

HIGH COURT : MADRAS

CrI.O.P. No.36748 of 2004

in

FIR No.914 of 2004
(on the file of the Respondent Police)

COUNTER AFFIDAVIT FILED ON
BEHALF OF THE RESPONDENT

PUBLIC PROSECUTOR.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Crl. O.P. No. 36748 of 2004

in

F.I.R. No. 914 of 2004
(on the file of the Respondent Police)

Sri Jeyendra Saraswathi Swamigal,
Kanchi Mutt, Kanchipuram.

... Petitioner/Accused

-versus-

The Inspector of Police,
B-2 Vishnu Kanchi Police Station,
Kanchipuram

... Respondent

COUNTER AFFIDAVIT FILED ON BEHALF OF
THE RESPONDENT

I, S.P.Sakthivelu, son of V.Palaniappan, Hindu, aged about 57 years, having office at No.1, Saravana Street, Orikkai, Kanchipuram, Kanchipuram District, have now temporarily come down to Chennai do hereby solemnly affirm and sincerely state as follows:

1. I am the Additional Superintendent of Police, Prohibition Enforcement Wing, Kanchipuram, Kanchipuram District and also the Chief Investigating Officer in the team of officers formed to investigate the above case and as such I am well acquainted with the facts and circumstances of the case.

2. I perused the above Petition and deny all allegations found therein excepting those that are specifically referred to and admitted herein.

3. It is respectfully submitted that there are absolutely no merits in the above application.

4. It is respectfully submitted that the present application filed under Section 439 of the Code of Criminal Procedure is not maintainable.

5. It is respectfully submitted that none of the grounds raised in the Bail Petition is sustainable.

6. It is respectfully submitted that the averments contained in ground No.5 of the Bail Petition are incorrect and untenable. The allegation that Thiru N.Sundaresan was kept in the Police Station for three hours in the morning and another two hours in the evening on 29.09.2004 is false and hereby denied. The further allegation that Thiru Sundaresan provided all such information as was required from him by the Police is false. The question of asking about cell phone conversation or bank account of the Mutt and withdrawal of monies from the bank did not arise at that stage.

7. It is respectfully submitted that the allegations in ground No.6 are incorrect and untenable. The allegation that the Petitioner could never flee from Mehboob Nagar is untenable. According to the Prosecution, to enable the Petitioner to escape,

a helicopter was stationed at Hyderabad with flight schedule for Mehboob Nagar. At no point of time it was alleged by the Respondent that the Petitioner would flee along with his commandos. These issues are mere repetition of what was alleged while disposing of the earlier bail petition. Hence these issues cannot be raised at this second Bail petition on the principle of issue in estoppel. These allegations cannot be permitted to be repeated again and again, since they were already raised and answered.

8. With reference to ground No.7 it is respectfully submitted that apart from the confessional statements of Kadiravan and Rajini @ Chinna, there are other materials which clearly establish the involvement of the Petitioner in the conspiracy and hiring of assassins to murder Sankararaman for monetary consideration.

9. The averments contained in ground No.8 are incorrect. The Petitioner took a specific stand that there is no account in Kanchipuram Branch of ICICI Bank in which the Mutt is interested. However, on behalf of the Prosecution, sufficient proof was produced to substantiate the fact that the Mutt is having about ten accounts in various names of the Trusts which are under its control in the Kanchipuram Branch of ICICI Bank. The contention that the stand taken by the Prosecution was ambivalent at different stages is incorrect. The contention that it is inconceivable that merely because the deceased had been criticising the Petitioner, the later would resort to engaging the

services of contract-killers to do away with the deceased is untenable. The deceased was making allegations not only regarding the management and affairs of the Mutt but also threatened to expose the personal conduct of the Petitioner which was unbecoming of an Acharya (sanyasi) which, even according to the Petitioner, hurt his feelings and lowered his image in the estimate of public.

✓ 10. In this connection it will not be out of place to mention that there are materials to show that the Petitioner was in the habit of talking to a deserted woman by name Usha at Sri Rangam during early morning hours. The conversation used to last even for 900 pulse units. She had been provided with free quarters to stay. Substantial sums of money had been periodically transferred to her through Bank. She has withdrawn the entire money from her account and she is absconding. Therefore the Petitioner had every reason to believe that his misconduct would be exposed by the deceased Sankararaman. Apart from the above, her involvement in the conspiracy and other allied matters are being probed since the Petitioner was regularly speaking to her before and after the incident, apart from transmission of funds. The extent of her involvement in the crime also has to be probed further in the light of materials available.

