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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 22.02.2022
PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI
CRL OP(MD)No.20893 of 2021

Ramachandran ... Petitioner/Accused No.2

Vs

The State represented by
The Sub Inspector of Police,
Karaiyur Police Station,
Pudukottai District.
[Cr.No.168 of 2021] ... Respondent/Complainant

For Petitioner : M/s.P.Ganapathi Subramanian,
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.168 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 alleged offence punishable under Section 379 IPC r/w Section 21(1) of the Mines and Minerals (Development and Regulation) Act in Crime No.168 of 2021, seeks anticipatory bail.

2.The case of the prosecution is that two units of river sand has been transported in the petitioners tipper lorry bearing registration No.TN 55 5253. Therefore, the present case came to be registered.

3.This is the third anticipatory bail petition. The first anticipatory bail petition in Crl.OP(MD)No.11423 of 2021 was dismissed by order dated 19.08.2021 on the ground of antecedents of the petitioner and the second anticipatory bail petition in Crl.O.P (MD)No.17635 of 2021 was dismissed as withdrawn by order dated 15.11.2021.

4.The learned counsel for the petitioner submits that the petitioner is an innocent and he has been falsely implicated in this

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case. Since the petitioner was involving in social activities in his locality, he has been purposely added as accused in this case. Further the petitioner to show his *bona fide*, has donated books relating to NEET to five schools, namely, the Government Girls Higher Secondary School, Keeramangalam, Kothamangalam, Keeranur and Viralimalai and the Government Boys Higher Secondary School, Kandarvakottai, to the tune of Rs.50,000/-. He has also produced the certificate issued by the Chief Educational Officer, Pudukottai in this regard.

4.The learned Government Advocate (Crl Side) appearing for the respondent police submitted that in the petitioner's vehicle two units of river sand has been transported.

5.This Court considering the antecedents of the petitioner had dismissed the earlier anticipatory bail petition. However, the petitioner claims to be involving in social activities and undertakes to abide by any condition imposed by this Court. Considering the facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioner. Accordingly, this criminal original petition is allowed.

6.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 District Munsif cum Judicial Magistrate, Illuppur 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.

[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 petitioners 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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7.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.

8.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 of 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 emphasised 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-2) 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-2) Department, dated 05.08.2020.

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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 DISTRICT MUNSIF CUM
JUDICIAL MAGISTRATE, ILLUPPUR.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
PUDUKOTTAI DISTRICT.

3 THE SUB INSPECTOR OF POLICE
KARAIKUDI POLICE STATION, PUDUKOTTAI DISTRICT

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4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.20893 of 2021
Date :22/02/2022

SS/SBN/SAR:IV/14.03.2022 : 4P/5C

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