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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 28/10/2021
PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD) . No.16551 of 2021

Kaliyamoorthy

... Petitioner/Accused No.1

Vs

The State rep.by
The Inspector of Police,
Thiruvaiyaru Police Station,
Thanjavur District.
(Cr.No.688 of 2021).

... Respondent/Complainant

For Petitioner : Mr.K.M.KARUNAKARAN,
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.688 of 2021 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioner/A1, who was arrested on 18.10.2021 for the offence punishable under Section 379 IPC r/w Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957 in Crime No.688 of 2021 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that the petitioner along with other accused has illegally transported ¼ unit of river sand in a bullock-cart. 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. He is inside the prison from 18.10.2021 and hence, he prays for grant of bail.

4.The learned Additional Public Prosecutor appearing for the respondent would submit that the the investigation is yet to be completed. He further submits that there is one previous case pending at his credit.



5. Considering the nature of mineral involved, the antecedent of the petitioner and also the period of incarceration, this Court is inclined to grant bail to the petitioner.

6. 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.25,000/- (Rupees twenty five thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Thiruvaiyaru, 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 report before the respondent police as and when required for interrogation.

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

[d]the petitioner shall not tamper with the evidence or witness 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 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]**.

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

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 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/-
28/10/2021

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/ /2021

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

ORDER

IN

CRL OP(MD) No.16551 of 2021
Date :28/10/2021

SA/SKN/SAR.3/28.10.2021/3P/6C