



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 04/10/2021

WEB COPY

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD). No.12752 of 2021

1. R.Sathish @ Sathees,

2. P.Prabu,

... Petitioners/Accused Nos.1 & 2

Vs

State Rep by,
The Inspector of Police,
T.Ramanathapuram Police Station,
Madurai District.
(in Crime No.41/2021)

... Respondent/Complainant

For Petitioner : Mr.S.Ramsundarvijayraj, Advocate.

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

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

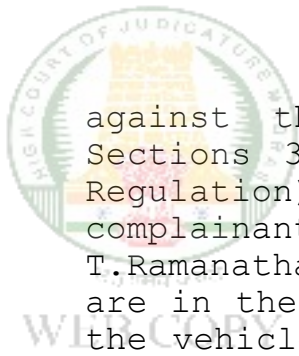
PRAYER :-

For Anticipatory Bail in Crime No.41 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioners/A1 and A2, who apprehend arrest at the hands of the respondent Police, for the offence punishable under Section 379 IPC in Crime No.41 of 2021, on the file of the respondent Police, seek anticipatory bail.

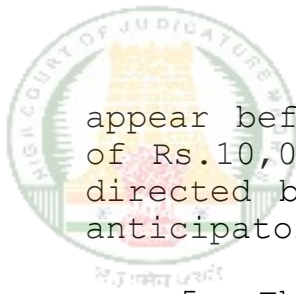
2. The case of the prosecution is that one Muniandi, Village Administrative Officer of Thirumanikkam Village, had preferred a complaint before the Sub Inspector of Police, T.Ramanathapuram Police Station, stating that on 01.07.2021, at about 2.00 a.m., the petitioners/accused by using the JCB bearing Reg.No.TN58 AS 7653, Tipper Lorry bearing No.TN64 J 8487 and Tipper Lorry bearing No.TN20 AT 4113 had illegally taken sand from the non-leased government Thappukutti Kanmoi in S.F.No.346/1 of Thirumanikkam Village for laying road, without getting prior permission from the concerned authorities. Based on the complaint, a case has been registered



against the petitioners/accused in Crime No.40 of 2021 under Sections 379 IPC r/w. 21(5) of Mines and Mineral (Development & Regulation) Act. After the registration of the case, the defacto complainant had filed a petition before the Sub Inspector of Police, T.Ramanathapuram Police Station that the above mentioned vehicles are in the custody of the defacto complainant and he will hand over the vehicles before the Sub Inspector of Police, after the rain is over since the vehicle got stuck in the muddy land of one Chinnan at Pappinayakkanpatti. The petitioners/accused are laying the road in the nearby kanmoi area and they used the sand for filling the part of road work. The defacto complainant and one Muthaiah were monitoring the vehicles for every two hours, but, the above vehicles were stolen on 03.07.2021 by the petitioners/accused. On the basis of the complaint given by the defacto complainant, another case was registered in Crime No.41 of 2021 under Section 379 IPC for the stolen vehicles.

3. The learned counsel for the petitioners submits that the petitioners are Highways Contractors and they are reputed persons in the village and in order to tarnish their image, a false case has been foisted against them. The petitioners claim that with the help of the Village Administrative Officer, a case has been registered on 02.07.2021 at about 6.00 p.m. as if the petitioners had indulged in illegal transportation of mineral. On knowing that a false case has been foisted, the first petitioner has also filed a petition for anticipatory bail before this Court in Crl.O.P.(MD)No.8941 of 2021, on 05.07.2021, wherein, he has taken a specific stand that without any theft of sand, a false case has been foisted against him. Thereafter, the present case has been foisted as if the vehicle has been seized by the Village Administrative Officer on 01.07.2021 and the same was kept in his custody and the petitioners took away the vehicle on 06.07.2021 from the custody of the Village Administrative Officer. Therefore, he prayed for grant of anticipatory bail to the petitioners.

4. The learned Government Advocate (Crl. Side) submits that in this case, the investigation officer was not able to arrest the accused persons, since they are absconding. He further submits that the first petitioner filed an anticipatory bail petition for Cr.No.40 of 2021 before this Court in Crl.O.P.(MD)No.8941 of 2021, that was dismissed by this Court on 07.07.2021. Thereafter, the petitioners filed a quash petition for Cr.No.40 of 2021 before this Court in Crl.O.P.(MD)No.9669 of 2021, which is pending. The petitioners again filed an anticipatory bail petition for Cr.No.40 of 2021 before this Court in Crl.O.P.(MD)No.11047 of 2021 and that petition was allowed by this Court vide order dated 19.08.2021. While granting anticipatory bail to the petitioners, this Court directed the petitioners to file an undertaking affidavit that they will not indulge in any other offence in future before the concerned Judicial Magistrate as well as before the concerned Police Station. In pursuance of this order of this Court, the petitioners failed to



appear before the concerned Judicial Magistrate and execute a bond of Rs.10,000/- and also failed to file an undertaking affidavit as directed by this Court. Therefore, he prayed for dismissal of the anticipatory bail petition.

5. This Court paid its anxious consideration to the rival submissions and also perused the materials available on record.

6. The occurrence was taken place on 01.07.2021 and the Village Administrative Officer is said to have seized the vehicles involved in illegal mining and also kept in his safe custody till 06.07.2021. When the vehicles are in the custody of the Village Administrative Officer, the petitioners are said to have taken the same from his custody, without any permission. If the vehicles have been seized as claimed by the Village Administrative Officer, it is not known as to why the same has not been handed over to the concerned Police Station or before the concerned Court. The Village Administrative Officer is not the authority to keep the vehicles, which have been seized on 01.07.2021, till 06.07.2021. Though the prosecution claims that the vehicles were in the custody of the Village Administrative officer, no photographs were placed before this Court to substantiate the same.

7. In such view of the matter, this Court is inclined to grant anticipatory bail to the petitioners and accordingly, the Criminal Original Petition is allowed. The petitioners are ordered to be released on bail in the event of arrest or their appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate No.II, Usilampatti, on condition that the petitioners shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each, with two sureties each for a like sum to the satisfaction of the learned Magistrate concerned and on further conditions that:

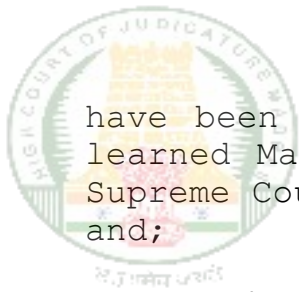
(a) the petitioners and the sureties shall affix their photographs and left thumb impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhaar card or bank pass book to ensure their identity;

(b) the petitioners shall report before the concerned Judicial Magistrate daily at 10.30 a.m. 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 are 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]*** and;

(f) if the accused thereafter abscond, a fresh FIR can be registered under Section 229-A IPC.

sd/-

04/10/2021

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

OGY

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 NO.II,
USILAMPATTI,
- 2 DO-THROUGH :
THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.
- 3 THE INSPECTOR OF POLICE
T.RAMANATHAPURAM POLICE STATION,
MADURAI DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to MrS.RAMSUNDARVIJAYARAJ, Advocate (SR-6884[I] dated 05/10/2021)
ORDER

IN

CRL OP(MD) No.12752 of 2021

Date : 04/10/2021

PKP/TR/SAR-1/22.10.2021/4P/6C