



CRL OP(MD). No.13674 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 30/08/2024

PRESENT

The Hon`ble Mr.Justice D.BHARATHA CHAKRAVARTHY

CRL OP(MD). No.13674 of 2024

A.G.Ponn Manickavel

... Petitioner/ Accused No.1

Vs

Central Bureau of Investigation,
Represented by the Superintendent of Police,
(SC-II) Delhi Plot No.5-B, 6th Floor,
CGO Complex, Lodhi Road,
New Delhi- 110 003.
FIR No.RC0502024S0013

... Respondent/ Complainant

For Petitioner : Mr.V.Selvaraj, Advocate
for Mr.T.Arul, Advocate

For Respondent : Mr.K. Srinivasan,
Senior Counsel & Senior Public Prosecutor for CBI Cases
assisted by Mr.C.Muthu Saravanan,
Special Public Prosecutor for CBI Cases

For Intervenor : Mr.L.Infant Dinesh, Advocate

PETITION FOR ANTICIPATORY BAIL Under Sec.482 of BNSS

PRAYER :-

To grant anticipatory bail to the petitioner ordering his release on bail in the event of his arrest in FIR in RC0502024S0013 dated 08.08.2024 on the file of Superintendent of Police, (SC-II Delhi) CBI.

ORDER : The Court made the following order :-

The petitioner/A1, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 120-B, 166, 166A, 167, 182, 193, 195A, 196, 199, 203, 211, 218 and 506 of IPC, in FIR No.RC0502024S0013 on the file of

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CRL OP(MD). No.13674 of 2024

the respondent police, seeks anticipatory bail.

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2.The case of the prosecution is that the petitioner, who was the chief investigating officer heading the idol wing, in the course of investigations while investigating Crime No.1 of 2017, falsely implicated the police officers, namely one Kader Batcha and others as accused without any proper evidence and by pressurizing the accused who are involved in Idol theft/smuggling to give confession statements against them. This apart while the case in Crime No.114 of 2005 was investigated and already final report was filed, the petitioner filed an additional final report implicating the police officers in the said case also. The petitioner also indulged in showing undue favour, to one Deenadayalan, the accused in the above case by aiding the filing of an application for pardon, especially when the trial was in an advanced stage.

3.Mr.V.Selvaraj, the learned counsel appearing for the petitioner, firstly would point out the materials collected by the petitioner to implicate the said police officers in Crime No.1 of 2017 and by pointing out certain portions of the final report filed by him in Crime No.114 of 2005, would try to justify the conduct of the petitioner and submit that the finding of the respondent/CBI to the contrary is only erroneous.

3.1 Secondly, he would make a submission that earlier when this Court had set aside the Government order, entrusting the investigations with reference to the idol



CRL OP(MD). No.13674 of 2024

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theft to the CBI and the same having been confirmed by the Hon'ble Supreme Court of India, the said agency cannot investigate this issue.

3.2 Thirdly, it is his submission that when the investigation in both the above cases was a Court monitored investigation, the petitioner having been appointed as a Chief Investigating Officer of a special investigating team constituted by this Court, and the same having been reiterated by the judgment of the Special Division Bench dealing with the case and the same having been confirmed by the Hon'ble Supreme Court of India, without the express permission from the said Division Bench, any further investigation ought not to have been conducted by the CBI.

3.3 Fourthly, adverting to the directions of this Court in Crl.O.P.No.18583 of 2019, he would submit that the directions issued by this Court in paragraphs No.64 and 65 should be read in the manner that even before the appropriate Courts accepting the final report filed by the CBI, the course adopted by the respondent/CBI to simultaneously register a separate case cannot be countenanced.

3.4 Finally, the learned counsel would point out that in the present case, which is registered, it can be seen that the only non- bailable offence which is complained off is one under Section 195-A of IPC. The respondent CBI cannot register the First Information Report in respect of the said offence except upon a complaint made by the Court concerned as per section 340 of Cr.P.C., in view of the embargo contained



under section 195 of Cr.P.C.

