

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2021

CORAM

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

Crl.O.P.No.1678 of 2021

M.Ganeshan

... Petitioner

Versus

State rep.

... Respondent

The Inspector of Police
Mangalam Police Station
Tiruppur District
(Crime No.1319 of 2020)

Prayer: Criminal Original Petition filed under Section 438 Cr.P.C. to enlarge petitioner on bail in the event of his arrest in Crime No.1319 of 2020 for the alleged offences u/s.379 of IPC on the file of the respondent police, The Inspector of Police, Mangalam Police Station, Tiruppur District.

For Petitioners : Mr.S.Vinoth Kumar

For Respondent : Mr.T.Shunmuga Rajeshwaran
Government Advocate (Crl. Side)

ORDER

The petitioner, who apprehend arrest at the hands of the respondent police for the offence punishable under Section 379 of IPC in Crime No.1319 of 2020 on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution as per the defacto complainant/Sundaramoorthy, Special Deputy Tahsildar (Mines) Department of Geology and Mining, Tiruppur, is that on 21.08.2020 while he was conducting inspection with regard to illicit transport of Minerals, he had stopped a lorry bearing Regn.No.TN42 J 6107 and on search, the vehicle was found illegally transporting two units of Gravel Sand pursuant to which, the driver of the lorry was arrested at the spot and the vehicle was also seized. Hence, the complaint.

3.The learned counsel for the petitioner would submit that the petitioner is an innocent and he has been falsely implicated in this case. He would submit that the petitioner is the owner of the lorry bearing Regn.No.TN42 J 6107 and that his driver without the knowledge of the petitioner had used the vehicle for transporting there by, his lorry has been seized and the same is

in the custody of the respondent. He would submit that the incident had happened without the knowledge of the petitioner and the driver of the vehicle who was arrested at the spot has been released on bail. He would further submit that this is the 2nd application for anticipatory bail and the earlier application in Crl.O.P.No.13546 of 2020 was dismissed by this Court on 03.09.2020 along with Crl.O.P.No.13334 of 2020 Batch etc. stating that the petitioner had caused damage to the environment. Subsequent to the order passed by this Court, the Hon'ble Supreme Court has clarified stating that the case of the accused has to be considered on case to case basis and thereby, the present petition has been filed. Hence, he prays for grant of anticipatory bail to the petitioner.

4. The learned Government Advocate (Crl. Side) would submit that when the lorry bearing Regn.No.TN42 J 6107 was intercepted on 21.08.2020 by the defacto complainant, the driver of the vehicle was found illegally transporting two units of Gravel sand and he was arrested at the same spot. Subsequently, he was enlarged on bail and that the vehicle is still in the custody of the respondent police. He would further submit that there is no previous case against the petitioner. However he opposed for the grant of anticipatory bail to the petitioner.

5. This Court had dismissed the earlier application filed by the petitioner in Crl.O.P.No.13546 of 2020 by order dated 03.09.2020 along with Crl.O.P.No.13334 of 2020 Batch etc. expressing the opinion that the offenders despite several orders passed by various Benches of this Court regarding illegal sand mining and knowing fully well about the evil consequences affecting the environment and society at large and the implications thereon are indulging in the offences of illegal quarrying/mining, theft and smuggling of sand and minerals and that finding that the case comes under the category of cases of large magnitude affecting and impacting livelihood of a very large number of people knowingly and unknowingly, had dismissed the earlier application. Subsequently, the order of this Court in Crl.O.P.No.13334 of 2020 and Batch etc. dated 03.09.2020 was clarified by the Hon'ble Supreme Court and the Hon'ble Supreme Court had not agreed with the broad sweep of the observation made by this Court in Paragraph 27 of the order in Crl.O.P.No.13334 of 2020 and connected matters decided on 03.09.2020 and had directed that the Court should take into consideration the role assigned to the person on case to case basis.

6. Accordingly, this Court takes into consideration, the role assigned to the petitioner in the present case. In this case on hand, the role assigned to the petitioner is that he is the owner of the lorry bearing Regn.No.TN42 J 6107 and it is stated that without the knowledge of the petitioner, his driver has transported sand in his vehicle. Further, the sand involved in this case is a Gravel Sand and it is not a river sand. Therefore, this Court is inclined to grant anticipatory bail to the petitioner.

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 petitioner may be directed to donate/pay a sum of Rs.10,000/- (Rupees Ten Thousand only) to "The Dean, Rajiv Gandhi Government General Hospital, Chennai, bearing A/c.No.10273425961, State Bank of India, Park Town (Chennai), 68, Evening Bazaar Road, Chennai, IFSC:SBIN0001856," without prejudice to his rights and contentions before the trial Court.

8. Accordingly, the petitioner is directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand only), to "The Dean, Rajiv Gandhi Government General Hospital, Chennai, bearing A/c.No.10273425961, State Bank of India, Park Town (Chennai), 68, Evening Bazaar Road, Chennai, IFSC:SBIN0001856". On such payment and production proof, the petitioner 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 on which the order copy is made ready, before the learned Judicial Magistrate IV, Tiruppur, on condition that the petitioner 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 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:

[a] the 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 to ensure their identity.

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

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioners 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 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].

[f] If the accused thereafter abscond/s, a fresh FIR can be registered under Section 229A IPC.

[g] Merely, because the petitioner 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.

-sd/-
16/02/2021

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 JUDICIAL MAGISTRATE IV,
TIRUPPUR.

2 THE CHIEF JUDICIAL MAGISTRATE
TIRUPPUR [FOR INFORMATION].

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
MANGALAM POLICE STATION,
TIRUPPUR DISTRICT.

5 THE DEAN,
RAJIV GANDHI GOVERNMENT GENERAL HOSPITAL,
CHENNAI, BEARING A/C.NO.10273425961,
STATE BANK OF INDIA, PARK TOWN (CHENNAI),
68, EVENING BAZAAR ROAD, CHENNAI,
IFSC:SBIN0001856

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

CRL OP.1678/2021

Date :16/02/2021