



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
( Criminal Jurisdiction )  
Date : 19/08/2021

PRESENT

WEB COPY

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD) . No.11765 of 2021

Muthukumar

... Petitioner/Accused No.4

Vs

The State rep.by,  
The Inspector of Police,  
Puliyankudi Police Station,  
Tenkasi District.  
in Crime No.399 of 2021

... Respondent/Complainant

For Petitioner : Mr.K.Muthuvai ILayaraj,  
Advocate.

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

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

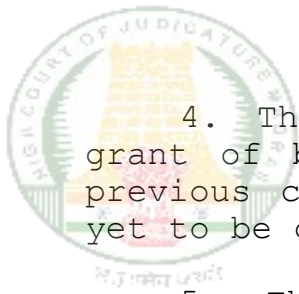
PRAYER :-For Bail in Crime No.399 of 2021 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner/A4, who was arrested on 28.07.2021 for the offences punishable under Sections 147, 379 of IPC r/w Section 21(4) of the Mines and Minerals (Development and Regulation) Act, 1957 in Crime No.399 of 2021 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that on 28.07.2021 at about 08.00 a.m., when the de-facto complainant along with the police parties was on patrol near Nariyuthu River Bank, they found that the petitioner and other accused have illegally transported one unit of river sand by using Tractor and Lorry. On seeing the Police, all the accused ran away and this petitioner was apprehended by the police and remanded to the judicial custody.

3.The learned counsel for the petitioner submits that the petitioner is an innocent and he has not committed any offence as alleged by the prosecution.



4. The learned Government Advocate (Crl. Side) opposed for grant of bail on the ground that the petitioner is having three previous cases. It is further submitted that the investigation is yet to be completed.

5. The learned counsel for the petitioner further submits that the petitioner will not indulge in any such offence in future. He is also ready to file an undertaking affidavit to that effect.

6. Considering the facts and circumstances of the case, the nature of allegations levelled against the petitioner, the period of incarceration and the petitioner's readiness to file an undertaking affidavit that he would not indulge in any such offence in future, this Court is inclined to grant bail to the petitioner.

7. Accordingly, this Criminal Original Petition is ordered. The petitioner is directed to be released on bail on his executing 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 Judicial Magistrate Court, Sivagiri, Tenkasi District and on further conditions that:

[a]the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar 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 such 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. The undertaking affidavit should be attested by the concerned Superintendent of Jail authority.

[c]the petitioner shall report before the respondent police daily at 10.30 a.m. until further orders.

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

[e]the petitioner shall not tamper with evidence or witness 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 229A 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 and any vehicle or instrument or tool which has been seized under Section 21 (4) of the Mines and Minerals (Development & Regulation) Act is liable to be confiscated under Section 21(4-A) of the Mines and Minerals (Development & Regulation) 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 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-2 Department, dated 05.08.2020 and therefore, the respondent police is directed to proceed further as per Section 21 (4-A) of the Mines and Minerals (Development & Regulation) Act and as per the guide lines issued in G.O.Ms.No.170, Industries MMC-2 Department, dated 05.08.2020.

sd/-

19/08/2021

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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,  
SIVAGIRI, TENKASI DISTRICT.

2 DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,  
TIRUNELVELI DISTRICT.



3 THE SUPERINTENDENT,  
CENTRAL PRISON, PALAYAMKOTTAI.

4 THE INSPECTOR OF POLICE,  
PULIYANKUDI POLICE STATION,  
TENKASI DISTRICT.

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

ORDER  
IN  
CRL OP(MD) No.11765 of 2021  
Date :19/08/2021

SJI/OGY  
MK/VR/SAR.III/19.08.2021/4P/6C