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Crl.O.P.No.25547 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.01.2022

Pronounced on : 08.07.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.25547 of 2021

Union of India Rep. by
The Senior Intelligence Officer,
Directorate of Revenue Intelligence,
Chennai Zonal Unit,
No.27, Adarsh Towwers, G.N.Chetty Road,
T.Nagar, Chennai – 600 017.

... Petitioner

Vs.

1. The State represented by
The Inspector of Police
S5 Police Station, Pallavaram,
Chennai.

... 1st Respondent /
Complainant

2. Saravanan

3.Mohammed Naseer

4.Praburam

... Respondents 2 to 4 /
Accused

PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to set aside order dated 22.09.2021 in Crl.M.P.No.1824 of 2021 in Cr.No.437 of 2021 on the file of the Learned Judicial Magistrate No.2, Tambaram, Chennai, for the reason stated above and pass by giving outright / absolute custody of the said Gold to the petitioner herein, vesting the right to dispose it off under Section 110 of the Customs Act, 1962 and facilitating further action under the said Act.

For Petitioner

:

Mr. N.P.Kumar
for M/s.K.Sathithya



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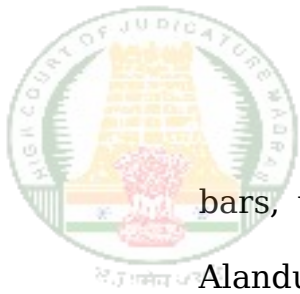
For Respondent-1 : Mr.E.Raj Thilak
Additional Public Prosecutor

For Respondents : No Appearance
(R2 to R4)

ORDER

This Criminal Original Petition has been filed praying to set aside order, dated 22.09.2021 in Crl.M.P.No.1824 of 2021 in Cr.No.437 of 2021, on the file of the Learned Judicial Magistrate No.2, Tambaram, Chennai.

2.The gist of the case is that on 23.08.2021, at 20.00 hrs, one Saravanan, the 2nd respondent herein, appeared before the Inspector of Police, S5, Police Station, Pallavaram, Chennai, the 1st respondent herein, gave a written complaint stating that he is working as Supervisor, Oberoi Flight Services. On 23.08.2021, after his night shift at 4.30 hrs., he was travelling on GST Road, Pallavaram Bridge, in his two wheeler. At that time, he was suddenly stopped by two persons, they snatched his mobile phone along with the two wheeler. Latter, he changed track and gave another complaint on 24.08.2021 at 21.45 Hrs stating that he was on night shift on 23.08.2021, when he was unloading the food packets at Airport Bay 23, one Ilayaperumal, a known person, came to him and handed over 08 Gold



bars, wrapped up in black cover, to be handed over to one Imran, Alandur. He concealed the same in his truck and came to Oberoi Flight Service. After his duty, he left at 04.50 hrs, by concealing 08 gold bars, behind the seat cover and drove towards Alandur to meet Imran. On the way at GST Road, two persons intercepted him, assaulted, snatched his mobile and drove away his two wheeler.

3.On investigation, the complainant Saravanan turned to be the prime accused of the robbery of smuggled 09 Kg of gold. Subsequently, on 26.08.2021, the said Saravanan was arrested along with co-accused viz., Mohammed Nazeer and Praburam, the respondents 3 and 4. The properties involved in the crime viz., 09 Kgs of Gold (08 gold bars of 01 Kg, each with 08 gold bars of 125 gms), Mobile Phone and a two wheeler have been recovered. On 26.08.2021, the properties were produced before the learned Judicial Magistrate No.II, Tambaram, Chennai, who ordered the safe custody, after its evaluation.

4.Since the property viz., 9 Kgs of Foreign origin gold, appeared to have been smuggled into India, through Chennai Airport, by Qatar Airways Flight, from Qatar, on 23.08.2021, engaging the services of Flight cleaning staff and Flight Catering Staff, with the active



involvement of the 2nd Respondent and others, the Senior Intelligence Officer, Directorate of Revenue Intelligence, Chennai Zonal Unit, filed a sworn affidavit before the learned Judicial Magistrate No.II, seeking custody of the property for further investigation, in accordance with the provisions of the Customs Act, 1962. The learned Judicial Magistrate No.II, Tambaram, while returning the property viz., 9 Kgs gold, as interim custody to the petitioner, directed to return back the property to the Court, after completion of the investigation or when the property is not necessary.” vide order dated 22.09.2021.

