



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 03/08/2021

WEB COPY

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD)No.10473 of 2021

1. Ganeshan

2. Kannan

... Petitioners/Accused Nos. 1&2

Vs

State Rep by
The Sub-Inspector of Police,
Thiruchulli Police Station,
Virudhunagar District
(Crime No.148/21).

... Respondent/Complainant

For Petitioner : M/s. Muneeswaran.B,
Advocate.

For Respondent : Mr.T.Senthilkumar,
Government Advocate (Crl.Side)

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

PRAYER :-

For Anticipatory Bail in Crime No.148/2021 on the file of the
Respondent Police

ORDER : The Court made the following order :-

The petitioners, who apprehend arrest at the hands of the
respondent police for the alleged offences punishable under Section
379 IPC and Section 21(1) of the Mines and Minerals (Development &
Regulations)Act, in Crime No.148 of 2021, seek anticipatory bail.

2.The case of the prosecution is that the petitioners have
transported sand illegally by using bullock cart. Therefore, the
present case came to be registered.



3.The learned counsel for the petitioners submitted that the petitioners are innocents and they have been falsely implicated in this case.

4.The learned Government Advocate(Crl.side) appearing for the respondent police submitted that the first petitioner has three previous cases, which are similar in nature. He further submitted that there is no previous case pending against the second petitioner.

5.Considering the nature of the offence and the bad antecedents of the first petitioner, this Court is not inclined to grant anticipatory bail to the first petitioner and this petition is dismissed as against the first petitioner. Insofar as the second petitioner is concerned, since it is reported that he is not involved in any other offence, this Court is inclined to grant anticipatory bail to the second petitioner on condition that the second petitioner shall pay a sum of Rs.10,000/- (Rupees Ten Thousand only) to the credit of Government of Tamil Nadu, CMPRF in IOB, Secretariat Branch, Chennai-9 (Account No.11720 10000 00070, IFSC Code: IOBA0001172), without prejudice to his rights and contentions before the trial Court and produce the receipt/acknowledgment before the learned Judicial Magistrate, Thiruchulli.

6.On depositing the above said amount, the second 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, Thiruchulli, on condition that the second 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 learned Magistrate concerned and on further conditions that:

[a]the second 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 Aadhaar card or bank pass book to ensure their identity.

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

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

[d]the second petitioner 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 second petitioner in accordance with law as if the conditions have been imposed and the second 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, a fresh FIR can be registered under Section 229-A IPC.

7.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.

8.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 of 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 emphasised 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/-
03/08/2021

/ TRUE COPY /

/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

GNS

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.

<https://hcservices.ecourts.gov.in/hcservices/>



TO

1 THE JUDICIAL MAGISTRATE,
THIRUCHULLI,
VIRUDHUNAGAR DISTRICT

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE
VIRUDHUNAGAR AT
SRIVILLIPUTHUR

3 THE SUB-INSPECTOR OF POLICE
THIRUCHULLI POLICE STATION,
VIRUDHUNAGAR DISTRICT

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

COPY TO

THE OFFICER-IN-CHARGE
CHIEF MINISTER PUBLIC RELIEF FUND
GOVT.OF TAMIL NADU
IOB SECRETARIAT BRANCH
CHENNAI-9

ORDER

IN

CRL OP(MD) No.10473 of 2021

Date :03/08/2021

PKP/PN/SAR2 09/08/2021:P4:6C