



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

Thursday, the Fifth day of February Two Thousand Fifteen
PRESENT

THE HON`BLE MR JUSTICE P.N.PRAKASH
CRL OP(MD) No.845 of 2015

1 S.SANKARANARAYANAN
2 P.K.M. SELVAM
3 B.SASIKUMAR
4 R.RAGU
5 MATHAVAN
6 JOSEPH

... PETITIONERS/ACCUSED NOS.1 TO 6

Vs

1. THE SUPERINTENDENT OF POLICE
MADURAI.

2. THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH, MADURAI.
CR. NO.12/2015.

... RESPONDENTS/COMPLAINANTS

FOR PETITIONER : MR.A.RAMESH, SENIOR COUNSEL
FOR MR.N.SHANMURGASELVAM

FOR RESPONDENT : MR.C.RAMESH, ADDITIONAL PUBLIC PROSECUTOR,

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

ORDER : The Court Made the following order :-

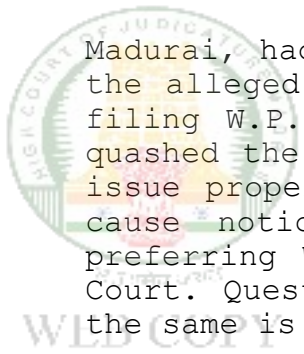
The petitioners, who apprehend arrest at the hands of the respondent police for the alleged offence punishable under Sections 447, 379, 120 (B), 420, 430, 434, 304(ii) IPC r/w 511 IPC r/w 3(1)(ii) of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992 and Section 6 r/w 3(a), 4(a), Explosives Substances Act and 4(1), 4(1A), 21 and 23 of the Mines and Minerals (Development and Regulation) Act 1957 in Crime No.12 of 2015 on the file of the respondent police, seek anticipatory bail.

2. Heard Mr.A.Ramesh, learned Senior Counsel appearing for the petitioners and Mr.C.Ramesh, learned Additional Public Prosecutor appearing for the respondents.

3. The case of the prosecution is that the petitioners 1 and 2 herein are partners in Sri Iswariya Rock Exports [hereinafter would be referred to as "Iswariya Exports] and the petitioners 3 to 6 are their employees. Iswariya Exports was granted 20 years lease, on 16.02.2006, to quarry multi-coloured granite blocks in an extent of 1.20.5 hectares in S.F.No.101/1A1(P), situated at Kaliappan II Bit Village and S.No.12/13A, Poolangulam Village, Madurai East Taluk.

4. Ex *hypothesi* of the prosecution shows Iswariya Exports had trespassed into the adjacent Government poramboke lands, which were not leased to them and had indiscriminately quarried there also.

5. Mr.A.Ramesh, learned Senior Counsel appearing for the petitioners, <https://hse.scribd.com/doc/111111111/111111111> Iswariya Exports was granted 20 years lease, on 16.02.2006, in patta lands and they were quarrying only in the lands covered by the lease. He further contended that the District Collector,



Madurai, had issued a show cause notice, dated 31.05.2010, with regard to the alleged excess quarrying, which was challenged before this Court, by filing W.P.[MD].No.8508 of 2010. This Court, by order dated 28.09.2012, quashed the said show cause notice, giving liberty to the authorities to issue proper show cause notice. He further contended that a second show cause notice dated 11.02.2013 was issued, which was challenged, by preferring W.P.[MD].No.3722 of 2013, which came to be dismissed by this Court. Questioning the same, W.A.[MD].No.1497 of 2014 has been filed and the same is pending before a Division Bench of this Court.

6. The learned Senior Counsel also contended that from the year 2013 onwards, all quarrying operations in the State of Tamil Nadu have come to standstill, on account of the Judgment of the Hon'ble Apex Court and therefore, the arrest of the petitioners, at this distant point of time, may not be necessary. He also submitted that the petitioners participated in the enquiry conducted by the District Collector concerned and that everything is borne out by records and therefore, there is no question of they tampering any evidence. He also submitted that the petitioners have got huge assets and strong roots in the State, leaving which, they cannot abscond anywhere.

7. The respondent-police has filed a counter, along with a coloured Map, showing the areas, which were allotted to Iswariya Exports for quarrying and the extent of area, in which they have illegally quarried. On a perusal of the materials prepared by the Assistant Geologist, Department of Geology & Mining and the Assistant Director of Geology & Mining, it is apparent that Iswariya Exports have expanded not only into an adjacent water body, but also into a huge extent of Government Land in and around the area. To be more precise, the counter filed by the police states thus:-

