

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Twenty Eighth day of November Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice R. MAHADEVAN

and

The Hon`ble Mr Justice P.D.AUDIKESSAVALU

CRIMINAL ORIGINAL PETITION No.19649 of 2018

N.THIRUMAGAL

[PETITIONER / ACCUSED]

vs

1 THE INSPECTOR GENERAL OF POLICE [RESPONDENTS]
IDOL WING CID OLD SIPCOT BUILDING
INDUSTRIAL ESTATE GUINDY, CHENNAI.

2 THE INSPECTOR OF POLICE,
E-1 MYALPORE POLICE STATION,
MYLAPORE, CHENNAI.

For Petitioner : M/S.SUDHA RAMALINGAM Advocate

For Respondent : MR. C.IYYAPPARAJ, ADDL. PUBLIC PROSECUTOR

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

ORDER : The Court Made the following order :-

Apprehending arrest at the hands of the respondent police in connection with the case in Crime No.5 of 2018 registered for the alleged offences punishable under Sections 403, 406, 409, 202 and 120B IPC, the petitioner has come up with the present Criminal Original Petition, seeking anticipatory bail.

2.The case of the prosecution is that on 23.07.2018, one Rangarajan Narasimhan lodged a complaint against the three individuals, archakars and temple officials, with regard to replacement and theft of idol of Parvathi in the form of Peacock in Shri Kapaleeswarar Temple, Mylapore, which resulted in the registration of the present case.

3.According to the petitioner, she is presently employed as Additional Commissioner (General) in the HR&CE Department and has been discharging her duties, without any adverse remarks. She claimed that while she was working as Deputy Commissioner/Executive Officer of Kapaleeswarar Temple, she repossessed prime lands of the said temple in Chennai from various encroachers and safeguarded the properties by constructing compound walls and fixed epigraphs stating that the lands are owned by Shri Kapaleeswarar Temple, Mylapore, Chennai. Further, she organized renovation and Kumbabishekam of the

temple and made earnest efforts to protect the temple. Thus, according to her, throughout her career, she received outstanding grades from her superiors.

4.The learned counsel for the petitioner submitted that the petitioner is occupying a higher cadre in the HR&CE Department and is having good service records. According to the learned counsel, the petitioner has nothing to do with the alleged offence and she has been falsely implicated in this case. However, the learned counsel submitted that the petitioner is ready and willing to abide by any condition that may be imposed by this Court and she will appear before the Investigating Agency, as and when required. Thus, the learned counsel seeks indulgence of this Court to grant anticipatory bail in favour of the petitioner.

5.On 09.08.2018, when this matter was taken up for consideration, the learned Government Advocate (Crl.Side) for the respondents submitted that the issue involved herein was investigated by the Idol Wing and upon investigation, it came to light that the three idols i.e., Parvathi in the form of Peacock, Raaghu and Kethu were replaced at the time of Kumbabhisekam of the temple held in 2004 and subsequently stolen and such events had taken place only with the knowledge and connivance of this petitioner. To unearth the truthfulness of the same, this Court directed the respondent Idol Wing to submit a detailed report along with the connected records relating to Kumbabhisekam of the temple held in 2004.

6.When the matter was subsequently taken up for hearing, the learned Special Government Pleader (HR&CE) produced a copy of the communication sent by the Commissioner of HR&CE Department stating that the records connected with the Kumbabhisekam were already destroyed. On such act of the HR&CE Department, this Court directed the respondent Idol Wing to collect all the relevant materials in this regard and place the same along with a detailed report for perusal of this Court.