5.Mr.N.P.Kumar, the learned Special Public Prosecutor appearing for the petitioner – Directorate of Revenue Intelligence, would submit that the petitioner is the Senior Intelligence Officer, Directorate of Revenue Intelligence, Chennai Zonal Unit, filed this Writ Petition, seeking to set aside the order, dated 22.09.2021, passed in Crl.M.P.No.1824 of 2021, by the Judicial Magistrate No.II, Tambaram. The grievance of the petitioner is that the learned Judicial Magistrate No.II, Tambaram, while returning the property viz., 9 Kgs gold, as interim custody to the petitioner, directed to return back the property to the Court, after completion of the investigation or when the property is not necessary.” The paragraph No.9 of the order



passed by the learned Judicial Magistrate reads as under:

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“9. On considering the facts and circumstances of this present case, the fact that the property is necessary for the petitioner to Investigate and for further process, this Court is inclined to return the property 9 Kgs gold in Crime No.437 of 2021 pending on the file of the first respondent as interim custody to the petitioner and further the petitioner is directed to return back the 9 kgs gold bar to this Court after the completion of the investigation or when the property is not necessary.”

6.The learned counsel appearing for the petitioner would submit that the petitioner is the Senior Intelligence Officer, Directorate of Revenue Intelligence, Chennai Zonal Unit, filed this petition seeking to set aside the order dated 22.09.2021 passed in Crl.M.P.No.1824 of 2021, by the Judicial Magistrate No.II, Tambaram., On a return of property petition filed by the petitioner, seeking return of Gold Bars seized in Crime No.437 of 2021, by the Inspector of Police, Pallavaram Police Station.

7.The learned for the petitioner further submitted that the



petitioner ought to have given custody of the property, by the lower Court without any condition. He further submitted that on a perusal of the First Information Report in Crime No.437 of 2021, registered by the first respondent would reveal that gold bars are smuggled from restricted area without customs clearance. On coming to know about the same, the first respondent ought to have informed the petitioner about the incident or at least, after registration of the First Information Report ought to have forwarded the same along with gold bars to the petitioner, which he had failed to do. When the facts disclose that it is smuggled gold, the Customs Authority, are specified Authority to investigate such cases. Further, the seized gold bars are liable for confiscation, by the Customs Authority. The condition imposed by the Court below to return the property/gold bar creates obstacles to the Customs Department in initiating the confiscation proceedings. He further submitted before custody of gold bar was handed over to the petitioner, it was examined, verified, inventoried and assessed thoroughly by the Government approved gold assessor, the purity of the gold bar, confirms it is foreign gold bar with the common marking "sam 1 KILO GOLD 995.0 sam MELTER ASSAYER" wherein 'sam' denotes SAM Precious Metals, a Gold and Silver Refinery Company, located in the United Arab Emirates (UAE), establishing the reason to believe that the said gold is of foreign



origin.

8.The learned counsel for the petitioner further submitted that the said Gold of foreign origin is liable for absolute confiscation under Section 111 of the Customs Act, 1962, for being smuggled into India and mandates to be disposed of under Section 110 of the Customs Act, 1962. As per Section 151(c) of the Customs Act, 1962, the officers of Police are hereby empowered and required to assist Officers of Customs in the execution of the provisions of the Customs Act, 1962. The learned counsel, therefore, seeks to set aside the order, dated 22.09.2021, passed by the learned Judicial Magistrate No.II, Tambaram, Chennai.

9.This Court considered the rival submissions and perused the materials available on record.

10.On 03.01.2022, while hearing the matter, this Court posed two specific questions to the Additional Public Prosecutor, viz.,

(i) “How the Inspector of Police, even after coming to know that the property is the smuggled gold, from a restricted customs area, he continue with the investigation, that too, without informing to the Customs Authorities?.

