

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.9796 of 2020

Kubendiran M/37 yrs,
S/o.Radha,
Residing at 27, Asupathi Nagar,
Esaani Street, Sirkazhi Taluk,
Nagapattinam District.

...Petitioner

Vs.

State represented by
The Inspector of Police,
Sirkazhi Police Station,
Nagapattinam District.
Crime No.811 of 2020

...Respondent

PRAYER: Criminal Original Petition filed under Section 438 Cr.P.C. praying to enlarge the petitioner on bail in the event of his arrest in Crime No.811 of 2020 on the file of the respondent police.

For Petitioner : Mr.S.Kishore Kumar

For Respondent : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor.

ORDER

The petitioner, who apprehends arrest at the hands of the respondent police for the alleged offences punishable under Sections 379 and 430 IPC and Section 21(1) of Mines and Minerals (Development & Regulation) Act, 1957 in Crime No.811 of 2020, on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution is that the accused persons have excavated the temple land for the purpose of taking sand and to sell the same. The 1st accused is the driver of the lorry. The 2nd accused who had got lease of the temple land in her name had also got permit from the Tahsildar for the establishment of fish pond. The 3rd accused is the lessee of the lorry and the 4th accused is the husband of the 2nd accused. Hence the complaint.

3. The learned counsel appearing for the petitioner would submit that this is second anticipatory bail petition. The petitioner is arrayed as 4th accused. Even according to the case of the prosecution, the 2nd accused is the lease holder of the temple land and she had got permission from the Tahsildhar for the establishment of fish pond and while excavating the land and selling the sand, she was arrested. Insofar as the petitioner is concerned, he is working

as a VAO and except the relationship of husband of the 2nd accused, he is nothing to do with the crime. Hence, he prays to grant anticipatory bail to the petitioner.

4. The learned Additional Public Prosecutor appearing for the respondent submitted that though the petitioner is the husband of the 2nd accused, he is working as a VAO and by using his official post, he is doing side business in his wife's name who is arrayed as 2nd accused in this case. She had obtained permission for the establishment of fish pond on the land belonging to the temple which was leased out in her favour. The petitioner along with other accused excavated the land leased out for the establishment of fish pond, took sand and sold the same. Hence, he opposed to grant anticipatory bail to the petitioner.

5. It is seen that there are totally four accused in this case in which, the petitioner is arrayed as A4. According to the prosecution, the 2nd accused is the wife of the petitioner herein who had obtained license from the Tahsildar for the establishment of fish pond on the land belonging to temple. The 2nd accused had taken the land for lease for the establishment of fish pond. Further, it is seen that except the relationship between the 2nd accused, no permission has been granted in the name of the petitioner and that the 2nd accused was already arrested and subsequently released on bail.

6. This Court is of the opinion that the petitioner shall deposit a sum of Rs.30,000/- (Rupees Thirty Thousand only) as non refundable deposit to the credit of the Arignar Anna Memorial Cancer Hospital & Research Institute, Kanchipuram, without prejudice to his rights and contentions before the trial Court. Merely, because the petitioner deposits the said amount, it would not amount to admission of his guilt. Therefore, it is open to the trial Court to deal with the case independently.

7. Considering the above fact and circumstances, this Court is inclined to grant anticipatory bail to the petitioner subject to the following conditions: Accordingly, the petitioner is directed to deposit a sum of Rs.30,000/- (Rupees Thirty Thousand only) as non refundable deposit to the credit of Arignar Anna Memorial Cancer Hospital & Research Institute, Kanchipuram, within a period of fifteen days from the date on which the order copy made ready and on such deposit the petitioner is ordered to be released on bail in the event of arrest or on his appearance before the learned Judicial Magistrate, Sirkazhi, Nagapattinam District, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two blood related sureties, each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

photographs and Left Thumb Impression in the surety bond and the 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.30,000/- (Rupees Thirty Thousand only) to the credit of the Arignar Anna Memorial Cancer Hospital & Research Institute, Kanchipuram, and shall produce the said receipt before the Court below.

[c] the petitioner shall report before the respondent police daily at 10.30 a.m., for a period of four weeks and thereafter as and when required for interrogation.

[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.

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

[g] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

-sd/-

01/07/2020

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

TRUE COPY

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

WEB COPY

TO

1 THE JUDICIAL MAGISTRATE,
SIRKAZHI, NAGAPATTINAM DISTRICT

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
SIRKAZHI POLICE STATION,
NAGAPATTINAM DISTRICT

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

4 THE ARIGNAR ANNA MEMORIAL
CANCER HOSPITAL & RESEARCH INSTITUTE,
KANCHIPURAM

CC to M/S.S.KISHORE KUMAR Advocate on payment of necessary
charges

CRL OP.9796/2020

Date :01/07/2020

RD 17/08/2020



WEB COPY