

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twelfth day of February Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice R. SURESH KUMAR

CRIMINAL ORIGINAL PETITION Nos.1565, 1566 & 1567 of 2018

V.S.O.BALAKRISHNAN,

[PETITIONER / ACCUSED in
ALL THE PETITIONS]

B.RAJAN

[PETITIONER/ACCUSED IN
CRL.OP.Nos.1566 & 1567/2018]

Vs

STATE THROUGH
THE INSPECTOR OF POLICE,
F2-SIPCOT POLICE STATION,
THIRUVALLUR DISTRICT.
CR.Nos.20, 19 and 11 OF 2018.

[RESPONDENT]

For Petitioner : M/S.R.GANESH KUMAR Advocate (IN ALL THE PETITIONS)

For Respondent : Mrs. THANKIRA Govt. Advocate (Crl. Side)
(IN ALL THE PETITIONS)

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

ORDER : The Court Made the following order :-

The petitioners in these Criminal Original petitions, on apprehending arrest at the hands of the respondent Police have filed these petitions seeking Anticipatory Bail. The Crl.O.P.Nos.1566 and 1567 of 2018 were filed by both the petitioners and Crl.O.P.No.1565 of 2018 was filed by the first petitioner.

2. The case of the prosecution is that 5 nos., of lorries involved in the aforesaid crime are belong to these petitioners. The lorries with Registration Nos.TN 18 F 6755 & TN 20 U 0618 are belonging to the 1st petitioner/ father of the 2nd petitioner and lorries with Registration Nos. TN 18 AZ 5515, TN 18 A 2705 and TN 18 AD 2750 are belonging to the second petitioner/ son of the first petitioner. When these lorries were intercepted by the respondent Police, which were stationed at the godown or at the place belonging to the petitioners within the respondent Police Station limits, all the three vehicles were fully loaded with approximately 3 units of sand in each of the lorry. Immediately, the respondent Police seems to have seized the vehicle as they prima facie found that there were no documents available with the drivers, who drove the vehicles for transporting the sand and therefore, arrested the drivers.

3. According to the prosecution, the petitioners herein who are the owners of the lorries are bringing sand illegally from the State of Andhra Pradesh and storing the said sand in their godown, where they also mix up some other material with the sand, after which they sell it to the needy, thereby causing loss to the Government Exchequer. Also, their activities are not only offences punishable under Sections 379 and 430 of Indian Penal code, but also under Section 21(1) of the Mines and Minerals (Development and Regulations) Act. Therefore, on 12.01.2018 after arresting the drivers and seizing the lorries, the respondent Police has undertaken the investigation and according to them, a sample of the sand taken from the lorries was sent for chemical analysis.

4. The learned counsel appearing for the petitioners submitted that the petitioners, no doubt are the real owners of the vehicles involved in these cases and they were in the process of purchasing sand for their clients, from the State of Andhra Pradesh, after paying necessary amount to the Government of Andhra Pradesh. The sand purchased from the State of Andhra Pradesh could be delivered to the client of the petitioners at various parts of the State. The learned counsel for the petitioners would further submit that, in this case the Government of Andhra Pradesh, Department of Mines and Geology, had given a transit form and GST e-way bill issued by the Commercial Tax Department. Purchase Orders(P.O.) and other such documents for each of the lorries which are filed by the petitioner in the typed set of papers and they are heavily relied upon by the learned counsel for the petitioner.

5. According to the learned counsel for the petitioner, the lessee's name and also the consignee's name have clearly been mentioned in the purchase form. Already, the quantity of the sand being transported, as well as, the details of the lorry is also mentioned in the said form issued by the Additional Director, Mines and Geology Department, Government of Andhra Pradesh and also the GST e-way bill has also been issued by the Commercial Tax Department, State of Andhra Pradesh. These documents are available for each of the lorry for transporting the sand on the particular date from the State of Andhra Pradesh and the sand was transported through the lorries of the petitioners. Appropriate transit forms were produced during the enquiry made by the Government of Andhra Pradesh and GST has also been paid. Therefore, necessary information required for transportation of sand to the respective consignee's name is also shown in the transit document.

6. The learned counsel for the petitioner would also submit that, the lorries were parked in front of the place which belongs to the petitioners, where a petrol bunk is also being run by the petitioners. It is the further argument on the side of the petitioners that, the petitioners have never violated any provisions of the Indian Penal Code, especially Sections 379 and 430 as well as provisions 21(1) of the Mines and Minerals Act.

7. I have considered the submissions made by both the petitioners as well as the learned Government Advocate (Criminal side). The learned Government Advocate has also produced a report given by the Tahsildhar concerned, to whom the reference has been made by the respondent Police. According to the report given by the Tahsildhar, Gummidipoondi vide his proceedings in Na.Ka.No.38/2018/A1 dated 17.01.2018, he along with the concerned Revenue Inspector and Village Administrative Officer, had a spot visit of the land belonging to the petitioners where the lorries were seized.

8. According to the report of the Tahsildhar, Gummidipoondi, some lorries belonging to the petitioners were found containing sand and upon enquiry, it is found that the sand and earth procured at this site was for the construction of Kalyana Mandapam, and land scapping work is undertaken for the purpose of construction of Kalyana Mandapam. The Tahsildhar in his report has further stated that, apart from the above, they found nothing except the sand kept for the construction of Kalyana Mandapam and there was no activity of sand loading or unloading or mixing of any other material with the sand or there was any evidence to show that there was a chance of mixing of sand with any other material in that place.

9. On perusal of the said report of the Tahsildar, and on perusal of the transit documents provided by the petitioners for each of the lorries seized by the respondent Police, it prima facie reveals that the petitioners have been transporting sand from the State of Andhra Pradesh, after having duly purchased the same for their consignee or the clients. Though it was the case of the prosecution, that the petitioners have involved in mixing of sand with other material for selling to gain profit, there was no materials or evidence available to show that such kind of activity has taken place at the place belonging to the petitioners, where the lorries were seized, according to the Tahsildhar's report.

10. In view of those facts and circumstances, this Court is inclined to accept the contentions of the petitioners and accordingly, the following orders are passed in these petitions:-

- (i) That the petitioners in the event of their arrest shall be released on bail, on condition that in each case, each of the petitioner shall execute a bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) alongwith two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Ponneri.
- (ii) Also, the petitioners shall co-operate with the respondent Police for the completion of investigation and appear before the respondent Police on every alternative day at **10:00 a.m.** until further orders.

With these directions and observations, the **Criminal Original Petitions shall stand ordered.**

-sd/-
12/02/2018

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
NO.I, PONNERI.

2 THE CHIEF JUDICIAL MAGISTRATE
TIRUVALLUR. [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
F2-SIPCOT POLICE STATION,
THIRUVALLUR DISTRICT,

5 THE TAHSILDHAR,
GUMMIDIPOONDI.

+3 CC to M/S.R.GANESH KUMAR Advocate on payment of necessary charges-Sr.Nos.2969, 2970 and 2968

CRL OP.Nos.1565, 1566 & 1567/2018

Date :12/02/2018

ths : 15.02.2018