

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2020

CORAM

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

**Crl.O.P.Nos.13334, 13339, 13340, 13354, 13357, 13380,**  
**13395, 13408, 13413, 13416, 13425, 13428, 13441, 13461,**  
**13472, 13484, 13498, 13504, 13507, 13511, 13514, 13544,**  
**13546, 13554, 13572, 13573, 13610, 13617, 13624, 13632,**  
**13640, 13644, 13647, 13540, 13567 and 13613 of 2020**

**Crl.OP.No.13334 of 2020**

Bala @ Balasubramani

... Petitioner

Vs.

State rep. by  
Inspector of Police,  
Thakkolam Police Station,  
Vellore District,  
Cr.No.355 of 2019

... Respondent

**Prayer:** Criminal Original Petition filed under Section 438 Cr.P.C. to enlarge the petitioner on bail in the event of his arrest in Cr.No.355 of 2019 on the file of the Inspector of Police, Thakkolam Police Station, Vellore District.

For Petitioner : Mr.K.Kannan.

For Respondent : Mr.M.Mohammed Riyaz  
Additional Public Prosecutor.

**COMMON ORDER**  
**(The cases have been heard through video conference)**

"Preservation of the environment and keeping the ecological balance unaffected is a task which not only governments but also every citizen must undertake. It is a social obligation and let us remind every Indian Citizen that it is his fundamental duty as enshrined in Article 51-A(g) of the Constitution". - Ranganath Misra., J - in Rural Litigation and **Entitlement Kendra v. State of U.P 1986 (supp) SCC 517**, Para.20.

1. Since the issues in the above criminal original petitions are one and the same (Mines & Mineral offences and for other IPC offences viz., illegal quarrying/minning, theft and smuggling of sand and minerals, all the criminal original petitions are taken up for final hearing and a common order is being passed.

2. This Court while sitting in the roster of Bail and Anticipatory Bail felt aghast with the sudden surge of petitions filed seeking bail and anticipatory bail for the offences relating to illegal quarrying/mining, theft and smuggling of sand and minerals. Amidst the national lockdown declared and the whole Country being under lockdown mode, there seems to be no lockdown for sand offenders. This Court took note that most of the industries and businesses in the country and especially the construction industry were under lockdown, whereas the illicit sand mining industry had worked overtime. The surge of cases registered shows that the business of illegal quarrying/mining, theft and smuggling of sand and minerals had happened rampantly in all Districts unabated without any control, resulting in grave damage and degradation to the environment and also indepletion of natural resources.

3. This Court asked itself a heart-searching question. In a society that has a well-established system of justice and

law, should the courts restrict its role only to adjudication of issues and abdicate and shirk its responsibility and pass on the duty of controlling and preventing crime to the police and State authorities alone?

4. In previous occasions this court in the petitions for anticipatory bails in cases relating to illegal quarrying/mining, theft and smuggling of sand and minerals, had granted anticipatory bail by imposing stringent monetary and serious conditions directing payment of hefty amounts to The Honourable Chief Minister's Relief Fund, The District Mineral Trust Fund and to various other organisation involved in Social work with a fond hope that offences of illegal quarrying/mining, theft and smuggling of sand and minerals could be controlled by imposition of such conditions. But despite the imposition of stringent conditions, this Court can see that the offences of such nature have not come down and on the contrary, there seems to be a rising trend, in these cases, increasing day by day. Each day at least 10 to 15 cases

are being listed seeking the relief of anticipatory bail in offences of illegal quarrying/mining, theft and smuggling of sand and minerals. Despite the offences being non-bailable and this Court imposing stringent conditions, the police are not able to abate the menace of illicit quarrying/mining, theft and smuggling of sand and minerals.

