

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2021

CORAM

THE HONOURABLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

CrI.O.P.No.1717 of 2021

Vinoth Kumar
S/o.Mahendran

... Petitioner/Accused

Vs.

State Represented by,
The Inspector of Police,
Kundrathur Police Station (T-13),
Kancheepuram District.
[Crime No.1348 of 2020]

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 438 Cr.P.C. to enlarge the petitioner on bail in the event of his arrest by the respondent police in Crime No. 1348 of 2020, on the file of the respondent police.

For Petitioner

: Mr.K.V.Dhanapalan for

M/s.T.Fenn Walter Associates

For Respondent

: Mr.C.Iyyappa Raj

Additional Public Prosecutor

ORDER

(The case has been heard through video conference)

The petitioner, who apprehends arrest at the hands of the respondent police for the offences punishable under Section 2(1) of Mines & Minerals (Development & Regulation) Act, 1957 and U/s 379 of IPC, in Crime No.1348 of 2020, on the file of the respondent, seeks anticipatory bail.

2. The case of the prosecution as per the defacto complainant Suresh Kumar, Assistant Director, Mines and Minerals, Kancheepuram District, is that on 31.08.2020 while he was conducting vehicle check up, he had intercepted a lorry bearing Regn.No.TN10 Q 4529 found to be transporting two units of M-sand without proper license. Based on the complaint, the vehicle was seized at the place of occurrence along with the contraband and the driver Sarathkmar was arrested. Hence, the complaint.

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3.The learned counsel for the petitioner would submit that the petitioner is an innocent and he is the owner of the lorry bearing Regn.No.TN10 Q 4529. He would submit that the petitioner is engaged in the

business of transport and he had been carrying out the business by engaging a driver namely Vetri S/o.Dhanasekar. He would submit that on 31.08.2020 at the time of vehicle was seized, the driver without informing the petitioner, had transported two units of M-sand. He would further submit that this is the second application for anticipatory bail and the earlier application was dismissed by this Court on 15.10.2020 in Crl.O.P.No.16464 of 2020 pursuant to the orders passed by this Court in Crl. OP No.13334 of 2020 etc. Batch, dated 03.09.2020 stating that the petitioner has caused damage to the environment. He would submit that the contraband alleged to have been transported in the lorry of the petitioner is M-sand which is very much available in the open market and that the petitioner is not the smuggler who had caused damage to the ecology. The driver without the knowledge of the petitioner had transported the M-sand and thereby the petitioner is put to distress. He would submit that 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. He would submit that subsequent to the proceedings initiated against the petitioner under the Mines and Minerals Act, the petitioner has paid the penalty based on the Seinorage and that the petitioner has no other case against him. He would reiterate that the driver of the petitioner has been arrested and

enlarged on bail by the lower Court. Hence, he prays for grant of anticipatory bail to the petitioner.

4. The learned Additional Public Prosecutor submitted that the petitioner is the owner of the lorry bearing Regn.No.TN10 Q 4529. On 31.08.2020, the vehicle of the petitioner was found transporting two units of M-sand without permit. Hence, he would oppose for grant of anticipatory bail.

5. At this juncture, the learned Counsel for the petitioner would submit that the petitioner is 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.

6. This Court on the earlier occasion in Crl.O.P.No.16464 of 2020 dated 15.10.2020, following the orders passed by this Court in a batch of applications in Crl.O.P.No.13334 of 2020 dated 03.09.2020 had dismissed the earlier applications 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 applications. 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 role assigned to the person would have to be considered on case to case basis.

7. Accordingly, this Court takes into consideration, the role assigned to the petitioners in the present case. In this case on hand, it is seen that the petitioner is the owner of the lorry and he is engaged in the business of transport by engaging driver and that his driver has transported the M-sand without the knowledge of the petitioner. Further, the driver of the vehicle who was arrested at the place of occurrence, has been enlarged on bail.

8. Taking into consideration the above facts and circumstances of the case and the voluntary submission made by the petitioner, this court is inclined to grant anticipatory bail to the petitioner subject to the following conditions;

9. In order to curb the illegal 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.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.

10. 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 District Munsif cum Judicial Magistrate, Sriperumbudur, 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 petitioners 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 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 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.

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A.D.JAGADISH CHANDIRA, J.

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To

1.The District Munsif Cum Judicial Magistrate,
Sriperambadur.

2.The Inspector of Police,
Kundrathur Police Station (T-13),
Kancheepuram District.

3.The Public Prosecutor,
High Court, Madras.

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