



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 02/11/2021

WEB COPY

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD). Nos.17031, 17193, 17194 & 17195 of 2021

K.Sambath @ Sambathkumar

... Petitioner/Accused No.2
In all petitions

Vs

The State rep by
The Inspector of Police,
Ammapet Police Station,
Thanjavur District.
Cr.Nos. 1367 of 2020, 785 of 2021,
391 of 2021, 142 of 2021.

... Respondent/Complainant
In all petitions

(In all petitions)

For Petitioner : Mr.R.L.Dhilipan Pandian,
Advocate.

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

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

PRAYER :-

For Bail in Crime Nos. 1367 of 2020, 785 of 2021, 391 of 2021,
142 of 2021 on the file of the Respondent Police.

COMMON ORDER : The Court made the following order :-

The petitioner/accused, who was arrested on 23.10.2021 in connection with the cases in Crime Nos. 1367 of 2020, 785 of 2021, 391 of 2021 and 142 of 2021, for the offence under Section 379 IPC and Section 21(4) Mines and Minerals (Development & Regulation) Act, 1957, on the file of the respondent police. Hence, he has moved these petitions for bail.

2. The case of the prosecution is that the petitioner along with other accused has illegally transported two units river sand in Cr.No.1367/2020, one unit of river sand in Cr.No.785 of 2021, 3 units of river sand in Cr.No.391 of 2021 and one unit of river sand in Cr.No.142 of 2021 by using tipper lorry. Hence, the complaints.



3. Since the petitioner as well as the respondent police in all the petitions are one and the same, all the petitions are heard together and are disposed of by this common order.

4. The learned counsel appearing for the petitioner submits that the petitioner is an innocent and has not committed any such offence and he has been falsely implicated in these cases. However, he is inside the prison from 23.11.2020. Hence, he prays for grant of bail.

5. The learned Additional Public Prosecutor appearing for the respondent police submits that the petitioner is a habitual offender. He is having eleven previous cases, out of which, seven cases are similar in nature. Therefore, the learned Additional Public Prosecutor opposed the grant of bail.

6. Considering the antecedent of the petitioner, this Court was not inclined to grant bail and was about to dismiss the bail applications, at that time, the learned counsel for the petitioner submitted that the petitioner has now realized his mistake and he is ready to file an affidavit of undertaking before the respondent police as well as before the trial Court that he will not indulge in any criminal activities in future.

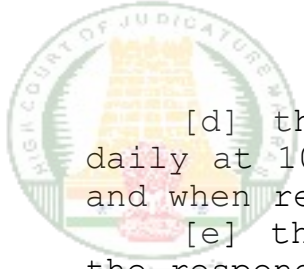
7. Considering the nature of mineral involved, the period of incarceration and the petitioner's readiness to file an undertaking affidavit, this Court is inclined to grant bail to the petitioner in all these petitions, however, with stringent conditions.

8. Accordingly, these Criminal Original Petitions are allowed and the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.2,00,000/- (Rupees two lakhs only) with two common sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Papanasam and on further condition 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 Magistrate may obtain a copy of their Aadhar 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 further offence, the respondent police shall inform the same to the concerned Court. The concerned Court shall impound the sureties amount and take action against the sureties.



[d] the petitioner shall report before the respondent police daily at 10.30 a.m. for a period of three months and thereafter, as and when required for interrogation;

[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 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.

9. 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.

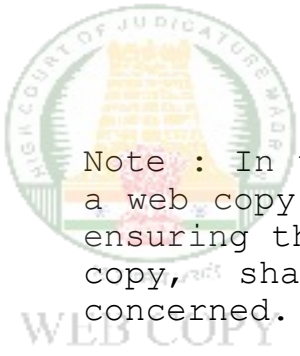
10. Though the above provision mandates the authorities to confiscate the tool or instrument or vehicle involved in the commission of the offence of illegal quarrying / transportation of sand, the authorities have not invoked the provision under Section 21(4-A) of the Mines and Minerals (Development & 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/-
02/11/2021

/ TRUE COPY /

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

COMMON ORDER
IN
CRL OP(MD) Nos.17031, 17193,
17194 & 17195 of 2021
Date : 02/11/2021

VB/PN/SAR-IV/02.11.2021/4P/6C