



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

Friday, the Twelfth day of January Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice R.PONGIAPPAN

CRL OP(MD) No.268 of 2018

T. GAJENDRAN

... PETITIONER/ ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
IDOL WING CID, CHENNAI.
(CRIME NO. 4/2017)

... RESPONDENT/ COMPLAINANT

For Petitioner : M/S.R.ANAND Advocate

For Respondent : MR.K.CHELLAPANDIAN, Assistant Advocate General
Asst. By MR.C.RAMESH, Additional Public Prosecutor

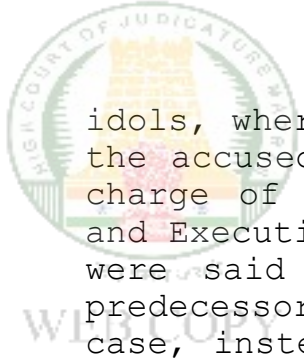
PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner/Accused, who was arrested on 30.11.2017 and remanded to judicial custody on the same day for the offences punishable under Sections 457(2), 380(2), 201, 202, 403, 409 and 468 r/w. 120(b) IPC and Section 25(1) of the Antiquities and Art Treasures Act, in Crime No.4 of 2017 on the file of the respondent police, seeks bail.

2.The case of the prosecution is that the petitioner, who is the Joint Commissioner of HR & CE Department of Pasupatheeswarar Temple, Pandanallur, is said to have indulged in the theft of an idol in connivance with other accused by replacing the original Manickavasagar Panchaloga Antique Statue with duplicate one, which resulted in registration of the present case.

3.The learned counsel for the petitioner submitted that the petitioner has not committed any offence as alleged by the prosecution and he has been falsely implicated in this case. He further submitted that the alleged occurrence took place before 13.09.2013, but the matter was reported to the respondent only on 27.02.2017. The petitioner had joined as Joint Commissioner only on 10.03.2013 and immediately after knowing the fact of missing of the alleged six idols, the petitioner took steps to find out the missing



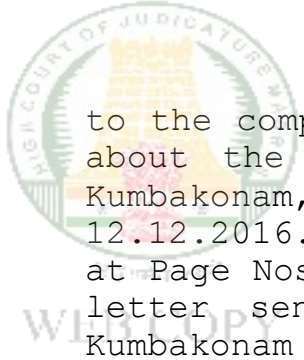
idols, whereas he has been falsely implicated in this case as one of the accused and furthermore, before the date on which, he has taken charge of the Joint Commissioner, a number of Joint Commissioners and Executive Officers were worked and even though the alleged idols were said to be replaced during the tenure of the petitioner's predecessors, the respondent has not arrayed them as accused in this case, instead, the respondent implicated the petitioner as accused, as if he has intentionally failed to take necessary action in appropriate time and even as per the said allegation only, the offence under Section 202 IPC is made out against the petitioner and that offence is also bailable one. He further submitted that one Manickavasagar Idol weighing 4.75 Kgs is said to be replaced by a new one with a weight of 2.8 Kgs, but as per the online updation copy, when the said Idol was handed over to Icon Centre, its weight is noted as 2 Kgs. He further submitted that the petitioner was arrested on 30.11.2017 and remanded to judicial custody on the same day. He also submitted that the petitioner is not having any previous bad antecedents and is ready to abide by any conditions being imposed by this Court and prays for bail in favour of the petitioner.

4. The learned Additional Advocate General has strongly objected to the grant of bail, contending that there are totally 10 accused in this case and the petitioner is arrayed as A1. He further contended that 275 Idols were kept in the ICON Centre at Pandanallur Pasupatheeswarar Temple, in which, six idols, which are 2000 years old were found missing and even after a complaint made by one public, the petitioner has failed to initiate immediate action against the subordinates as well as inform the same to the Higher Officials and Police and thereafter, the said person approached this Court in this regard and based on the directions of this Court, the respondent registered a case as against the petitioner and 9 others. He further submitted that one Manickavasagar Panchaloga Antique Statue was replaced by a duplicate one. He also submitted that the investigation of the case is at the initial stage and if the petitioner/accused is let out on bail, there is every possibility of the accused tampering the witnesses/evidence and hampering the investigation.

