

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 8TH DAY OF MAY 2015/18TH VAISAKHA, 1937

Bail Appl..No. 1156 of 2015 ()

**CRIME NO. 535/2014 OF MAVOOR POLICE STATION,
KOZHIKODE DISTRICT**

PETITIONER/ACCUSED:-:

**MUFEESHKhan, AGED 32 YEARS, S/O.MUHAMMED,
KANICHADIKKUZHIYIL HOUSE, CHERUVADY,
MAVOOR - 673 661, KOZHIKODE.**

**BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN**

RESPONDENTS/STATE AND COMPLAINANT:-:

- 1. THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. THE SUB INSPECTOR OF POLICE,
MAVOOR POLICE STATION, KOZHIKODE DISTRICT.**

R1 & R2 BY SENIOR PUBLIC PROSECUTOR SRI. SAREENA GEORGE

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 08-05-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

P. UBAID, J.

Bail Appl. No.1156 of 2015

Dated this the 8th day of May 2015

O R D E R

The petitioner seeks pre arrest bail on the apprehension of arrest in connection with Crime No.535 of 2014 of the Mavoor Police station registered under Sec.379 of the Indian Penal Code and under Secs.20 and 21 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (for short, 'the Sand Act').

2. The prosecution case is that the accused were found illicitly transporting river sand without any pass or authority. Though, crime is seen registered under Sec.379 IPC also, the allegations will practically come only under the Sand Act. This is only a case of illicit or unauthorized possession, removal or transportation of river sand. The petitioner seeks pre arrest bail on the ground that Sec.379 IPC was mischievously incorporated by the Police in the FIR, with the object of bail being denied to the petitioner. No doubt, illicit or unauthorised removal, possession or transportation of river sand by itself will come only under Sec.20 of the

Sand Act. But to constitute the offence of theft punishable under Sec.379 IPC, something more is required. These things will have to be considered by the learned Magistrate having jurisdiction. If the crime involves only an offence punishable under Sec.20 or 21 of the Sand Act, the petitioner can very well claim bail as of right before the learned Magistrate, because the offence is bailable. The offences under Sec.20 and 21 of the Sand Act are made cognizable under Sec.24 of the Sand Act. The offence under Sec.20 is punishable with imprisonment up to two years. The offences under the Sand Act are not seen made non bailable under the Act. No doubt, the offences are bailable. If the allegations made by the police in the FIR will constitute only the offence under Sec.20 or 21 of the Sand Act, the accused will have to be granted bail as of right. Whether the case involves the essentials of Sec.379 IPC, will have to be examined by the learned Magistrate having jurisdiction. This Court is not inclined to go into these aspects or to exercise the discretionary powers under Sec.438 Cr.P.C., when the main offence alleged against the petitioner is

essentially and practically aailable one under the Sand Act. I find that the request for bail will have to be considered by the learned Magistrate having jurisdiction under Sec.437 Cr.P.C. Let the learned Magistrate examine the case records and see whether necessary elements and ingredients are there to constitute the offence of theft punishable under Sec.379 IPC, or whether the allegations come only under the Kerala Sand Act.

In the result, this bail application is disposed of with direction to the learned Magistrate having jurisdiction, that in case application for bail is filed under Sec.437 Cr.P.C. on surrender, or on arrest, the same shall be judiciously considered and decided as indicated above.

Sd/-
P. UBAID
JUDGE

/ True Copy /

P.A.To Judge

NS