

IN THE COURT OF THE PRINCIPAL SESSIONS JUDGE, NAMAKKAL

Present: Thiru.K.H.Elavazhagan, B.Sc., M.L.,
Principal Sessions Judge,
Namakkal.

Tuesday the 26th day of May 2020

CMP.No.577/2020

(Cr.No.381/2020, Mohanur P.S., Judicial Magistrate No.II, Namakkal)

Duraisamy, (43), S/o. Chinnamanaicker

... Petitioner/Accused

/VS/

State by Inspector of Police,
Mohanur P.S.

... Respondent/Complainant

Petition filed u/s. 439 Cr.P.C. dated 22.05.2020 to release the accused on bail.

This petition is coming on this day through E-mail filed by counsel for the petitioners Thiru.P.Parameshwaran, Advocate and Thiru.K.Dhanasekaran, Public Prosecutor filed objection through E-mail for the respondent and upon hearing both sides through videoconferencing and upon perusing both side contentions, this court delivered the following:

ORDER

Heard both sides through video conferencing. Perused both side contentions.

The petitioner/accused Duraisamy (A1) is seeking bail for the offence u/s 379 IPC alleged to have been committed by him concerned in Cr.No. 381/2020 of Mohanur PS.

The learned counsel for the petitioner/accused stated in the petition filed through E Mail petitioner has not involved in any case and no way connected with the sand theft. Further submits that this case has been motively foisted against this petitioner by the police. The petitioner is innocent and he is in judicial custody, since 14.05.2020. He prays to release him on anticipatory bail.

The learned Public Prosecutor stated in the objection filed through E Mail that the petitioner/accused transported 5 units of river sand illegally in his vehicle, bearing Reg No TN 28 P 6995 and JCB. The vehicles were seized. The accused A2 Ramesh and A4 Balakrishnan are still absconding. The co-accused A3 Arulmani was released on anticipatory bail by this court in CMP 554/2020 on 22.04.2020. This petitioner/accused has no previous case. Investigation is pending. He objected to release him on anticipatory bail.

It is seen that the petition is filed through E.mail and hence, the court fees should be paid before this court, after the lifting off National Wide Lockdown.

It is seen that the petitioner transported 5 units of river sand in his vehicle illegally and **the petitioner/accused not have any previous antecedent**. The market value of one unit sand is Rs.15,000/-. Having taken judicial notice of the fact that the illegal sand mining is a rampant in the state of Tamil Nadu. As a result, great ecological damage has been caused to almost all the rivers in Tamil Nadu. Cases involving sand theft issues cannot be viewed lightly. It is a mechanized mining and the illegal transportation of sand through lorries, is the principal cause for the calamities damage caused to the rivers. The petitioners herein cannot simply say that they did not involved in the said offence. Further I would like to impose the condition particularly for the cases of Mines and Minerals Development and Regulation Act 1957 by quoting the conditions imposed by the *Honourable High Court, Madras in Crl.O.P .22191/2018 dated 19.09.2018 in Ravi Vs. State Represented by the Inspector of Police, Mohanur PS, Namakkal* with stringent condition.

Considering the same and also considering the conditions imposed on the co-accused in the above said order of Honorable High Court, with regard to the non-refundable deposit of Rs.15,000/- and production of Adhar card and Pass Book and the petitioner is not having any previous case and

also considering the fact that he has no previous case and the 1st time offender and also considering his age is 43 years, and also considering the also considering the Covid-19 virus spread over the world, I am of the view that granting bail to this petitioner would possibly reduce the number of prisoners in the prison, which would be the preventive measure from the spread of the above disease, at the time of Nation Wide Lock down, and hence, I am inclined to allow this petition with the same conditions imposed by the Honourable High Court, Madras.

Accordingly, the petitioner is ordered to be released on bail on executing 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 concerned Magistrate **after two weeks of lifting of lockdown** and on further condition that;

(i) if the petitioner fails to surrender before the concerned Magistrate within stipulated time, this order shall stand automatically cancelled.

(ii) the petitioner shall make a non-refundable deposit of Rs.20,000/- (Rupees Twenty Thousand only) by way of demand draft to the credit of the Chairman/District Collector, District Mineral Foundation Trust of the Namakkal District, without prejudice to him defence before the trial court and the receipt/challan shall be produced before the learned Magistrate, **after two weeks of lifting of lockdown** and thereafter, the learned Judicial Magistrate shall accept the sureties furnished by the petitioner;

(iii) 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;

(iv) the petitioner shall report before respondent police daily at 10.30 a.m. for about 15 days.

(v) the petitioner shall not tamper with evidence or witness either during investigation or trial,

(vi) the petitioner shall not abscond either during investigation or trial,

(vii) 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 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]

(viii) If the accused thereafter abscond, a fresh FIR can be registered under section 229-A IPC.

This petition is allowed accordingly.

Pronounced by me in open court this the 26th day of May 2020.

Sd/- K.H.Elavazhagan,
Principal Sessions Judge,
Namakkal.

To

The Judicial Magistrate No.II, Namakkal.
(and the Superintendent of jail concerned)

Copy to

1. The Inspector of Police, Mohanur P.S.
2. The Public Prosecutor, District Court, Namakkal.
3. The Chairman/District Collector, District Mineral Foundation Trust of the Namakkal District.