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3.5 In support of his contentions, the counsel would also rely upon the following judgments:

(i) R.Venkataraman Vs. Director General of Police and Others [2017 SCC Online Mad 37586 : (2018) 2 LW 65 : (2018) 1 LW (Cri) 394];

(ii) Director General of Police and another Vs. R.Venkataraman and others [2017 SCC Online SC 1838];

(iii) Elephant G.Rajendran Vs. State of Tamil Nadu rep. by the Additional Chief Secretary to Government and others [(2018) SCC Online Mad 8842 : (2019) 2 CTC 705];

(iv) State of Tamil Nadu and others Vs. Elephant G. Rajendran and others [(2019) 14 SCC 29 : (2020) 2 SCC (cri) 187 : 2019 SCC Online SC 527];

(v) Bangaru Laxman Vs. State (through CBI) and Anr., [2012 CRI.L.J. 678 (SC)]

(vi) Sushila Devi Vs. State of Rajasthan and others [(2014) 1 SCC 269 : (2014) 1 SCC (Cri) 262 : 2013 SCC Online SC 887]; and

(vii) P.C.Mishra Vs. State (Central Bureau of investigation) and Other [(2014) 14 SCC 629];

(viii) State Through CBI, Chennai Vs. Arul Kumar [2016 CRI.L.J. 3127 (SC)]

3.6 With reference to grant of anticipatory bail, reliance is made on the



CRL OP(MD). No.13674 of 2024

Judgment of the Supreme Court of India in Hema Mishra -Vs- State of UP (2014 4 SCC 453), more specifically to paragraphs 19,20,28,31.

4. Per contra, Mr.K.Srinivasan, the learned Senior Counsel appearing on behalf of the respondent/CBI would submit that the legal arguments made by the petitioner cannot be countenanced as the case itself is registered pursuant to the directions of this Court in CrI.O.P.No.18583 of 2019. The operative portion of the said judgement contains three distinct directions and all the three are duly complied with by the respondent/CBI. As far as Crime No.1 of 2017 is concerned, the investigation was entrusted to the respondent agency and it had conducted an investigation and completed the same and filed final report, to close the case as a mistake of fact and the said report is pending consideration by the appropriate Court. Similarly, with reference to the additional final report filed by the petitioner also as directed by this Court, further investigations are carried out and report has been filed before the concerned Court and the same is under due consideration of the said Court.

4.1 The present case pertains to the third direction, in which, this Court specifically directed the agency to conduct a preliminary enquiry on the representations of the petitioner herein and therefore, after conduct of preliminary enquiry when there are materials pointing out to certain offences that are committed by the petitioner herein, a case has been registered. The facts about the conduct of the



CRL OP(MD). No.13674 of 2024

WEB COPY

preliminary enquiry, the investigation in the above said cases are all narrated in detail and report is also submitted in a sealed cover to this Court. Therefore, there is absolutely no impediment whatsoever to proceed further with the investigation.

4.2 The learned Senior Counsel would submit that the very same contentions, which are raised before this Court, are raised in the Special Leave Petition filed by the petitioner as against the order of this Court in Crl.O.P.No.18583 of 2019 and the Hon'ble Supreme Court of India, vide order dated 27.03.2023 in Special Leave to Appeal (Crl.) No(s).9446 of 2022, had confirmed the order of this Court. In view thereof, the only question which is to be considered by this Court is as to whether the custodial interrogation of the petitioner is necessary in the instant case.

4.3 He would submit that the instant case relates to idol theft having international ramifications wherein the mastermind behind the idol thefts in India, one Subash Chandra Kapoor was also arrested and therefore, the custodial interrogation is very much essential in the present case. The learned counsel would rely upon the Judgment of the Hon'ble Supreme Court of India in P. Chidambaram v. Directorate of Enforcement [(2019) 9 SCC 24 : (2019) 3 SCC (Cri) 509 : 2019 SCC OnLine SC 1143], more specifically on paragraph No.69 and he would submit that the petition be dismissed.

5.Mr.L.Infant Dinesh, the learned counsel appearing on behalf of the intervenor



CRL OP(MD). No.13674 of 2024

would strongly oppose the grant of anticipatory bail by submitting that, with malafide intentions, his client, Mr.Kader Batcha, who was an appraised police officer, was arrested and his entire carrier itself was ruined. When he has only done his duty in accordance with law, only to wreck vengeance against him, he was falsely implicated in this case.

