



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 05.10.2021

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PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP (MD)Nos.15033, 15036 of 2021

Palanivel @ Pazhanivel ... Petitioner / Accused No.1
in Crl.OP.15033/2021

1.Hussain Oone

2.Sethupathy @ Sethupandi ... Petitioners / Accused Nos.2 & 4
in Crl.OP.15036/2021

Vs

State Rep by
The Inspector of Police,
Devipattinam Police Station,
Ramanathapuram District.
(Crime No. 143/2021)

... Respondent / Complainant
in both OPs

For Petitioner : Mr.S.Vikram, Advocate
in Crl.OP.15033/2021

For Petitioners : Mr.T.Muneeshwaran, Advocate
in Crl.OP.15036/2021

For Respondent : Mr.P.Kottaichamy,
in both OPs Government Advocate (Crl.Side)

PETITIONS FOR ANTICIPATORY BAIL Under Sec.438 of Cr.P.C

COMMON PRAYER :-

For Anticipatory Bail in Crime No.143 of 2021 on the file
of the respondent Police.

COMMON 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.143 of 2021, seek anticipatory



2.The prosecution case is that the petitioners and other accused have illegally transported 1/2 unit of savudu by using a Tractor bearing registration no.TN-65-AM-4725. Hence, the complaint.

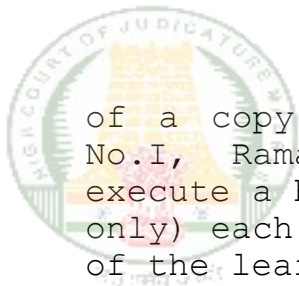
3.Learned Counsel for the petitioners submit that the petitioners are innocents and have not committed any offence as alleged by the prosecution, but, a false case has been foisted as against them. However, to show their *bona fide*, they are prepared to pay a sum of Rs.5,000/-, each, to any organization as directed by this Court.

4.Learned Government Advocate(Crl.side) appearing for the respondent police submitted that the petitioners have illegally transported 1/2 unit of savudu and hence, the case was registered. He further submitted that the petitioners have no previous case pending against them.

5.Considering the nature of mineral involved, the antecedent of the petitioners and their willingness to pay a sum of Rs.5,000/- each, this Court is inclined to grant anticipatory bail to the petitioners. Accordingly, these Criminal Original Petitions are allowed on condition that **the petitioners shall pay a sum of Rs.5,000/- (Rupees Five Thousand Only) each, in favour of the District Green Committee, Ramanathapuram District**, without prejudice to their rights and contentions before the trial Court and produce the receipt / acknowledgment before the learned Judicial Magistrate No.I, Ramanathapuram.

6.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 petitioners 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.

7.On production of receipt / acknowledgement for having paid the amount before the District Green Committee, the petitioners 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.I, Ramanathapuram, on condition that the petitioners shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five 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 and the sureties shall affix their photographs and left thumb impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhaar card or bank pass book to ensure their identity.

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

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

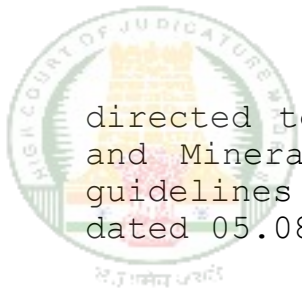
[d]the petitioners shall not abscond either during the investigation or trial.

[e]On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners 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]**.

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

9.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/-
05/10/2021

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

gk

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.I,
Ramanathapuram.
- 2.Do Through The Chief Judicial Magistrate,
Ramanathapuram.
- 3.The Inspector of Police,
Devipattinam Police Station,
Ramanathapuram.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

- 1.The Officer Incharge, District Green Committee,
Ramanathapuram.
- 2.The Officer Incharge, State Green Committee,
Chennai.

ORDER IN
CRL OP(MD)Nos.15033, 15036 of 2021
05.10.2021

TR/SKN/SAR-III(08.10.2021) 4P 7C

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