



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 07/09/2021

WEB COPY

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD). No.12829 of 2021

1. Srinivasan,

2. Neethipathi,

3. Selvaraj, ... Petitioners/Accused No.1, 2 & 4

Vs

State rep by
The Inspector of Police,
Thanjavur Taluk Police Station,
Thanjavur District. Cr.No.927 of 2021.

... Respondent/Complainant

For Petitioner : M/s. Dhilipan Pandian.R.L.,
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.927 of 2021 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioners/A1, A2 and A4 apprehending arrest at the hands of the respondent police for the alleged offences punishable under Section 379 IPC and Section 21(1) of Mines and Minerals (Development and Regulation) Act in Crime No.927 of 2021, seek anticipatory bail.

2.The case of the prosecution is that each of the petitioners have illegally transported $\frac{1}{4}$ unit of river sand by using bullock cart. Therefore, the present case came to be registered.

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



this case. However, to show their bona fide, the second petitioner has come forward to pay a sum of Rs.5,000/- and the third petitioner has come forward to pay a sum of Rs.10,000/- to the credit of Chief Minister's Public Relief Fund.

4.The learned Government Advocate (Crl. Side) for the respondent police submitted that each of the petitioners have transported ¼ unit of river sand illegally. He further submitted that the first petitioner is having six previous cases of similar in nature, third petitioner is having one previous case of similar in nature and no previous case is pending against the second petitioner.

5.Considering the nature of offence and the first petitioner is having six previous cases of similar in nature, this Court is not inclined to grant anticipatory bail to the first petitioner. Accordingly, this petition is dismissed as against the first petitioner.

6.Considering the nature of the mineral involved, the antecedents of the petitioners 2 and 3 and their willingness to pay the above said amount to the credit of Chief Minister's Public Relief Fund, this Court is inclined to grant anticipatory bail to the petitioners.

7.Accordingly, this criminal original petition is allowed on condition that the second petitioner shall pay a sum of Rs.5,000/- (Rupees Five Thousand only) and the third petitioner shall pay a sum of Rs.15,000/- (Rupees Fifteen 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 their rights and contentions before the trial Court and produce the receipt/acknowledgment before the learned Judicial Magistrate No.II, Thanjavur District.

8.On production of such receipt/acknowledgment, the petitioners 2 and 3 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 No.II, Thanjavur District, on condition that the petitioners 2 and 3 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 2 and 3 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 2 and 3 shall report before respondent police daily at 10.30 am., until further orders.

[c]the petitioners 2 and 3 shall not tamper with the evidence or witness either during investigation or trial.

[d]the petitioners 2 and 3 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 2 and 3 in accordance with law as if the conditions have been imposed and the petitioners 2 and 3 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.

9.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.

10.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/-
07/09/2021

/ TRUE COPY /

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



SJI

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,
Thanjavur District.
2. Do-Through The Chief Judicial Magistrate,
Thanjore District.
3. The Inspector of Police,
Thanjavur Taluk Police Station,
Thanjavur 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.12829 of 2021
Date : 07/09/2021

TR/SKN/SAR-II(20.09.2021) 4P 6C