



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 01/11/2021

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PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD). No.16889 of 2021

1. Ramesh
2. Senthil Kumar ... Petitioners/Accused Nos.2 & 3

Vs

The State Rep.by
The Inspector of Police,
Emaneswaran Police Station,
Ramanathapuram District.
(Crime No.302/2021). ... Respondent/Complainant

For Petitioners: Mr.M.S.Jeyakarthik,
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. 302 of 2021 on the file of the respondent Police.

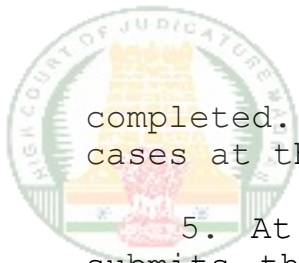
ORDER : The Court made the following order :-

The petitioners/A2 & A3, who were arrested on 21.10.2021 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.302 of 2021 on the file of the respondent police, seek bail.

2.The case of the prosecution is that the petitioners had illegally transported $\frac{3}{4}$ unit of river sand in a tractor bearing Reg.No.TN 67 AM 4000. Hence, the complaint.

3.The learned counsel for the petitioners submits that the petitioners are innocents and they have not committed any offence as alleged by the prosecution. However, they are inside the prison from 21.10.2021. Hence, he prays for grant of bail.

4.The learned Additional Public Prosecutor appearing for the respondent submits that the the investigation is yet to be



completed. He further submits that the petitioners are having four cases at their credit.

5. At this juncture, the learned counsel for the petitioners submits that the petitioners realised their mistakes and they are ready to file an undertaking affidavit before the respondent police as well as before the trial Court that they will not indulge in any other offence in future.

6. Considering the facts and circumstances of the case, the nature of mineral involved, the petitioners' readiness to file an undertaking affidavit that they will not indulge in any offence further and also the period of incarceration, this Court is inclined to grant bail to the petitioners.

7. Accordingly, this Criminal Original Petition is allowed and the petitioners are ordered to be released on bail on their executing 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 Judicial Magistrate, Paramakudi 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 petitioners shall file an undertaking affidavit before the respondent police as well as before the trial Court that they will not involve in any other offence in future.

[c] the petitioners shall report before the respondent police as and when required for interrogation.

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

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

[f] 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]**.

[g] If the accused thereafter abscond, 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 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.

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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/-

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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, PARAMAKUDI.
2. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
RAMANATHAPURAM DISTRICT.
3. THE OFFICER INCHARGE, SUB JAIL, SIVAGANGAI.
4. THE INSPECTOR OF POLICE,
EMANESWARAN POLICE STATION, RAMANATHAPURAM DISTRICT.
5. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.M.S.JEYAKARTHIK, Advocate (SR-7756[I] dated 01/11/2021)

ORDER IN

CRL OP(MD) No.16889 of 2021

Date : 01/11/2021

PNM

<https://hmcscs.judiciary.gov.in/Services/1.2021/3P.7C>