

In the Court of the Judicial Magistrate No.-I, Kancheepuram

Present : Thiru. S. Uthamaraj, B.A., B.L.,  
Judicial Magistrate No. – I

C.M.P. No. 5257/2004  
in Crime Number 914/2004 of Vishnu Kanchi P.S.,  
u/s 302 IPC., r/w 34 IPC.,  
Dated: the 19<sup>th</sup> day of November 2004

State represented by  
S.P. Sakthivelu  
Addl. Superintendent of Police  
Prohibition Enforcement Wing  
Kancheepuram

..... Petitioner/Prosecution

... Vs ....

Sri Jayendra Saraswati Swamigal  
Kanchi Sankara Mutt  
No.I Salai Street  
Kancheepuram

..... Respondent/Accused

This petition having been taken on file on 16.11.2004 and having come on for final hearing today before me in the presence of Thiru. K. Vijerangan, A.P.P., Gr-II and Thiru. Jayakumar, Special Public Prosecutor for the Petitioner/Prosecution and Thiru. K.N. Dinakaran, Thiru. N. Sathyanarayanan, Thiru. Arun, Counsel for Respondent/Accused and having stood over till this day for consideration, the Court passed the following

**ORDER**

- 1) The petitioner being the state, Represented by Thiru. S.P. Sakthivelu, Additional Superintendent of Police, Prohibition Wing, Kancheepuram being the Chief Investigation Officer of the case in Crime Number 914/2004 on the case at Vishnu Kanchi Police Station has filed this petition praying for the grant of police custody of the Respondent/accused by name Sri. Jayendra Saraswathi Swamigal for five days.
- 2) When the court resumed its work at 10.30 a.m. on 18.11.2004 the Counsel for the Respondent filed his Memorandum of objections against the above petition.
- 3) The Respondent/accused was produced before this court at 12.45 P.M., on 18.11.2004 from the prison. The Advocates appearing for the Respondent requested to permit the respondent to have consultation with him and they were permitted. After the Respondent having consulted his Advocate, it was informed to him the purpose for which is brought that day and to which the proceedings so as to enable him to answer for the questions to be put to him.
- 4) The Chief Investigation Officer present and his sworn statement recorded. After this, I made him to cause production of the Case Diary and perused it. Therefore when the accused was questioned he replied that he has been falsely implicated by the police in this case and he is innocent and also he submitted that the police custody is unnecessary and he is unwilling to go for police custody and his health condition is normal and there is no injury on his body.
- 5) The Assistant Public Prosecutor Thiru. Jayakumar appearing for the petitioner submitted that the Hon'ble Supreme Court in State of Bihar and mother .. vs .. P.P. Sarma T.A.S., and another reported in 1992 Supreme Court Cases (1) Page 222 has stated that "the function of judiciary in the course of investigation by the police should be complementary and full freedom should be accorded to the

investigator to collect the evidence connecting the chain of events leading to the discovery of the truth viz., proof of commission of the crime.”

