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CRL.O.P(ML



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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.01.2023

PRESENT

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

CRL.O.P (MD) No.335 of 2023

Sakthivel

...Petitioner/Sole Accused

-vs-

State represented by
The Inspector of Police,
Illupur Police Station,
Pudukottai District.
(Cr.No.347 of 2022)

...Respondent/Complainant

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

PRAYER: Criminal Original Petition filed under Section 438 of Cr.P.C, praying to enlarge the petitioners on bail in the event of their arrest in connection with Cr.No.347 of 2022 on the file of the respondent Police.

For Petitioner : Mr.G.Anto Prince, Advocate

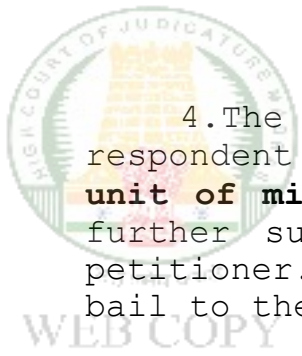
For Respondent : Mr.M.Veeranthiran
Government Advocate (Crl.side)

O R D E R

The petitioner, who apprehends arrest at the hands of the respondent Police for the offences punishable under Sections 379 IPC and Section 21(1) of Mines and Minerals (Development and Regulation) Act, 1957 in Crime No.347 of 2022 on the file of the respondent Police, seeks anticipatory bail.

2.The case of the prosecution, as per the de-facto complainant, is that the petitioner was illegally mining **1 unit of mined (mineral) sand** by using Swaraj Tractor. Hence, the complaint.

3.The learned Counsel appearing for the petitioner would submit that the petitioner is innocent and he has not committed any offence as alleged by the prosecution. Hence, he prays to grant anticipatory bail to the petitioner.



4.The learned Government Advocate (crl.side) appearing for the respondent submitted that the petitioner was indulging in theft of **1 unit of mined (mineral) sand** by using a Swaraj Tractor. He would further submit that no previous case is pending as against the petitioner. However, he vehemently opposes to grant anticipatory bail to the petitioner.

5.Heard the learned Counsel for the petitioner and the learned Government Advocate (crl.side) for the respondent and perused the materials available on record.

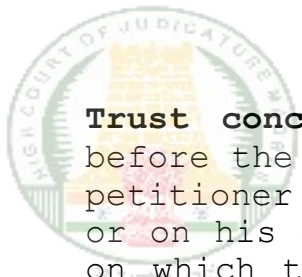
6.This Court in a batch of applications in Crl.O.P.No.13334 of 2020 dated 03.09.2020 had dismissed the earlier application expressing the opinion that the offenders despite several orders passed by various Benches of this Court regarding illegal sand mining and knowing fully well about the evil consequences affecting the environment and society at large and the implications thereon are indulging in the offences of illegal quarrying/mining, theft and smuggling of sand and minerals and that finding that the case comes under the category of cases of large magnitude affecting and impacting livelihood of a very large number of people knowingly and unknowingly, had dismissed the earlier applications. Subsequently, the order of this Court in Crl.O.P.No.13334 of 2020 and Batch etc. dated 03.09.2020 was clarified by the Hon'ble Supreme Court and the Hon'ble Supreme Court had not agreed with the broad sweep of the observation made by this Court in Paragraph 27 of the order in Crl.O.P.No.13334 of 2020 and connected matters decided on 03.09.2020 and had directed that the role assigned to the person would have to be considered on case to case basis.

7. In view of the rehabilitation undertaken under the Tamil Nadu District Mineral Foundation Rules, 2017, and in order to curb the illegal sand mining activities, this Court is of the opinion that the petitioner may be directed to deposit a sum of Rs.10,000/- (Rupees Ten Thousand only) to the credit of the concerned District Mineral Foundation Trust, without prejudice to his rights and contentions before the trial Court.

8. Merely, because the petitioner had deposited the said amount, it would not amount to admission of his guilt. Therefore, it is open to the trial Court to deal with the case independently.

9. Taking into consideration the facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

10. Accordingly, the petitioner shall make a non refundable deposit of Rs.10,000/- (Rupees Ten Thousand only) by way of Demand Draft/BTGS/NEFT to the credit of the **District Mineral Foundation**



Trust concerned, without prejudice to his rights and co. is before the trial Court, on such deposit and production of proof, 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 on which the order copy made ready, before the Judicial Magistrate Court, Ilupur, Pudukkottai District, on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition 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 everyday at 10.30 a.m., until further orders.

[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 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 229A IPC.

sd/-
12/01/2023

/ TRUE COPY /

/01/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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- 1 THE JUDICIAL MAGISTRATE,
ILLUPUR, PUDUKKOTTAI DISTRICT.
- 2 DO THROUGH:
THE CHIEF JUDICIAL MAGISTRATE,
PUDUKKOTTAI DISTRICT.
- 3 THE SUB INSPECTOR OF POLICE
ILLUPUR POLICE STATION,
PUDUKKOTTAI DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO

THE OFFICER INCHARGE
DISTRICT MINERAL FOUNDATION TRUST,
PUDUKKOTTAI DISTRICT.

+1 CC to M/s.ANTO PRINCE G, Advocate (SR-804[I] dated 19/01/2023

ORDER
IN
CRL OP (MD) No.335 of 2023
Date :12/01/2023

PKP/MMS/SAR-2/31.01.2023/4P/7C