(ii) On what basis the Assistant Public



Prosecutor, attached to the Judicial Magistrate No.II, Alandur, raised objection for returning the property to the Directorate of Revenue Intelligence Officer, Chennai?

11.The learned Additional Public Prosecutor to that effect filed the explanation submitted by the Assistant Public Prosecutor, attached to the learned Judicial Magistrate No.II, Tambaram, dated 19.02.022, stating that she raised only a 'formal objection' and also filed status report of the Inspector of Police, S5 Pallavaram Police Station, Chennai/1st respondent Police with supporting materials and photocopies of seized articles including the gold bars. For better appreciation, the relevant portion of the explanation filed by the Assistant Public Prosecutor, attached to the Judicial Magistrate Court No.II, Tambaram is extracted hereunder:-

"I respectfully submit that originally the complainant is one Saravanan in the above case, he has given a complaint that on 24.8.22021 he is working as Supervisor in Oberoi Flight Services in the International Airport. On 23.8.2021 while he was transporting the food items one Illaiyaperumal known to Saravanan handed over 9 kgs of gold parcels to him. Saravanan brought them in the food truck, concealed the gold in his two wheeler to hand over to one Imran. On his way in GST road, opposite Ayuth Bavan he was waylaid by 2



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unknown persons, they robbed of the gold parcels, his mobile phone and two wheeler within the jurisdiction of the Pallavaram PS.

3.I humbly submit that The Inspector of Police attached to the Pallavaram PS registered the case in FIR.No.437/2021 for the offence u/s 392 IPC. He proceeded with the investigation and unearthed the fact that the defacto complainant and co- accused persons hatched a criminal conspiracy to loot the gold bars and enacted a drama giving false information to the police. Accordingly Saravanan and others were arrested, the gold bars were seized, the mobile phone and the vehicle used for the commission of the offence were seized. It is submitted that the preliminary investigation was conducted by the Inspector of Police attached to Pallavaram PS and he produced the accused before the Judicial Magistrate Court II, Tambaram for remand. The accused persons were remanded to Judicial custody and the seized properties produced before the Judicial Magistrate Court II, Tambaram.

4.I humbly submit that subsequently the Petitioner herein filed an application to hand over the seized 9 kgs of gold in crime no 437/2021 pending on the file of the first



respondent to the Directorate of Revenue Intelligence, for further investigation.”

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12.The relevant portion of the status report filed by the Inspector of Police, S5 Pallavaram Police Station, Chennai/1st respondent is extracted hereunder:-

“4.It is submitted that the 2nd Responded Saravanan, appeared before the 1st Respondent on 23.08.2021 at 20 00 hrs., with a written complaint that he is working as supervisor, Oberoi flight service, GST Road and on 23.08.2021, after his night shift at 04 30 hrs., was travelling on GST Road, Pallavaram Bridge, on his two wheeler, at the end near to Airway Hotel, he was suddenly stopped by two persons and snatched his smart phone along with the two wheeler TN 22DP 4875, and sped away. On his complaint, a CSR was registered vide No. 812/CSR/S5/2021, at 20 00 hrs. Enquiry conducted at the spot and also verification of CCTV footage, revealed that no such incident was indeed occurred. Hence, the petitioner Saravanan was called again to the station and confronted with the facts of enquiry, he changed track and given another complaint on 24.08.2021 at 21 45 hrs., in which he stated that he was on night shift on 23.08.2021 from 19 00 hrs. to 04 00 hrs., and when he was unloading the food packets at Airport bay 23, one Ilayaperumal already known to him, came to him and handed over 08 Gold bars wrapped up in black cover to be handed over to one Imran, Alandur. He



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concealed the same in his truck and came to Oberoi flight service. After his duty was over, he left at 04 50 hrs., by concealing the 08 gold bars behind the seat cover and drove towards Alandur to meet Imran. On the way at GST Road opposite to AyudhBhavan, two persons intercepted him, assaulted him, snatched his mobile and drove away in his two wheeler. He requested action and on his complaint, the above case was registered and investigated.