5. This court can see that due to the amount of money involved, the business of illegal quarrying/mining, theft and sand smuggling activities is increasing day by day and offenders are bold enough to involve in the offences with a fond belief that they will be able to get advance bail by accepting and undertaking to comply with any stringent conditions imposed by the courts. Orders of the courts are routinely taken more lightly and the industry is thriving by engaging men and materials on a large scale. Heavy and high-cost equipments and vehicles like excavators, earthmovers, JCB, Poclain, Hitachi are used to excavate and heavy lorries viz., Taurus and Tata Benz are being used in the illegal mining

business flouting all rules which remain in paper only. It is also brought to the notice of this court across the bar that nowadays bullock carts are fabricated like that of tractor-trailers to transport a huge quantity of sand to avoid seizure of high priced vehicles. This court is also able to see cases where more and more people are getting involved and sand is smuggled in pleasure cars and two wheelers which shows the economy and the profits involved in sand smuggling. The offenders with scant regard to the law enforcers and orders of this court continue with the illegality at the cost of heavily degrading the ecology and environment since it is well settled in their minds that they will be able to get anticipatory/advance bail by complying with any stringent condition with ease and get out.

6. Various single benches and Division Benches of this Court over the years have time and again taken painstaking and earnest efforts to control and bring down the illegal sand smuggling by passing numerous orders exercising jurisdiction



under Article 226 of the Constitution of India with a fond belief to stop the illegality once for all in the interest of the state and posterity. Whereas day by day it is becoming bad to worse.

7. The Hon'ble judge of this Court, Hon'ble Mr.Justice P.Shanmugam.J has even before two decades in WP.No.10632 of 1998 dated 14.07.1999 while dealing with the Tamil Nadu Minor Mineral Concession Rules and the specific clauses in the agreement prohibiting the use of machinery for quarrying sand has issued the following directions:-

*"In one of the directive principles of State policy, namely Article 48-A, the Constitution mandated the State to take endeavour to protect the environment and to safeguard the forest and wildlife of the country. The protection of the environment includes the protection of rivers and forests. The Supreme Court, in HINDSTONE'S case, has held "rivers, forests, minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all the succeeding generations to develop and conserve*

*the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation." In Mukthi Sangharsh's case referred to above, the Supreme Court held that there should be a check to balance the preservation of natural gift and social consumption in such a way that the water source would not be affected. Sand is a natural formation on the river beds through the natural process over tens and thousands of years. They sustain the rivers and percolation of water too far off distances both for the growth of trees to sustain drinking water and raise cultivation. It is almost a lifeline to human existence. Without considering the precise gift provided by nature, commercial exploitation for short term gains by pumping out the sand indiscriminately from the rivers will destroy not only the river, but also the whole environment. It is common knowledge that by virtue of commercialization, the pattadars on the adjoining river beds take out leases on the plea of sand formation in their lands and encroach and take sand from the river beds taking advantage of leases granted in the rivers itself. People employ huge machineries like cranes and other pumping mechanism through which they suck out the sand*



*within few days which has been formed over centuries. This leads to the depletion, destruction and whole natural beauty of the river, apart from causing untold natural calamities and loss to the society. Therefore, in order to maintain the existing balance in the river bed, the Government should make arrangements and provisions to see that the removal of sand is regulated and proper measures are taken.*

8. In our neighbouring State of Kerala, there was a report submitted by Senior Environmental Engineer referred to in a judgment reported in **CHANDRASEKHARAN PILLAI VS. STATE OF KERALA (1998 (2) K.L.J. 195)**. On the question whether the extraction of sand causes environmental degradation, it was stated as follows:-

*"The extraction of sand will cause environmental degradation such as :*

*(a) This will spoil the normal gradient (slope) of the river bed and thereby affect the self-clearing velocity of the river.*

*(b) This will give chances to the accumulation of silt and dirt and affects water quality.*

*(c) Reduces ground water table during summer, and causes drinking water shortage.*

*(d) Land slide on river banks.*

*(e) Affects the water management structures, bridges, retaining walls etc."*

9. In **State of Tamil Nadu v. Hind Stone, (AIR 1981 SC 711)** it has been observed as follows:

*"Rivers, forests, minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation."*

10. This Court feels it is necessary to refer to a judgment delivered 18 years back on 26-07-2002 by Honourable Mr. Justice K. Sampath. J, to show that this court had passed the judgment with prophetic vision and wisdom

visualizing the situations to come in future. It is also astonishing to note that in the judgment K.Sampath J had referred to an article titled "Sandstrom under Water" reported in the newspaper "The Hindu" dated 14.07.2002. Though this Court feels that referring to the major portion of the judgment will burden this order making it lengthy, however this court specifically wants to refer it to show how the collective society has failed and also to remind each one of us our duty.

