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CRL OP(MD) . No.17171 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 02/11/2021

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD) . No.17171 of 2021

1. Murugesan

2. Balasubramaniyan

... Petitioners/Accused 3&4

Vs

The State rep.by,
The Inspector of Police,
Seevalaperi Police Station,
Tirunelveli District.
Cr. No. 33 of 2020.

... Respondent/Complainant

For Petitioners : M/s.Lenin Kumar T,
Advocate.

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

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

PRAYER :-

For Anticipatory Bail in Crime No.33 of 2020 on the file of the Respondent Police.

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 of IPC, in Crime No.33 of 2020, seek anticipatory bail.

2.The prosecution case is that the petitioners have illegally transported 4 units of river sand by using two lorries. Hence, the complaint.



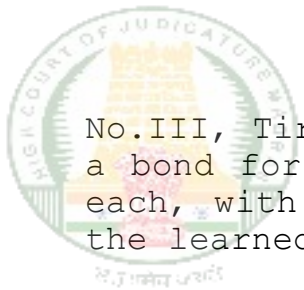
3.Learned Counsel for the petitioners submits that the petitioners are innocents and they have not committed any offence as alleged by the prosecution, but, a false case has been foisted as against them. However, to show their *bona fide*, they are prepared to pay a sum of Rs.30,000/-each, to any organization as directed by this Court.

4.Learned Government Advocate(Crl.side) appearing for the respondent police submitted that the petitioners have illegally transported 4 units of river sand and hence, the case was registered. He further submitted that one previous case is pending against the first petitioner and no previous case is pending against the second petitioner.

5.Considering the nature of mineral involved, the antecedent of the petitioners and their willingness to pay a sum of Rs.30,000/-each, this Court is inclined to grant anticipatory bail to the petitioners. Accordingly, this Criminal Original Petition is allowed on condition that **the first petitioner shall pay a sum of Rs.35,000/-(Rupees Thirty Five Thousand Only) and the second petitioner shall pay a sum of Rs.30,000/-(Rupees Thirty thousand only), in favour of the District Green Committee, Tirunelveli District,** without prejudice to their rights and contentions before the trial Court and produce the receipt / acknowledgment before the learned Judicial Magistrate No.III, Tirunelveli.

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.III, Tirunelveli, 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 Judge 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.

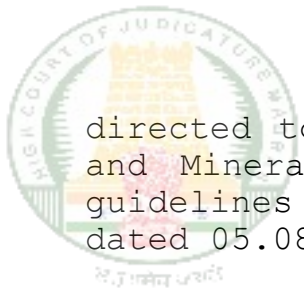
[d]the petitioners shall not abscond either during the investigation or trial.

[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 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 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/-
02/11/2021

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

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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.III,
TIRUNELVELI.
- 2.DO THROUGH- THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI.
- 3.THE INSPECTOR OF POLICE
SEEVALAPERI POLICE STATION,
TIRUNELVELI DISTRICT.
- 4.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,MADURAI.

COPY TO

- 1.THE OFFICER INCHARGE,
DISTRICT GREEN COMMITTEE,
TIRUNELVELI DISTRICT.
- 2.THE OFFICER IN CHARGE,
GREEN COMMITTEE,CHENNAI.

ORDER
IN
CRL OP(MD) No.17171 of 2021
Date :02/11/2021