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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.12.2021

CORAM

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

CRL.O.P.No.25804 of 2021

Viji

... Petitioner

Versus

State Rep by
The Inspector of Police
Thirunavallur Police Station,
Kallakurichi District.
(Crime No.802 of 2021)

... Respondent

Prayer:-Criminal Original Petition filed under Section 438 of the Code of Criminal Procedure seeking to enlarge the petitioner on anticipatory bail in the event of their arrest in Crime No.802 of 2021 pending investigation on the file of the respondent police.

For Petitioner : M/S.W.Camyles Gandhi

For Respondent : Mr.L.A.J.Selvam
Government Advocate (Crl. Side)

Order

The petitioner, who apprehends arrest for the alleged offence under Section 379 IPC in Crime No.802 of 2021 on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution is that the petitioner has illegally transported $\frac{1}{4}$ unit of river sand in Bullock Cart.

3. The learned counsel for the petitioner submits that the petitioner is an innocent and he has not committed any offence as alleged by the prosecution. However, to show his *bona fide*, he is prepared to pay a sum of Rs.5,000/- to any organization as directed by this Court.

4. The learned Government Advocate (Crl. Side) submits that the petitioner has illegally transported $\frac{1}{4}$ unit of river sand in Bullock Cart and hence, the case was registered. He further submitted that the petitioner has no previous case pending against him.



5. Considering the nature of mineral involved, the antecedent of the petitioner and his willingness to pay a sum of Rs.5,000/-, this Court is inclined to grant anticipatory bail to the petitioner. Accordingly, this Criminal Original Petition is allowed on condition that the petitioner shall pay a sum of Rs.5,000/- (Rupees Five Thousand Only) in favour of the District Green Committee, Kallakurichi, without prejudice to his rights and contentions before the trial Court and produce the receipt / acknowledgment before the learned Judicial Magistrate-II, Ulundurpet.

6. The District Green Committee, which was formed as per the Government Order in G.O.Ms.No.39, Environment, Climate Change and Forest (FR.13) Department, dated 02.07.2021, pursuant to the directions of this Court in W.P.No.11094 of 2021, shall utilize the amount paid by the petitioner for plantation of trees on either side of the road, tree guard, drip irrigation, manure, etc., with public participation, including, NGOs, Confederation of Industries, Rotary Clubs, Lions Clubs, School Students, College Students, Self Help Groups, labours under MGNREGS and any other volunteers, etc., to achieve 100% survival rate of the planted trees. The State Green Committee shall extend their support in this regard by recommending the correct variety / species of trees, in accordance with the soil type and climatic conditions and also for the maintenance. The maintenance of the trees planted has to be reviewed by the District Green Committee, after two years and necessary appreciations have to be made to the stakeholders concerned in the form of certificates.

7. On production of receipt / acknowledgement for having paid the amount before the District Green Committee, 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 of receipt of a copy of this order, before the learned Judicial Magistrate-II, Ulundurpet, on condition that the petitioner 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 learned Magistrate concerned and on further conditions that:

[a]the petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the learned Judge may obtain a copy of their Aadhaar card or bank pass book to ensure their identity.

[b]the petitioner shall report before the respondent police daily at 10.30 am., until further orders.

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



[d]the petitioner shall not abscond either during the 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 absconds, a fresh FIR can be registered under Section 229-A IPC.

8. It is needless to say that any tool or instrument or vehicle used for illegal quarrying / transportation of sand is liable to be seized under Section 21(4) of the Mines and Minerals(Development & Regulation) Act, 1957 and any vehicle or instrument or tool which has been seized under Section 21(4) of the Mines and Minerals (Development & Regulation) Act, 1957, is liable to be confiscated under Section 21 (4-A) of the Act.

9. Though the above provision mandates the authorities to confiscate the tool or instrument or vehicle involved in the commission of the offence of illegal quarrying / transportation of sand, the authorities have not invoked the provision under Section 21 (4-A) of the Mines and Minerals (Development & Regulation) Act, 1957 and therefore, a Division Bench of this Court in W.P.No.19936 of 2016, etc., batch has emphasized the need for confiscation of the vehicles. Consequently, the Government has also issued certain directions to the authorities of Revenue, Police and Forest and Geology and Mining departments to seize the vehicles and for confiscation of the same in G.O.Ms.No.170, Industries (MMC-II) Department, dated 05.08.2020. Therefore, the respondent police is directed to proceed further as per Section 21 (4-A) of the Mines and Minerals(Development & Regulation) Act, 1957 and as per the guidelines issued in G.O.Ms.No.170, Industries (MMC-II) Department, dated 05.08.2020.

-sd/-
29/12/2021

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.



1 THE JUDICIAL MAGISTRATE-II,
ULUNDURPET.

2 THE CHIEF JUDICIAL MAGISTRATE
VILLUPURAM [FOR INFORMATION]

3 THE INSPECTOR OF POLICE,
THIRUNAVALLUR POLICE STATION,
KALLAKURICHI DISTRICT.

4 THE DISTRICT GREEN COMMITTEE,
KALLAKURICHI DISTRICT.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1CC to M/S.W.CAMYLES GANDHI Advocate on payment of necessary
charges SR.NO.15636

CRL OP.25804/2021

Date :29/12/2021

CSK 30/12/2021