5. Heard the learned counsel for the petitioner and the learned Additional Advocate General appearing for the State and perused the materials available on record.

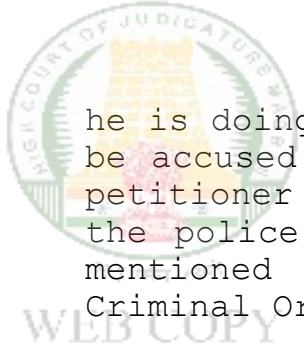
6. Before discussing the merits and de-merits of the submissions made by the learned counsel on either side, it is necessary to mention the history of this case with regard to the petitioner.

7. A copy of the Joining Report of the petitioner shows that he joined duty as a Joint Commissioner, HR & CE Department, Myladuthurai, on 10.08.2015, which is enclosed at Page Nos.1 and 2 of the typed set of Papers. Subsequently, on 09.12.2016, he sent a letter to the Commissioner, HR & CE Department, Chennai, with regard



to the complaint given by one R.Venkatraman, in which, he intimated about the direction given by him to the Assistant Commissioner, Kumbakonam, i.e., to inspect and submit a report on or before 12.12.2016. The said letter addressed by the petitioner is enclosed at Page Nos.3 and 4 of the Typed Set of Papers. After receiving the letter sent by this petitioner, the Assistant Commissioner of Kumbakonam viz., S.Gnanasekaran completed the inspection and sent a reply to the petitioner on 27.12.2016. In the said reply, he mentioned that six idols were found missing while K.Kamaraj, the present Executive Officer, dated 08.09.2013 took charge from A.Ramachandran [Additional In-charge], dated 30.06.2012. Further, he requested the Joint Commissioner for getting explanation from the Executive Officer. Based on the letter sent by the Assistant Commissioner, on 10.01.2017, the petitioner issued a show cause notice to four Executive Officers, who were all worked in the place of occurrence prior to that notice. The show cause notice issued by the petitioner was enclosed at Page Nos.8 and 9 of the Typed Set of Papers, for which, the respective Executive Officers have sent a reply, in which, the Executive Officers viz., M.Kannabiran and A.Ramachandran have stated that all Idols required for 'Nithiya Pooja' are all in the custody of the Priest, but in the reply dated 24.01.2017, the said M.Kannabiran, Executive Officer [Retired], stated that all the Idols now alleged to be stolen are handed over to one A.Ramachandran, Executive Officer. Apart from that, in the reply sent by one K.Kamaraj, Executive Officer to the Joint Commissioner, HR & CE Department, Kumbakonam, dated 13.02.2017, he specifically stated that when at the time of taking charge on 30.08.2013, six idols, which were said to be stolen now, were not handed over to him. Accordingly, on 13.02.2017, the petitioner herein was intimated by K.Kamaraj, Executive Officer, with regard to missing of Idols. Subsequently, after some more correspondence with the Commissioner, HR & CE Department, the petitioner herein directed the Assistant Commissioner to lodge a complaint before the police officers with regard to missing of idols. Then only, on 04.05.2017, the complaint was lodged by one K.Kamaraj, who is the Executive Officer to the Inspector of Police, Pandanallur, in respect of missing idols. Even after lodging the complaint, the Inspector of Police attached to Pandanallur Police Station, has not registered a case directly and he treated the complaint given by Kamaraj, Executive Officer, as Petition No.122/2017. Even after treating the same as a petition, the police officers have not registered the case. Thereafter, as per the order passed by this Court, this case has been registered against the petitioner along with 9 others and the petitioner is arrayed as A1.

8.The learned counsel appearing for the petitioner submitted that after gaining knowledge with regard to missing of idols, the petitioner herein immediately directed the Assistant Commissioner to verify the said issue. Further, he intimated the same to the Commissioner. In the above circumstances, finally he directed the Assistant Commissioner to lodge a complaint before the police for registering the case. So the function of the petitioner shows that



he is doing his duty promptly to the utmost satisfaction, but he may be accused for his negligence. The only lacuna on the part of the petitioner is that he has not directly informed the said issue to the police officer. The said act does not constitute the offence mentioned in this case. Accordingly, he prays for allowing this Criminal Original Petition.

