



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

Date : 11.08.2021

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD)No.11164 of 2021

WEB COPY

1. Asokan
2. Nagaraj

... Petitioner/Accused No.3 and 4

Vs

State Rep. By the
The Inspector of Police,
Adiramapattinam Police Station,
Thanjavur District.
(Crime No.647 of 2021)

... Respondent/Complainant

For Petitioners : Mr.S.Amulraj
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.647 of 2021 on the file of the respondent Police.

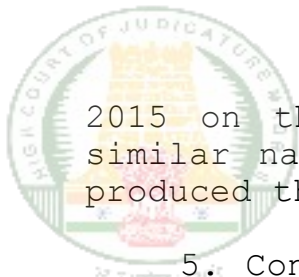
ORDER : The Court made the following order :-

The petitioners, who apprehend arrest at the hands of the respondent police for the alleged offences punishable under Sections 379 of IPC and Section 21(1) of Mines and Minerals (Development and Regulation) Act, 1957 in Crime No.647 of 2021, seek anticipatory bail.

2. The case of the prosecution is that on 06.08.2021, the petitioners had illegally transported one unit of river sand by using four Bullock Carts. Hence, the complaint.

3. The learned counsel for the petitioners submits that the petitioners are innocent persons and they are falsely implicated in this case.

4. The learned Government Advocate (Criminal Side), on instructions, would submit that the petitioners had illegally transported one unit of river sand without permit. He would further submit that the first petitioner is having three previous cases, which are similar in nature in Crime Nos.63 of 2017, 204 and 41 of



2015 on the file of the respondent Police and no other case of similar nature is pending against the second petitioner. He also produced the photographs of the vehicles seized with sand.

5. Considering the facts and circumstances of the case and the fact that the second petitioner has no previous case of similar nature, this Court is inclined to grant anticipatory bail to the second petitioner. Since the first petitioner is having three previous cases of similar nature, this Court is not inclined to grant anticipatory bail to the first petitioner. Accordingly, this petition is dismissed insofar as the first petitioner is concerned and this petition is allowed insofar as the second petitioner is concerned and the second petitioner is granted anticipatory bail on condition that the second petitioner shall pay a sum of Rs.15,000/- (Rupees Fifteen 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 Judicial Magistrate, Pattukkottai, Thanjavur District.

6. 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 Judicial Magistrate, Pattukkottai, Thanjavur District, 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 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)



[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 emphasized the need for confiscation of the vehicles. Consequently, the Government has also issued certain directions to the authorities of Revenue, Police, Forest, Geology and Mining departments to seize the vehicles and for confiscation of the same in G.O.Ms.No.170, Industries (MMC-2) 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-2) Department, dated 05.08.2020.

9. In fine, this petition is partly allowed.

Sd/-
11/08/2021

/ TRUE COPY /

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

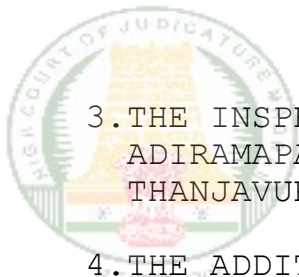
Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. THE JUDICIAL MAGISTRATE,
PATTUKKOTTAI, THANJAVUR DISTRICT.

2. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THANJAVUR DISTRICT AT KUMBAKONAM.

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



3.THE INSPECTOR OF POLICE,
ADIRAMAPATTINAM POLICE STATION,
THANJAVUR DISTRICT.

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

COPY TO

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

ORDER

IN

CRL OP(MD) No.11164 of 2021

Date :11/08/2021

GC/JM/SAR-3/19/08/2021/4P/6C