



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.538 of 2018

KAMARAJ

... PETITIONER / ACCUSED NO.3

Vs

STATE REP.BY

THE INSPECTOR OF POLICE

IDOL WING CID, CHENNAI

(CRIME NO.4 OF 2017)

... RESPONDENT/ COMPLAINANT

For Petitioner : M/S.S.VENKATESAN Advocate

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

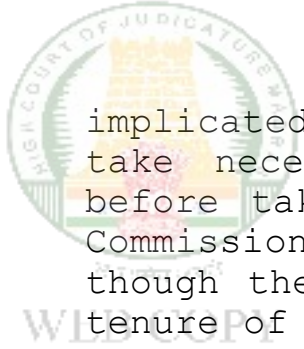
PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner/Accused No.3, who was arrested on 29.11.2017 and remanded to judicial custody on the same day for the offences punishable under Sections 457(ii), 380(ii), 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/Accused No.3, who is the Executive Officer 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. He further submitted that the alleged idols are said to be found missing prior to the tenure of the petitioner and after knowing the fact, he has taken requisite steps to find out the missing idols, whereas he has been falsely

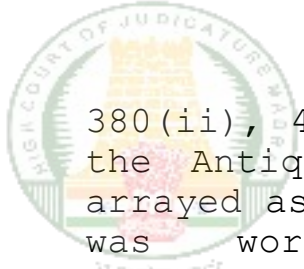


implicated in this case as if he has intentionally failed to take necessary action in appropriate time and furthermore, before taking charge as Executive Officer, a number of Joint Commissioners and Executive Officers were worked and even though the alleged idols were said to be misplaced during the 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 29.11.2017 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 A3. 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.

<https://hcservices.courts.gov.in/hcservices/> 6. The submissions made by the learned counsel on either side are considered. A case has been registered against the petitioner for the offences punishable under Sections 457(ii),



380(ii), 403, 409 and 468 r/w. 120(b) IPC and Section 25(1) of the Antiquities and Art Treasures Act. The petitioner is arrayed as A3 in the alleged crime. Admittedly, the petitioner was working as Executive Officer in Pandanallur Pasupatheeswarar Temple. As per the statement given before the Joint Commissioner on 11.04.2017, the petitioner categorically admitted that he joined as Executive Officer of above said Temple on 22.07.2013. Further, he admitted that when at the time of taking charge, the alleged missing of 6 idols were not handed over by the then Executive Officer, viz., A.Ramachandran. Further, he stated that the same was already informed to the Joint Commissioner on 08.09.2013 itself. The learned counsel on either side admitted that till 2015, the Joint Commissioner, HR & CE Department, has not taken any steps with regard to the information given by this petitioner. Further, being the Executive Officer, he is the custodian of the missing idols. So if this petitioner really had any interest in the welfare of the Temple, he himself informed the inaction of the Joint Commissioner to the Commissioner. But the petitioner cannot do like this. Further, in the year 2017, as per the direction given by the Joint Commissioner, he lodged a complaint before the Sub-Inspector of Police, Pandanallur. After lodging the complaint before the police, the further action of that complaint cannot be looked into. It shows the inaction on the part of the petitioner constitutes another one offence against this petitioner. As of now, another two idols were replaced as per the statement given by the witnesses before the learned Additional Chief Judicial Magistrate, Kumbakonam.

7.As per the submission made by the learned Additional Advocate General, the investigation is not completed. Furthermore, in the alleged offence, the property worth about nearly Rs.100 crores were found missing. According to the statement of the learned Additional Advocate General, now, the said properties are available in Australia. So only after completion of investigation, the real accused have to be traced. The circumstance in and around the petitioner herein creates a *prima facie* case against him.

8.In this context, it is relevant to refer the judgment of the Hon'ble Apex Court in **Kalyan Chandra Sekar Vs. Rajesh Ranjan Alias Pappu Yadav and another** reported in **2004 (7) SCC 528**, wherein the Hon'ble Apex Court held that while granting bail, the following factors are required to be considered by the Court:



''(a) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and

(c) prima facie satisfaction of the court in support of the charge.''

9.Considering the above said principles laid down by the Hon'ble Apex Court and also considering the facts and circumstances of the case, this Court accepts that there is a *prima facie* case against the petitioner. Since the petitioner being the Executive Officer, the inaction on his part would make a change of mind for tampering the witnesses and hampering the investigation, this Court is not inclined to grant bail to him. Hence, this Criminal Original Petition is dismissed.

sd/-
12/01/2018

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

TO

- 1 THE INSPECTOR OF POLICE
IDOL WING CID, CHENNAI
- 2 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, TRICHY.

SMN2
GJM/PN/SAR-1-12.1.18-4P-4C

ORDER
IN
CRL OP (MD) No.538 of 2018
Date :12/01/2018 (2/2)