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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 28.04.2022

Delivered on : 18.05.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.19947 of 2021

and

CRL OP(MD) Nos.7085 and 2227 of 2022

CRL OP(MD) . No.19947 of 2021 :

Charles

... Petitioner/Accused No.15

Vs.

1.State rep.by
The Inspector of Police,
Kallidaikurichi Police Station,
Tirunelveli.
Crime No.417/2020.

(the case has been transferred to the second respondent police and R2 registered a case and altered as Crime No.2 of 2021 and now pending before the second respondent Police)

2.The Sub Inspector of Police,
CBCID Police Station,
Tirunelveli. Cr.No.2 of 2021. ... Respondents/Complainants
(transferred from the first respondent police)

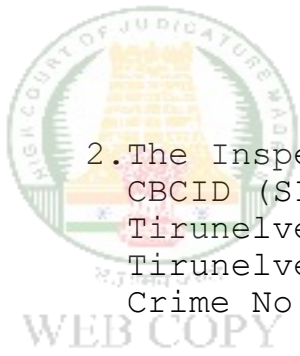
CRL OP(MD) . No.7085 of 2022 :

Senthilvel

... Petitioner/Accused Rank Not Known

Vs.

State rep.by
1.The Deputy Superintendent of Police,
CBCID Wing, Tirunelveli District.



2.The Inspector of Police,
CBCID (SID),
Tirunelveli Range,
Tirunelveli.
Crime No.2/2021.

3.The Inspector of Police,
Kallidaikurichi Police Station,
Tirunelveli District.
Crime No.417/2020

... Respondent/Complainant

CRL OP(MD). No.2227 of 2022 :

Siyad

... Petitioner/Accused Rank Not Known

Vs.

State represented by
The Inspector of Police,
CBCID Police Station,
Tirunelveli District.
Crime No.2/2021

... Respondent/Complainant

(in CRL.OP(MD)No.19947/2021)
For Petitioner : Mrs.T.Sathya Selvi,
Advocate.

(in CRL.OP(MD)No.7085/2022)
For Petitioner : Mr.N.Mohideen Basha,
Advocate.

(in CRL.OP(MD)No.2227/2022)
For Petitioner : Mr.M.S.Jeya Karthick, Advocate
for Mr.C.Susi Kumar, Advocate.

(in all petitions)
For Respondent : Mr.S.Ravi,
Additional Public Prosecutor.

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

PRAYER :-

For Anticipatory Bail in Crime No.2 of 2021 on the file of the Respondent police.

ORDER : The Court made the following common order :-

The petitioners/accused, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 379 IPC @ 120(b) and 379 IPC r/w 21(1) (IV) of Mines and Minerals

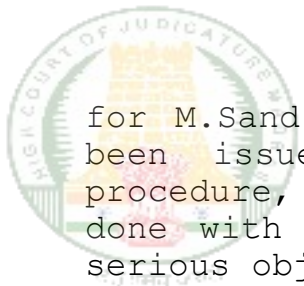


(Development and Regulation) Act @ Sections 420, 465, 468, 471, 120 (b) and 379 IPC r/w 21(1) (IV) of Mines and Minerals (Development and Regulation) Act, in Crime No.417 of 2020, on the file of the Kallidaikurichi police, which has been transferred to the second respondent Police and re-numbered as Crime No.2 of 2021, seek anticipatory bail.

2.The case of the prosecution is that one Mariselvam, the Deputy Tahsildar of Ambasamudram, has given a complaint on 03.08.2020 stating that one Manuvel George was granted with a license on 09.11.2019 for a period of five years on condition that he has to store the mines and minerals only in Survey No.843, Pottal Village, Kallidaikurichy, Part-II, Tirunelveli District. However, he was granted liberty to purchase the mines and minerals from the nearby quarry being run by one Sankara Narayanan @ Sankaran in various Survey numbers. During inspection, it was found that in other survey numbers also under the guise of washing the sand, in several places ponds have been dug and the quarried sand came through digging, have been stocked in heaps just adjacent to the ponds, which were dug. By using the washed sand, the ponds were filled and closed. The enquiry has further revealed that the above said Manuvel George in the name of producing M.Sand, has transported the sand unauthorizedly by using the permit chits issued for the purpose of transporting M.Sand. The over all enquiry, according to the defacto complainant reveals that the aforesaid manuvel George is responsible for the aforesaid activities, which ultimately resulted in the loss to the exchequer of the State. Hence the complaint.