*In the case of **M.K.Janarthanam v. The District Collector, Thiruvallur and others**" reported in **2003 (1) LW 262** Justice K.Sampath, J has held as follows :-*

12. *We are informed that in Atharva Veda, a verse occurs, meaning as follows:*

*"Oh Mother Earth - On this multi-colour Indra Gupta Prithvi let me enjoy, never ending happiness and gain ever lasting glory without fear of defeat."*

13. *Our ancients worshipped the five elements of nature, viz. earth, air, water, fire and sky both in reality and symbolically. Our scriptures are replete with information on the relationship between*

*man and nature and the former's eternal indebtedness to the latter. We are told that earth is the paradise of man which has been blessed with nature's bounties. During ancient times there was emphasis on the care for the natural resources.*

14. All religions in our country have environmental overtones for the observance of an ecological code of conduct and are united in their attitude towards nature. They enjoin us to respect nature and its creations which is complementary to secularism.

15. The enjoyment of life and its attainment and its fulfillment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature's gifts without which life cannot be enjoyed and environmental degradation violates the fundamental right to life.

16. Stockholm Declaration of United Nations on Human Environment evidences this human anxiety: —

*"The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystem, must be safeguarded for the benefit of present and future*

*generations through careful planning or management, as appropriate..... Nature conservation including wildlife must therefore receive importance in planning for economic development."*

17. *In State of Tamil Nadu v. Hind Stone, (AIR 1981 SC 711) it has been observed as follows:*

*"Rivers, forests, minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation."*

18. *A decade ago there was a big Earth Summit in Rio de Janeiro. A publication from UNESCO offered the following vision of the future.*

*"Every generation should leave water, air and soil resources as pure and unpolluted as when it came to earth. Each generation should leave undiminished all the species of minerals it found existing on earth."*

19. *In a disturbing article "Sandstorm under water" in 'The Hindu' dated 14-7-2002, very serious warning has been sounded that the turbulence created*



*by dredging for sand at sea in Kerala could damage the fragile ecosystem along the coast. There also appeared a sub article about ravaged rivers. Though it is about Kerala rivers, it is as much relevant elsewhere and in particular in Tamil Nadu. The article depicts a very harrowing picture of the dangers of clandestine exploitation of river sand. In my view what is happening is not clandestine exploitation, but a bold unabashed robbery of nature's wealth.*

*20. Sand mining has an adverse and destructive impact. Its disastrous effect is unimaginable. It has "crippled the riverine ecology and depleted the ground water table resulting in a nascent desertification process". It has affected the stability of river banks leading to loss of whole chunks of land and making large areas flood prone. Drain channels to lakes, ponds, tanks irrigation are blocked since there is no more water. The river bed goes down far below the receive canals. It has been identified as the main reason for the water crisis. The potable nature of available drinking water is affected as the sweet water aquifers (recharger and purifier) are destroyed by quarrying. It has increased the base flow of ground water to the rivers. It also causes sea water intrusion further than usual upstream through back*



*waters and river mouths. As enough sand does not reach the river mouths to make natural barriers along the coast, sea water and sand enter the back waters and rivers. This ultimately leads to saline intrusion into ground water. It has also seriously affected the structural stability of several bridges. River bridges and railway tracks are severely damaged by sand mining in violation of rules and lease deeds. Flooding of agricultural lands due to break in linkage between discharge/channels and river basins. There is destruction of Agriculture/Mangrove Eco System. Houses and buildings collapse due to erosion. The groundwater table goes down in all the river basins affecting agriculture severely. The sand mining permitted in private lands adjacent to river beds enables private owners to encroach the river bed illegally. Public roads are also seriously damaged. Direct irrigation to about 22000 acres of lands is affected in Vaigai and Cauvery basins. Drinking water has turned saline. Accidents occur due to heavy lorry traffic. The noise and dust thrown up by the lorries carrying quarried sand affect the people's health.*

*21. It takes millions of years for natural denudation of hard rock into sand. The current rate of extraction is far more than what nature is capable of*

