



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 19/08/2021

WEB COPY

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD). No.11310 of 2021

Balasubramanian @ Balu,

... Petitioner/Accused No.2

Vs

State Rep by
The Inspector of Police,
Arimalam Police Station,
Pudukkottai District.
Crime No.389 of 2020.

... Respondent/Complainant

For Petitioner : MR.Rajarajan.M,
Advocate.
For Respondent : MR.P.Kottaichamy,
Government Advocate (Crl.Side)

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

PRAYER :-

For Anticipatory bail in Crime No.389 of 2020 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 Section 379 of IPC and Section 21(1)(2) of Mines and Minerals (Development and Regulation) Act, 1957 in Crime No.389 of 2020, seeks anticipatory bail.

2. The case of the prosecution is that on 25.08.2020, the petitioner and other accused had illegally transported 1/2 unit of river sand by using JCB bearing Regn.No.TN 55 BD 3253. Hence, the complaint.

3. The learned counsel for the petitioner submits that the petitioner is an innocent person and he is falsely implicated in



this case. However, to show his bona fide, he is prepared to pay a sum of Rs.10,000/- to the Chief Minister's Public Relief Fund.

4. The learned Government Advocate (Criminal Side), on instructions, would submit that the petitioner had illegally transported 1/2 unit of river sand without permit. He would further submit that the petitioner is having three previous cases and the one is in similar nature of offence.

5. Though the petitioner has involved in two other offences of similar in nature, he has filed an undertaking affidavit before this Court that he will not indulge in any other offences in future and also undertook to file an affidavit before the respondent police as well as before the trial Court.

6. Considering the facts and circumstances of the case, the nature of allegation levelled against the petitioner and also his willingness to pay a sum of Rs.10,000/- to the Chief Minister's Relief Fund, this Court is inclined to grant anticipatory bail to the petitioner. Accordingly, this petition is allowed and the petitioner is granted anticipatory bail on condition that the 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 Judicial Magistrate Court, Thirumayam.

7. On production of such receipt/acknowledgment, the 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 Court, Thirumayam on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties for a like sum to the satisfaction of the Magistrate concerned and on further conditions that:

[a] the 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 petitioner shall file an undertaking affidavit in Tamil that he will not indulge in any other offence in future, before the concerned Judicial Magistrate as well as before the concerned Police Station. On filing the undertaking affidavit, the concerned Judicial Magistrate shall accept the sureties.

[c] the petitioner shall report before respondent police daily until further orders.



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

[e]the petitioner shall not abscond either during investigation or trial.

[f]On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the 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].

[g]If the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

8.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.

9.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.

sd/-

19/08/2021

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/ /2021

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



mbi / trp

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,
THIRUMAYAM
- 2 DO THROUGH
THE CHIEF JUDICIAL MAGISTRATE
PUDUKKOTTAI DISTRICT
- 3 THE INSPECTOR OF POLICE
ARIMALAM POLICE STATION,
PUDUKKOTTAI DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO

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

+1. CC to M/S. RAJARAJAN.M Advocate SR.No.26868(F) dated 19/08/2021

ORDER
IN
CRL OP(MD) No.11310 of 2021
Date :19/08/2021

PKP/JC/SAR-2/26.08.2021/4P/7C