



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

Friday, the Thirtieth day of November Two Thousand Eighteen

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PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CRL OP(MD) No.20425 and 20523 of 2018

DURAIYAPPAN THEVAR

... PETITIONER / ACCUSED NO.1
IN CRL OP(MD) No.20425 of 2018

POOVAIRAJA

... PETITIONER/ACCUSED NO.2
IN CRL OP(MD) No.20523 of 2018

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
SRIVAIKUNDAM POLICE STATION,
THOOTHUKUDI DISTRICT.
CRIME NO.30 OF 2018

... RESPONDENT / COMPLAINANT
IN BOTH THE PETITIONS

For Petitioner : M/S.P.MUTHUPANDI, Advocate
IN BOTH THE PETITIONS

For Respondent : MR.M.ASOKAN, Government Advocate
IN BOTH THE PETITIONS

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

ORDER : The Court Made the following order :-

The petitioners, who apprehending arrest at the hands of the respondent police for the offence punishable under Section 379 of IPC, registered in Crime No.30 of 2018, seeks anticipatory bail.

2. The case of the prosecution is that the petitioners illegally transported gravel sand.

3.The learned counsel for the petitioners submitted that the petitioners have not committed any offence as alleged by the prosecution and they have been falsely implicated in this case and that therefore, they may be granted anticipatory bail.

4.The learned Government Advocate (Crl. Side) appearing for the State submitted that there is no previous case pending against the petitioners. He further submitted that if the person is caught with



illegal sand in the mining area, he has to be directed to deposit the conditional amount to the credit of Crime number. However, in view of formation of District Mineral Foundation Trust in each district, the amount may be deposited to the credit of the said Trust for rehabilitation in the illegal sand mining affected areas.

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5. In view of the rehabilitation undertaken by the State Government under the Tamil Nadu District Mineral Foundation Rules, 2017, and in order to curb the illegal sand mining activities and also considering the submission made by the learned counsel for the petitioners, this Court is of the opinion that the petitioner is directed to make a non refundable deposit of **Rs.7,500/- (Rupees Seven Thousand Five Hundred only) each** to the credit of the concerned District Mineral Foundation Trust, without prejudice to their rights and contentions.

6. It is made clear that the deposit of the amount by the petitioners to the Trust would not amount to admission of guilt. The trial Court shall deal with the case independently on merits without reference to the amount deposited at the stage of anticipatory bail.

7. Considering the facts and circumstances of the case and also considering the submission made by the learned Government Advocate (Crl. Side), this Court is inclined to grant anticipatory bail to the petitioners with certain conditions.

8. Accordingly, the petitioners 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, Srivaikundam, Thoothukudi District, on condition that the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties each for a like sum to the satisfaction of the respondent Police or to the Police Officer, who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that:

(i) if the petitioners fails to surrender before the concerned Magistrate within a period of 15 days, this order shall stand automatically cancelled.

(ii) the petitioners shall make a non refundable deposit of **Rs.7,500/- (Rupees Seven Thousand Five Hundred only) each** to the credit of the Chairman/District Collector, District Mineral Foundation Trust of the concerned District, without prejudice to their defence before the trial Court and thereafter, the learned Judicial Magistrate shall accept the sureties furnished by the petitioner;

(iii) the petitioners shall report before the respondent police daily at 10.30 a.m. for a period of two weeks and thereafter as and when required for interrogation.

(iv) the petitioners shall not tamper with evidence or witness either during investigation or trial.

(v) the petitioners shall not abscond either during investigation or trial.

(vi) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners 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]**.

(vii) If the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.\

sd/-

30/11/2018

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

TO

1 THE JUDICIAL MAGISTRATE,
SIVAIKUNDAM, THOOTHUKUDI DISTRICT.

2 DO THROUGH THE CHIEF
JUDICIAL MAGISTRATE, TUTICORIN.

3 THE INSPECTOR OF POLICE,
SRIVAIKUNDAM POLICE STATION,
THOOTHUKUDI DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2. CC to M/S.P.MUTHUPANDI Advocate SR.No.22546 & 22547

COPY TO:

THE OFFICER INCHARGE,
DISTRICT MINERAL FOUNDATION TRUST,
THOOTHUKUDI DISTRICT.

ORDER

IN

CRL OP(MD) No.20425 and
20523 of 2018

Date :30/11/2018

JM/VR MMS/SAR 1/06.12.2018/3P/8C