*replenishing. Alternative materials have to be found to replace river sand in construction activities. Excessive deepening of the river bed due to sand removal also accentuates soil erosion. Reduction in sediment supply from the rivers due to indiscriminate extraction will deplete the quantum of beach sand which in turn contributes to increased erosion along the coast line.*

*22. There is large scale illicit, irregular and illegal sand mining in the river beds of Tamiraparani, Vaigai, Amaravathi, Palar, Araniyar, Kusasthalai, etc. The Hindu report says that rivers are being plundered by a powerful mafia controlling the sand mining business. The illegal trade is driven by the unholy nexus between contractors, politicians, trade union leaders, panchayat and revenue officials and corrupt policemen, making a mockery of the regulations imposed by the Government. Contractors who quote marginal amounts for auction rights go on to make a killing, extracting many times the permitted amount of sand as enforcement agencies turn a blind eye.*

*23. Local political leaders anchor the whole operation acting as the conduit for the huge bribes fuelling the well oiled network. Many of the kingpins evade the long arm of the law by alternating between*

*other illegal operations in the forest and liquor business.*

*24. Government is deprived of huge amounts by way of royalty.*

*25. There is no proper legal provision enacted by the Government to take action on illegal sand mining. Very often policies are dictated by short term considerations such as elections or partisan pressure. The rules are not scrupulously followed in the matter of grant of permit for sand quarrying. Government officials who are supposed to check illegal sand quarrying join hands with sand smugglers.*

*26. Articles 48-A and 51-A emphasize protection and improvement of the natural environment including forests, lakes, rivers, wildlife and other living creatures. The phrase used is 'protect and improve' which implies that the phrase appears to contemplate affirmative governmental action to improve the quality of the environment and not just to preserve the environment in its degraded form. Section 3 of the Environment (Protection) Act, 1986 contains parliamentary mandate to improve the environmental quality. The Courts are increasingly*

*relying on these directive principles as complementary to fundamental rights."*

27. *"The State is a trustee of all natural resources and is under a legal duty to protect them and that the resources are meant for public use and cannot be converted into private ownership." — M.C. Mehta v. Kamal Nath, (J.T. 1996 (1) Supreme Court 467)*

28. *People's Watch - Tamil Nadu is doing yeoman service in this field. There was a public hearing on the impact of sand mining under its aegis on 19-2-2002 at Chennai. It appears that there was very active public participation. I had the benefit of perusing the proceedings and I have incorporated the valuable materials I gathered from the said proceedings in this judgment.*

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30. *It appears that it was only a cry in wilderness. Nothing appears to have been done. On the contrary things have gone from bad to worse. The Hindu reported about the battles between the District administration and the sand mafia. The report referred to the collapse of Karanodai Highway Bridge*

*on Chennai-Calcutta Highway and how the Lakshmipuram Anicut across Araniar, on the northern outskirts of the city was washed away some years ago because its structure got weakened as a result of sand extraction around the Anicut. As on that day it required Rs. 3 or 4 crores to build a fresh Anicut.*

*31. The enormity of the problem suffocates us. The apathetic and lukewarm approach of the powers that be baffles and pains us. Gide Andre lamented 'Everything has been said already but nobody is listening. We must always begin again.' Scores of Judges have said before. Their directions have not been implemented. It is a sordid commentary on the state of affairs. Still I am issuing directions to the Government in the fond hope that they will be implemented and something good may come about. These are in addition to what has been directed to be done by P. Shanmugham, J. in W.P. Nos. 10632/92 etc. batch already referred to."*

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*32. Under Articles 48-A and 51-A(g) it is the fundamental duty of every one of the citizens of this country to protect and improve the natural*



*environment including forests, lakes, rivers, all other water resources and wild life and to have compassion for living creatures. ...."*

11. Once again at the cost of repetition, this Court is reminded of para 19 of the judgment of Justice K.Sampath, referred above. All of us know what happened to Kerala during the floods a few years ago. Tamil Nadu is not far away. The above referred judgments were warning alarms.

12. After the above judgments, the successive Governments have brought in various legislation to control illicit sand mining, nothing fruitful has happened till date.

