



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

Friday, the Twenty Second day of February Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice M.DHANDAPANI

CRL OP(MD) No.2747 of 2019

1.GANESAN,
2 CHINNADURAI,
3 ESAKKIRAJA,

... PETITIONERS / ACCUSED NOS.1 TO 3

Vs

THE SUB INSPECTOR OF POLICE,
MUNNEERPALLAM POLICE STATION,
MUNNEERPALLAM, TIRUNELVELI DISTRICT.
(CRIME NO.35 OF 2019)

... RESPONDENT / COMPLAINANT

For Petitioners : MR.N.PRAGALATHAN Advocate

For Respondent : MR.K.SUYAMBULINGA BHARATHI,
Govt. Advocate (Crl. Side)

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

ORDER : The Court Made the following order :-

The petitioners, who are apprehending arrest at the hands of the respondent police for the offence punishable under Section 379 (Sand Theft) IPC in Crime No.35 of 2019, seek anticipatory bail.

2. The case of the prosecution is that five gunny bags of sand has been illegally transported by the petitioners in their vehicle.

3. The learned counsel for the petitioners submitted that the petitioners are innocent person and they have not committed any offence as alleged by the prosecution. However, on instruction, he would further submit that the petitioners are ready to deposit any amount to the District Mineral Foundation Trust without prejudice to his rights.

4.The learned Government Advocate(Crl.side) appearing for the State submitted that the vehicle was seized by the respondent police would further submit that the second petitioner is having previous cases.



5. At this juncture, the learned counsel appearing for the petitioners would submit that he is not pressed this petition as far as the second petitioner is concerned.

6. The learned Government Advocate (Crl. side) would submit 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 areas affected by illegal sand mining.

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 first and third petitioners are directed to make a non refundable deposit of Rs.5,000/- (Rupees Five Thousand only) jointly to the credit of the concerned District Mineral Foundation Trust, without prejudice to his rights and contentions. This amount so deposited shall be utilised by the Trust for rehabilitation works.

6. It is made clear that the deposit of the amount by the first and third 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), I am inclined to grant anticipatory bail to the first and third petitioners with certain conditions.

8. Accordingly, the first and third petitioners is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.5, Tirunelveli, on condition that the first and third petitioners 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 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 first and third petitioners failed to surrender before the concerned Magistrate within a period of 15 days from the date of receipt of a copy of this order, this order shall stand automatically cancelled.

(ii) the first and third petitioners shall make a non refundable deposit of Rs.5,000/- (Rupees Five Thousand only) jointly



through demand draft to the credit of the Chairman/District Collector, District Mineral Foundation Trust of the concerned District, without prejudice to his defence before the trial Court and the learned Judicial Magistrate, after perusing the challan/receipt, shall accept the sureties furnished by the petitioners;

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(iii) the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/concerned court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity;

(iv) the first and third petitioners shall report before the respondent police at 10.30.a.m., until further orders.

(v) the first and third petitioners shall not tamper with evidence or witness either during investigation or trial;

(vi) the first and third petitioners shall not abscond either during investigation or trial;

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

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

sd/-
22/02/2019

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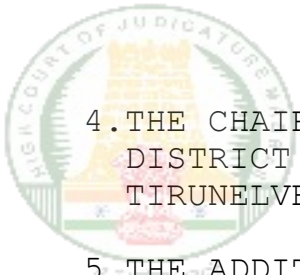
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1.THE JUDICIAL MAGISTRATE NO.5,
TIRUNELVELI

2.DO THRO'THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.

3.THE SUB INSPECTOR OF POLICE,
MUNNEERPALLAM POLICE STATION,
MUNNEERPALLAM, TIRUNELVELI DISTRICT.



4. THE CHAIRMAN/DISTRICT COLLECTOR,
DISTRICT MINERAL FOUNDATION TRUST,
TIRUNELVELI DISTRICT.

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

+1. CC to MR.N.PRAGALATHAN Advocate SR.No.3642

ORDER

IN

CRL OP (MD) No.2747 of 2019

Date :22/02/2019

AE/PN/SAR-I/08.03.2019/4P/7C