



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

Date : 20/09/2021

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI
CRL OP(MD). No.12003 of 2021

WEB COPY

G.Sugumaran @ Sukumaran

... Petitioner/Sole Accused

Vs

State Represented by
The Inspector of Police,
Aralvaimozhi Police Station,
Kanyakumari District.
Cr.No. 428 of 2021.

... Respondent/Complainant

For Petitioner : M/s.Anto Prince G,
Advocate.

For Respondent : Mr.P.Kottai Chamy,
Government Advocate (Crl.Side)

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

PRAYER :-

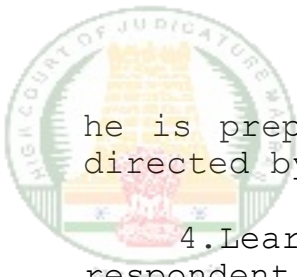
For Anticipatory Bail in Crime No.428 of 2021 on the file of
the Respondent Police.

ORDER : The Court made the following order :-

The petitioner, who apprehends arrest at the hands of the
respondent police for the alleged offence punishable under Section
379 of IPC 1860 and Section 21(1) of the Mines & Minerals
(Development & Regulation) Act, 1957, in Crime No.428 of 2021, seeks
anticipatory bail.

2.The prosecution case is that on a complaint forwarded from
the Hon'ble Chief Minister Special Cell with regard to the sand
theft, the defacto complainant conducted a spot inspection with
Surveyor, on 07.07.2021. Survey No.447/2 to an extent of 0.49.50
hectare belongs to this petitioner and he runs brick kiln there and
nearby his land there is a Government Poramboku odai in Survey
No.447/1. During the Inspection, it is found that sand measuring
7020 cubic meter was accumulated from Government poromboku odai in
Survey No.447/1. Hence the complaint.

3.Learned Counsel for the petitioner submits that the
petitioner is an innocent and he has not committed any offence as
alleged by the prosecution, but, a false case has been foisted as
against him. He would further submit that he is running a brick kiln
and he has obtained permission from the concerned Department and he
has taken the mineral from the water body for brick kiln and not
from any Government poromboke land. However, to show his *bona fide*,



he is prepared to pay a sum of Rs.20,000/- to any organization as directed by this Court.

4.Learned Government Advocate(Crl.side) appearing for the respondent police submitted that the petitioner has illegally taken the sand from nearby Government Odai. He further submitted that apart from this case, this petitioner had also involved in Crime No.72 of 2019 on the file of the Inspector of Police, Dindigul District.

5.Considering the nature of mineral involved, the antecedent of the petitioner and his willingness to pay a sum of Rs.20,000/-, this Court is inclined to grant anticipatory bail to the petitioner. Accordingly, this Criminal Original Petition is allowed on condition that **the petitioner shall pay a sum of Rs.20,000/- (Rupees Twenty Thousand Only) in favour of the District Green Committee, Kanyakumari District**, without prejudice to his rights and contentions before the trial Court and produce the receipt / acknowledgment before the learned Judicial Magistrate, Boothapandi.

6.The District Green Committee, which was formed as per the Government Order in G.O.Ms.No.39, Environment, Climate Change and Forest (FR.13) Department, dated 02.07.2021, pursuant to the directions of this Court in W.P.No.11094 of 2021, shall utilize the amount paid by the petitioner for plantation of trees on either side of the road, tree guard, drip irrigation, manure, etc., with public participation, including, NGOs, Confederation of Industries, Rotary Clubs, Lions Clubs, School Students, College Students, Self Help Groups, labours under MGNREGS and any other volunteers, etc., to achieve 100% survival rate of the planted trees. The State Green Committee shall extend their support in this regard by recommending the correct variety / species of trees, in accordance with the soil type and climatic conditions and also for the maintenance. The maintenance of the trees planted has to be reviewed by the District Green Committee, after two years and necessary appreciations have to be made to the stakeholders concerned in the form of certificates.

7.On production of receipt / acknowledgement for having paid the amount before the District Green Committee, 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 learned Judicial Magistrate, Boothapandi, on condition that the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five 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 petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the learned Judge may obtain a copy of their Aadhaar card or bank pass book to ensure their identity.

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

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

[d]the petitioners are directed to deposit a sum of Rs.50,000/- (Fifty Thousand Only), to the credit of Crime No.428 of 2021 before the learned Judicial Magistrate, Boothapandi.

[e]the petitioner shall not abscond either during the 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.

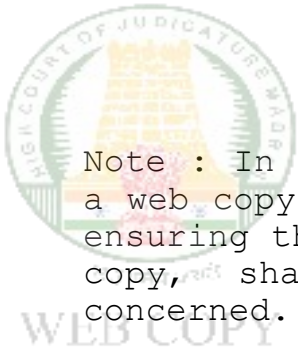
9.Though the above provision mandates the authorities to confiscate the tool or instrument or vehicle involved in the commission of the offence of illegal quarrying / transportation of sand, the authorities have not invoked the provision under Section 21(4-A) of the Mines and Minerals (Development & 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 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/-
20/09/2021

/ 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, BOOTHAPANDI.
2. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI DISTRICT AT NAGERCOIL.
3. THE INSPECTOR OF POLICE,
ARALVAIMOZHI POLICE STATION,
KANYAKUMARI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO

- 1 THE OFFICER INCHARGE
DISTRICT GREEN COMMITTEE,
KANYAKUMARI DISTRICT
- 2 THE OFFICER INCHARGE
STATE GREEN COMMITTEE,
CHENNAI.

+1 CC to M/s.G.ANTO PRINCE, Advocate (SR-6412[I] dated 21/09/2021)

ORDER
IN
CRL OP(MD) No.12003 of 2021
Date : 20/09/2021

VB/JC/SAR-I/23.12.2021/4P/8C