



CRL OP(MD). No.18514 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 16/10/2023

PRESENT

The Hon`ble Mr.Justice V. SIVAGNANAM

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1. Lingam @ Sivalingam,
2. Ramamoorthi

... Petitioners / Accused Nos.1 & 2

Vs

State rep by
The Sub Inspector of Police,
Dhalavaipuram Police Station,
Virudhunagar District.
(Crime No. 138 of 2023.)

... Respondent/Complainant

For Petitioners : M/s.R.Jegadheeswari, Advocate.
For Respondent : Mrs.M.Aasha,
Government Advocate (Crl.Side)

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

PRAYER :-

For Anticipatory Bail in Crime No. 138 of 2023 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioners/ A1 and A2, who apprehend arrest at the hands of the respondent



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police for the offences punishable under Section 379 of IPC and 21(1) of Mines and Minerals (Development and Regulation) Act, 1957 in Crime No.138 of 2023 on the file of the respondent police, seek anticipatory bail.

2.The case of the prosecution is that the petitioners along with other accused have illegally taken ten bags of pond sand in a two wheeler bearing Reg.No. TN 67 AS 7697 and TN 67 F 3452. Hence, the case.

3.The learned counsel appearing for the petitioners would submit that the petitioners are innocent and a false case has been foisted against them. He would further submit that the petitioners have taken the sand only for their garden. Therefore, he prayed for anticipatory bail to the petitioners.

4.The Government Advocate(Crl.Side) appearing for the respondent would submit that petitioners along with other accused have illegally taken ten bags of pond sand in a two wheeler bearing Reg.No. TN 67 AS 7697 and TN 67 F 3452, hence she objected to grant anticipatory bail to the petitioners. However he fairly concedes that so similar type of previous cases are pending against the petitioners.

5. On perusal of the FIR, it is noticed that the petitioner has taken only pond sand no similar type of previous case is pending against the petitioners.

6.Taking into consideration the principles stated by the Honourable Supreme Court in Gurubaksh Singh Sibbia Etc., vs. State of Punjab reported in 1980 AIR



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1632 and Lal Kamalendra Pratap Singh vs. State of Uttar Pradesh and others reported in (2009)4 SCC 437 and Joginder Kumar vs. State of U.P. and others reported in (1994)4 SCC 260 and taking into consideration the origines of crime, it is seen that the offence alleged as against the petitioners is not a case of heinous crime. Further the petitioners are having permanent residents at Virudhunagar District. Hence the principles stated in Hussainara Khatoon & Ors vs. Home Secretary, State Of Bihar reported in AIR 1979 SC 1360 is taken into consideration. In that case, the Hon'ble Supreme Court has cautioned that pre-trial detention is not be encouraged nor is to be encourageable pre-trial release on sureties; that if the Court is satisfied after taking into consideration that the accused has his roots in the community and is not likely to abscond, he can safely be released on his personal bond.

7. In view of the above, this Court is inclined to grant anticipatory bail to the petitioners. Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their appearance, within a period of fifteen days from the date on which the order copy made ready, before the learned Judicial Magistrate, Rajapalayam on condition that the petitioners shall execute own bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned



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Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that :

[a] the petitioners shall report before the trial Court on receipt of summons

[b] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[c] the petitioners shall not abscond either during investigation or trial.

[d] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners 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].

[e] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-
16/10/2023

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/10/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

AAV



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To

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1.The Judicial Magistrate,
Rajapalayam.

2.Do through the Chief Judicial Magistrate,
Virudhunagar District at Srivilliputhur.

3.The Inspector of Police,
Dhalavaipuram Police Station,
Virudhunagar District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M.SURIYAKUMAR, Advocate (SR-15313[I] dated 17/10/2023)

ORDER

IN

CRL OP(MD) No.18514 of 2023

Date :16/10/2023

ED/VRS/SAR- (20/10/2023) 5P / 6C

Madurai Bench of Madras High Court is issuing certified copies in this format from
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