



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Ninth day of March Two Thousand Fifteen

PRESENT

THE HON`BLE MR JUSTICE P.N.PRAKASH

CRL OP(MD) Nos.1879 & 2578 of 2015

1 P.PERIASAMY
2 P.KRISHNAMOORTHY
3 P.ARUNRAJA

... PETITIONERS/ACCUSED NO.1 TO 3
IN CRL.OP(MD)NO.1879/2015

1. PRABAHARAN
2. STALIN
3. MARIMUTHU
4. KARUNANITHI
5. KUMARESAN

... PETITIONERS/ACCUSED NO.4 TO 7 & 11
IN CRL.OP(MD)NO.2578/2015

Vs

THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH, MADURAI DISTRICT.
CR. NO. 20/2015.

... RESPONDENT/COMPLAINANT
IN BOTH PETITIONS

FOR PETITIONER : M/S.GOPINATH, SENIOR COUNSEL,
FOR M/S.C.MUTHU SARAVANAN, ADVOCATE IN BOTH PETITIONS

FOR RESPONDENT : MR.S.SHANMUGA VELAYUTHAM, PUBLIC PROSECUTOR,
ASSISTED BY MR.R.RAMACHANDRAN,
ADDITIONAL PUBLIC PROSECUTOR, IN BOTH PETITIOS

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioners, who apprehend arrest at the hands of the respondent police for the alleged offences punishable under Sections 120(b), 447, 379, 420, 304(i), 434 r/w 511 IPC, 3(1) of TNPPDL Act, 3(a), 4(a) of Explosive Substances Act, 4(1), 4(1)(a) and 21 of MMDR Act in Crime No.20 of 2015 on the file of the respondent police, seek anticipatory bail.

2.Heard Mr.V.Gopinath, learned Senior Counsel for Mr.C.Muthusaravanan, learned counsel appearing for the petitioners and Mr.S.Shanmuga Velayutham, learned Public Prosecutor assisted by Mr.R.Ramachandran, learned Additional Public Prosecutor, appearing for the State.

3. The case of the prosecution has been narrated as follows:

"One Thiru. A.Muhamad Ali, Village Administrative Officer of Malampatti Village i/c E.Malampatti Village, Melur Taluk, Madurai District has preferred a complaint stated that vide G.O.Ms.(3D) No.46, Industries (MMB 1) Dept. dt. 29.10.2003, the



Government granted lease to the first petitioner P.Periasamy to quarry granites in Survey No. 240/5. 240/6. 240/2B, 241/12, 241/13, 241/14A, 241/14B1, 241/14B2, 241/15, 241/16, 241/17A, 241/17B, 241/17C, 241/18, 253/2B of E.Malampatti Village to an extent of 1.23.5 Hectares for a period of 20 years. After taking lease from the Government the petitioner / accused with the active connivance of his sons Babu & Krishna Moorthy and Arunraj along with Quarry Manager and workers, namely, Prabaharan, Stalin, Marimuthu, Karunanithi, Mathan Kumar, Arumugam, Murugan, Kumaresan, Saravanan, Renganathan, were quarrying the lease hold land and also illicitly quarried granite blocks in Government Navinkudi Kanmai Poramboke land in Survey No.253/1 adjacent to the lease hold area and illegally quarried and committed theft of multi coloured granites and he also quarried illegally in the non lease hold patta land in S.F.No.240/4 and 240/3c, thus wrongfully gained themselves totally to the tune of Rs.55.86 Crores causing wrongful loss to the Government. The complainant on receipt of the Evaluation Report of the inspection team from the Tahsildar, he along with his Village Assistant Tr.Sudhandira Gandhi visited the quarry site and found missing of survey stones. The Government Navinkudi Kanmoi Porampoke land in Survey No.253/1 was damaged by the petitioner and others and excavated a deep pit without leaving safety distance from the quarry, knowing fully well that the village people and workers of the quarry may fall in the deep pit and which may cause the loss of their life. The defacto complainant's enquiry reveals that all the above said accused after getting lease from the government on various dates illegally quarried using explosive substances and machineries, committed theft of multi coloured granites. He produced the Evaluation Report, Sketch, A-Register, Chitta, FMB sketch with the complaint. The Sub-Inspector of Police ALGSC who received the complaint and registered a case in Cr.No.20/2015 u/s 120(B), 447, 379, 434, 420, 304(ii) IPC r/w 511 IPC and 3(i) of TNPPDL Act and 3(a), 4(a) of Explosives Substances Act and 4(1),, 4(1A), 21 of MM(D&R) Act."

4.Mr.V.Gopinath, learned Senior Counsel for the petitioners in CrI.O.P.(MD) No.1879 of 2015 submitted that though mining lease was granted to P.Periasamy / 1st petitioner, the land for which the lease was granted, was sold by Periasamy to PRP Granites owned by one Palanisamy as early as on 10.07.2008 and since then, it was PRP Granites, which was quarrying in the said land. In support of this contention, learned Senior Counsel for the petitioners also produced the Revenue Records of the land in question in which the name of Palanisamy, Managing Director of PRP Granites figures.

5. Learned Senior Counsel for the petitioners also submitted that the petitioners carried on with the mining activities only upto 2007 and thereafter, they transferred the lease to PRP Granites owned by the said Palanisamy. In support of this contention, the petitioners filed a typed set of papers, enclosing ""Form-C", which is a notice of Intention of Abandonment / Surrender of Mine / Quarry or Part of the Mine / Quarry under Rule 24(2) and Rule 24(4) of the Mining Rules. The copy of the Form-C bears the date 20.07.2007. Learned Senior Counsel also filed a copy of Appendix VII-A, which is an "Application For Transfer of Quarrying Lease" dated 10.06.2008 duly signed by Periasamy, requesting the Government to transfer the lease as per Rule 36-F of the Tamil Nadu Mines and Minerals Concessional Rules, 1959, in favour of P.R.P.Exports. Based on this document, learned Senior Counsel submitted that the



petitioners had not only sold the patta land for which mining lease was granted to P.R.P.Exports on 10.07.2008, but even prior to that , they had submitted necessary transfer applications to the Government.