13. Thereafter, the Division Bench of this Court in a batch of writ petitions in **WP(MD).No.19936 of 2017** etc in the case of **Muthu v. The District Collector, Pudukottai District, Pudukottai and others** was pleased to observe and pass the following directions:-



*"2. Taking note of the prevailing situation, we have passed the following order on 24.09.2018:*

*"We have perused the report filed by the third respondent District Collector, Pudukkottai. From the submissions made on both sides, we are satisfied that not only in the place, which is subject matter of writ petition, but also in the entire State indiscriminately mining is going on illegally by using vehicles and bullock carts. The action taken is far and few. We are afraid to say that even this is mainly restricted to only imposing of fine. The vehicles involved are either released by the official respondents or by the Courts. Every thing has become a part of the routine transaction. The action taken so far has not yielded any result. Sand in the present form takes thousands of years. Removal of the sand will lead to the destruction of the rivers. At this speed, we may lose the rivers once for all. A report of NITI Aayog - a Government Think Tank, indicates that by 2050 there will not be any water for the entire State. 21 cities including Chennai will run out of ground water affecting about 100 million people. The aforesaid situation is the stock reality bourne out of the greed of the man. May be, the generation next might see water only in bottle. Day in and day out we are forced to*

deal with such cases. However, illegal mining goes on unchecked under our nose. This is the reality.

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4.Thus, Considering the seriousness of the situation, we deem it appropriate to implead the State of Tamil Nadu, represented by the Secretary, Home Department, Fort St. George, Chennai suo motu as 8th respondent. The learned Special Government Pleader takes notice for the 8th respondent. The 8th respondent is to inform the Court of any action plan to deal with the situation.

13.As recorded earlier, illegal mining is carrying on unabatedly under the very nose of the revenue officials, which can be taken judicial note of this Court with a fond hope that the same can be controlled in future. Hence, we issue the following directions:

(i)The District Level Task Forces and Taluk Level Task Forces, constituted pursuant to the order passed in WP(MD)No.9806 of 2018 should follow the G.O.(Ms)No.135 Industries (MMA.1) Department, dated 13.11.2009 in letter and spirit.

*(ii)As stated in the above said Government Order, periodical meetings will have to be held followed by Revenue which is inclusive of action taken/to be taken for the illicit mining.*

*(iii)Steps will have to be taken for dereliction of the duty by the concerned officials.*

*(iv)Taluk Level Task Forces shall also comply with the directions issued in the Government Order by making frequent surprise checks and submit their report to the District Level Task Forces.*

*(v)The Taluk Level Task Forces shall meet every fortnight as mandated in the Government Order.*

*(vi)The responsibility fixed in the Government Order will have to be strictly construed and action will have to be taken against the erring Village Administrative Officer, Tahsildar, Officer in-charge of Department of Geology and Mining at District Level.*

*(vii)Action taken report will have to be sent by the District Collector concerned for the purpose of taking necessary action. The District Collector concerned shall take appropriate departmental action by himself as when Rules provide so.*

(viii) Separate records will have to be maintained by the Village Administrative Officer, Tahsildar and Officer in-charge of the Department of Geology and Mining with respect to the cases involving illicit mining.

(ix) As and when illicit mining is reported, the same will be recorded in the records.

(x) The respective District Collectors will have to ensure by making wide publicity of phone particulars assigned to the District Level Task Forces and the Taluk Level Task Forces, so that, the general public can give their complaints. There should be affixture or display of the phone particulars in the Collectorate, Taluk office, Office of Deputy Director and Assistant Director of Geology and Mining and that of the Village Administrative Officer.

(xi) Complainant will have to be intimated on the action taken within a period of one week from the date of receipt of the complaint. A complaint shall also be received even when made through phone calls.

