

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.02.2021

CORAM

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

CRL.O.P.No.1349 of 2021

1.Gajendiran

2.Dhakshinamoorthy

... Petitioners

Vs.

The State Rep. by
Inspector of Police,
R.K.Pet Police Station
R.K.Pet, Tiruvallur District
(Crime No.2270 of 2020)

... Respondent

Prayer: Criminal Original Petition filed under Section 438 of Cr.P.C. to enlarge the petitioners on bail in the event of their arrest in Crime No.2270 of 2020 pending on the file of the respondent police.

For Petitioner : Mr.M.V.Deenadayalan

For Respondent : Mr.C.Iyyappa Raj
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 offence punishable under Sections 379, 430 of I.P.C. R/w Section 21(1) M.M.D.R. Act, in Crime No.2270 of 2020 on the file of the respondent police, seek anticipatory bail.

2. The case of the prosecution as per the defacto complainant Special Deputy Thasildar, Geology and Mines Department, Tiruvallur, is that on 31.08.2020 while he was on his usual raid for implementation of the order passed by the Hon'ble High Court in W.P. (MD).NO.19936 of 2017 dated 29.10.2018, he had seen a vehicle bearing Regn.No.73 A 6868 driven by the accused. When it was intercepted and inspected, it was found to be transporting four units of M-sand. During the inspection, the driver had left the vehicle and absconded. Hence, the complaint.

3.The learned counsel for the petitioners would submit that the petitioners are innocent and they have been falsely implicated in this case. He would submit that the first petitioner is the driver and the second petitioner is the owner of the vehicle bearing Regn.No.73 A 6868. He would submit that one Antony Francis, Director of RAYMIX CONCRETE India Pvt. Ltd., was granted permission to transport M-sand for their concrete mixing unit and they have also been given transit pass dated 31.08.2020 for transporting M-sand

through the said lorry bearing Regn.No.73 A 6868 for their construction site. Unfortunately, the driver of the vehicle had not taken the Transit Pass along with him when the vehicle was intercepted and that he was also unable to produce the Transit Pass during the earlier hearing and thereby, the earlier application for anticipatory bail was dismissed by this Court in Crl.O.P.No.16653 of 2020 following the orders passed in Crl.O.P.No.13334 of 2020 and connected batch dated 03.09.2020. 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. He would further submit that the petitioners have not transported river sand and they have transported M-sand which is locally available in the market and that they have also been granted Transit Pass. On instructions, he would submit that the petitioners are prepared to pay/donate some considerable amount to any charitable organization or association without prejudice to their rights and contentions. Hence, he prays for grant of anticipatory bail to the petitioner.

4. The learned Additional Public Prosecutor would submit that the first petitioner is the driver and the second petitioner is the owner of the vehicle bearing Regn.No.73 A 6868. On 31.08.2020, the first petitioner was found driving the said lorry and it was containing four units of M-sand and when the vehicle was intercepted by the defacto complainant, the driver of the vehicle had left the vehicle and ran away from the place of occurrence. However, he would submit that the Transit Pass produced by the petitioners is a genuine one.

5. This Court on the earlier occasion in Crl.O.P.No.16653 of 2020 dated 28.10.2020, 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.

6. 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 petitioners are driver and owner of the vehicle bearing Regn.No.73 A 6868 which is alleged to have

transported M-sand in this case and it is also seen that they have been given Transit Pass dated 31.08.2020 to transport M-sand. Therefore, this Court is inclined to grant anticipatory bail to the petitioners.

7. In order to curb the illegal activities and taking into consideration the voluntary submission made by the petitioners 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) each, 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 their rights and contentions before the trial Court.

8. Accordingly, the petitioners are directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) each, 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 petitioners are ordered to be released on bail in the event of arrest or on their appearance, within a period of fifteen days from the date on which the order copy is made ready, before the learned Judicial Magistrate, Pallipattu, on condition that the petitioners shall execute a separate 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 petitioners 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 petitioners 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 petitioners 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 petitioners deposit the said amount, it would not amount to admission of their guilt. Therefore, it is open to the trial Court to deal with the case independently.

-sd/-

11/02/2021

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,
PALLIPATTU

2 THE CHIEF JUDICIAL MAGISTRATE
THIRUVALLUR (FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 INSPECTOR OF POLICE,
R.K.PET POLICE STATION, R.K.PET,
THIRUVALLUR DISTRICT.

5 THE DEAN, RAJIV GANDHI
GOVERNMENT GENERAL HOSPITAL CHENNAI

CC to M/S.M.V.DEENADHAYALAN Advocate on payment of necessary charges SR.NO.1428

CRL OP.1349/2021

Date : 11/02/2021

RVR 19/02/2021

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