6. I have considered the rival submissions made on either side and perused the material records of the case.

7. Firstly, this case arises out of the direction of this Court in Crl.O.P.No.18583 of 2019. One Kader Batcha, who was a Police Officer earlier assisting the investigations in the idol theft wing was arrayed as an accused in Crime No.1 of 2017 and thereafter, was enlarged on statutory bail. He made two representations dated 20.04.2019 and 15.06.2019 making allegations against the petitioner herein. The gist of allegation is that in order to wreck vengeance against a fellow member of the police force, he was falsely implicated by colluding with one of the accused Deenadayalan and making him to confess against the said Kader Batcha. Thereafter, Crl.O.P.No.18583 of 2019 was filed with a prayer to register a case through the 3rd or 4th respondent therein based on the complaints of the petitioner dated 20.04.2019 and 15.06.2019.

8. The matter was considered in detail by this Court and this Court speaking



CRL OP(MD). No.13674 of 2024

WEB COPY

through Hon'ble Dr. Justice G.JAYACHANDRAN by an order dated 22.07.2022, found that there is prima facie suspicion with reference to the version of the petitioner herein regarding involvement of the said Kader Batcha and others in the cases. This Court found that the case as projected with reference to the seizure of idols and the travel of idols to various countries as prima facie riddled with contradictions raising suspicion. The findings of this Court are rendered in paragraphs No.60 and 61 which are extracted hereunder for ready reference:

“...60. The petitioner and the 5th respondent are Police Officers at different rank. They had been entrusted with specific responsibility, which involves pride and faith of this Nation. Their action also involves other ramifications like our foreign relationship, honouring the International Treaty obligations without compromising the interest of the Nation. Men entrusted with responsibility whether on the Investigating side or on the Judicial side are expected to deal fairly in issues which has serious ramification on our Culture, Heritage, Faith and Emotion.

61. From the material placed, it is certain that only one among the two, the petitioner or the 5th respondent must have placed all the facts within their knowledge and those facts must be true. But, at no stretch of imagination, both versions could be true. Yet another possibility is both



CRL OP(MD). No.13674 of 2024

have wilfully come out only with half truth and suppressing the other half, it is then a case of suppression of the fact or suggestion of falsehood through fabrication of documents. One of the character here, had chosen to play the role of “red herring”. Either way, for the Court to satisfy its conscious, let fair and impartial investigation be conducted. Hence, this is a case which requires exercise of the inherent power under Section 482 of Cr.P.C to ensure fair and impartial investigation.”

Finally, the following directions were issued which are contained in paragraphs No.64 and 65 which are extracted hereunder:

“..64. Accordingly, Director of Central Bureau of Investigation, is directed to take cognizance of the representations of the petitioner dated 20/04/2019 and 15/06/2019 and make a preliminary enquiry by appointing an Investigating Officer not below the rank of Deputy Inspector General of Police. Hence, the investigation of Crime No.1 of 2017 from the file of Idol wing is transferred to Central Bureau of Investigation [CBI] for re-investigation.

65. In case, any concoction of fact and falsification of evidence in their investigation by any of the Police Officials in Crime No.114 of 2005 is made out, the Central Bureau of Investigation [CBI] is permitted to



CRL OP(MD). No.13674 of 2024

proceed against them, independently and file report before the Court which is trying the cases in Crime No.114 of 2005 for the offence of fabricating false evidence with intent to procure conviction.”

9.Thus a perusal of the same, it is clear that there are three directions. Apart from the two other directions relating to the final reports in Crime Nos.1 of 2017 and 114 of 2005, specific direction is also granted to consider the complaint of the said Kader Batcha. The Order of this Court was also challenged by the petitioner before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India had also confirmed the Order. In view thereof, I am in agreement with the learned Senior Counsel appearing on behalf of the respondent/CBI that the respondent/CBI is well within its jurisdiction to register the case and investigate into the matter as the case has been specifically entrusted to it by this Court.

10.Therefore, the only question which is to be considered by this Court is whether or not the petitioner is entitled for a pre-arrest bail or whether this is a case for custodial interrogation.

11.In this regard, it can be seen that the present case is registered by the respondent/CBI for the offences under Sections 166, 166A, 167, 182, 193, 196, 199, 203, 211, 218, 195A, and 506 r/w 120B of IPC. It can be seen that the only non-bailable offence for which, the case is registered under Section 195-A of IPC. Of course,



CRL OP(MD). No.13674 of 2024

Section 120B of IPC would accordingly, become Non-bailable.

