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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 19.08.2021

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD)No.11861 of 2021

Balakrishnan ... Petitioner/Sole Accused

Vs

State rep by
The Inspector of Police,
Nagudi Police Station,
Pudukottai District.
Crime No.262 of 2021. ... Respondent/Complainant

For Petitioner : Mr.M.Suresh, 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.262 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 offences punishable under Section 379 IPC and Sections 21(1) and 21(2) of the Mines and Minerals (Development and Regulation)Act, 1957 in Crime No.262 of 2021, seeks anticipatory bail.

2.The case of the prosecution is that the petitioner had illegally transported half unit of river sand by using bullock cart. Hence, the present case has been registered.

3.The learned counsel for the petitioner submitted that the petitioner is an innocent person and he has been falsely implicated

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in this case. However, to show his bona fide, the petitioner has come forward to pay a sum of Rs.7,500/- to the credit of Chief Minister's Public Relief Fund.

4.The learned Government Advocate(Crl.side) appearing for the respondent police submitted that the petitioner had transported half unit of river sand illegally in a bullock cart. He further submitted that there is no other case pending against the petitioner.

5.Considering the fact that the petitioner has not involved in any other offences and also the fact that the petitioner in order to show his bona fide, has also come forward to pay a sum of Rs.7,500/- to the credit of Chief Minister's Public Relief Fund, this Court is inclined to grant anticipatory bail to the petitioner.

6.Accordingly, this criminal original petition is allowed on condition that the petitioner shall pay a sum of Rs.7,500/-(Rupees Seven Thousand and Five Hundred 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, Pudukkottai District.

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 learned Judicial Magistrate, Aranthangi, Pudukottai District, on condition that the 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 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 Magistrate may obtain a copy of their Aadhaar card or bank pass book to ensure their identity.

[b]the petitioner shall report before 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 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 petitioner in accordance with law as if the conditions

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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].**

[**f**]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 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. 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.

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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.

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TO

1.The Judicial Magistrate,
Aranthangi.

2.Do Through
The Chief Judicial Magistrate,
Pudukottai.

3.The Inspector of Police,
Nagudi Police Station,
Pudukottai District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to
The Officer Incharge,
Chief Minister's Public Relief Fund,
Finance(CMPRF) Department,
Government of Tamil Nadu,
Secretariat, Chennai 600 009.

ORDER IN
CRL OP(MD)No.11861 of 2021
Date : 19.08.2021

TR/JC/SAR-III(08.09.2021) 4P 6C

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