



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

Date : 26.08.2021

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD)No.12245 of 2021

1.M.ARUL BRITTO
2.S.ILAYARAJA

... PETITIONERS/ACCUSED 1 & 2

VS

THE STATE REPRESENTED BY.
THE INSPECTOR OF POLICE,
SETHUBAVACHATRAM POLICE STATION,
THANJAVUR DISTRICT.
(CRIME NO.492/2021)

... RESPONDENT/COMPLAINANT

FOR PETITIONERS : MR.A.SIVASUBRAMANIAN,
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.492 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 offence punishable under Sections 379, 294(b), 353, 506(i) IPC r/w 21(1) of Mines and Minerals (Development and Regulation) Act, 1957, in Crime No.492 of 2021, seek anticipatory bail.

2.The prosecution case is that the petitioners have involved in illegal transportation of 1/2 unit of river sand in bullock cart. Hence, the complaint.

3.Learned Counsel for the petitioners submitted that the petitioners are innocents and have not committed any offence as alleged by the prosecution. However, to show their *bona fide*, the petitioners are prepared to pay a sum of Rs.7,500/- to the Chief Minister's Relief Fund.



4.Learned Government Advocate(Crl.side) appearing for the respondent police submitted that the petitioners have illegally transported 1/2 unit of river sand and on the complaint of the Police officials, the case was registered. He further submitted that no previous case is pending as against the petitioners.

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5.Considering the nature of mineral involved, antecedent of the petitioners and their willingness to pay a sum of Rs.7,500/- to the Chief Minister's Relief Fund, this Court is inclined to grant anticipatory bail to the petitioners. Accordingly, this Criminal Original Petition is allowed on condition that the petitioners shall pay a sum of Rs.7,500/-(Rupees Seven Thousand and Five Hundred Only), jointly, 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 their rights and contentions before the trial Court and produce the receipt / acknowledgment before the learned Judicial Magistrate, Pattukottai.

6.On production of such receipt/acknowledgement, the petitioners are ordered to be released on bail in the event of arrest or on their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate, Pattukottai, on condition that the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties each for a like sum to the satisfaction of the learned Magistrate concerned and on further conditions that:

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

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

[d]the petitioners 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 petitioners in accordance with law as if the conditions have been imposed and the petitioners 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 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 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/-
26/08/2021

/ TRUE COPY /

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

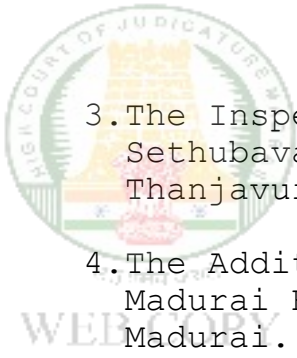
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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant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

To

1.The Judicial Magistrate,
Pattukottai.

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



3.The Inspector of Police,
Sethubavachatram Police Station,
Thanjavur.

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

Copy to:

The Officer Incharge,
The Chief Minister Public Relief Fund,
Secretariat,
Chennai - 9.

ORDER

IN

CRL OP(MD) No.12245 of 2021

Date :26/08/2021

GC/SKN/SAR-II (07.09.2021) 4P 6C