

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Sixteenth day of March Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice A.D.JAGADISH CHANDIRA

CRIMINAL ORIGINAL PETITION No.4051 of 2021

A.THIRUMALAI

[PETITIONER / ACCUSED]

Vs

STATE REP BY,
INSPECTOR OF POLICE,
JAMUNAMARATHUR POLICE STATION,
THIRUVANNAMALAI DISTRICT.
CRIME NO.461 OF 2020.

[RESPONDENT]

For Petitioner : M/S.C.KOUSALYA DEVI Advocate

For Respondent : MR.T.SHUNMUGARAJESWARAN Govt. Advocate (Crl. Side)

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

ORDER : The Court Made the following order :-

The petitioner who apprehends arrest at the hands of the respondent police for the alleged offences punishable under Sections 379 & 430 I.P.C., and r/w Section 21(5) of Mines and Minerals (Development & Regulation) Act, 1957, in Crime No.461 of 2020 on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution as per the defacto complainant, the Inspector of Police is that on 26.07.2020, while he was on his usual rounds, he had seen that the accused without any permission from the Government, had dug and taken the sand. Hence the complaint.

3.The learned counsel appearing for the petitioner would submit that the petitioner is innocent and he has been falsely implicated in this case. She would further submit that this is the second anticipatory bail petition and in view of the orders passed in Crl.O.P.No.13334 of 2020 dated 03.09.2020, this Court had dismissed the earlier anticipatory bail application filed by the petitioner in Crl.O.P.No.19324 of 2020 dated 10.12.2020. 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.

4.Learned counsel would submit that as far as the petitioner is concerned, he was alleged to have transported one unit of Odai / stream sand in a Mahindra Pickup vehicle bearing Reg.No.TN47X5968. She would further submit that the petitioner was constructing a house at No.33, Kumbalamarathur Village, Attiyanur Post, Polur, Kovilur, Jamunamarathur, Thiruvannamalai District, within the jurisdiction of the respondent police and that after completion of the construction, while he was transporting the remaining sand to his relatives' house, the petitioner's vehicle was detained by the respondent police. She would further submit that the petitioner has not involved in any commercial activity and he had only transported the remaining sand which was left behind after completing the construction work. She would further submit that without prejudice to the contentions, the petitioner is prepared to deposit some considerable amount to any charitable organization or association.

5.Learned Government Advocate (Crl. Side) would submit that the petitioner had constructed a house and after completing the construction, the remaining sand had been taken from his house to his relatives' house. He would further submit that the petitioner has no previous cases against him.

6.This Court takes into consideration, the role assigned to the petitioner in the present case. In this case on hand, it is seen that the petitioner has not indulged in any commercial activity and he has no previous cases pending against him and since it is reported by the learned Government Advocate (Crl. Side) that the petitioner has taken only the remaining sand to his relatives' house, this court is inclined to grant anticipatory bail to the petitioner subject to the following conditions;

7. 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 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.Merely, because the petitioner deposits 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.

[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 two weeks and thereafter, as and when required for interrogation.

(c).the petitioner shall deposit 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, Vaniyambadi, Vellore District, 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:

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

[e] the petitioner 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 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].

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

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

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-sd/-
16/03/2021

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,
VANIYAMBADI, VELLORE DISTRICT.

2 THE CHIEF JUDICIAL MAGISTRATE
VELLORE [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
JAMUNAMARATHUR POLICE STATION,
THIRUVANNAMALAI DISTRICT.

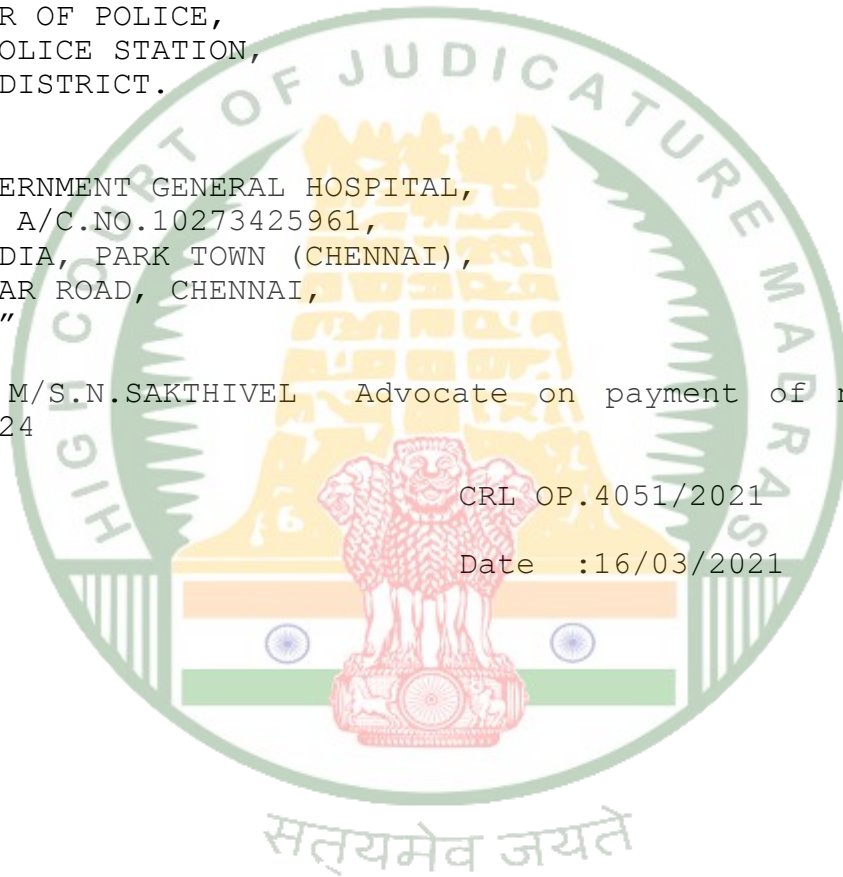
5 THE DEAN,
RAJIV GANDHI GOVERNMENT GENERAL HOSPITAL,
CHENNAI, BEARING A/C.NO.10273425961,
STATE BANK OF INDIA, PARK TOWN (CHENNAI),
68, EVENING BAZAAR ROAD, CHENNAI,
IFSC:SBIN0001856"

+1CC to M/S.N.SAKTHIVEL Advocate on payment of necessary
charges SR NO.3424

CRL OP.4051/2021

Date :16/03/2021

MK:29/03/2021



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