



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

Date : 01.09.2021
PRESENT

WEB COPY

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP (MD)No.12157 of 2021

1.Sahaya xavier
2.Anil Prabin Dhas
3.Sasidharan

... Petitioners/Accused Nos.2 to 4

Vs

The State rep.by
The Inspector of Police,
Marthandam Police Station,
Kanyakumari District.
(Crime No.859 of 2020).

... Respondent/Complainant

For Petitioners : Mr.S.SIVAPRAKASH, 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.859 of 2020 on the file of the respondent police.

ORDER : The Court made the following order :-

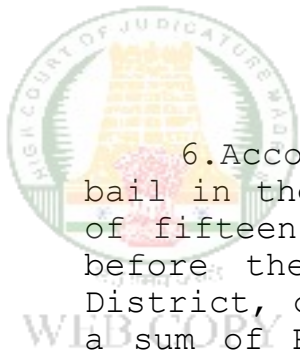
The petitioners, apprehending arrest at the hands of the respondent police for the alleged offences punishable under Section 379 IPC in Crime No.859 of 2020, seek anticipatory bail.

2.The case of the prosecution is that the petitioners had illegally transported half unit of red sand by using vehicle. Hence, the present case has been registered.

3.The learned counsel for the petitioners submitted that the petitioners are innocent persons and they have been falsely implicated in this case.

4.The learned Government Advocate(Crl.side) appearing for the respondent police submitted that the petitioners had transported half unit of red sand illegally in a vehicle. He further submitted that there is no previous case pending against the petitioners.

5.Considering the nature of mineral involved and the antecedents of the petitioners, this Court is inclined to grant anticipatory bail to the petitioners.



6. Accordingly, 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 Judicial Magistrate Court-I, Kuzhithurai, Kanyakumari District, on condition that the petitioners 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 petitioners 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 petitioners shall report before 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.

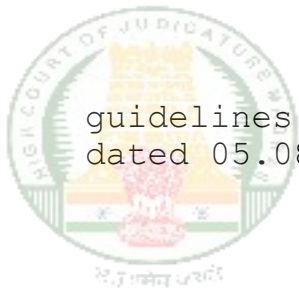
[d] the petitioners shall not abscond either during investigation or trial.

[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 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/-
01/09/2021

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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 COURT NO.I
KUZHIDHURAI, KANYAKUMARI DISTRICT.
- 2.DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI DISTRICT AT NAGERCOIL.
- 3.THE INSPECTOR OF POLICE,
MARTHANDAM POLICE STATION,
KANYAKUMARI DISTRICT.
- 4.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL OP(MD) No.12157 of 2021

Date :01/09/2021

SA/PN/SAR.4/14.09.2021/3P/5C