



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 10.08.2021

WEB COPY

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP (MD) No.11015 of 2021

1.Murugesan

2.Iyyappan

... Petitioners/Accused

Vs

State Rep.by
The Inspector of Police,
Mimisal Police Station,
Pudukottai District.
(Crime No.178 of 2021).

... Respondent/Complainant

For Petitioner : M/s.Manikandan G.D.
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 Cr.No.178 of 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 Sections 147, 353, and 379 IPC r/w Sections 21(1) and 21(2) of the Tamil Nadu Mines and Minerals (Development and Regulation) Act, 1957 in Crime No.178 of 2021, seek anticipatory bail.

2.The case of the prosecution is that the petitioners had illegally transported two units of river sand by using lorry and UCB. Therefore, the present case came to be registered.



3.The learned counsel for the petitioners submitted that the petitioner 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 is having one similar previous case in Cr.No.39 of 2019 under Sections 379, 511 IPC r/w Sections 21(1) and 21(2) MMDR Act. He further submitted that there is no previous case pending against the second petitioner.

5.Considering facts and circumstances of the case and the fact that the first petitioner is having one similar previous case, this Court is not inclined to grant anticipatory bail to the first petitioner and this petition is dismissed as against the first petitioner.

6.Considering the fact that the second petitioner has not involved in any other offences, this Court is inclined to grant anticipatory bail to the second petitioner and this petition is allowed, so far as the second petitioner is concerned.

7.Accordingly, the second petitioner shall pay Rs.30,000/- (Rupees thirty 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, Aranthangi, Pudukottai District.

8.On production of such receipt/acknowledgment, 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, Aranthangi, Pudukottai District, on condition that the second petitiones 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.

9.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.

10.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.

11.In the result, the criminal original petition is partly allowed.

Sd/-
10/08/2021

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/ /2021
Sub-Assistant Registrar (C.S.II)
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 JUDICIAL MAGISTRATE,
ARANTHANGI, PUDUKOTTAI DISTRICT.
2. DO THROUGH THE CHIEF JUDICIAL
MAGISTRATE, PUDUKOTTAI DISTRICT.
3. THE INSPECTOR OF POLICE
MIMISAL POLICE STATION, PUDUKOTTAI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

COPY TO:

THE OFFICE INCHARGE,
CHIEF MINISTER PUBLIC RELIEF FUND,
SECRETARIAT, CHENNAI-9.

ORDER
IN
CRL OP(MD) No.11015 of 2021
Date :10/08/2021

SP/JM/SARII/24/08/2021/4P/5C