



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

Thursday, the Twenty Eighth day of February Two Thousand Nineteen

WEB COPY

PRESENT

The Hon`ble Mr.Justice M.DHANDAPANI

CRL OP(MD) No.3142 of 2019

SUKUMARAN

... PETITIONER / SOLE ACCUSED

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
KOLLENCODE POLICE STATION,
KANYAKUMARI DISTRICT.
(CRIME NO.96/2010)

... RESPONDENT / COMPLAINANT

For Petitioner : MR.S.SIVAKUMAR Advocate

For Respondent : MR.S.CHANDRASEKAR, Additional Public Prosecutor

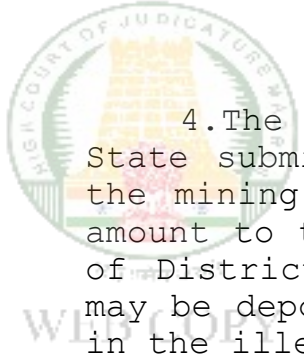
PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner who was arrested and remanded in the judicial custody from 01.02.2019 in pursuant to the NBW issued by the Judicial Magistrate Court on 11.05.2017 for the offences punishable under Section 379 of IPC and Section 4 (1) 4 (ii) r/w Section 21 of Mines and Minerals (Development and Regulation) Act, 1951, registered in Crime No.96 of 2010, seeks bail.

2.The case of the prosecution is that the petitioner illegally transported 35 bags of sand in the year 2010. For which charge sheet had been filed before the trial Court and the petitioner is facing trial in C.C.No.144 of 2010. Since on 11.05.2017 he failed to appear before the trial Court, the trial Court issued Non Bailable Warrant against the petitioner and the petitioner has been arrested on 01.02.2019 pursuant to the NBW.

3.The learned counsel for the petitioner submitted that the absence of the petitioner before the trial Court on the particular day is neither willful nor wanton. Therefore, he may be granted bail. However, on instructions he would further submit that the petitioner is ready to deposit any amount in favour of Mineral Trust without prejudice his rights.



4. The learned Government Advocate (Crl. Side) appearing for the State 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.

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 petitioner and though the petitioner was arrested on execution of Non Bailable Warrant during the trial, this Court is of the opinion that the petitioner is directed to make a non refundable deposit of **Rs.5,000/- (Rupees Five thousand only)** to the credit of the concerned District Mineral Foundation Trust, without prejudice to his rights and contentions.

6. It is made clear that the deposit of the amount by the petitioner 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 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 bail to the petitioner with certain conditions.

6. Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties, of whom, one should be a blood related surety, each for a like sum to the satisfaction of the learned Judicial Magistrate, Thiruvaiyaru, Thanjavur District and on further condition that:

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

(b) the petitioner shall deposit a sum of **Rs.5,000/- (Rupees Five thousand only)** to the credit of the concerned District Mineral Foundation Trust Fund, without prejudice to his defence before the trial Court and therefore, the learned Judicial Magistrate shall accept the sureties furnished by the petitioner;

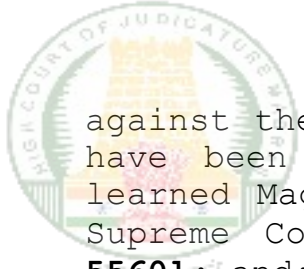
(c) the petitioner shall report before the concerned Judicial Magistrate Court daily at 10.30 a.m. until further orders;

(d) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(e) the petitioner shall not abscond either during investigation or trial;

<https://hcservices.ecourts.gov.in/hcservices/>

(f) 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]**; and;

(g) if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC;

sd/-
28/02/2019

/ TRUE COPY /

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

TO

- 1 THE JUDICIAL MAGISTRATE,
THIRUVAIYARU, THANJAVUR DISTRICT.
 - 2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THANJAVUR AT KUMBAKONAM.
 - 3 THE INSPECTOR OF POLICE,
KOLLENCODE POLICE STATION,
KANYAKUMARI DISTRICT.
 - 4 THE OFFICER INCHARGE,
SUB JAIL, KUZHITHURAI.
 - 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1 CC to M/s.S.SIVAKUMAR, Advocate (SR-4004[I] dated 28/02/2019)

COPY TO:

THE CHAIRMAN/DISTRICT COLLECTOR,
DISTRICT MINERAL FOUNDATION TRUST,
KANYAKUMARI DISTRICT.

ORDER
IN
CRL OP(MD) No.3142 of 2019
Date :28/02/2019

JM/PN/SAR 4/28.02.2019/3P/8C