3.The petitioner's case in Crl.OP(MD) No.7085/2022 is that he is a Deputy Tahsildar and is now presently undergoing magisterial training under Special Judicial Magistrate, Judicial Magistrate Court No.V, Tirunelveli, that he was appointed as Special Deputy Tashildar in the Office of Assistant Director (Mines), Tirunelveli on 06.06.2019 and thereafter, he was posted in the Office of Special District Revenue Officer (Land Acquisition) on 14.07.2020, that the role of the petitioner is only confined to signing the office note prepared by the Revenue Inspector after inspection conducted by the Assistant Director (Mines), that the petitioner has no power or duty to conduct field inspection and he can only verify as to what the Revenue Inspector has stated in his Office note, that there is no illegality in the stockyard license issued to the first accused, that the petitioner is no way connected with the alleged offences, that he is innocent and that he has been falsely implicated in the above case.

4.The learned Additional Public Prosecutor appearing for the State would submit that this is a case of smuggling of huge volume of sand from 280 acres of patta land by creating forged documents, that the petitioner has used his influence and colluded with the other accused and has used forged documents and aided the other



for M.Sand stockyard for five years, that 3600 transit passes had been issued to the first accused without following any due procedure, that the petitioner had colluded and abetted sand theft done with the first accused and others and that they are having serious objections for granting anticipatory bail to the petitioner.

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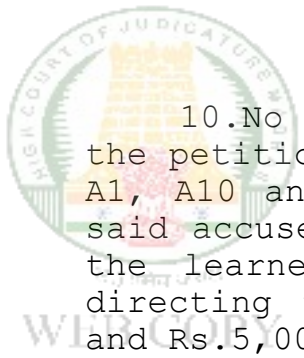
5.The petitioner's case in CrI.OP(MD)No.2227 of 2022 is that he did not involve any offence as alleged by the prosecution, that Kallidaikurichi Police has registered the case as against 12 accused and subsequently, all the accused were enlarged on bail and anticipatory bail and the vehicles seized were also returned to the owners for their interim custody, that thereafter, the investigation was transferred to the respondent Police, that though the petitioner's name was not mentioned in the FIR, based on the confession recorded from the co-accused, he was also implicated in the above case, that the main accused A1 was already released on interim anticipatory bail and that there is no specific allegations against the petitioner.

6.The learned Additional Public Prosecutor would submit that the accused Nos.1, 13 and 24 have confessed about the involvement of the petitioner as one of the silent and un-registered partner of Boomi M.Sand Company, that the petitioner alone has maintained the accounts of the company, that after the registration of the FIR by Kallidaikurichi Police Station, the petitioner alone has immediately cleared the SOC and transported the sand washing and separating Machineries to Kerala, that the investigation is not yet completed and some more documents and machineries, which are in the custody of the petitioner are to be recovered and collected.

7.The petitioner's case in CrI.OP(MD) No.19947/2021 is that the petitioner is the owner of the Poclain, that he has not committed any offence and did not remove the sand illegally, that he was falsely implicated on the basis of the confession of the co-accused, that the petitioner's vehicle has already been recovered, that the petitioner is innocent and that he has not committed any offence as alleged by the prosecution.

8.The learned Additional Public Prosecutor appearing for the State would submit that the petitioner had taken the sand with the help of Hitachi, which was operated by him in the illegal sand theft, that the said Hitachi vehicle was already seized by the then Investigating Officer and the same is under judicial custody and that the petitioner has assisted the main accused and was involved in the commission of offence.

9.No doubt, as per orders of this Court in CrI.OP.(MD)No.11057 and 15312 of 2022, dated 20.07.2021, the case originally registered by the Kallidaikurichi Police Station, was transferred to the file of CBCID, Tirunelveli.



10.No doubt, as rightly contended by the learned counsel for the petitioners that in the petitions for anticipatory bail filed by A1, A10 and A11 by considering the submissions of counsels of the said accused that they are willing to deposit some amount involved, the learned Judge of this Court has granted anticipatory bail, directing them to deposit a sum of Rs.15,00,000/-; Rs.10,00,000/- and Rs.5,00,000/- respectively.