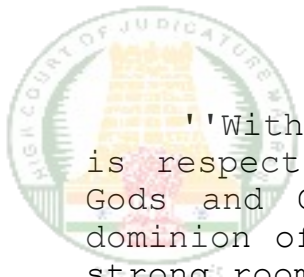
9. On the other hand, the learned Additional Advocate General submitted that the petitioner commits the intentional omission only because of the reason that he is also involved in the alleged offence. Now, in the memorandum of bail objections filed by the respondent in Page No.3 at Part D, the respondent has stated as follows:

'D. In spite of their knowledge of these offences, the accused Executive Officer Tr.Kamaraj (HR & CE), Joint Commissioner Tr.Gajendran (HR & CE), Executive Officer Tr. Ramachandran (Rtd) (HR & CE), Assistant Commissioner Tr.Gnanasekaran (HR & CE) had intentionally omitted to give specific information about all these offences of graver dimension involving theft and dishonest misappropriation of many antique idols worth beyond crores and crores of money.

Being public servant the accused/petitioner herein is legally bound and accountable to furnish this cognizable information to the jurisdiction Pandanallur Police Station or the nearest Judicial Magistrate, but this accused did not. He conjointly with other accused committed the offence of 'Intentional omission'.

10. Now, considering the submissions made by the learned counsel on either side, it could be seen that in the confession statement given by the 7th Accused, viz., Ramachandran and the fourth Accused viz., Raja, they categorically stated that after recording the Inspection Report, the petitioner herein conducted departmental enquiry only and not lodged any complaint to the police. Further, in this regard, one Sriraman, who is the prime witness in the case stated in his statement, which was recorded by the learned Additional Chief Judicial Magistrate, Kumbakonam, on 16.12.2017 under Section 164(5) Cr.P.C., that in 2013 itself when at the time of audit conducted by the HR & CE Department, the missing of idols were found by the authorities, but the said fact was not intimated to anybody, for initiation of action against the erring officials. According to the evidence of the said witness, it establishes the fact remains that the missing of idols found in the year 2013 itself. But, admittedly, the petitioner herein joined as a Joint Commissioner in Myladuthurai in 2015 alone. So it is crystal clear that the alleged occurrence was happened previous to the date on which the petitioner was joined as a Joint Commissioner.

11. Furthermore, in the Memorandum of Bail Objections submitted by the respondent at Page No.12, it has been stated as follows:



'With regard to the averment of the petitioner vide Para-4, it is respectfully submitted that there are a total of 275 idols of Gods and Goddesses and other antique artifacts entrusted to the dominion of the temple archagar who was holding the key of the idol strong room in the Panthanallur Pasupatheeswarar Temple. As per the preliminary investigation, though the key of the idol strong room is in the dominion of temple archagar, the actual controller and of the key and actual commander of the Panthanallur Pasupatheeswarar 'idol strong room' was non-else but Raja, Clerk of Panthanallur Pasupatheeswarar Temple and the co-accused of this bail petitioner herein.'

12.In the above version of the respondent, he himself admitted that nearly 275 idols including the missing idols are all entrusted to the Temple Archagar. Accordingly, the dominion over the idols are with the Temple Archagar along with one Raja, who is the Clerk of Panthanallur Pasupatheeswarar Temple. In this aspect also, the role of the petitioner is not displayed by the witnesses during the time of giving statement before the Investigation Officer.

13.In this occasion, the second allegation levelled against the petitioner is that after he joined as Joint Commissioner, he replaced the Manickavasagar Idol and Subramania Swamy Idol. In this regard, four witnesses were examined on the side of the Investigating Agency and all are gave a statement before the learned Additional Chief Judicial Magistrate, Kumbakonam. They categorically stated that the idols, viz., Manickavasagar and Subramania Swamy are not belonging to the Temple, in which, the alleged occurrence was happened. Further, the donor of Manickavasagar Idol stated that at the time of donating the Idol, the weight is 4.75 Kgs, but at the time of showing by the police its weight is only 2 Kgs.