- 6) The Counsel for the respondent on the line of the objections filed by him submitted that the Respondent is produced by the order of this court and not forwarded as contemplated U/s. 167 Cr.P.C. and moreover on 12.11.2004 the Respondent was ordered to be kept in judicial custody till 24.11.2004 therefore, this court cannot review its own order and it is prohibited under section 362 of Cr.P.C. , He also submitted that the Respondent has stated before the Hon’ble High Court that he has nothing to do with the arrested persons, persons to be arrested, recovered monies, money spent or anything whatsoever with the alleged murder on 3<sup>rd</sup> of September, 2004. He also submitted that the police officer has not chosen to file an application praying for police custody at the time of remand and hence the present petition is an after-thought and this petition is, filed to prevent the respondent from getting the relief of bail from the Hon’ble High Court and there is nothing to be recovered at the instance of this respondent and the respondent has not made any compassion statement and also he doesn’t want to make any statement and hence the police custody is not necessary. The Counsel for the Respondent submitted that the Investigation Officer has made contradictory statements with regard to bank account and relied as the judgment of the Hon’ble Supreme Court in Gubaksh Sing ... Vs ... State of Punjab (A.I.R. 1980) Supreme Court 1632) and the Judgment of the Hon’ble Kerala High Court in M.N. Sreetharan and others .... Vs .... State of Kerala (1981 Cr.L.J. 119) and submitted that the procedure established by law for depriving a person of his liberty must be fair, just and reasonable and the accused cannot be directed to police custody by Magistrate for merely the recovery of Accounts books with regard to the money transaction and if the police want to verify the records with regard to the accounts it can be verified even with the Manager of the Mutt and even if the interrogation is necessary it can be done in the presence of the Jail Authorities, if the respondent is granted to police custody there will be unnecessary harassment, threat and inducement.
- 7) The Counsel for respondent relying on the Judgments of the Hon’ble High Court of Delhi reported in 1981 Cr.L.J.100 and 1981 Cr.L.J. 1773 submitted that once the accused is remanded to Judicial custody, he cannot be sent back to police custody in connection with or in continuation of the same investigation. Moreover the Counsel admitted that the above view has been overruled in a subsequent judgment by the same Hon’ble High Court at Delhi reported in 1982 Cr.L.J. Page 1103 in which Para 20 of the Judgement of the Hon’ble High Court, Delhi has held that the nature of custody can be altered from judicial custody to police custody vice-versa during the first 15 days mentioned in Section 167(2) Cr.P.C.
- 8) The Counsel for Respondent also submitted that the Hon’ble Allahabad High Court has stated in its judgment reported in 1985 (2) CRIMES that “after having remanded the accused person to judicial custody for certain period, as provided under Cr.P.C. that Hon’ble Allahabad High Court has stated the above view when the Magistrate after having remanded the accused person for the offences under Section 307 I.P.C. granted bail to that accused as the ground that the case was one not fit for remand.
- 9) The Counsel for Respondent submitted that the Hon’ble Supreme Court has held in C.B.I. .... Vs .... Anupam J Kulkarni reported in 1992 S.C. (Cril) 554 that the detention of the accused to judicial custody or police custody can be ordered and within the first fifteen days there can be more than one order changing the nature of such custody wither from police to judicial or vice versa. The Counsel submitted that if the Judicial Custody is granted for a shorter period at the first instance, then there from judicial custody to police custody may be ordered; but in this case judicial custody has been ordered from 12.11.2004 to 26.11.2004; hence the nature of custody cannot be altered during the period of the judicial custody which has been already ordered. I carefully perused the said judgement of the Hon’ble Supreme Court in which at para 13, the Hon’ble Supreme Court has held that “the Judicial Magistrate can in the First instance authorize the detention of the

accused in each custody, i.e. either police or judicial from time to time but the total period of detention cannot exceed fifteen days in the whole. Within this period of fifteen days there can be more than one order changing the nature of such custody either from Police to Judicial vice versa.” I humbly submit that the Hon’ble Supreme Court has not stated that the order of granting judicial custody cannot be altered and more over it has been very clearly held by the Hon’ble Supreme Court that within this period there can be more than one order changing the nature of such Custody .....” Therefore, this Court has not accepted the interpretation of the learned Counsel for the Respondent. Therefore, this Court comes to the conclusion that even the accused is initially remanded to judicial custody for a period of fifteen days at the First instance, the nature of such custody can be altered during that period.

