



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Reserved on : 10/08/2021
Pronounced on : 01/09/2021
PRESENT

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The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD). No.10383 of 2021

Villayutham

... Petitioner/Accused No.1

Vs

The State rep.by,
The Inspector of Police,
Jetty Police Station
Ramanathapuram District.
Crime No.95 of 2021

... Respondent/ Complainant

For Petitioner : Mr.G.Prabhu Rajadurai, Advocate.
For Mr.M.S.Jeyakarthik, Advocate.
For Respondent : Mr.T.Senthilkumar,
Government Advocate (Crl.Side)

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :-For Bail in Crime No.95 of 2021 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioner / first accused, who was arrested for the offence punishable under Sections 9, 39(1), 50, 51(1) of the Wild Life (Protection) Act, 1972, in Crime No.95 of 2021, on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the complainant, on a secret information, proceeded to the petitioner's coconut grove on 11.04.2021, at about 14.00 hours, at Nethaji Nagar. On seeing the police party, the petitioner and others escaped. The police gave a chase and apprehended one Thangachamy / third accused. The police made a search of the place and found preserved and un-preserved sea cucumber. A white color Maruti Omni van, bearing registration no.TN-01-R-3236, was found, with 13 sacks of sea cucumbers, 12 bags each with 40 kg and one bag with 20 kg of sea cucumber. They also found a Bolero Maxi Truck Mahindra Plus, bearing registration no.TN-65-T-5338, with 20 sacks each containing 50 kg of sea cucumbers. Two two wheelers, bearing registration nos.RN-62-AM-3024 and TN-63-BX-7967 were found, with 25 kg and 26 kg of sea cucumber, respectively. That apart, they have also found 565 kg of preserved sea cucumber and 689 kg of un-preserved sea cucumber. Totally, they found 2800 kg of sea cucumber. Hence, the case.



3. Learned Counsel for the petitioner submitted that the petitioner is an innocent and has not committed any offence as alleged by the prosecution. He would contend that as per Section 55 (1) of the Wild Life (Protection) Act, 1972, only the forest officials are empowered to file a complaint under this Act and the respondent police has no power to file a charge sheet or to register a complaint. The learned Counsel further submitted that the petitioner is a heart patient and taking treatment in the prison hospital. Therefore, he seeks for grant of bail to the petitioner.

4. Learned Government Advocate (Crl. Side) strongly opposed for the grant of bail. He submitted that this is the second petition for bail and the earlier petition in Crl.OP(MD)No.9011 of 2021, was dismissed by this Court on 16.07.2021. The petitioner is having 13 previous cases to his credit, for violating the provisions of the Wild Life (Protection) Act. In this case, the accused have illegally possessed 2800 kg of sea cucumber, worth about Rs.2,00,00,000/-. There is no change in circumstances and therefore, he prays for dismissal of this petition.

5. The parameters of granting bail have been laid down by the Hon'ble Supreme Court in a number of cases.

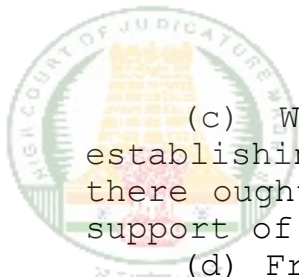
5.1. In **Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598**, the Hon'ble Supreme Court laid down the factors that must guide the exercise of the power to grant bail in the following terms :

"3. Grant of bail though being a discretionary order – but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always to be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail – more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.



(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

5.2. In **Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496**, the Hon'ble Supreme Court observed as under:

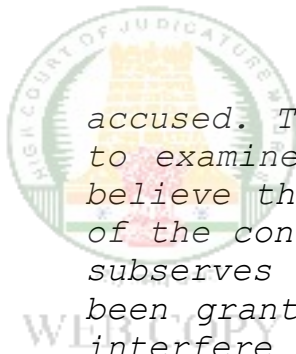
"9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- i. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- ii. nature and gravity of the accusation;
- iii. severity of the punishment in the event of conviction;
- iv. danger of the accused absconding or fleeing, if released on bail;
- v. character, behaviour, means, position and standing of the accused;
- vi. likelihood of the offence being repeated;
- vii. reasonable apprehension of the witnesses being influenced; and
- viii. danger, of course, of justice being thwarted by grant of bail.

10. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal."

5.3. In **Mahipal v. Rajesh Kumar, (2020) 2 SCC 118** the Hon'ble Supreme Court observed as under:

"12. The determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straitjacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the



accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused subverts the purpose of the criminal justice system. Where bail has been granted by a lower court, an appellate court must be slow to interfere and ought to be guided by the principles set out for the exercise of the power to set aside bail."

