



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 09/02/2022

WEB COPY

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL OP(MD) . No.2673 of 2022

Mathiyalagan,

... Petitioner/Accused No.2

Vs

The State Rep. by
The Inspector of Police,
Thanjavur Taluk Police Station,
Thanjavur.
Cr.No.1036/2021.

... Respondent/Complainant

For Petitioner : MR.K.Kanann , Advocate.

For Respondent : Mr.T.Senthilkumar,
Additional Public Prosecutor

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

PRAYER :-

For Anticipatory Bail in Crime No.1036 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 Sections 21(1) of Mines and Minerals (Development & Regulation) Act, 1957, in Crime No.1036 of 2021, seeks anticipatory bail.

3.The case of the prosecution is that on 15.09.2021, the petitioner had illegally transported ¼ unit of river sand by using bullock cart. Hence, the complaint.



4. The learned counsel for the petitioner submits that this is the second application filed for anticipatory bail. Earlier application was dismissed as withdrawn on 23.09.2021.

5. Learned Additional Public Prosecutor has not raised any serious objections to allow this petition.

6. Considering the facts and circumstances of the case and the volume of sand involved in this case, this Court is inclined to grant anticipatory bail to the petitioner. Accordingly, this Criminal Original Petition is allowed on condition that **the petitioner shall pay a sum of Rs.7,500/- (Rupees Seven thousand five hundred Only) in favour of the District Green Committee, Thanjavur District**, without prejudice to his rights and contentions before the trial Court and produce the receipt / acknowledgment before the learned Judicial Magistrate Court No.II, Thanjavur.

7. 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 petitioner 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.

8. On production of receipt / acknowledgement for having paid the amount before the District Green Committee, 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 No.II, Thanjavur 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.

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.

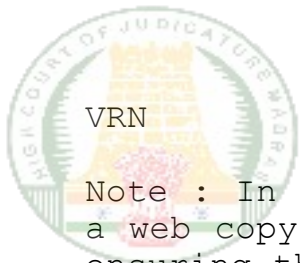
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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



VRN

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.II
THANJAVUR.
- 2 DO THROUGH:
THE CHIEF JUDICIAL MAGISTRATE,
THANJAVUR DISTRICT AT KUMBAKONAM
- 3 THE INSPECTOR OF POLICE,
THANJAVUR TALUK POLICE STATION, THANJAVUR.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO

THE OFFICER INCHARGE
DISTRICT GREEN COMMITTEE,
THANJAVUR DISTRICT.

ORDER
IN
CRL OP(MD) No.2673 of 2022
Date :09/02/2022

PKP/SBN/SAR-1/23.02.2022/4P/6C