

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.08.2020

CORAM :

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.12662 of 2020

1. N. Dhakshinamoorthy
2. S. Venkatesan @ Michale

... Petitioners

Vs.

State rep. by
The Inspector of Police,
Mappedu Police Station,
Mappedu, Tiruvallur.
(Crime No.1064 of 2020)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 438 of Criminal Procedure Code to enlarge the petitioners on bail in the event of their arrest in connection with Crime No. 1064 of 2019 on the file of the respondent police.

For Petitioner : Mr. P. Sugumar

For Respondent : Mr.K. Prabakar
Additional Public Prosecutor

O R D E R

(The case has been heard through video conference)

The petitioners, who apprehend arrest at the hands of the respondent police for the alleged offences punishable under Sections 379, 430 of I.P.C., r/w 21(1) of MM (D & R) Act, 1957 in Crime No.1064 of 2020 on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution is that the petitioners had attempted to illegally transported three units of sand in one lorry with registration number and one tractor without registration number without obtaining proper license. Hence, the complaint.

3. The learned counsel appearing for the petitioners would submit that the second petitioner has been arrested and as far as the first petitioner is concerned, he is resident of Chennai and he has been falsely implicated in this case. On instruction, he would further submit that taking into consideration the present Covid pandemic situation the petitioners are prepared to donate/pay some considerable amount to any charitable organization or association without prejudice to his defence and prayed for grant of anticipatory bail.

4. The learned Additional Public Prosecutor would submit that the petitioners are sand smuggler and they have three previous cases against them. Out of which, one is registered with a crime No.553 of 2017 for a commission of similar offence. Hence, he opposed for the grant of anticipatory bail to the petitioner.

5. At this juncture, the learned counsel for the petitioners would submit that out of three cases, one for the offence under Section 506(ii) of I.P.C and another is for the offence under Section 302 of I.P.C. He would further submit that only attempt has been made. He would further submit that so far offence for sand theft is concerned, there is only one previous case.

6. In order to curb the illegal sand mining activities and taking into consideration the voluntary submission made by the petitioner offering to donate/pay considerable amount to any charitable organization or association, this Court is of the opinion that the petitioners may be directed to donate/pay a sum of Rs.90,000/- (Rupees Ninety Thousand only) jointly, to Seva Chakkara Samajam Orphanage, 89/41, Sami Pillai Street, Choolai, Chennai - 112, Canara Bank, Vepery Branch, A/c.No.0943101024681, IFSC Code No.CNRB0000943, without prejudice to their rights and contentions before the trial Court.

7. Merely, because the petitioners deposit 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.

8. Taking note of the facts and circumstances, this Court is inclined to grant anticipatory bail to the petitioners with certain conditions :

[a] The petitioners are directed to pay a sum of Rs.90,000/- (Rupees Ninety Thousand only) jointly, either through RTGS/NEFT or in cash in favour of Seva Chakkara Samajam Orphanage, 89/41, Sami Pillai Street, Choolai, Chennai - 112, Canara Bank, Vepery Branch, A/c.No.0943101024681, IFSC Code No.CNRB0000943, within fifteen (15) days from the date of receipt of a copy of this order. Thereafter, the petitioners are directed to be released on bail in the event of their arrest or on their appearance and on production of proof of payment of the above amount and on further condition that each of the petitioners shall execute a bond for a sum of Rs.10,000/- (Ten thousand only) with two sureties each for a like sum to the satisfaction of the police officer who intends to arrest, failing which the petition for anticipatory bail shall stand dismissed automatically and on further condition that the petitioners shall also give a letter of undertaking before the respondent/police that the said amount has been paid in respect of particular crime number.

[b] the petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the respondent/police may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[c] the petitioners shall report before the respondent police every Monday and Friday at 10.30 am until further orders.

[d] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[e] the petitioners 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 petitioners in accordance with law as if the conditions have been imposed and the petitioners are 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.

8. With the above directions, this Criminal Original Petition is ordered.

-sd/-

21/08/2020

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 SEVA CHAKKARA SAMAJAM
ORPHANAGE, 89/41, SAMI PILLAI STREET,
CHOLAI, CHENNAI-112, CANARA BANK, VEPERY
BRANCH, A/C NO.0943101024681 IFSC CODE NO.
CNRB0000943

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
MAPPEDU POLICE STATION,
MAPPEDU, TIRUVALLUR.

CC to M/S.P.SUGUMAR Advocate on payment of necessary charges

CRL OP.12662/2020

Date :21/08/2020

RVR 24/09/2020