(xii) Complaints by an authorised person under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 or to be

*made immediately and not later than one week from the date of seizure.*

*(xiii)Whenever, a final report is filed for the offence under Section 379 IPC by the jurisdictional police before the jurisdictional Magistrate, the same shall also be committed to the Special Court. This is for the reason that it would be appropriate to deal with both the police case and the private complaint by the same Court and in order to avoid any possible conflict.*

*(xiv)The revenue officials at the time of seizure can issue a memo to the person in-charge of the vehicle, mineral among other things, indicating the seizure made, along with the date and time.*

*(xv)In so far as the seized vehicles are concerned, they shall be produced before the concerned Magistrate Court by the revenue authorities at the time of filing their respective complaints.*

*(xvi)Any application for release of vehicle etc., can only be filed before the Special Court above.*

*(xvii)Any violation of the above would constitute a contempt of the order passed by this Court, for which, appropriate application can either be filed before the First Bench of this Court or any other*



*Bench as per the direction of the Hon'ble Chief Justice."*

14. Thereafter, on behalf of the State, the Review Applications in Review Application Writ (MD)Nos.80 to 82 of 2019 had been filed for reviewing/seeking clarification of the said order and those review applications were also disposed of on 09.09.2019 and in paragraph No.20, the following directions were issued:

*"(i) The Secretary to Government, Industries Department, Fort St. George, Chennai is directed to issue proper directions either by way of order or circular to all the persons authorized to exercise the power to seizure indicating the manner and the circumstances under which the power of compounding is to be exercised sparingly;*

*(ii) The designated Courts are directed to deal with the question of confiscation or release of the vehicles on receipt of the private complaint or seizure report from the person authorized, notwithstanding the exercise of power of compounding. The persons authorized are directed to comply with the earlier*



*directions with reference to making the private complaints.*

*(iii) Whenever the vehicles / materials seized are produced before the Court for confiscation proceedings, the Courts concerned shall take photographs of the vehicle / material and keep the same in file and shall proceed to sell the vehicle / material by public auction after getting valuation report from the Motor Vehicle Inspector of the District concerned (or) the authorities concerned and shall issue sale certificate to the successful bidder and deposit the sale price to the credit of the particular case. In the event, confiscation is ordered by the trial Court, the amount shall be confiscated to the Government.*

*(iv) If the designated Court comes to the conclusion that the vehicle / material is not liable to be confiscated, the same shall be returned to the parties who are legally entitled to.*

*(v) The applicants are directed to file an affidavit on the complaints made on the direction issued by this Court; particularly in the light of the submission made that they are not being followed. Such an affidavit will have to be filed within a period*

*of four weeks from the date of receipt of a copy of this order."*

15. Thus the Division Bench had lamented that illegal mining is carried on unabatedly under the very nose of the revenue officials and the Division Bench had also taken judicial note of it with a fond hope that the same can be controlled in future.

16. Thereafter, spate of orders have been passed by the various other Division benches of this Court and the Courts have also grieved that the various orders passed by this Court have not been taken seriously by the law enforcement agencies as well as persons indulging in the acts of illegal quarrying/mining, theft and smuggling of sand and minerals.

17. It is pertinent to note that even few days back on 26.08.2020, yet another Division Bench of this Court while hearing WP.(MD).No.10084 of 2020 had lamented and observed so :-

*"5. This Court, in matters of similar nature, made scathing observations as to the ineptitude or total lack of sensitivity on the part of the District and Police administration, as to the rampant illegality in the form of sand quarry taking place right in front of their eyes and in more than one order, it is pointed out about the above G.O.(Ms)No.62, Home, Prohibition and Excise (XVI) Department, dated 01.10.2018 as well as the complete lack of action on the part of the Taluk and District level forces and despite that, no headway or remedial measures had been taken place.*

*7. The past experience of this Court, in the form of status reports filed by the District and Police administrative, is that they are only reeling out the statistics, without indicating any worthwhile action either in the form of getting the offenders convicted or initiation of confiscation proceedings etc."*

18. The judgments and orders of this Court are given wide publicity and they are also telecasted in various news channels with visuals of rampant illegal minning happening in various rivers throughout the State. Further various news

channels, newspapers and magazines over the years have frequently carried special programmes, talk shows, articles and news items about the menace of illegal quarrying/minning, theft and smuggling of sand and minerals and cartelisation and the evil effects to the environment and ecology.