7.On 22.11.2018, when the matter was again taken up for consideration, Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the respondent Idol Wing seriously opposed the relief sought in this petition. According to him, there are incriminating materials available against the petitioner to the effect that she was actively involved in the commission of offence relating to replacement of the aforesaid idols in 2004 at the time of Kumbabhisekam and without following the relevant Rules with respect to destruction of records, she recently destroyed the connected records. He further submitted that the petitioner is involved in serious offences and if she is granted anticipatory bail, there cannot be a fair investigation and the recovery of idols also will be difficult and it is all the more probable that the petitioner may tamper with the witnesses and evidence as well. In support of the same, the learned Additional Public Prosecutor produced a sealed cover. He also submitted that the respondent police are investigating the matter and the custodial interrogation of the petitioner is very much required for completion of the same. Thus, the learned

Additional Public Prosecutor prayed for dismissal of this petition.

8.Today, when the matter is taken up for consideration, the learned counsel for the petitioner filed an additional affidavit of the petitioner dated 28.11.2018, *inter alia* stating in paras 3 and 7, which are profitably extracted hereunder:

"3.The complaint is based on surmises without any basis. I have been a diligent officer, who has done my duties to the best of my abilities and conscience. The instant FIR describes an idol, which neither the complainant has seen nor has knowledge of. The HR&CE Department has no record of the said idol as an antique idol. Without admitting it to be true, even if it were an antique idol, I am not responsible for its loss/theft as the same was never brought to my knowledge. The peacock idol of Punnai Vana Nathar Sannathi was never changed during the renovation and kumbabishegam in the year 2004 as alleged. I submit that as DC/EO, I have worked systematically according to the HR&CE Act and its Rules."

"7.I learn from the statement of the IG, Idol Wing, before this Hon'ble Court and the media reports that I have been accused of disposing official records. I have not been responsible for disposal or destruction of any record/files pertaining to the Kumbabishekam of Kapaleeswarar Temple in 2004. I learn that the same were disposed as per Tamil Nadu Government Office Manual in due course as early as 2009 and 2013. I had no role in the disposal of such files."

The aforesaid averments are to the effect that the petitioner has no knowledge about the replacement and theft of idols as well as the destruction of the records.

9.Heard both sides and perused the records, more particularly the sealed cover, which contains a report of the Idol Wing enclosing the statements of the officials of the HR&CE Department and staff as well as the Archagas of the temple. The contents of those statements would shockingly, disclose the direct involvement of the petitioner. It is stated in one of the statements that during the course of the enquiry, it came to light that at the time of conducting Kumbabhisekam in 2004, the petitioner had replaced the aforesaid idols, as apparent in the video recorded at the time of Kumbabhisekam. The two other statements further revealed that the petitioner destroyed the documents relating to Punnaivananathar Sannithi, which stood against her.

10.The aforesaid statements would in unequivocal terms, stand testimony for the involvement of the petitioner in the commission of the offence relating to replacement and subsequent theft of three antique idols and also destroying the records, documents etc. relating to Kumbabhisekam of Shri Kapaleeswarar Temple. Hence, the averments made in paras 3 and 7 of the additional affidavit now filed by the petitioner, cannot be countenanced by this Court. Further, it is to be noted here that the whereabouts of those idols are not known

11.It is well settled that the Court must not go deep into the merits of the matter, while considering the application for anticipatory bail. If it is established by records that there exists a *prima facie* evidence against the accused, then, the anticipatory bail petition has to be rejected. The discretionary power has to be exercised on the basis of available materials.

12.Thus, considering the facts and circumstances of the case and having regard to the rival submissions and also taking note of the nature, gravity and magnitude of the offence committed by the petitioner, this Court is of the view that there is every possibility of the petitioner hampering the witnesses and tampering the evidence, if she is granted anticipatory bail. Hence, the petitioner is disentitled to get the relief sought in this petition.

13.Accordingly, this Criminal Original Petition stands dismissed.

-sd/-

28/11/2018

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE INSPECTOR GENERAL OF POLICE,
IDOL WING CID OLD SIPCOT BUILDING
INDUSTRIAL ESTATE
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2 THE INSPECTOR OF POLICE,
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MYLAPORE, CHENNAI.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+3 CC to M/S.SUDHA RAMALINGAM Advocate on payment of necessary charges SR.NO. 22621

CRL OP.19649/2018

Date :28/11/2018

RD 30/11/2018