



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 01/11/2021

WEB COPY

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD). No.16545 of 2021

Shanmuganathan,

... Petitioner/Sole Accused

Vs

State Rep by,

The Inspector of Police,

Devipattinam Police Station,

Ramanathapuram District.

(Crime No.312 of 2021). ... Respondent/Complainant

For Petitioner : Mr.D.Rameshkumar, Advocate.

For Respondent : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor.

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

PRAYER :-

For Bail in Crime No. 312 of 2021 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioner/sole accused, who was arrested on 19.10.2021 for the offence punishable under Sections 379 IPC and Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957 in Crime No.312 of 2021 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that the petitioner has illegally transported $\frac{3}{4}$ unit of beach sand in a Tractor bearing registration No.TN 65 S 0815. Hence, the complaint.

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. However, he is inside the prison from 19.10.2021. Hence, he prays for grant of bail.

4.The learned Additional Public Prosecutor appearing for the respondent opposed for grant of bail on the ground that the petitioner is having six previous case.



5. At this juncture, the learned counsel for the petitioner submits that one G.Thirukumaravel, S/o. Gopal, who is working as Deputy Tax Officer at Commercial Tax Department, filed an undertaking affidavit before this Court that the petitioner, who is his brother-in-law, will not indulge in any criminal cases in future and he will stand as surety for the petitioner and he is ready to execute a bond for a sum of Rs.1,00,000/- before the concerned Judicial Magistrate and if the petitioner indulges in any criminal case in future, the said amount can be forfeited from him.

6. Considering the undertaking affidavit filed by one G.Thirukumaravel, S/o. Gopal, who is working as Deputy Tax Officer at Commercial Tax Department, considering the nature of mineral involved and also the period of incarceration, this Court is inclined to grant bail to the petitioner.

7. Accordingly, this Criminal Original Petition is allowed and the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.1,00,000/- (Rupees one lakh only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Ramanathapuram District and on further conditions that:

[a] the persons who are giving sureties should be respectable persons in their locality, either Government Servants or elected people representatives or the persons who are having permanent business establishments and the sureties shall file an affidavit before the trial Court, by ensuring that the petitioner will not indulge in any other offence in future and he will be available for the entire trial;

[b] 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;

[c] The petitioner shall not misuse the liberty granted to him by this Court and if the petitioner is involved in any other offence, the respondent police shall inform the same to the concerned Court. The concerned Court shall impound the sureties amount;

[d] the petitioner shall report before the respondent Police daily at 10.30 a.m. until further orders;

[e] the petitioner shall file an undertaking affidavit before the respondent Police as well as before the trial Court that he will not indulge in any other offence in future;

[f] the petitioner shall not abscond during the trial;



[g] the petitioner shall not tamper with the evidence or witness during trial;

[h] 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 is 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]**.

[i] 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, 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/-
01/11/2021

/ TRUE COPY /

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

PNM/OGY

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 DISTRICT.

4 THE OFFICER INCHARGE,
DISTRICT PRISON,
RAMANATHAPURAM.

5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL OP(MD) No.16545 of 2021

Date :01/11/2021

PKP/JM/SAR-1/01.11.2021/4P/6C