11.The learned Additional Public Prosecutor would submit that subsequently on the basis of the confession taken from some of the accused, they came to know about the involvement of the other accused, including the petitioners.

12.No doubt, as rightly pointed out by the learned counsel for the petitioner in Crl.OP(MD)No.19947/2021, the main allegation against the petitioner herein is that he is owning Hitachi Poclain and the same was used for taking sand illegally. Admittedly, the said vehicle was already recovered and is in judicial custody.

13.Considering the nature of the charges levelled against the present petitioner and also the fact that the vehicle owned by the petitioner was already recovered and was remanded to judicial custody and that the petitioner is not having any previous cases for similar offence or for any serious offence, this Court is inclined to grant anticipatory bail to the petitioner, but with certain conditions.

14. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or 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.I, Virudhunagar District, 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 respondent Police or to the Police Officer, who intends to arrest or to the satisfaction of the learned Special Judge 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 Aadhar card or Bank pass Book to ensure their identity;

(b)the petitioner shall report before the respondent police daily at 10.30 am for a period of one month and thereafter, as and when required for interrogation.

(c)the petitioner shall not tamper with 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

<https://hccs.courts.gov.in/hccsportal/> 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]***; and;

(f)if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

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15.Regarding the petitioner in Crl.OP(MD)No.2227/2022, the petitioner Siyad was the man behind the alleged offence, that the petitioner alone has been maintaining the accounts of the said Company and that immediately after coming to know about the registration of the case, he has immediately cleared the SOC and transported the sand washing and separating Machineries to Kerala.

16.He would further submit that the main accused A1 and co-accused A13 and A24 have specifically stated in their confession statement about the involvement of the petitioner and the major part played by him.

17.Considering the seriousness and gravity of the offence alleged and also taking note of the objections of the prosecution that though some more machineries and documents, which are in the custody of the petitioner, are yet to be recovered and collected and that the investigation is in progress and also taking note of the quantum of loss allegedly caused to the Government, this Court is not inclined to grant anticipatory bail to the petitioner at this point of time.

18.Accordingly, the Criminal Original Petition (MD) No.2227/2022, is dismissed.

19.Regarding the petitioner in Crl.OP.(MD) No.7085 of 2022, the learned counsel for the petitioner would submit that the main official, viz., Assistant Director (Mines) was already released on bail by the Principal Sessions Court and that therefore, there is no need or necessity for custodial interrogation of the petitioner and that the petitioner may be enlarged on anticipatory bail.

20.The learned Additional Public Prosecutor would submit that the Assistant Director (Mines) has given a voluntary confession statement elaborately narrating what had happened and she has specifically stated that the petitioner was given commission of Rs.25,000/- or one load of sand every day and that the petitioner was very much involved in the alleged offence.

21.It is not in dispute that the Assistant Director (Mines) was arrested on 10.04.2022 and she was ordered to be released on bail by the learned Principal Sessions Judge, Tirunelveli in Crl.M.P.No.3165 of 2022, vide order dated 22.04.2022.

22.Considering the seriousness and gravity of the offence alleged against the petitioner and also the facts that the



investigation is in progress as stated by the learned Additional Public Prosecutor and also taking note of the quantum of loss allegedly caused to the Government, this Court is not inclined to grant anticipatory bail to the petitioner.

23. Accordingly, the Crl.OP.(MD)No.7085 of 2022 is dismissed.

sd/-
18/05/2022

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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 NO.I,
VIRUDHUNAGAR DISTRICT.
- 2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.
- 3 THE INSPECTOR OF POLICE
KALLIDAIKURICHI POLICE STATION, TIRUNELVELI
- 4 THE SUB INSPECTOR OF POLICE
CBCID POLICE STATION, TIRUNELVELI
- 5 THE DEPUTY SUPERINTENDENT OF POLICE,
CBCID WING, TIRUNELVELI DISTRICT
- 6 THE INSPECTOR OF POLICE,
CBCID (SID), TIRUNELVELI RANGE, TIRUNELVELI.
- 7 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER IN
CRL OP(MD). No.19947 of 2021
and
CRL OP(MD)Nos.7085 and 2227
of 2022
Date :18/05/2022

das

<https://hccs.csb.gov.in/Services/05.2022/7P/8C>