



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

Date : 08/09/2021

PRESENT

WEB COPY

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD) . No.13161 of 2021

1.Gopal

2.Dharmaraj

... Petitioners/Accused Nos.1 and 2

Vs

The State rep.by
The Inspector of Police,
Thiruvadanai Police Station,
Ramanathapuram District.
Cr.No.223/2021.

... Respondent/Complainant

For Petitioners : Mr.S.M.SANJAY,
Advocate.

For Respondent : Mr.T.SENTHILKUMAR,
Government Advocate (Crl.Side)

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :-

For Bail in Crime No.223 of 2021 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioners/A1 and A2, who were arrested on 29.08.2021 for the offence punishable under Section 379 IPC and Section 21(1) Mines & Minerals (Development and Regulation) Act 1957, in Crime No.223 of 2021 on the file of the respondent police, seek bail.

2. The case of the prosecution is that the petitioners have illegally transported one unit of river sand in a Tipper Lorry and JCB.

3. The learned counsel for the petitioners submits that the petitioners are innocents and they have not committed any offence as alleged by the prosecution. However, they are languishing in jail from 29.08.2021. Hence, he prayed for grant of bail.

4. The learned Government Advocate (Crl. Side) opposed for grant of bail on the ground that the investigation is yet to be completed. However, he fairly submits that the petitioners are not having any previous case.



5. Considering the nature of mineral involved, the period of incarceration and the fact that the petitioners are not having any previous case, this Court is inclined to grant bail to the petitioners.

6. Accordingly, this Criminal Original Petition is ordered. The petitioners are directed to be released on bail on his executing 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 Judicial Magistrate, Thiruvadanai and on further conditions that:

[a]the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b]The petitioners shall file an undertaking affidavit in Tamil that they will not indulge in any such offence in future, before the concerned Judicial Magistrate as well as before the concerned Police Station. On filing the undertaking affidavit, the concerned Judicial Magistrate shall accept the sureties. The undertaking affidavit should be attested by the concerned Superintendent of Prison.

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

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

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

[f]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]**.

[g] If the accused thereafter abscond, a fresh FIR can be registered under Section 229A 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 and any vehicle or instrument or tool which has been seized under Section 21 (4) of the Mines and Minerals (Development & Regulation)Act is liable to be confiscated under Section 21(4-A) of the Mines and Minerals (Development & Regulation) 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 and therefore, the respondent police is directed to proceed further as per Section 21 (4-A) of the Mines and Minerals (Development & Regulation) Act and as per the guide lines issued in G.O.Ms.No.170, Industries MMC-2 Department, dated 05.08.2020.

sd/-

08/09/2021

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/ /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
THIRUVADANAI.
- 2.DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE,
RAMANATHAPURAM DISTRICT.
- 3.THE OFFICER INCHARGE
SUB JAIL, SIVAGANGAI.
- 4.THE INSPECTOR OF POLICE
THIRUVADANAI POLICE STATION,
RAMANATHAPURAM DISTRICT.
- 5.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN

CRL OP(MD) No.13161 of 2021
Date : 08/09/2021

SA/PN/SAR.3/08.09.2021/3P/6C

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