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12.As far as Section 195A of IPC is concerned, the Kerala High Court in *Suni @ Sunil Vs. State of Kerala* [Bail Application No.556 of 2023] has considered the question and answered that even though 195-A of IPC is mentioned in the schedule as cognizable, a combined reading of the said section, along with 195, 195-A of Cr.P.C and Section 2(d) defining complaint r/w 340 of Cr.P.C., it would be clear that the police cannot register an FIR for the offence under Section 195-A of IPC and it can be taken cognizance only upon a complaint filed by the Court under Section 340 or by the concerned witness under Section 195-A of Cr.P.C. However, the Hon'ble Supreme Court of India in *Salib @ Shalu @ Salim Vs. State of U.P & Ors.*, [Criminal Appeal No.2344 of 2023] had left the said question open in its recent judgment. Useful reference can be made to paragraph 19 of the said judgment.

13.Be that as it may, when the case involves idol theft, which is serious in nature having international ramifications, the question as to the unravelling of truth would assume significance and therefore, the primary question which begs an answer is, whether as per the prima facie findings and the allegations which are imputed as on date, the actions of the petitioner are a mere excess and framing the other police officers or whether it was with a view to screen some other real offender. If the framing of the case with malafide intentions is alleged with a view to screening some



CRL OP(MD). No.13674 of 2024

other offender, then certainly it would be a case for custodial interrogation.

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14. With that in mind, this Court perused the detailed report submitted by the respondent agency, where under all the evidence unearthed by them and the procedures followed by them and their findings are given in detail. This Court also perused the final report filed by the CBI in Crime No.1 of 2017. A perusal thereof, the gist of allegations which are sought to be made is that without adequate evidence, only by pressurizing one of the accused to give a confession statement, the police officers were implicated. It is not a mere excess but it is suspected that it is a willful excess as the various anonymous complaints said to have been received by the petitioner and the other reports and the confession statements are all sounding on the same lines raising grave suspicion. Further, there is no material at all to prove such a robbery as reported in Crime No.1 of 2017 could have been taken place. With the above findings, further proceedings in Crime No.1 of 2017 is sought to be dropped.

15. It is not the case of the respondent agency that some other accused were really involved in the said offence or even in the other cases some other accused who are involved or not actually arrayed as an accused. Therefore, for the limited purpose, when I considered the report filed by the respondent agency in detail, that is, (i) the status report filed by them to this Court in Crl.O.P.No.18583 of 2019; and (ii) the final report in Crime No.1 of 2017, I find that there is no any prima facie material or



CRL OP(MD). No.13674 of 2024

WEB COPY

pinpointed allegation that the petitioner herein had screened any other accused or that the investigation in the present case will lead to any further unravelling of truth as to idol theft. For now the allegation is that on account of inimical disposition and to wreck vengeance, he had framed the police officers also without adequate evidence in that regard.

16. In that view of the matter, I am of the view that in this case, the petitioner can be enlarged on anticipatory bail on the following conditions:

17. Accordingly, the Criminal Original Petition is allowed and the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date on which the order copy made ready, before the learned Additional Chief Judicial Magistrate, Madurai, on condition that the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[a] 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.



CRL OP(MD). No.13674 of 2024

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[b] the petitioner shall report before the Central Bureau of Investigation, Anti Corruption Branch, Shastri Bhawan, Chennai, daily at 10.30 a.m., for a period of four weeks and thereafter, as and when required for interrogation; It is made clear that no relaxation of the condition for the said period will be entertained by this court.

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned 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 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].

[f] If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-
30/08/2024

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/09/2024
Sub-Assistant Registrar (C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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CRL OP(MD). No.13674 of 2024

TO

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1 THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE, MADURAI.

2 THE SUPERINTENDENT OF POLICE, CENTRAL BUREAU OF INVESTIGATION,
(SC-II) DELHI PLOT NO. 5-B, 6TH FLOOR, CGO COMPLEX, LODHI ROAD,
NEW DELHI- 110 003.

3 THE SPECIAL PUBLIC PROSECUTOR FOR CBI CASES,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO

THE OFFICER INCHARGE, CENTRAL BUREAU OF INVESTIGATION,
ANTI CORRUPTION BRANCH, SHASTRI BHAWAN, CHENNAI.

+1 CC to M/s.T.ARUL, Advocate (SR-10654[I] dated 30/08/2024)

+1 CC to M/s.T.ARUL, Advocate (SR-10749[I] dated 02/09/2024)

ORDER

IN

CRL OP(MD) No.13674 of 2024

Date :30/08/2024

RS/VR/SAR-(03.09.2024) 15P 7C

Madurai Bench of Madras High Court is issuing
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