14.As per the particulars available in the Website of HR & CE Department, as on 21.09.2014 the weight of the idol is 2 Kgs, for which, the learned counsel for the petitioner enclosed a copy of the particulars available in the HR & CE Department Website at Page Nos.54 to 56 of the Typed Set of Papers. Since the weight of the Manickavasagar Idol is 2 Kgs in the year 2014 itself, so we cannot come to the conclusion that the petitioner, being the Joint Commissioner and joined in the said place in year 2015, do not have any chance to take part in the alleged occurrence. In this occasion also, the allegation submitted by the respondent is worthless. However, since the investigation is so far not completed and also due to non-enquiry of missing idols, this Court cannot come to the conclusion that the active part of the petitioner in the alleged offence.

15.As of now, according to the investigation, the role played by the petitioner is not have any elementary principle for constituting the said offence. According to the petitioner's counsel, the petitioner was arrested on 30.11.2017 and remanded to



judicial custody on the same day. Now, considering the allegation levelled against the petitioner and as per the discussions stated supra, this Court comes to the conclusion that further custodial interrogation of the petitioner is not necessary for completing the investigation. Furthermore, the petitioner being the Joint Commissioner of HR & CE Department, there is no chance for absconding.

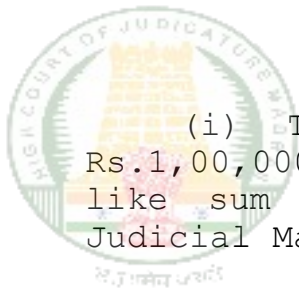
16. In the above situation, with regard to personal liberty of human being, it is relevant to refer the judgment of the Hon'ble Apex Court in **Vaman Narain Ghiya Vs. State of Rajasthan** reported in **2009 (2) SCC 281**, wherein it has been held as follows:

'7. Personal liberty is fundamental and can be circumscribed only by some process sanctioned by law. Liberty of a citizen is undoubtedly important but this is to balance with the security of the community. A balance is required to be maintained between the personal liberty of the accused and the investigational right of the police. It must result in minimum interference with the personal liberty of the accused and the right of the police to investigate the case. It has to dovetail two conflicting demands, namely, on one hand, the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other, the fundamental canon of criminal jurisprudence, viz, the presumption of innocence of an accused till he is found guilty. Liberty exists in proportion to wholesome restraint, the more restraint on others to keep off from us, the more liberty we have. (See A.K. Gopalan v. State of Madras, AIR 1950 SC 27).

8. The law of bail, like any other branch of law, has its own philosophy, and occupies an important place in the administration of justice and the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed a crime, and presumption of innocence in favour of the alleged criminal. An accused is not detained in custody with the object of punishing him on the assumption of his guilt.'

17. So according to the verdict of our Hon'ble Apex Court, an accused is not detained in custody with the object of punishing him on the assumption of his guilt.

18. Applying the principles of our Hon'ble Apex Court in the present case on hand and also considering the role played by the petitioner in the alleged offences, it is a fit case for granting bail. However, considering the value of the property, which were stolen away during the time of alleged occurrence and also due to the reason that some of the accused were not arrested so far, this Court is inclined to grant bail to the petitioner. Accordingly, the petitioner is ordered to be released on bail subject to the following conditions:



(i) The petitioner shall execute a bond for a sum of Rs.1,00,000/- (Rupees One Lakh Only) with two sureties, each for a like sum to the satisfaction of the learned Additional Chief Judicial Magistrate, Kumbakonam, Thanjavur District;

(ii) the petitioner is directed to stay at Chennai and appear before the respondent police daily twice i.e., at 10.30 a.m. and 5 p.m. until further orders;

(iii) the petitioner shall surrender his passport to the learned Additional Chief Judicial Magistrate, Kumbakonam, Thanjavur District, if he is having the same. Otherwise, he should file an affidavit to that effect;

(iv) the petitioner shall not tamper with the evidence or witness either during investigation or trial;

(v) the petitioner shall not abscond either during investigation or trial; and

(vi) On breach of any of the aforesaid conditions, the 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 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]**.

sd/-

12/01/2018

/ TRUE COPY /

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

SMN2

TO

1 THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE, KUMBAKONAM

2 THE INSPECTOR OF POLICE, IDOL WING CID, CHENNAI

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

4 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.

+1. CC to M/S.R.ANAND Advocate SR.No.720

GJM/PN/SAR-O-12.1.18-7P-6C

ORDER

IN

CRL OP(MD) No.268 of 2018

Date :12/01/2018