

3. 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 river 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.5,000/- 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.

4. 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 river sand involved is 4 units. He further submits that the first petitioner has four previous cases and the second petitioner has no previous case pending against him.



5. At that juncture, the learned Counsel appearing for the petitioners seeks permission of this Court to withdraw the petition insofar as the first petitioner is concerned and he has also made an endorsement to that effect in the Court bundle.

6. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.side) for the respondent and perused the materials available on record.

7. 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.

8. In view of the submission and endorsement made by the learned



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counsel appearing for the petitioners, this Criminal Original Petition is dismissed as withdrawn insofar as the first petitioner is concerned.

9. 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 second petitioner, 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.5,000/- (Rupees five thousand only), to the credit of District Legal Services Authority, Vellore District, without prejudice to their rights and contentions before the trial Court.

8. It is made clear that merely because the second petitioner is depositing the amount, it would not amount to the second petitioner admitting his guilt in the criminal case and such amount is being paid without prejudice to the right of the second petitioner.



9. Accordingly, the second petitioner shall make a non refundable deposit of **Rs.5,000/- (Rupees five thousand only)**, by way of Demand Draft/RTGS/NEFT to the credit of the **District Legal Services Authority, Vellore District**, and on such deposit and on receipt of proof of payment, the second 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, Gudiyatham, Vellore District**, on condition that the second 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 second petitioner fails to surrender before the said Magistrate within a period of fifteen days, this Order shall stand automatically cancelled;

[b] the second 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 second petitioner shall not tamper with evidence or witness either during investigation or trial;

[d] the second petitioner shall not abscond either during investigation or trial;

[e] On breach of any of the aforesaid conditions, the learned



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Magistrate/Trial Court is entitled to take appropriate action against the second petitioner in accordance with law as if the conditions have been imposed and the second 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];

[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,
Pernampet Police Station,
Vellore District.
2. The Public Prosecutor,
High Court, Madras.



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A.D.JAGADISH CHANDIRA, J.

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