19. It is common knowledge what is the amount paid as Royalty to the Government and what is the amount paid by end user of sand and minerals. It is an open secret that various mafias are controlling the illegal business at various locations. By this cartelisation, not only the State's exchequer, the entire society is affected. In a way the illegal business is nothing but an **organised crime** against the society and each individual offender plays an active role in the **organised crime**. As stated earlier it is not that the individual offender is not aware about the rippling effect the illegal act causes to the environment and ecology. The greed and selfish attitude of the offenders are increasing day by day. The Courts cannot keep the eyes and ears closed.

20. Though anticipatory bails are granted imposing heavy monetary cost and serious conditions, offenders are not bothered about paying since the amount of money spun in the illegal business takes care of them. May be the amounts ordered to be paid are treated as business expenditure in a thriving industry. This Court finds that the sand and mineral offenders are unmindful of the fact that they are killing their mother nature and are continuing to indulge in illegal activities since there is hope for them, that they can get away by complying with the stringent conditions imposed by the courts while granting anticipatory bail/advance bail. It is also surprising and astonishing to note that despite seizure of vehicles and coming to know the names of owners and persons involved in the illegal activities they are allowed to roam scott free and given sufficient time to approach this court to obtain orders of advance bail. There seems to be no will for the enforcement agencies to give effect to the various orders passed by this court in letter and spirit. In most of the cases there is no progress after an accused obtains bail and when

compared to the cases registered the confiscation and conviction rate till date remains very poor. This court also has a reasonable suspicion that the cases which are registered are too for the purpose of statistics and are only a tip of the iceberg and much more are rolled under the carpet by the law enforcers for reasons best known to them.

21. This court is also saddened and feels that the routine exercise of discretionary power has allowed the miscreants to indulge in illegal activities fully understanding the consequences and implications.

22. In such scenario and background this Court questions itself whether the discretionary power under Section 438 of Cr.P.C can be routinely exercised for cases of illegal quarrying/mining, theft and smuggling of sand and minerals?

23. About the exercise of discretionary powers under Section 438 of Cr.P.C, the Honourable Apex court in the case



of ***Directorate of Enforcement and another v. P.V.Prabhakar Rao***, reported in ***(1997) 6 SCC 647*** has held as follows :

*"8. Legal position concerning the grant of anticipatory bail requires no repetition particularly in view of the decision of the Constitution Bench of this Court in Gurbaksh Singh [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] which has settled the position well-nigh. Nonetheless, we remind ourselves that the order contemplated under Section 438 of the Code is to be granted or refused by the High Court or a Court of Session, after exercising its judicial discretion wisely. The Constitution Bench in Gurbaksh Singh [(1980) 2 SCC 565 : 1980 SCC (Cri) 465] said thus: (SCC p. 584, para 21)*

*"21. ... A wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. Every kind of judicial discretion, whatever may be the nature of the matter in regard to which it is required to be exercised, has to be used with due care and caution. In fact, an awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable*

*consequences of its use, is the hallmark of a prudent exercise of judicial discretion. One ought not to make a bugbear of the power to grant anticipatory bail."*

24. Further with regard to the parameters for grant of anticipatory bail the Hon'ble Apex Court in **Siddharam Satlingappa Mhetre vs State Of Maharashtra** – reported in **(2011) 1 SCC 694** had stated as follows.

*The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:*

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;*
- (iii) The possibility of the applicant to flee from justice;*
- (iv) The possibility of the accused's likelihood to repeat similar or other offences;*

*(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*

*(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;*

*(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;*

*(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*

*(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*

*(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.*

25. Thus the order contemplated under Section 438 of the Code of Criminal Procedure is to be granted or refused by the High Court or Court of Sessions after exercising its judicial discretion wisely. A wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. Every kind of judicial discretion, whatever may be the nature of the matter regarding which it is required to be exercised, has to be used with due care and caution. Further anticipatory bails cannot be granted in cases of large magnitude affecting and impacting very large number of people.

26. As referred earlier this court is of the opinion that the offenders despite several orders passed by various benches of this court regarding illegal sand mining and knowing fully well about the evil consequences affecting the environment and society at large and the implications thereon are indulging in the offences of illegal quarrying/mining, theft and smuggling of sand and minerals. Ignorance and feigned ignorance of law cannot be excused. These cases come within the category of cases of large magnitude affecting and impacting livelihood of a very large number of people knowingly and unknowingly. Though the individual seizure may seem small, small drops make a big ocean.

