



CRL OP(MD)No.18866 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 14.12.2023

PRESENT

The Hon`ble MR JUSTICE V.SIVAGNANAM

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1.S.Raja

2.Valli Mayil

... Petitioners/ Accused Rank Nos. 1 to 2

Vs

The State Rep.by
The Inspector of Police,
Sivagiri Police Station,
Tenkasi District.
(Crime No.353 of 2023)

... Respondent/ Complainant

For Petitioners : Mr.R.L.Dhilipan Pandian, Advocate

For Respondent : Mr.RMS.Sethuraman,
Additional Public Prosecutor.

For Intervenor : Mr.R.Rajesh Kumar, Advocate

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

PRAYER :-

For Anticipatory Bail in Crime No.353 of 2023 on the file of the Respondent Police.



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ORDER : The Court made the following order :-

The petitioners, who apprehend arrest at the hands of the respondent police for the offences punishable under Sections 406, 420, 294(b), 506(i), 427, 379 & 381 IPC and Section 4 TNPHW Act 2022 and Section 21(1) of M&M Act, 1957 in Crime No.353 of 2023, seek anticipatory bail.

2.The case of the prosecution is that the defacto complainant's husband worked in Arab countries and earned some money which was invested by him into the companies, which are being operated in Gujarat through one of his friends company and their sister concerns. When thus being so, the defacto complainant had got acquaintance with the present petitioners and they had been engaged with the work of purchasing land for the defacto complainant to make use of the funds which are being sent from Gujarat. However, the petitioners had cheated the defacto complainant and swindled the money which was sent for purchasing land and got some valueless land which was over valued by the petitioners and thereby, caused loss to the defacto complainant. Hence the case.

3.The learned counsel appearing for the petitioners would submit that the petitioners are innocent persons and they have not committed any offence as alleged by the prosecution. He would further submit that the petitioners are agent of the defacto complainant and purchased land. As per the agreement, they purchased the land for



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cultivation purpose. Since there is some misunderstanding, the defacto complainant preferred the present false case. Hence, he seeks anticipatory bail.

4.The learned counsel appearing for the intervenor would submit that the petitioners without knowledge of the defacto complainant, illegally taken the sand from the lands and caused huge loss to the defacto complainant and hence, he objected to grant anticipatory bail to the petitioners.

5.The learned Government Advocate (Crl.side) appearing for the respondent police filed a status report. Relevant passage extracted hereunder:-

7.I humbly submit that in the very same report which was addressed to me by Mr.Andand, Tashildhar, Sivagiri, Tenkasi District it has been stated as if the land in S.Nos.255/12B, 255/13, 247/12, 247/4C, 247/9, 247/8, 247/1, 247/3, 247/2, 247/6D, 247/6C, 247/4A, 247/6 i.e., lands which was entrusted by the defacto complainant to the accused persons, due to lemon, guava and coconut plantation, he was unable to ascertain information about the illegal sand mining and that illegal sand mining was carried out only in S.Nos.270/1, 270/2, 270/3, 271/1, 271/3, 271/4, 272/2C, 275/2 to the tune of 5,99,221 cubic feet. However, there is no prima facie material available on record as of now that the alleged illegal sand mining was done by the accused persons, as the defacto complainant is in lack of evidence to show that the same was done by the accused persons, moreover, my preliminary investigation reveals that the illegal sand mining was conducted by one Jeyakumar, to whom the land in said S.Nos.270/1, 270/2, 270/3, 271/1,



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271/3, 271/4, 272/2C, 275/2 were entrusted by the defacto complainant for maintenance and development but not the present petitioners/accused before this Hon'ble Court.

6.On perusal of status report, it is noticed that there is a civil dispute between the parties and there is lack of evidence to prove the illegal mining. It is also noticed that preliminary investigation reveals that the illegal sand mining was conducted by one Jeyakumar, to whom the land in said S.Nos.270/1, 270/2, 270/3, 271/1, 271/3, 271/4, 272/2C, 275/2 were entrusted by the defacto complainant for maintenance and development but not the petitioners herein.

7.Taking into consideration the principles stated by the Honourable Supreme Court in Gurubaksh Singh Sibbia Etc., vs. State of Punjab reported in 1980 AIR 1632 and Lal Kamlendra 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 origin 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 residence 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.



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8. 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, Sivagiri, Tenkasi District on condition that the petitioners shall execute a 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 Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that :

[a] the petitioners shall affix his photograph 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 petitioners shall report before the trial Court on summons.

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

[d] the petitioners 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 petitioners in accordance with law as if the



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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 229A IPC.

sd/-
14/12/2023

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/01/2024
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

- 1.The Judicial Magistrate,
Sivagiri,
Tenkasi District.
2. Do through the Chief Judicial Magistrate,
Tirunelveli.
- 3.The Inspector of Police,
Sivagiri Police Station,
Tenkasi District.



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

+1. CC to DHILIPAN PANDIAN R L Advocate SR.No.17861

ORDER
IN
CRL OP(MD) No.18866 of 2023
Date :14/12/2023

SSA/29.12.2023/7P/ 6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023