11. The said deceased continued his mission of exposure of the petitioner in a zealous manner by filing a Writ Petition, by seeking accounts of remaining 65 kgs. of gold imported for making Golden Chariot to which only 35 kgs. was

utilised and the remaining 65 kgs. gold remain unaccounted, creation of various Trusts doing commercial activities than in concentrating on Vedic and Godly affairs, presence of women in the Mutt after 10.00 P.M., extravagant life lead by the relatives of the Pontiffs. He went on protesting that the Mutt has indulged in various kinds of activities and drifted away from the path of Holy Peetathipathis and in particular taking a different path from that of the earlier Pontiff.

12. With reference to ground No.9, it is respectfully submitted that the earlier Bail Application was resisted not only on the ground that custodial interrogation of the Petitioner was necessary but also on various other valid grounds. There was need for getting extension of the Police custody beyond 22.11.2004 to complete the interrogation on the basis of new incriminating materials collected. However the same was denied by the learned Judicial Magistrate. Merely because Police custody was not granted, further it cannot be contended that investigation is over and the Petitioner is entitled to come out on bail. The fact remains that two main accused are still at large.

Very long period

13. The averments contained in ground No.10 of the Bail Petition are incorrect and untenable. The contention that there is no more justification for keeping the Petitioner under incarceration is incorrect. The further contention that there is no possibility of the Petitioner resorting to any act by which the free investigation in the case would be impeded is false and hereby denied. The medical need of the Petitioner is properly taken care

of by the jail authorities and there is no justification in seeking bail on this ground.

14. Regarding ground No.11, it is respectfully submitted that this Honourable Court was pleased to consider all the grounds now raised at the time of hearing the previous bail application and all such grounds were rejected by this Honourable Court. The Petitioner is not justified in raising those grounds once again in the present application merely because this Honourable Court was pleased to observe at the end that the bail application was dismissed "at this stage".

15. It is respectfully submitted that the contentions found in ground No.12 are incorrect and untenable. There is absolutely no change in the circumstances which would entitle the Petitioner to prefer a second bail application. The refusal to order the application of the Prosecution for extending the Police custody will not enable the Petitioner to seek an order of bail.

16. It is respectfully submitted that the fact that two of the accused viz., Kadiravan and Rajini @ Chinna who have rescinded from their original stand itself will prove that grant of bail to the Petitioner will result in tampering with evidence. Kadiravan was sent to jail on 19.11.2004. Several Advocates met him after his confession under Section 164 Cr.P.C. was recorded and before he gave retracted statement before the learned Magistrate on 24.11.2004. The details of the Advocates who met Kadiravan are as follows:

S.No.	Date	Name of Visitor
1.	22.11.2004	(1) Salomon Francis Advocate, High Court, Chennai.
2.	-do-	(2) R. Kumaran,
3.	-do-	(3) R. Vikram Advocates, High Court, Chennai.
4.	23.11.2004	(1) Darwin Wisdom, - <i>Asst</i>
5.	-do-	(2) T. Gandhiraj Advocates, Chennai.
6.	-do-	(3) Salomon Francis
7.	-do-	(4) M. Nirmal Kumar
8.	-do-	(5) R. Kumaran, Advocates, High Court. <i>K. Asokan</i>
9.	25.11.2004	(1) M. Nirmal Kumar
10.	-do-	(2) R. Kumaran, Advocates, High Court, Chennai.

His elder sister Shanthi and his uncle Malai Alangaram met Kadiravan on 23.11.2004. Again his elder sister Shanthi met him on 26.11.2004. However, in his retraction statement before the learned Magistrate, he had falsely said that no visitor was allowed to meet him and the only visitor permitted to meet him was his elder sister Shanthi, ~~that too only on 26.11.2004~~. The letters written by Advocates addressed to the jail authorities for arranging interview is sufficient to indicate their meetings with the accused. It is further submitted that as per investigation,

it has been revealed that the accused was made to retract his confession on the advice given to him during two consecutive days which has made him go back from his earlier version before the Judicial forum by way of confession. The Prosecution has got sufficient material to indicate how it was retracted.

