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CRL OP(MD).



23

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 01/02/2023

PRESENT

The Hon`ble Mr.Justice A.D.JAGADISH CHANDIRA

CRL OP(MD) . No.1895 of 2023

Dharmaraj

... Petitioner / Sole Accused

Vs.

State represented by
The Inspector of Police,
Kattuputhur Police Station,
Trichy District
(Crime No.36 of 2023)

... Respondent/Complainant

For Petitioner : Mr.K.Arunraj, Advocate

For Respondent : Mr.A.Albert James
Government Advocate (Crl.Side)

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

ORDER : The Court made the following order :-

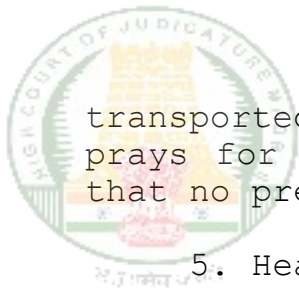
The petitioner/accused who apprehends arrest at the hands of the respondent police for the offences punishable under Section 379 of I.P.C r/w Section 21(1) of Mines and Minerals (Development and regulation) Act, 1957, in Crime No. 36 of 2023 on the file of the respondent police, seeks anticipatory bail.

2. The case of the prosecution as per the de-facto complainant is that the petitioner has illegally transported $\frac{1}{4}$ unit of **river sand** in Bullock cart. Hence, the complaint.

3. The learned counsel for the petitioner would submit that the petitioner is innocent person and a false case has been foisted against him. He would further submit that petitioner is ready to abide by any condition imposed by this Court. He prays for grant of anticipatory bail to the petitioner.

4. The learned Government Advocate (Crl.side) appearing for the respondent would submit that the petitioner was illegally

<https://www.mhc.tn.gov.in/judis>



transported 3 cement bags of river sand in Bullock Car. He prays for dismissal of this application. However, he would concede that no previous case is pending against the petitioner.

5. Heard. Perused the materials available on record.

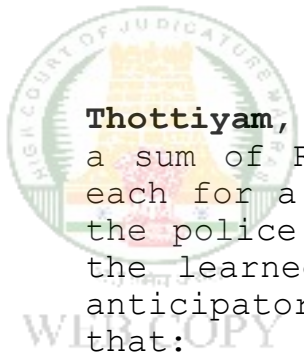
6. This Court in a batch of applications in Crl.O.P.No.13334 of 2020 dated 03.09.2020 had dismissed the earlier application expressing the opinion that the offenders despite several orders passed by various Benches of this Court regarding illegal sand mining and knowing fully well about the evil consequences 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.5,000/- (Rupees Five 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.5,000/- (Rupees Five Thousand only)** by way of Demand Draft/RTGS/NEFT to the credit of the to the credit of the concerned District Mineral Foundation Trust, without prejudice to his rights and contentions before the trial Court. On such deposit and on 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 **learned District Munsif cum Judicial Magistrate Court,**



Thottiyam, 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 Station every Monday at 10.30 a.m., for a period of two weeks and thereafter, every Saturday at 10.30 a.m until further orders;

[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]**; and;

[f] if the accused/ petitioners thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

sd/-

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

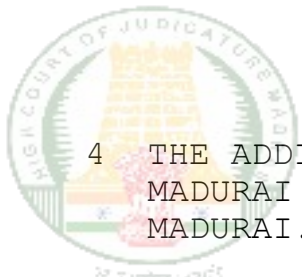
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TO

1. THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
THOTTIYAM.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TRICHY DISTRICT.

3. THE INSPECTOR OF POLICE,
KATTUPUTHUR POLICE STATION,
TRICHY DISTRICT



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

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THE OFFICER IN CHARGE,
DISTRICT MINERAL FOUNDATION TRUST,
TRICHY.

+1 CC to M/s.K.ARUNRAJ, Advocate (SR-1601[I] dated 01/02/2023)

ORDER

IN

CRL OP(MD) No.1895 of 2023

Date :01/02/2023

RK/VR/SAR- 1(14/02/2023) 4P/7C