5. During the course of investigation, the complainant Saravanan (Res.02) turned to be the prime accused of the robbery of the smuggled 09 kg of gold, that occurred on 23.08.2021 at 04 50 hrs. at GST Road, opposite to Ayudhbhavan. It appeared that he along with his associates planned a robbery of the gold that he usually receives at the Airport bay through Ilayaperumal, cleaner in Air India flights, to be handed over to one Imran at Alandur for which he receives an amount every time. On knowing his clandestine act, Mohammed Nazeer, a security at Vistara Airlines, lured him with high amount at one time, if he changed hands the gold, as devised by him.

6. Prior to ten days of the crime, the Respondent (1) Saravanan, Mohammed Nazeer, and their accomplices in the crime, met at a wine shop at Anakaputhur, and hatched a



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conspiracy to rob the gold. As per the plan, on 23.08.2021 at 03 30 hrs., Saravanan (Res.01) received the parcel of gold from Ilayaperumal, at Airport bay, and concealed it in the front seat cover of their truck used to carry food packets from the flight service company to the Airport. He contacted Prabhuram, about the parcel of gold concealed in the truck, and as told by him Prabhuram took it from the truck and gave it to Sheik at Radial road and Echangadu signal. Later, he met his other accomplices Ismail and Mani near the sugarcane juice shop on GST Road, opposite to Ayudhbhavan, to whom he gave his mobile and two wheeler; and as planned, informed Imran that he was robbed of the Gold kept under the seat cover of his two wheeler, mobile and also the two wheeler two persons after assaulting him. Hence, a case was registered on 24.08.2021 at 21 45 hrs., and investigated. During the investigation, it was disclosed that Saravanan (Respondent 01) hatched criminal conspiracy ten days prior to the incident along with his accomplices Mohammed Nazeer, Prabhuram, Ismail, Mani@ Manikandan, Sheik Bagat, Rabbik and Asiq Mohammed, planned a Robbery like situation to divert the contraband from Imran.

7. In this case, Saravanan, Mohammed Nazeer and Prabhuram, were arrested on 26.08.2021 morning and the property involved in the crime 09 kg of gold (08 gold bars of



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01 kg each with 08 gold plates of 125 gram each) and the Redmi 7pro mobile belongs to Saravanan, were seized from the possession of Mohammed Nazeer, from his residence at No.03, Metriveeng apartments, Alandur, Chennai. 600 016, on 26.08.2021 at 10 45 hrs, under the cover of mahazar. The two wheeler TN 22 DP 4875 belongs to Saravanan alleged to have robbed by Ismail and Mani on 23.08.2021 morning, was seized from a stone quarry at Venkatapuram, Oppur, on 28.08.2021 with the help of TN fire service and rescue personnel, Maraimalai Nagar.

8.The seized properties (09 kg of Gold) and the Mobile Redmi7pro from Mohammed Nazeer at his flat at Alandur, were produced before the Judicial Magistrate-II, Tambaram, on the day itself (26.08.2021) numbered vide PI No. 70/2021, and after a physical check with appraiser in the court who verified it and certified the purity of the Gold. The property was then ordered to be kept in safe custody at Sub Treasury, Tambaram.

9. In this case, on 28.08.2021, Ismail and Mani@Manikandan who enacted the Robbery on 23.08.2021 morning were arrested and remanded. On the confession of Mani@Manikandan, the two wheeler of Saravanan was seized from stone quarry at Venkatapuram, Oppur, with the assistance of



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the Fire and Rescue service, Maramalai Nagar. Again on 30.08.2021, Rabbik, Ashik Ahmed and Sheik Bagath who have involved in the crime were arrested and the vehicles, a two wheeler TN 65 P2 1733 and a car TN 06 A 7494, used by them in the commission of crime, were also seized and produced in the court. So far, 08 accused were arrested and remanded. Further search is on for other suspects.