27. This Court finds that the discretionary power has been consciously and continuously misused by the offenders and the enforcers as well in an organised manner and this Court is of the firm opinion that the discretionary powers cannot be extended to persons indulging in illegal sand mining, smuggling and theft of sand and minerals.

28. In view of the above all the petitions for anticipatory bails stand dismissed.

29. This Court appreciates and puts on record the valuable assistance rendered by Mr.M.Mohammed Riyaz, Additional Public Prosecutor in this case.

30. This Court also has a fear that this order could bring in a counter effect of non registration of cases regarding illegal quarrying/mining, theft and smuggling of sand and minerals, however this Court is aware that it would not be difficult for the Director General of Police, Tamil Nadu to get statistics in which Districts and which Stations more cases were registered and it would not be difficult for him to do proper monitoring and take appropriate action to stop the illegality. **"Where there is a will there is a way"**. The Director General of Police, Tamil Nadu is directed to periodically review the progress of cases registered for



offences regarding illegal quarrying/mining, theft and smuggling of sand and minerals in a time bound manner and see to that the final reports are filed within the prescribed time and accused are taken to trial.

**03.09.2020**

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**Note :** Registry is directed to communicate the copy of this Order to all the Principal District Judges.

**Copy to :-**

1. The Director General of Police, Tamilnadu State, Chennai.
2. The Public Prosecutor, High Court, Madras.

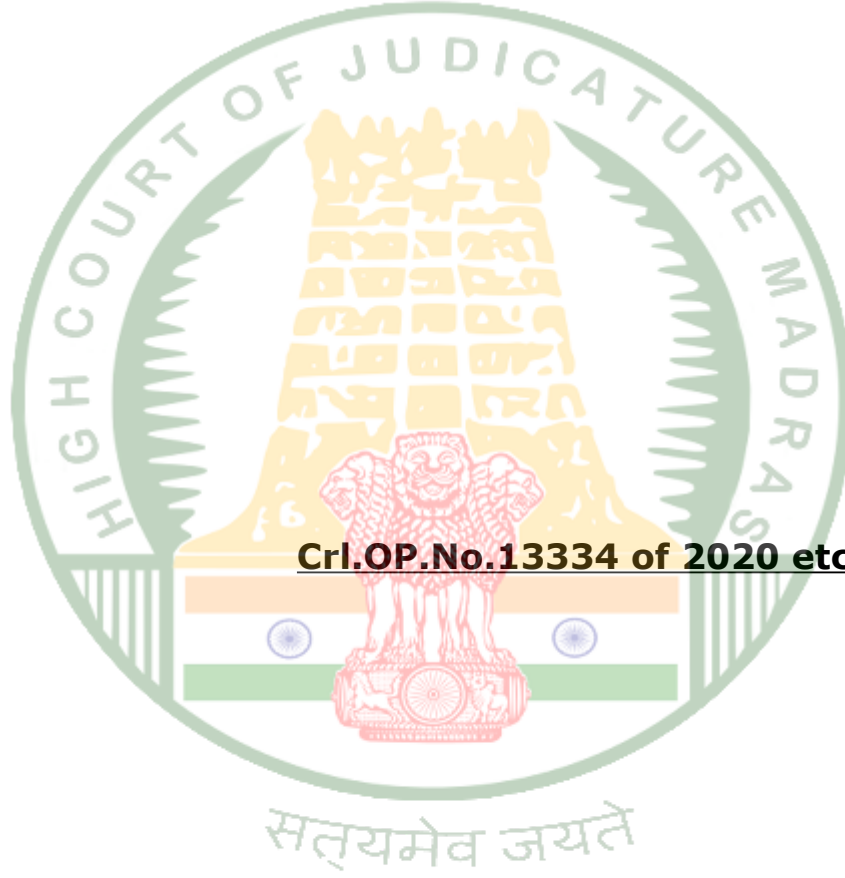
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**Crl.OP.No.13334 of 2020 etc batch**

**A.D.JAGADISH CHANDIRA.J**

tsh



**Crl.OP.No.13334 of 2020 etc batch**

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**03.09.2020**