"After taking lease from the Government, the prime accused with the aid of other petitioners and his men trespassed into the adjacent Government Promaboke Poolankulam Kanmai in S.F.No.10/12 of Poolankulam Village and non lease patta land in S.F.Nos.12/13A1, 12/13A2(P), 12/13B of Poonkulam Village and 101/1A1(P), 101/2 of Kalikappan II Bit Village of Madurai East Taluk, illegally quarried after removing boundary stones and by using explosive substances illegally, committed theft of multi-coloured granite stones to the tune of 70819.44 M3. The Tahsildar has further stated in his complaint that the petitioner had also quarried without leaving safety distance, excavated deep pit, which may cause the death of any public passing through the Kanmai and thereby the petitioners have violated the conditions imposed the G.O., and the rules of MM [D&R] Act. The evaluation report issued by the special team valued the loss caused by the petitioner to the Government is about Rs.141.64 Crores. The Special Team which evaluated the quarry had sent a report to the District Collector, Madurai and the District Collector, after perusing voluminous records available in the office of the Department of Geology and Mining, Madurai instructed the Tahsildar to take necessary action. The Tahsildar, Madurai East Taluk, Madurai District, after verifying the inspection report and after visiting the quarry preferred a complaint to the Superintendent of Police, Madurai District, on 13.01.2015. As per the orders of the Superintendent of Police, Madurai Districty, and the same was registered in the name of the petitioner as FIR by this respondent on 14.01.2015 at 10.00 hours in Crime No.12/2015, u/s 447, 379, 120(B), 420, 430, 434, 304(ii) IPC r/w 511 IPC r/w 3(1)(ii) of the Tamil Nadu



Public Property (Prevention of Damage and Loss) Act, 1992 and Section 6 r/w 3(a), 4(a), Explosives Substances Act and 4(1), 4(1A), 21 and 23 of the Mines and Minerals (Development and Regulation) Act 1957.

8. Mr.A.Ramesh, learned Senior Counsel also contended that when Iswariya Exports received the show cause notice, apprehending arrest by the police, they filed Crl.OP[MD].No.17012 of 2013 for Anticipatory Bail, though, admittedly, no First Information Report was registered then. The learned Senior Counsel also produced a copy of the order dated 30.01.2014 and submitted that this Court had granted Anticipatory Bail to the petitioners upon the same set of facts and the subsequent registration of the First Information Report has, in no way, altered the state of affairs. In the said order, dated 30.01.2014 made in Crl.OP[MD].No.17012 of 2013, in Paragraph No.3, it is stated as follows:-

"3. The learned Public Prosecutor, on instructions, would submit that as on today, no complaint is received against the petitioners herein and therefore, the question of registration of F.I.R against the petitioners does not arise at all."

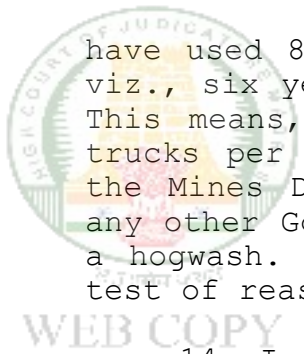
9. The said order further says that these petitioners were enjoying an interim order of not to arrest from 11.10.2013 onwards and under those circumstances, Anticipatory Bail was granted, though there was neither a complaint nor First Information Report registered against the petitioners. In the said case, the petitioners apprehended arrest by the police for the offences under Sections 447, 420, 406 and 379 of the Indian Penal Code and 4(1A), 4(2A), 4(3), 21(b) and 5 of the Mines and Minerals (Development and Regulation) Act 1957.

10. Now, after a preliminary enquiry by the District Collector, the Special Tahsildar was directed to conduct inspection again and he has given a complaint on 13.01.2015, based on which the present case in Crime No.12 of 2015 has been registered, on 14.01.2015 for offences under Sections 447, 379, 120(B), 420, 430, 434, 304(ii) IPC r/w 3(1)(ii) of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992 and Section 6 r/w 3(a), 4(a), Explosives Substances Act and 4(1), 4(1A), 21 and 23 of the Mines and Minerals (Development and Regulation) Act 1957. Thus, the offence, in the present case, is different from the offences, for which Anticipatory Bail was granted earlier. Since the petitioners themselves are aware that the earlier order would not enure to their benefit now, they have rightly approached this Court for Anticipatory Bail via this petition.

11. Therefore, in my considered view, the order dated 30.01.2014 made in Crl.OP[MD].No.17012 of 2013, will neither protect the petitioners herein from arrest nor can that be taken into consideration for deciding this Criminal Original Petition.

12. The case of the prosecution is that these petitioners have quarried 70819.44 M³ of coloured granite from the adjacent water bodies and Government lands and the loss caused to the Government is estimated at Rs.141.64 Crores. This is, indeed, gargantuan. A village pond that was adjacent to the leased land has now vanished in thin air.

13. Mr.A.Ramesh, learned Senior Counsel, wanted to call the bluff in the prosecution case, by submitting a calculation. He submitted that, <https://hcservices.gov.in/hcservices/> prosecution hypothesis, 70819.44 cbm means - 70819.44 cbm X 3 tons per cbm, which equals 2,12,458 tons. On an average, a lorry can carry only 25 tons and to transport 2,12,458 tons, the petitioners should



have used 8,500 trucks, during the period from April 2006 to July 2012, viz., six years and four months, which approximately comes to 2,300 days. This means, the petitioners should have on an average transported four trucks per day illicitly, on all 2,300 days, without being detected by the Mines Department, the Revenue Department, the police authorities or any other Government Agency. Hence, the entire case of the prosecution is a hogwash. This argument did sound attractive, but cannot withstand the test of reason.