10.It is respectfully submitted that there is no divergence of opinion about the genuineness of the 09 kg of gold which is of foreign origin and imported through the Air India flight by hiding the property in the toilet or toilet waste materials by someone at the other end and with the information regularly passed on to Imran who signaled Saravanan(Res.02) to take possession of the same at Airport bay through Ilayaperumal, cleaner of Air India flights, which was then transported through the truck used to carry food packets from Oberai Flight service. Investigation made so far disclosed that Saravanan Res. (02) was acting as a courier to Imran of Alandur, and transported such materials previously 12 times, and it is the 13th time, when he changed track by making a complaint of Robbery, as per the plan devised by them, which landed in police net and subsequently seizure of the Gold. Had he not appeared in S5 Pallavaram P.S., with his complaint this could not have come to notice. He even



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concealed the Gold in his first complaint and when the Police put pressure on him with certain facts, he revealed the fact of Gold in his second one.

11.It is respectfully submitted that the accused was neither arrested nor the Gold bars were seized in the restricted area of the Airport or its vicinity, on the day of the crime on 23.08.2021. The offence came to light with the strenuous efforts and sustained investigation of the Police in questioning the accused with his call records obtained from the service providers and CCTV footage in the area.

12.It is respectfully submitted that there was no intention to conceal the information from the Revenue Intelligence, on knowing the facts of the origin of the Gold and necessary details were furnished to them through the Addl. Commissioner of Police, Law & Order, South, Greater Chennai Police, vide ref No. 623/Addl.COP/L&O/S/camp/2021, on 28.08.2021 and also the CDRs to them then and there.

13.Prior to that the Directorate of Revenue Intelligence in their letter dated 27.08.2021, informed the I.O. that the seized gold was an imported contraband which has to be investigated vide Customs act 1962, it is submitted that the



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seized Gold and the Redmi 7pro phone, were already produced before the Judicial Magistrate-II Court, Tambaram, on 26.08.2021 itself as soon as it was seized from the house of the accused and the JM court ordered the safe custody of the valuable property in the Sub treasury, Tambaram, with proper escort.

14.It is most respectfully submitted that the I.O. had taken extra precautions immediately after the seizure of the Gold on 26.08.2021 morning in producing the property before the Judicial Magistrate-II, Tambaram, Chennai, who ordered the safe custody after its evaluation. It is submitted that the Police could not act on the instructions of the DRI to hand over the property directly, as the seizure of the contraband was born out of a crime of well-planned conspiracy and robbery, in which more accused are involved who acted with the common interest of deception and other properties involved in the crime were also seized and produced in the court.

15.It is submitted to the request of the D.R.I., vide their letter dated 30.08.2021 to the Addl. Commissioner of Police, L&O South, Greater Chennai, for filing transfer petition by the state police, it was instructed to render necessary assistance to the DRI for the interim custody of the property in



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the above case. Accordingly, the DRI counsel was given all assistance by the I.O.

16.Further to this, the DRI represented by the Senior Intelligence Officer, filed a sworn affidavit before the Judicial Magistrate-II, with a pray to hand over the seized 09kg of Gold along with the copy of relevant records of the case in S5 Pallavaram case in Cr. No. 437/2021, to the Directorate of Revenue Intelligence for further investigation in accordance with the provisions of the Customs act 1962.”

13.In the respect of the 1st question, the learned Additional Public Prosecutor would submit that the goods, which were seized by the 1st respondent, are smuggled goods. The investigation has to be done only on the basis of the smuggled goods on the accused. The property seized is in the custody of the Court. The 1st respondent has no objection to give the property to the petitioner, as the petitioner has not filed any documents to confirm that he has Authority to file the petition. Further, if the property is handed over the petitioner, the investigation of the case by State Police, may get stalled.

