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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 09/09/2021

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD). No.13305 of 2021

Sakthivel

... Petitioner/Sole Accused

Vs

The State rep.by
The Inspector of Police,
Kabisthalam Police Station,
Thanjavur District.
(Crime No. 609 of 2021).

... Respondent/Complainant

For Petitioner : Mr.R.MAHESWARAN,
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. 609 of 2021 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner/sole accused, who was arrested on 01.09.2021 for the offence punishable under Section 379 IPC and Section 21(4) of the Mines and Minerals (Development and Regulation) Act, 1957 in Crime No.609 of 2021 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that the petitioner has illegally transported $\frac{1}{4}$ unit of river sand in a Bullock Cart.

3.The learned counsel for the petitioner submits that the petitioner is an innocent and he has not committed any offence as alleged by the prosecution.

4. The learned Government Advocate (Crl. Side) opposed for grant of bail on the ground that the investigation is yet to be



completed. He further submits that apart from this case, the petitioner has also involved in three other cases.

5. The learned counsel for the petitioner further submits that the petitioner will not indulge in any such offence in future. He is also ready to file an undertaking affidavit to that effect.

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6. Considering the nature of mineral involved, the period of incarceration and his readiness to file an undertaking affidavit that he will not indulge in any such offence in future, this Court is inclined to grant bail to the petitioner.

7. Accordingly, this Criminal Original Petition is ordered. The petitioner is directed to be released on bail on his executing 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 Judicial Magistrate, Papanasam, Thanjavur District 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 petitioner shall file an undertaking affidavit in Tamil that he 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.

[c]the petitioner shall report before the respondent police daily twice, i.e. morning at 10.30 a.m. and evening at 5.30 p.m. until further orders.

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

[e]the petitioner 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 petitioner in accordance with law as if the conditions have been imposed and the petitioner 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 absconds, a fresh FIR can be registered under Section 229A IPC.

8. 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.

9. Though the above provision mandates the authorities to
<https://hservices.courts.gov.in/hservices/> seize 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/-

09/09/2021

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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
PAPANASAM, THANJAVUR DISTRICT.
2. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THANJAVUR DISTRICT AT KUMBAKONAM
3. THE OFFICER INCHARGE
SUB JAIL, THANJAVUR DISTRICT.
4. THE INSPECTOR OF POLICE,
KABISTHALAM POLICE STATION,
THANJAVUR DISTRICT.
5. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL OP(MD) No.13305 of 2021

Date : 09/09/2021

SA/VR/SAR.4/09.09.2021/3P/6C