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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 09.06.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.10180 of 2022

Kitappandian @ Krishnamoorthy ... Petitioner/Accused No.1

Vs

State represented by
The Inspector of Police,
Manur Police Station,
Tirunelveli District.
(Crime No.145 of 2022)

... Respondent/Complainant

For Petitioner : Mr.K.Sivabalan, Advocate.

For Respondent : Mr.B.Thanga Aravindh,
Government Advocate (Crl. Side)

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

PRAYER :-

For Anticipatory Bail in Crime No.145 of 2022 on the file of the Respondent police.

ORDER : The Court made the following order :-

The petitioner/A.1, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 379 and 511 IPC r/w Section 21(1) of Mines and Minerals (Development and Regulation) Act, in Crime No.145 of 2022, on the file of the respondent police, seeks anticipatory bail.

2.The case of the prosecution is that the petitioner and other accused made an attempt to remove the stones from the illegal quarry. Hence, the complaint.

3.The learned counsel for the petitioner would submit that the petitioner is an innocent and he has not committed any offence as alleged by the prosecution.



4.The learned counsel for the petitioner would further submit that the co-accused Kasi @ Mariappan was arrested on 10.05.2022 and was produced for remand with remand requisition. The learned Judicial Magistrate, by holding that there is no *prima facie* case made out against the said accused for the offences under Sections 379 and 511 IPC, refused to remand the accused and set the accused at liberty.

5.The learned counsel for the petitioner has produced the copy of the remand requisition and the order passed by the learned Magistrate therein.

6.Even in the remand requisition, there are specific and sufficient averments to the effect that with the intention to steal the minerals, the accused had broken the larger white stones with the help of compressure tractor and stored 5 units of round stones for the purpose of laying pathway.

7.It is necessary to refer to Section 378 IPC for better appreciation, which reads as follows:-

"378. Theft – Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft."

"...

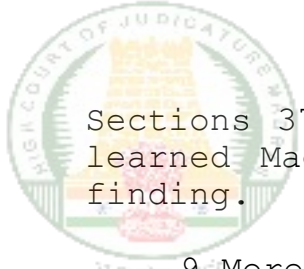
Explanation 3 – A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

...

Illustration (a) – A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

..."

8.Considering the above, it is clearly evident that the prosecution has raised necessary averments to attract the offence under Section 379 IPC, but for the reason best known to them, they have added Section 511 IPC along with Section 379 IPC. But whatever it is, the finding of the learned Magistrate that there is no *prima facie* case made out against the accused for the offences under



Sections 379 and 511 IPC is not good in law. More importantly, the learned Magistrate has not assigned any reason for giving such a finding.

9. Moreover, this Court is at loss to understand the further observation of the learned Magistrate in the impugned order "Hence I am most satisfied in the reason for remand to judicial custody".

10. Considering the above, this Court has no hesitation to observe that the learned Magistrate has rejected the remand requisition without application of mind and in a very casual manner. Hence, Registry is directed to call for explanation from the concerned Magistrate.

11. Coming to the case on hand, considering the nature of the charges levelled against the petitioner and also the fact that the petitioner is not having any previous cases for similar offence and taking note of the quantum of property allegedly taken, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

12. Accordingly, 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 No.V, Tirunelveli, 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 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 daily at 10.30 a.m., for a period of one month and thereafter, 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 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.

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Sd/-
09/06/2022

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

CSM

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

+1. CC to M/S.SIVABALAN K Advocate SR.No.5302

ORDER
IN
CRL OP(MD) No.10180 of 2022
Date :09/06/2022