



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 12/03/2020

WEB COPY

PRESENT

The Hon`ble Dr.Justice G.JAYACHANDRAN

CRL OP(MD) . No.4445 of 2020

1. SATHEESH
2. NADARAJAN
3. JEYAKUMAR @ JEBA KUMAR ... PETITIONERS/ACCUSED 2,3,5.

VS

STATE REP. BY
THE INSPECTOR OF POLICE,
COLACHEL POLICE STATION,
KANYAKUMARI DISTRICT,
CRIME NO.72/2020. ... RESPONDENT/COMPLAINANT

For Petitioners : M/s.R.Russel Raj,
Advocate.

For Respondent : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.Side)

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

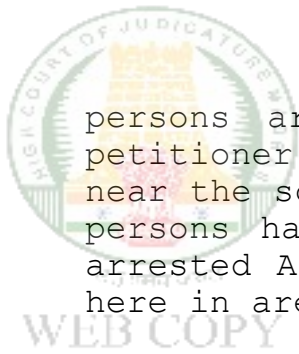
PRAYER :-

For Anticipatory Bail in Crime No.72 of 2020 on the file of the Respondent Police

ORDER : The Court made the following order :-

The petitioners, who apprehend arrest at the hands of the respondent police for the offences punishable under Section 379 of IPC seek anticipatory bail.

2.The petitioners herein along with two others were involved in excavating red sand in the land owned by one Alwin. During the late night hours on 04.03.2020 at about 3.00 a.m., based on the specific information police has gone to the spot and found two tempo van fully loaded with red sand and the third 407 about to be loaded with the help of JCB standing inside. The accused



persons are owners and drivers of tempo. A5 who is the third petitioner herein is the owner of two wheeler who was found part near the scene of occurrence. On seeing the police party the accused persons have fled leaving behind the vehicles. The police has arrested A1 and A4 driver of the vehicle and the other petitioners here in are at large seeking anticipatory bail.

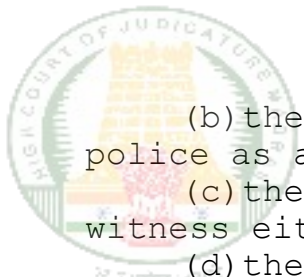
3. The learned counsel for the petitioners submits that the First Information Report indicates that it is a foisted case and only after preparing mahazhar for recovery of vehicle the police has registered the First Information Report for the offence under Section 379 of IPC.

4. The learned Government Advocate(Crl.Side) would submit that the police party on receiving the secret information from the source has rushed to the spot and found the vehicles loaded with red sand. On seeing the police party the accused persons involved in the illegal excavation of red sand fled from the scene of crime. Therefore for recovery of vehicles mahazhar was prepared on the spot in the presence of independent witnesses and thereafter First Information Report was registered. There is statutory bar under the Code of Criminal Procedure to prepare recovery mahazhar before registering the First Information Report. Thereafter no action is taken by the respondent police and so far as anticipatory bail is concerned the petitioners are at large and unless and until they are secured further progress of trial could be made.

5. Taking into consideration the nature of the complaint and the submission made by the learned counsel for the petitioners, this Court finds that A3 and A4 are owners of vehicle who were found in the scene of occurrence and they are not entitled for bail due to their logistic support given for illegal sand mining. As far as A2 is concerned, the first petitioner herein this Court is of the opinion that he is entitled for anticipatory bail. Hence Anticipatory bail is granted to A2/first petitioner herein on the following condition.

6] Accordingly, the first petitioner is ordered to be released on bail in the event of arrest or his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate, Eraniel on condition that the petitioners shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five 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:

(a) the first petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book



(b)the first petitioner shall report before the respondent police as and when required for interrogation;

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

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

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

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

7. As regards the petitioners 2 and 3, since there are specific allegations, this petition is dismissed.

sd/-
12/03/2020

/ TRUE COPY /

/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE JUDICIAL MAGISTRATE,
ERANIEL.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
KANNIYAKUMARI DISTRICT.

3 THE INSPECTOR OF POLICE
COLACHEL POLICE STATION,
KANYAKUMARI DISTRICT.

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

+1 CC to M/s.R.RUSSEL RAJ, Advocate (SR-5208[I] dated 13/03/2020)

ORDER
IN
CRL OP(MD) No.4445 of 2020
Date :12/03/2020

AAV

<https://hcmv.csr.courts.gov.in/hcmvices/3.2020/3P/6C>