*Does it mean
you were
tripping
the witness?*

17. As far as the conspiracy angle is concerned, the Prosecution has got credible and unassailable material evidence available through witnesses who speak about the meeting of minds between A-1 and other accused involved in the crime. If this Honourable High Court so feels such material available with the Prosecution as revealed by witnesses can be produced that would speak volumes against A-1 to A-4 who are very much and deeply involved in the conspiracy to murder Sankararaman. It is further submitted that the custodial interrogation of A-1 has revealed his complicity in the offence in very clear terms. Much cannot be stated now at this stage. The entire interrogation of the Petitioner is available with the Prosecution and the Prosecution is willing to submit the same for the kind perusal of this Honourable Court.

18. It is respectfully submitted that in fact Tvl. Salomon Francis, R.Kumaran and R.Vikraman, Advocates had interviewed Kathiravan for two hours from 3 p.m. to 5 p.m. on 22.11.2004. Tvl. Salomon Francis and R.Kumaran, Advocates once again met him the next day viz., 23.11.2004. Only thereafter on 24.11.2004 Kathiravan retracted his 164 Statement. Enough material is available with the Prosecution that such retraction was

Admission

made on clear legal advice. The allegation that Kadiravan was beaten up at the Police Station and Police forced him to read a statement as dictated by them and that Police forced him to make a statement under section 164 of Cr.P.C. are all false and were stated on tutoring.

19. Thiru Darwin ^{Widwon} and Thiru T.Gandhiraj, Advocates met not only Kadiravan but also Rajini @ Chinna on 23.11.2004. It is obvious that Rajini @ Chinna made the false allegation that his teeth were broken during interrogation only on legal advise. The fact that neither Kadiravan nor Rajini @ Chinna made any complaint either to the learned Magistrate on the earlier occasions when they were produced nor before the Doctors attended on them of any ill-treatment or bodily injury will clearly establish that such allegations are false and made only for the purpose of getting the same flashed on the date on which the application seeking transfer of the case from the State Police to C.B.I. came up for hearing before the Honourable Supreme Court. Such false allegations were made in execution of a pre-plan with ulterior motive is proved by the repeated insistence that their statements should be recorded by the learned Magistrate.

20. It will be more interesting if one could look into the background of these developments. Some of them are Juniors of a Senior Advocate who regularly appears for Appu, the wanted accused and also associated in the Bail petition of the present Petitioner. It looks it is not a mere coincidence. Beyond these

*Dr D Nii
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asked see
for list.*

issues, something much more is glaring which does not meet the eye. The close proximity and link to each accused can be easily seen in this background itself.

21. The allegation in ground No.12(c) that identification parade is completed in this case is incorrect. The conduct of identification parade is not yet over.

*Ref 437
p. 100.00*

22. It is respectfully submitted that the Petitioner, even when he is in judicial custody, is able to influence accused and witnesses to support him. It is evidently clear that the Petitioner is already set to sabotage the witnesses. The Petitioner had already misused his position and tampered with the evidence and if he is let on bail, the Prosecution will be greatly prejudiced. The conduct of the Petitioner in organising fake surrender will speak volumes against the Petitioner in this regard. The fact that he influenced his own employee Sundaresan to give him a good conduct certificate by filing a false affidavit before the Honourable High Court and the way in which some of the accused who have given 164 Statements were persuaded to retract the same, making false allegations against the Police, contrary to the truth, would clearly establish that the Petitioner wields great power and influence. It will be unimaginably so if he is released on bail with such enormous fund and men at his disposal. Not only investigation on right direction suffers but the whole Justice system will suffer.

*Lumpsum
element's
Sympathy
court requires
in*

23. It is respectfully submitted that even when the Petitioner is in custody in connection with the Sankararaman murder case, he is able to influence the witnesses to support his case and the accused to retract their 164 Statements. If he is allowed to come out on bail, he will definitely interfere with the course of justice by tampering with the evidence. He influenced not only his employee Sundaresan to give him a good conduct certificate in the affidavit filed by him but also influenced accused Kadiravan to retract his statement under Section 164 Cr.P.C. The Petitioner also influenced Kadiravan to give him a good conduct certificate in the bail application filed by him. If the Petitioner is granted bail, he will definitely tamper with the evidence which would result in miscarriage of justice.

24. It is respectfully submitted that there are absolutely no merits in the above bail application and the same is liable to be dismissed.

25. For the reasons stated in the foregoing paragraphs, it is humbly prayed that this Honourable Court may be pleased to dismiss the above bail application and thus render justice.

Solemnly affirmed at Chennai,
this the 29th day of November
2004 and signed his name in
my presence.

BEFORE ME

ADVOCATE, CHENNAI.