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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 01.10.2021
PRESENT
The Hon`ble Mr.Justice B.PUGALENDHI
CRL OP(MD). No.14867 of 2021

1.Manikandan
2.Sakthivel ... Petitioners/Accused Nos. 2 & 3

Vs

State Rep by
The Inspector of Police,
Adiramapattinam Police Station,
Thanjavur District.
(in Crime No.634 of 2021) ... Respondent/Complainant

For Petitioners : Mr.C.Sureshkannan
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.634 of 2021 on the file of the Respondent Police.

ORDER : The Court made the following order :-

The petitioners/A2 and A3 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, 1957 in Crime No.634 of 2021, seek anticipatory bail.

2.The case of the prosecution is that the petitioners illegally transported ¼ unit of river sand in the bullock carts. Therefore, the present case came to be registered.

3.The learned counsel for the petitioners submitted that the petitioners are innocents and they have been falsely implicated in this case. However, to show their bona fide, the petitioners have come forward to pay a sum of Rs.5,000/- each to any organisation as directed by this Court.

4.The learned Government Advocate (Crl. Side) for the respondent police submitted that the petitioners illegally transported ¼ unit of river sand in the bullock carts. He further submitted that the first petitioner is having two previous cases and the second petitioner is having five previous cases.

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5.Considering the bad antecedents of the second petitioner, this Court is not inclined to grant anticipatory bail to the second petitioner. Accordingly, this petition is dismissed as against the second petitioner.

6.Considering the nature of the mineral involved, the antecedents of the first petitioner and his willingness to pay a sum of Rs.5,000/-, this Court is inclined to grant anticipatory bail to the first petitioner with certain conditions.

7.Accordingly, this criminal original petition is partly allowed on condition that the first petitioner shall pay a sum of Rs.5,000/- (Rupees Five Thousand Only) in favour of the District Green Committee, Thanjavur District, without prejudice to his rights and contentions before the trial Court and produce the receipt/acknowledgment before the learned Judicial Magistrate, Pattukkottai, Thanjavur District.

8.The District Green Committee, which was formed as per the Government Order in G.O.Ms.No.39, Environment, Climate Change and Forest (FR.13) Department, dated 02.07.2021, pursuant to the directions of this Court in W.P.No.11094 of 2021, shall utilize the amount paid by the petitioner for plantation of trees on either side of the road, tree guard, drip irrigation, manure, etc., with public participation, including, NGOs, Confederation of Industries, Rotary Clubs, Lions Clubs, School Students, College Students, Self Help Groups, labours under MGNREGS and any other volunteers, etc., to achieve 100% survival rate of the planted trees. The State Green Committee shall extend their support in this regard by recommending the correct variety / species of trees, in accordance with the soil type and climatic conditions and also for the maintenance. The maintenance of the trees planted has to be reviewed by the District Green Committee, after two years and necessary appreciations have to be made to the stakeholders concerned in the form of certificates.

9.On production of such receipt/acknowledgment for having paid the amount before the District Green Committee, 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, Pattukkottai, Thanjavur District, 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 Magistrate may obtain a copy of their Aadhaar card or bank pass book

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to ensure their identity.

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

[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 absconds, a fresh FIR can be registered under Section 229-A IPC.

10. 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.

11. 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/-
01/10/2021

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

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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,
Pattukkottai, Thanjavur District.

2.Do Through The Chief Judicial Magistrate,
Thanjavur District at Kumbakonam.

3.The Inspector of Police,
Adiramapattinam Police Station,
Thanjavur District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to
1.The Officer incharge,
District Green Committee, Thanjavur.

2.The Officer incharge,
State green committee,Chennai.

ORDER IN
CRL OP(MD) No.14867 of 2021
Date : 01.10.2021

TR/VR/SAR-I(13.10.2021) 4P 7C

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