- 10) Under Section 167 Cr.P.C., if the investigation is not completed within 24 hours of arrest, the arrested person should be produced before the Judicial Magistrate. He may be remanded to judicial or police custody so as to enable the investigating agency for further investigation. The order of judicial custody is not a judgement or a final order disposing of the same. Therefore, this court feels that the order to the police custody during the period of judicial custody is not under the purview of Section 362 Cr.P.C. If the argument of the Counsel for Respondent is accepted no Magistrate can pass an order of bail during the pendency of an order of Judicial remand.
- 11) The Counsel for Respondent relying on the judgment of the Hon’ble Supreme Court in *Nandini Satpathy ... Vs ... P.L. Dani* (A.I.R. 1978 Supreme Court Page 1028) and the judgment of the Hon’ble High Court, Madras in *Mrs. Hartley .... Vs .... State* (1983 L.W.Cr.l. page 71) submitted that the arrested person has a Constitutional Right to be defended by an Advocate and he shall be permitted to have an assistance during the interrogation. The respondent has filed another petition C.M.P. No. 5047/2004 in which he has prayed that if police custody is given his Advocate must be permitted at the time of interrogation and permit his counsel to be present at hearing distance. The Counsel for petitioner replied that if such permission is granted that will affect the purpose of interrogation and submitted that there will be no harassment during the course of investigation.
- 12) The Counsel for petitioner relying on the judgment of the Hon’ble Supreme Court in *State ... Vs Anil Sharma* (A.I.R. 1997 Supreme Court 3806) submitted that since this case is being investigated by an Additional Superintendent of Police, this court shall presume that the officer should conduct himself in such a responsible manner. The Hon’ble Supreme Court has stated at para 6 of the said judgment thus :-

Para 6) “we find force in the submission of the C.B.I. that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage is disinterring many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible Police Officers would conducted themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

He also submitted that if the accused person is permitted to have the assistance of his Advocates during interrogation then the interrogation will be merely a ritual and will greatly prejudice the course of investigation.

- 13) The Hon'ble Supreme Court has given guidelines in D.K. Basu .... Vs .... State of West Bengal (1996 (4) Crimes Page 233 – A.I.R. 1997 Supreme Court page 610, in which at para 36 (10) the Hon'ble Supreme Court has stated that “the arrested may be permitted to meet his lawyer during interrogation though not throughout interrogation.” The Respondent was remanded to judicial custody on 12.11.2004 and already 7 days has lapsed. The police officer can seek custody of the accused only within 15 days of the initial remand period.

The petitioner has stated the reason in his Affidavit why the Respondent has been produced immediately for judicial custody, after the arrest. It is acceptable one in this case. In para 19 of the judgment ( 1982 CrI.L.J.1103), the Hon'ble Delhi High Court has emphasized the importance of Section 167 Cr. P.C., as this – “we must keep in view that the object of the section is to facilitate investigation into an offence. We completely agree with Hardy J., is coming to the conclusion that the Magistrate to find out whether a good case for grant of police custody. There is no sign in the section that the nature of custody cannot be altered. In fact, experience would show that investigation would be hampered and made more difficult if the nature of the custody was not capable of alteration in the First Fifteen days”. Therefore, it cannot be stated that this application is an afterthought and the petitioner has lost his right. In this case the said period of 15 days has not elapsed. This is a case of criminal conspiracy which resulted in murder and the Investigating Officer needs the custody of the Respondent for the purpose of investigation in connection with the role played by the respondent prior to the said murder and after to the said murder.

- 14) On perusal of the records, case diary, the affidavit filed alongwith this petition, the sworn statement of the Investigating Officer, I am satisfied that there are sufficient grounds for granting of police custody of the accused and it is just and necessary for the purpose of further investigation. Therefore this court hereby order that the Respondent/accused Sri Jayendra Saraswathi Swamigal is hereby ordered to be granted for police custody from 12.05 p.m. on 19.11.2004 till 10.30 a.m. on 22.11.2004., for a period of 4 days and considering the above submissions and guidelines of judgement of the Apex Courts with regard to the assistance of an Advocate during the interrogation, this Court further orders that the Respondent may nominate and inform the Court anyone of his Advocate to visit the place of Interrogation at 4.00 p.m., everyday evening during the period of police custody for being consulted with him till 7.00 p.m. The Respondent has stated that he is a sugar patient and suffering with High B.P. Therefore, it is further directed that the petitioner shall strictly comply with the undertaking given in Para 15 of his affidavit filed alongwith this petition and check the health condition of the respondent by a government doctor everyday.

Pronounced in open court, this the 19<sup>th</sup> day of November, 2004.

Sd/-  
S.Uthamaraj  
Judicial Magistrate – I  
Kancheepuram