



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 06.09.2021

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PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD)No.12706 of 2021

Basith Ahamed ... Petitioner/Accused No.1

Vs

The State represented by
The Inspector of Police,
Nachiyarkovil Police Station,
Thanjavur District.
[Cr.No.983 of 2021] ... Respondent/Complainant

For Petitioner : Mr.K.M.Karunakaran, 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.983 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 offence punishable under Section 379 IPC r/w Section 21(4) of the Mines and Minerals (Development and Regulation) Act, 1957 in Crime No.983 of 2021, seeks anticipatory bail.

2.The case of the prosecution is that the petitioner along with other accused transported two units of river sand in a tipper lorry. Therefore, the present case came to be registered.

3.The learned counsel for the petitioner submits that the petitioner is an innocent and he has been falsely implicated in this

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case. However, the petitioner in order to show his *bona fide*, has come forward to pay a sum of Rs.30,000/- to the credit of the Chief Minister's Public Relief Fund.

4.The learned Government Advocate (Crl.side) appearing for the respondent police submitted that the petitioner has transported two units river sand in a tipper lorry. He further submitted that the petitioner has not involved any other offence.

5.Considering the facts and circumstances of the case, the nature of allegations and also considering the fact that the petitioner in order to show his *bona fide*, has come forward to pay a sum of Rs.30,000/- to the credit of Chief Minister's Public Relief Fund and his antecedent, this Court is inclined to grant anticipatory bail to the petitioner. Accordingly, this criminal original petition is allowed on condition that the petitioner shall pay a sum of Rs.30,000/- (Rupees Thirty Thousand 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 No.2, Kumbakonam.

6.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 No.2, Kumbakonam 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 learned Magistrate may obtain a copy of their Aadhaar card or bank pass book to ensure their identity.

[b]the petitioner shall report before the 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 have been imposed and the petitioner is 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.

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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/-
06/09/2021

/ TRUE COPY /

/ /2021

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 NO.2,
KUMBAKONAM.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THANAVUR DISTRICT AT KUMBAKONAM

<https://hcservices.mca.gov.in/hcservices/>



3 THE INSPECTOR OF POLICE
NACHIYARKOVIL POLICE STATION, THANJAVUR
DISTRICT.

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

Copy to:
THE OFFICER INCHARGE,
GOVERNMENT OF TAMIL NADU,
CHIEF MINISTER PUBLIC RELIEF FUND,
SECRETARIAT,
CHENNAI 09.

ORDER
IN
CRL OP(MD) No.12706 of 2021
Date :06/09/2021

SS/JC/SAR-IV/13.09.2021 : 4P/6C