6. On 17.02.2015, this Court directed the learned Public Prosecutor to ascertain from the department whether any application for transfer has been duly submitted by the petitioners to the Assistant Director, Mines Department, Madurai, as contended by the petitioners.

7. Learned Public Prosecutor brought to my notice the provisions of Rule 36-F of the Tamil Nadu Mines and Minerals Concessional Rules, 1959, which states as follows:

"36-F Transfer of Lease - Notwithstanding anything contained in these rules, the lessee shall not, without the previous consent in writing of the State Government-

(a) Assign, sub-let mortgage or in any other manner, transfer the quarrying lease, or any right title or interest thereon."

8. Learned Public Prosecutor submitted that transfer applications were never submitted by the petitioners to the Government and even according to their own showing, applications were given by the petitioners only to PRP Granites and not to the Government. Further learned Public Prosecutor brought to my notice Column No.2 in Appendix VII-A, which reads as follows:

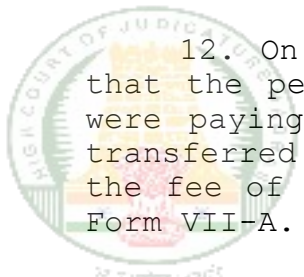
"A sum of Rs..... being the non-refundable application fee payable under sub-rule (5) (a) (i) of rule 36-F of the said Rules has been deposited."

According to the extant rules, a sum of Rs.2,000/- has to be paid along with the application for transfer of quarrying lease. If the petitioners had really submitted Appendix VII-A, Column No.2 would not have been left blank and that they would have mentioned the details of the demand draft for Rs.2,000/- and other particulars.

9. There appears to be force in this contention of the learned Public Prosecutor. Learned Public Prosecutor also filed a report dated 23.02.2015 given by the Assistant Director (Geology and Mining), Madurai, in which it is clearly stated that there is no document available in the file of the Collectorate relating to the applications of transfer of quarry lease, allegedly submitted by the petitioners. It is further stated in the report that the petitioners have paid seigniorage fee of Rs.16,45,259/- for the period 2003-2004 to 2010-2011 in his name. This shows that the petitioners have been quarrying the lease land as well into adjoining Government land till 2012.

10. The crux of the allegation against these petitioners is that they have illegally quarried into the waterbody in S.No.253/1, which is located adjacent to the lease hold area. Learned counsel for the petitioners submitted that there cannot be a vicarious liability in Criminal Law inasmuch once these petitioners have sold the land to P.R.P.Exports, they cannot be held criminally liable for the acts committed by P.R.P.Granites.

11. I am unable to persuade myself to agree with this argument, because there is no material on record to show that the lease was ever transferred in favour of P.R.P.Exports.



12. On the contrary, the prosecution has produced materials to show that the petitioners continued to quarry in the area till 2012 and they were paying seigniorage fee. That apart, if the petitioners had really transferred the lease hold rights to P.R.P.Exports, they should have paid the fee of Rs.2,000/- and submitted the application to the Government in Form VII-A.

13. Learned Senior Counsel for the petitioners further submitted that the lease stands in the name of the 1st petitioner and the 2nd and the 3rd petitioners are only his sons and they had nothing to do with the business.

14. It is the case of the prosecution that though the lease stands in the name of the 1st petitioner, the 2nd and the 3rd petitioners were actively participating in the business of their father and were assisting him.

15. Taking into consideration the gravity of the allegations against these petitioners in Crl.O.P.(MD) No.1879 of 2015, this Court is not inclined to grant anticipatory bail to them. Hence, the Criminal Original Petition in Crl.O.P.(MD) No.1879 of 2015 is dismissed.

16. As regards the petitioners in Crl.O.P.(MD) No.2578 of 2015 are concerned, even according to the prosecution, these petitioners were working as Supervisors and Servants under Periasamy and his sons. Hence, this Court is inclined to grant anticipatory bail to them. Accordingly, Accordingly, the petitioners in Crl.O.P.(MD) No.2578 of 2015 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 Judicial Magistrate, Melur, Madurai District, on condition that each of 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 learned Magistrate concerned and on further condition that:

[a] the petitioners in Crl.O.P.(MD) No.2578 of 2015 shall report before the respondent police daily at 10:30 a.m. for a period of four weeks and thereafter as and when required for interrogation.

[b] the petitioners in Crl.O.P.(MD) No.2578 of 2015 shall not tamper with evidence or witness either during investigation or trial.

[c] the petitioners in Crl.O.P.(MD) No.2578 of 2015 shall not abscond either during investigation or trial.

[d] 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 5560].



17. For the sake of brevity, it is reiterated that the Criminal Original Petition in Crl.O.P.(MD) No.1879 of 2015 in respect of all the petitioners is dismissed.

sd/-
09/03/2015

/ TRUE COPY /

WEB COPY

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE JUDICIAL MAGISTRATE, MELUR.
 2. -DO- THRO THE CHIEF JUDICIAL MAGISTRATE, MADURAI.
 3. THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH, MADURAI DISTRICT.
 4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +2. CC to M/S.C.MUTHU SARAVANAN Advocate SR.No. 11208 & 11209
- SM : 11.03.2015 : 5P/7C

ORDER
IN
CRL OP(MD) Nos.1879 & 2578 of 2015
Date :09/03/2015