



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 07/04/2021

PRESENT

The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CRL OP(MD)No.1711 of 2021

Karthick ... Petitioner/Sole Accused

Vs

State rep.by
The Inspector of Police,
Paramakudi Taluk Police Station,
Ramanathapuram District.
Crime No. 2 of 2021. ... Respondent/Complainant

For Petitioner : M/s.Krishnasamy.P,
Advocate.

For Respondent : Mr.K.Dinesh Babu,
Additional Public Prosecutor

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

PRAYER :-

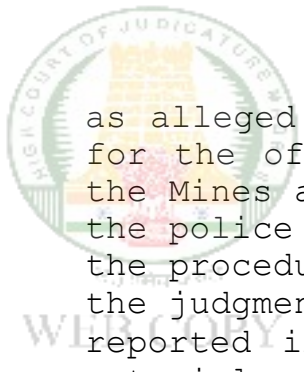
For Anticipatory Bail in Crime No.2 of 2021 on the file of the
Respondent Police

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 IPC r/w Section 21(1) of the Mines and Minerals (Development & Regulation) Act 1957 in Crime No.2 of 2021, seeks anticipatory bail.

2.The case of the prosecution is that the petitioner and other accused illegally transported two unit of river sand by using petitioner's vehicle bearing registration No.TN-34D-6165. Hence, the complaint.

3.The learned counsel for the petitioners submitted that the respondents are innocent persons and they did not commit any offence



as alleged by the prosecution. It is his submission that punishment for the offence under Section 379 IPC and under Section 21(1) of the Mines and Minerals Act is three years. He further submitted that the police has tried to arrest the petitioner without complying with the procedure under Section 41-A Cr.P.C., and the direction given in the judgment reported in **Arnesh Kumar Vs. State of Bihar and Another** reported in **(2014)8 Supreme Court Cases 273**. When there is no material to link the petitioner with the alleged illegal transportation of river sand, he is entitled for anticipatory bail.

4.The learned Additional Public Prosecutor appearing for the respondent police strongly opposed this petition on the ground that the vehicle and sand were seized on the spot and on seeing the search party headed by defacto complainant, the petitioner and other occupants escaped from the scene of crime.

5.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

6.It is seen that the defacto complainant gave a complaint to the respondent police on 05.01.2021 alleging among other things that on information that sand is being smuggled, he along with Village Administrative Officer Mr.Bhoominathan, Village Assistant Mr.P.Balu, Sub-Inspector of Police Mr.Karuppsamy, Police Constables Mr.Packiyaraj and Mr.Anishkumar were involved in search of vehicles near Sonaiah Temple, Aadhidraavidar Colony, Then Pothuvakudi Village. At that time, a lorry bearing registration No.TN 34 D 6165 came with full load of river sand. On seeing the parties headed by the defacto complainant, the Driver stopped the lorry and all the occupants in the lorry escaped from the scene. The lorry was seized and the present case was registered.

7.This is a case involving the offence of looting the natural resources of our Country. This case was registered on 05.01.2021. *Prima facie* it appears that the accused persons are evading the arrest and thus, effectively preventing the furtherance of the investigation to its logical conclusion. The main grievance of the learned Counsel for the petitioner is that the offences under Section 379 I.P.C., and under Section 21(1) of Mines and Minerals Regulation Development Act 1957 are individually punishable with an imprisonment of 3 years only. Without issuing a notice under Section 41-A Cr.P.C., and conducting any enquiry, the efforts made to arrest the petitioner is illegal and impermissible in law.

8.The perusal of Section 41-A Cr.P.C., shows that the police officer shall, in all cases where the arrest of a person is not required under the provisions of Sub-Section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable



offence, to appear before him or at such other place as may be specified in the notice.

2.Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

3.Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officers is of the opinion that he ought to be arrested.

4.Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

9.This Section makes it clear that only when the Police Officer decides that the arrest of a person is not required under Section 41 (1) Cr.P.C., he can issue notice for enquiry. It is not necessary to issue notice under Section 41-A in all the cases.

10.Further reading of Section 41(1) Cr.P.C., makes it clear that any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(a)who commits, in the presence of a police officer, a cognizable offence;

(b)against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely—

(i)the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

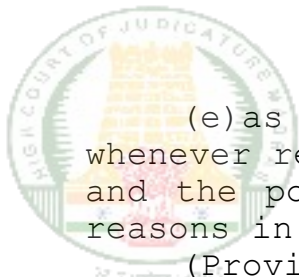
(ii)the police officer is satisfied that such arrest is necessary—

(a)to prevent such person from committing any further offence;
or

(b)for proper investigation of the offence;or

(c)to prevent such person from causing the evidence or the offence to disappear or tampering with such evidence in any manner;or

(d)to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer, or



(e)as unless such person is arrested, his presence in the Court whenever required cannot be ensured;
and the police officer shall record while making such arrest, his reasons in writing;

(Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest;)

11.In the case on hand, a reasonable complaint has been made that the accused in this case involved in the commission of illegal transportation of river sand. Therefore, the arrest of the petitioner in this case is necessary to prevent the person from committing any further offence and for proper investigation of the case.

12.What is important is the subjective satisfaction of the police officer before effecting an arrest and that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts. There is also a direction to the Judicial Magistrate that before authorising detention, the Magistrate has to record his own satisfaction in brief where such satisfaction must reflect from his order. This is what has been reiterated in the case of **Arnesh Kumar Vs. State of Bihar and Another** reported in **(2014)8 Supreme Court Cases 273**. A decision to make arrest without warrant vests with the Police Officer as contemplated under Section 41(1) Cr.P.C., and therefore, the contention of the learned Counsel for the petitioner that the petitioner has not served with notice under Section 41(1)Cr.P.C., and therefore, he is entitled for anticipatory bail cannot be accepted.

13.Illegal and indiscriminate sand mining has become a threat to the worldwide environment. It leads to changes in river channel form, physical habitats and food webs. It also increases the velocity of flow in river which destroy flow-regime eventually erodes the river banks. Removal of vegetation and destruction of the soil profile destroys habitat above and below the ground and faunal population decrease. Not only that, sand mining causes sinking of water tables in the nearby areas and as a result, ground water table drops leaving the drinking water wells on the embankments of these rivers dry.

14.This offence of illegal mining is not only an offence against any particular individual, but against the Society at large.



It affects not only the present population, but the posterity as well. In this view of the matter, this Court is not inclined to grant anticipatory bail to the petitioner. Accordingly, this Criminal Original Petition is dismissed.

sd/-

07/04/2021

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE INSPECTOR OF POLICE,
PARAMAKUDI TALUK POLICE STATION,
RAMANATHAPURAM DISTRICT.
- 2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL OP(MD) No.1711 of 2021

Date :07/04/2021

MS/PN/SAR4/19.04.2021/5P/3C