



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 10.03.2022

PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

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CRL OP(MD) . No.4212 of 2022

Vivek

...Petitioner/Sole Accused

Vs

The State Rep by,
The Inspector of Police,
Swamimalai Police Station,
Thanjavur District.
(crime No. 886 of 2021)

... Respondent/Complainant

For Petitioner : Mr.K.M.Karunakaran, 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.886 of 2021 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioner, who apprehends arrest at the hands of the respondent Police, for the offence punishable under Sections 379 IPC r/w. 21(4) of Mines and Minerals (Development and Regulation) Act, in Crime No.886 of 2021, on the file of the respondent Police, seeks anticipatory bail.

2. The case of the prosecution is that the petitioner has illegally transported 1/4 unit of river sand in Bullock Cart. Hence, the complaint.

3. This is the third anticipatory bail petition. The first anticipatory bail petition was dismissed by this Court on 20.09.2021 considering the antecedent of the petitioner and the second anticipatory bail petition was dismissed as withdrawn on 30.11.2021.

4. The learned counsel appearing for the petitioner submits that the petitioner, in order to show his *bona fide*, donated one steel bureau, three steel tables, three chairs, one computer table and four plastic chairs to the Panchayat Union Middle School, Ponpethi, to the tune of Rs.41,500/-. He has also filed a letter given by the School Headmaster. Therefore, he prays to grant anticipatory bail to the petitioner.



5. The learned Government Advocate (Crl. Side), upon instructions from the respondent Police, has also confirmed the same.

6. Considering the nature of allegations and also considering the fact that the petitioner, in order to show his bona fide, donated some materials to the Panchayat Union Middle School, Ponpeathi, this Court is inclined to grant anticipatory bail to the petitioner.

7. Accordingly, the Criminal Original Petition is ordered and the petitioner is directed 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 No.III, Kumbakonam, 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 Magistrate 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 as and when required for interrogation.

[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.

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/-
10/03/2022

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/ /2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE JUDICIAL MAGISTRATE NO.III
KUMBAKONAM.
- 2 DO THROUGH:
THE CHIEF JUDICIAL MAGISTRATE,
THANJAVUR AT KUMBANKONAM.
- 3 THE INSPECTOR OF POLICE
SWAMIMALAI POLICE STATION,
THANJAVUR DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADRUI.

COPY TO

THE HEADMASTER,
PANCHAYAT UNION MIDDLE SCHOOL,
PONPETHI.

+1 CC to M/s.K.M.KARUNAKARAN, Advocate (SR-1881[I]

ORDER
IN
CRL OP(MD) No.4212 of 2022
Date :10/03/2022



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