14.From the status report filed by the 1st respondent Police, it is seen that the information about the above case was informed by the 1st respondent Police to the higher officials. In fact, in this case, on

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enquiry, the complainant himself turned to be an accused, hence, he was apprehended. On the confession statement, the gold bars and the vehicles used to conceal and transport were all recovered. Further, the aid of Fire and Rescue Service Department sought for and the two wheeler, which was thrown into the stone quarry filled with water, was retrieved. Thereafter, the accused was taken into custody and enquired. On the very first day, the 1st respondent Police was very much aware that the gold bars are with foreign origin and the assessor had given a report about the purity of the gold confirming that it is smuggled gold. The right thing should have been done by the 1st respondent Police Officer is that he has to inform the customs/DRI authorities, but it has not done. Even the superior officers with whom the Inspector of Police/1st respondent Police had regular communication about the case, for the reasons best known, kept quite. Only after the DRI authorities facing resistance and sensing some mischiefs, had informed the Commissioner of Police about the entire episode and whatever tracking and information they could collect. Thereafter, the local police upto the Joint Commissioner level had started giving information. On the query of the Commissioner of Police, the case gained momentum everything was informed to the Court. Thereafter, the DRI's query was responded and the petition was filed before the lower Court.



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15.It is also seen that the Police had acted in alacrity, but nothing was forwarded to the Court then and there immediately. It is certain that the Inspector of Police Mr.Ravi would not have conducted the investigation without the aid and support of his superior officials like the Deputy Commissioner and the Joint Commissioner and others. For what reason, the collected evidence was withheld and why there was so much resistance in handing over the gold bars is not known. This needs a probe to clear the mystery. Hence, this Court leave it to the wisdom of the Director General of Police, Chennai to take appropriate action against the erring officials in this regard.

16.It is seen from the investigation that the property viz., 9 Kgs of Foreign origin gold, appeared to have been smuggled into India, through Chennai Airport, by Qatar Airways Flight, from Qatar, on 23.08.2021, engaging the services of Flight cleaning staff and Flight Catering Staff, with the active involvement of the 2nd Respondent and others. On investigation, the smuggled gold produced before the jurisdictional Court. On coming to know, the Senior Intelligence Officer, Directorate of Revenue Intelligence, Chennai Zonal Unit, filed a petition for return of property in Crl.M.P.No.1824 of 2021 in Cr.No.437 of 2021 on the file of the Learned Judicial Magistrate No.2,



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Tambaram, Chennai. The Magistrate ought to have ordered custody of the smuggled gold to the absolute custody of the petitioner herein, vesting the right to dispose it off under Section 110 of the Customs Act, 1962, facilitating further action under the said Act. Hence, this Court is inclined to set aside the order dated 22.09.2021. The attested Mahazar copy can be used as document to prove the case in Crime No.437 of 2021. The foreign sealed gold bar are the property to be retained and disposal by the DRI / Customs. The order of the lower Court, in imposing the condition to return back 9 Kgs of gold bar, is not proper.

17. In the result, this Criminal Original Petition stands allowed and the order passed by the learned Judicial Magistrate No.2, Tambaram, Chennai, Crl.M.P.No.1824 of 2021, dated 22.09.2021, is hereby set aside, to the extend of interim custody and the condition to return back 9 Kgs of gold.

08.07.2022

Index : Yes/No
Internet : Yes / No

MPK

Note: Registry is directed to send the

20/23



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copy of this order along with the following documents:-

1.Explanation filed by the Assistant Public Prosecutor, Judicial Magistrate Court No.II, Tambaram.

2.Status Report of Mr.M.Ravi, Inspector of Police, S5 Pallavaram, Crime Wing, Chennai.

3.Additional Typed Set filed by Mr.N.P.Kumar, learned Special Public Prosecutor appearing for the petitioner.

To

1.The Judicial Magistrate No.2,
Tambaram,
Chennai.

2.The Senior Intelligence Officer,
Union of India,
Directorate of Revenue Intelligence,
Chennai Zonal Unit,
No.27, Adarsh Towers, G.N.Chetty Road,
T.Nagar, Chennai – 600 017.

3.The Inspector of Police
S5 Police Station, Pallavaram,
Chennai.

4.The Public Prosecutor,
High Court, Madras.

Copy To:

1.The Director General of Police,
Chennai.



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M.NIRMAL KUMAR, J.

MPK

Pre-Delivery Order made in

CRL.O.P.No.25547 of 2021

08.07.2022

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