



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 23/09/2021

WEB COPY

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP (MD) . No.13862 of 2021

1. Ilayaraja

2. Raja @ Rajangam

... Petitioners/Accused 1 & 2

Vs

State rep.by

The Inspector of Police,

Thogur Police Station,

Thanjavur District.

(Crime No.217 of 2021).

... Respondent/Complainant

For Petitioners : M/s.Narayanakumar K.P., Advocate.

For Respondent : M/s.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.217 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioners, who apprehend arrest at the hands of the respondent police for the alleged offence punishable under Section 379 IPC and Section 21(1) of Mines and Minerals (Development & Regulation) Act, 1957, in Crime No.217 of 2021, seek anticipatory bail.

2.The prosecution case is that the petitioners have illegally transported one unit of river sand by using a tractor. Hence, the complaint.



3. Learned Counsel for the petitioners would submit that the petitioner are innocent persons and they have not committed any offence as alleged by the prosecution, but, a false case has been foisted as against them. However, to show their *bona fide*, they are prepared to pay a sum of Rs.25,000/- to the Chief Minister's Public Relief Fund.

4. Learned Government Advocate (Crl. side) appearing for the respondent police submitted that the petitioners have illegally transported one unit of river sand and hence, the case was registered. He further submitted that the first petitioner is having two previous cases in Crime Nos. 09 of 2020 and 100 of 2018 and the second petitioner is having four previous cases in Crime Nos. 07 of 2012, 100 of 2018, 09 of 2020 and 387 of 2020.

5. In view of the antecedents of the second petitioner, this Court is not inclined to grant anticipatory bail to the second petitioner. Accordingly, this petition is dismissed insofar as the second petitioner is concerned.

5. Considering the nature of mineral involved, the antecedent of the first petitioner and his willingness to pay a sum of Rs.25,000/- to the Chief Minister's Public Relief Fund, this Court is inclined to grant anticipatory bail to the first petitioner. Accordingly, this Criminal Original Petition is allowed on condition that the first petitioner shall pay a sum of Rs.25,000/- (Rupees Twenty Five 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, Thanjavur.

6. On production of such receipt / acknowledgement, the first 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, Thanjavur, on condition that the first petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees twenty Five 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 first petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the learned Judge may obtain a copy of their Aadhaar card or bank pass book to ensure their identity.

[b] the first petitioner shall report before respondent police daily at 10.30 am., until further orders.

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

[c] the first petitioner shall not tamper with the evidence or witness either during investigation or trial.



[d]the first 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 first petitioner in accordance with law as if the conditions have been imposed and the first 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]**.

[f]If the accused thereafter abscond, a fresh FIR can be registered under Section 229-A IPC.

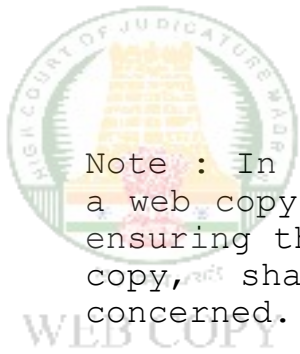
7.It is needless to say that any tool or instrument or vehicle used for illegal quarrying / transportation of sand is liable to be seized under Section 21(4) of the Mines and Minerals(Development & Regulation) Act, 1957 and any vehicle or instrument or tool which has been seized under Section 21 (4) 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 under Section 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 emphasized 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-II) 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-II) Department, dated 05.08.2020.

Sd/-
23/09/2021

/ TRUE COPY /

/ /2021
Sub-Assistant Registrar (C.S.IV)
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,
THANJAVUR.
2. -DO- THRO THE CHIEF JUDICIAL MAGISTRATE,
THANJAVUR AT KUMBAKONAM.
3. THE INSPECTOR OF POLICE,
THOGUR POLICE STATION,
THANJAVUR DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

COPY TO:

THE OFFICER INCHARGE,
CHIEF MINISTER PUBLIC RELIEF FUND,
SECRETARIAT, CHENNAI-9.
IOB, Secretariat Branch, Chennai-9
(Account No.11720 10000 00070,
IFSC Code: IOBA0001172)

ORDER
IN
CRL OP(MD) No.13862 of 2021
Date :23/09/2021

SP/SKN/SAR IV/06/10/2021/4P/6C