14. India has a hoary history of loot and plunder of its assets. No part of the globe is blessed with such abundant riches beneath the soil as available in our country. Subterranean wealth has been the support for the well being and prosperity of the humans on the surface of this part of the Planet. Art, Music, Literature, Poetry, Science, et al would not have flourished in this sub-continent had the people not been peaceful and prosperous. Our prosperity was an eyesore for invaders and marauders beginning from Alexander to East India Company. The paradox is, despite the plunders for several centuries, we are still surviving. When everyone was looting us, we remained stoic and indifferent. This apathy continues even today, but for different reasons. Therefore, I am not wee bit surprised at the political dispensation and bureaucracy closing their eyes, ears and mouths, like Gandhiji's monkey dolls, of course for wrong reasons, when, accentuated by greed, the petitioners were mining into water bodies and Government lands using high voltage explosives and transporting them by huge trucks in broad day light.

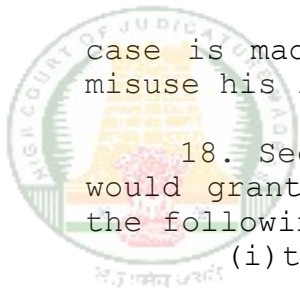
15. Mr.A.Ramesh, perhaps, on account of his deference for the judiciary, confined his arguments only on the indulgence shown by the other two organs of the State to the mining lobby.

16. In an Article published in the January 27th 2015 issue of Tamil Hindu, Justice K.CHANDRU, a retired Judge of this Court has cited several instances, where mining barons have carried on with their activities, under the protective umbrella of stay orders granted by this Court. In fact, First Information Reports registered by the police for illegal quarrying against offenders were quashed by this Court from 2006 to 2012, based on the order in D.Sudhashar Vs. State [2006 (2) MLJ [Cr1] 115], until it was overruled by a Division Bench of this Court in Sengol Vs. State [2012 (2) CTC 369]. In this long interregnum, even conscientious policemen suffered legal paralysis. Therefore, just because all the instrumentalities of the State were looking somewhere all along, it cannot be said that they should continue to be a Rip Van Winkle in the future also.

17. As regards the contentions of the learned Senior Counsel that the entire evidences are borne out by records and that custodial interrogation of these petitioners may not be necessary, the learned Additional Public Prosecutor submits that, custodial interrogation of these petitioners is essential in order to discover the money trail. Recently, the First Bench of this Court, in a Public Interest Litigation, has directed Mr.U.Sahayam, I.A.S., to conduct an inspection with regard to the illegal mining of granites in and around Madurai and perhaps, as a follow up action, the present First Information Report must have been registered by the police. The Hon'ble Supreme Court in the case of Rakesh Baban Borhade vs. State of Maharashtra and another, reported in 2014 (13) Scale 93 has reiterated the parameters for granting anticipatory bail, by

<https://hsevercourts.gov.in/hsevercourts>

several earlier cases on the subject. In the said judgment, the Hon'ble Supreme Court has stated that anticipatory bail is not to be granted as a matter of rule, but should be granted only when a special



case is made out and the Court is convinced that the accused would not misuse his liberty.

18. Section 438, as amended by Act 25 of 2005, states that the Court would grant or refuse anticipatory bail after taking into consideration the following factors, namely, :-

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence.

The gravity of the accusation against these petitioners, as stated above, is indeed very serious. Learned Additional Public Prosecutor also represented that there are two earlier cases, registered against the petitioners 1 and 2.

19. In this case, petitioners 1 and 2 are the owners of Aiswariya Exports, the third petitioner was working as Pit in-charge, the fourth petitioner was Cashier, the fifth petitioner was an Explosive Blaster and the sixth petitioner was the Quarry Manager. Therefore, their involvement in this illegal mining cannot be dismissed as insignificant.

20. According to the prosecution, there are two other cases, viz., Crime Nos.196 of 2012 and 187 of 2012 on the file of Keelavalavu Police Station against the first and second petitioners. Though this Court has granted Anticipatory Bail to them in those two cases, I am not inclined to grant Anticipatory Bail to them as a matter of routine, for, custodial interrogation of these petitioners is essential to collect substantial evidence and also to find out the involvement of other players in this crime. Judiciary being one of the trustees of public wealth, the Legislature and the Executive being the other two, cannot turn a Nelson's eye any more.

21. In the result, the Criminal Original Petition is dismissed.

sd/-
05/02/2015

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)

TO

1. THE SUPERINTENDENT OF POLICE, MADURAI.
2. THE INSPECTOR OF POLICE, DISTRICT CRIME BRANCH, MADURAI.
3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.N.SHANMUGASELVAM Advocate SR.No. 5392

SR : 06.02.2015 : 5p/5c

ORDER
IN
CRL OP(MD) No.845 of 2015
Date : 05/02/2015