



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 08/12/2021

WEB COPY

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD) . No.19126 of 2021

Alagumari

... Petitioner/Accused No.2

Vs

State Rep.by
The Inspector of Police,
Usilampatty Town Police Station,
Madurai District.
(Cr.No.327 of 2021).

... Respondent/Complainant

For Petitioner : M/s.Mithun Chakravarthi A,
Advocate.

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

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

PRAYER :-

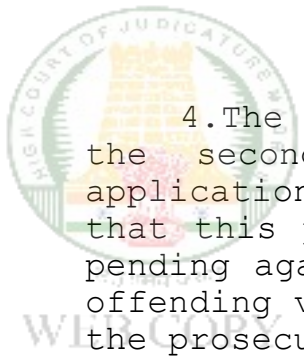
For Anticipatory Bail in Crime No. 327 of 2021 on the file of the respondent Police.

ORDER : The Court made the following order :-

Heard the learned counsel appearing for the petitioner and the learned Government Advocate(Crl. Side) appearing for the respondent.

2.The petitioner, who apprehends arrest at the hands of the respondent police for the alleged offence punishable under Section 379 IPC and Section 21(5)(g) of Mines and Minerals (Development & Regulation) Act, 1957, in Crime No.327 of 2021, seeks anticipatory bail.

3.The case of the prosecution is that when the Village Administrative Officer visited Masanam temple, based on information that sand was illegally taken by using JCB, on seeing the VAO, the accused off-loaded the sand from JCB bearing Registration No.TN 59 BR 4668 in the land of one Venkatesan. Hence, this complainant.



4.The learned counsel for the petitioner submits that this is the second application filed for anticipatory bail. Earlier application was dismissed by this Court on 04.08.2021, on the ground that this petitioner is having one previous case of similar nature pending against him. The first accused is the driver of the alleged offending vehicle and he has not committed any offence as alleged by the prosecution.

5.Considering the submission made by the learned counsel for the petitioner, this Court is inclined to grant anticipatory bail to the petitioner and the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date of receipt of a copy of this order, before the learned Judicial Magistrate Court, Usilampatty on condition that the petitioner shall execute 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 Magistrate concerned and on further conditions that:

[a]the petitioner 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 petitioner shall report before the respondent police daily at 10.30 am., until further orders.

[c]the petitioner shall not tamper with the evidence or witness either during investigation or trial.

[d]the petitioner 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 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 229-A IPC.

10.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.



11. 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/-
08/12/2021

/ 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,
Usilampatty.
2. Do Through The Chief Judicial Magistrate,
Madurai District.
3. The Inspector of Police,
Usilampatty Town Police Station,
Madurai District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER IN
CRL OP(MD) No.19126 of 2021
Date : 08/12/2021