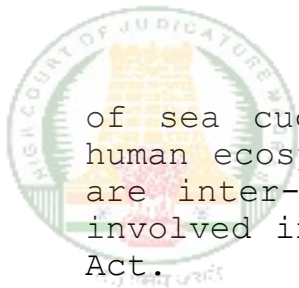
6. The prosecution case is that the petitioner and others were found in illegal possession of 2800 kg of preserved and un-preserved sea cucumber, which is valued at Rs.2,00,00,000/-. Sea cucumbers are marine animals found on the sea floor and they are the Earthworms in the marine environment. Taking note of the importance of sea cucumber in marine environment, this Court has directed the concerned officer to assist the Court and accordingly, Mr.G.Venkatesh, Forest Range Officer, Mandapam Wildlife Range, Mandapam, is present before this Court and has also filed a report.

7. From the submissions made by the Officer and from the report filed by him, this Court can infer the following:

- Sea cucumbers act like Earthworm in the marine environment;
- they feed on tiny particles, like algae, minute aquatic animals or waste materials and break down these particles into even smaller pieces, which become fodder for bacteria and thus, recycle them back into the ocean ecosystem;
- their poop provides the nutrients required for the growth of mangroves, sea grass, etc., and that apart, their poop on a coral reef reduces ocean acidification and are contributing calcium carbonate to the coral reefs;
- they act like a natural antacid to neutralize other acidic environmental sources.

8. Apart from the above, they are having several medicinal values as well, for which, they are being exploited. Anything that is exploited beyond a certain limit is having its own consequences. Likewise, over exploitation of sea cucumbers would decrease sediment health, reduce nutrient recycling and potential benefits of deposit feeding to sea water chemistry, diminish biodiversity of associated symbionts and reduce the transfer of organic matter from detritus to higher trophic levels. To avoid such a situation, sea cucumbers are listed in Schedule I, Part IV-C of the Wild Life Protection Act, 1972 and are strictly banned for collection and for trade in India, from 2001.

9. A blanket submission was made before this Court that while fishing, the sea cucumbers are caught in the net and that they are not catching the sea cucumbers intentionally. This Court is not inclined to accede the said submission for the reason that sea cucumbers are found on the sea floor and not on the surface of the sea or the inter-space. One should not forgot that over-exploitation



of sea cucumbers not only damages the marine ecosystem, but the human ecosystem, as well, more particularly, the fishermen, as both are inter-dependent. In this case, the petitioner appears to have involved in 13 cases for the offence under the Wild Life Protection Act.

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10. In view of the aforesaid discussions, the antecedents of the petitioner and the guidelines of the Hon'ble Supreme Court referred to supra, this Court is not inclined to grant bail to the petitioner.

11. No doubt, as per the Wild Life Protection Act, the respondent police is not empowered to file a final report in this case. But, a police officer, not below the rank of Sub-Inspector of Police, has power to search, arrest and detain a person involved in a commission of offence under this Act. Therefore, for filing of FIR and for arresting the accused, the respondent police cannot be found fault with. But, after registering the FIR, they ought to have forwarded the records to the concerned officer of the Forest Department for further course of action.

12. When this Court verified with the learned Government Advocate as to the status in this regard, it was informed that steps are underway to forward the files and that it would be completed in a weeks' time. It appears that the case was registered in the month of June, 2021 itself, but, the same is yet to be transferred to the authority concerned. Such a conduct on the part of the respondent police needs to be deprecated, as it would give room for the offenders to come out on statutory bail for non-filing of charge sheet. Therefore, the Superintendent of Police, Ramanathapuram District, is directed to look into this episode and take action as against the erring officials concerned and also issue necessary directions to avoid the recurrence.

13. A couple of days after reserving the matter for orders, a mention was made by the learned Counsel for the petitioner that the petitioner is in prison for more than 60 days and that he is entitled for statutory bail. But, no such averment / plea has been made in the affidavit. Since the arguments have already been concluded and matter has also been reserved, this Court is not inclined to verify the same and as such, liberty is given to the petitioner to work out his remedy in the manner known to law before the appropriate forum.

In the result, this criminal original petition stands dismissed.

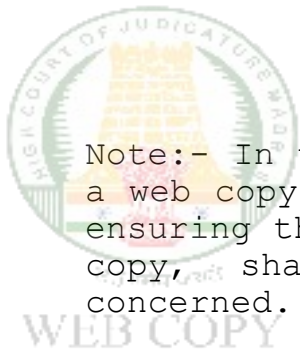
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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



Note:- In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1 THE INSPECTOR OF POLICE
JETTY POLICE STATION, RAMANATHAPURAM DISTRICT.

2 THE OFFICER INCHARGE,
DISTRICT JAIL, RAMANATHAPURAM.

3 THE SUPERINTENDENT OF POLICE,
RAMANATHAPURAM DISTRICT.

4 THE FOREST RANGE OFFICER,
MANDAPAM WILDLIFE RANGE, GULF OF MANNAR
MARINE NATIONAL PARK, RAMANATHAPURAM.

5 THE DISTRICT COLLECTOR, RAMANATHAPURAM.

6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to MR.M.S.JEYAKARTHIK, Advocate (SR-5849[I] dated
01/09/2021)

ORDER
IN
CRL OP(MD) No.10383 of 2021
Date :01/09/2021

GK
MK/VR/SAR.IV/02.09.2021/7P/8C