

In the forenoon of 03.09.2004, Thiru Sankaraman, Manager, Varadaraja Perumal Swamy Temple, Kanchipuram was brutally murdered inside the office complex of the Varadaraja Perumal Swamy Temple premises. On the strength of the complaint given by Thiru Ganesh a temple staff, the above case was registered on 03.09.2004 in Vishnu Kanchi P. S. Cr. No. 914/2004 under section 302 IPC read with 34 IPC and investigation was taken up. I was nominated as Chief Investigating Officer of this murder case, with a 29 members team which is being monitored by the Superintendents of Police of Cuddalore, Kanchipuram and Thiruvallur districts. During the course of investigation, lot of incriminating documents both hand written and photo stated were seized from the house of the deceased which disclosed a bitter and strong enmity between the Petitioner herein and the deceased Sankaraman who was earlier very close to Sankara Mutt itself. All those incriminating documents secured are duly sent to the Honourable Judicial Magistrate No. 1, Kanchipuram and the same are now available on the file of the Honourable Judicial Magistrate. These documents indicate very strong motive for the murder apart from the further materials collected by the prosecution.

3. Further investigation disclosed that the murder was perpetrated on the conspiracy hatched by the Petitioner with the hirelings and associates. On 27.10.2004, 5 persons surrendered before the XV Metropolitan Magistrate's Court, George Town, Chennai who are unconnected with the crime. The investigation has revealed that they were made to surrender to side track and mislead the investigation. Further investigation disclosed about the persons who organized the surrender drama and it further revealed that a gang from Chennai

City had perpetrated this brutal murder at the instigation and deep-rooted conspiracy hatched by the petitioner with his hirelings and associates. They have deep rooted criminal track behind them. The Investigation also revealed that prior occurrence with similar motive has also been perpetrated on one Thiru Radhakrishnan, who was a staunch follower of Maha Periyavel of Kanchi Sankara Mutt, his wife and their servant also were brutally assaulted by the henchmen who were hired at the instance of the Petitioner/First accused. The deceased Thiru Sankaraman and Thiru Radhakrishnan were ardent followers of the late Maha Periyavel Chandrasekhara Swamigal and were not liked by the Petitioner. Leaflets and pamphlets were circulated in the name of Somasekara Ganapadigal which exposed several illegal activities of the Petitioner apart from challenging the authority and supremacy of the petitioner. The petitioner having failed in his attempts to grease the palms of these followers of late Maha Periyavel resorted to intimidating tactics to toe his line. With his constant suspicion on Thiru Radhakrishnan and on the deceased Thiru Sankaraman of circulating the pamphlets and leaflets, the petitioner has conspired with his henchman and his associates to do away them, which resulted in the brutal assault on Radhakrishnan and his family members and the death of Thiru Sankaraman. Thus the Petitioner is involved in two grave crimes as the investigation so far done would reveal. It is sad the Pontiff of the Mutt has got constant touch with goondas, rowdy elements and persons of undesirable conduct and character.

4. Investigation so far carried out reveals that totally 22 accused persons are involved in the commission of this murder and out of them, 17 accused persons were arrested and remanded to judicial custody. One of the assailant has

surrendered before the Judicial Magistrate Court, Thiruvatriyur. The investigation is in early stages and most of the witnesses to be examined in this case are willing to give statement under section 164 Cr.P.C. but are afraid of threat to their life at the hands of the petitioner, as the past incidents would disclose. In the event of this Petitioner being released on bail, the said witnesses, out of fear of such assault and threat to life, will not co-operate with the investigating agency, which in turn will greatly prejudice the course of the investigation and will hamper the very rule of law.

5. I submit that there are credible information and material evidence available with the investigating agency to show that before effecting the arrest of the Petitioner, he was about to leave for Nepal and the apprehension of the prosecution that the Petitioner will flee from justice is well founded. There are sufficient materials to prove the case of the prosecution as against the Petitioner viz. pattern series of telephone calls made between the petitioner and the henchmen and his associates on the day prior to the murder and after the murder. This Honourable Court may be pleased to consider the materials and unassailable evidence collected during the course of investigations for better appreciation of this Petition. Already steps have been taken by the prosecution to seek police custody of the Petitioner. It is expected to be ordered today. If bail is granted at this stage it will prevent the prosecution from availing the statutory right given under section 167 Cr.PC. The prosecution is duty bound to exercise this power in this case to meet ends of justice. There is subtle difference between the custodial interrogation authorized under section 167 Cr.PC and the accused making himself available for interrogation after the bail being granted. The makers of law are

conscious of this subtle difference and made Section 167 Cr. PC. In short, if bail is granted at this stage the prosecution will lose the statutory rights under Section 167 Cr.PC once for all. It is like “now or never” situation. Further, huge bank transactions and disbursements of money to the hirelings at the instance of the Petitioner are to be probed. If the Petitioner is released on bail now, the opportunity for seeking custodial interrogation of the petitioner as empowered under section 167 (2) of the Code of Criminal Procedure will be denied to the prosecution, which will greatly prejudice the Investigation. The Petitioner, without moving the competent trial court, viz. the Honourable Sessions Court at Chengalpattu, has moved this Honourable Court without exhausting his legal remedy before the competent trial court.

6. I submit that the Petitioner has acted as the head of the hirelings. The prosecution has got sufficient materials to show that the petitioner before the commission of murder of the Sankaraman and after the commission of murder, had several telephone conversations with some of the accused persons who are all notorious rowdy elements and have got criminal records.

7. The Petitioner was arrested on 11.11.2004 at 10.00pm and remanded to judicial custody on 12.11.2004 at 9.00am. Many of the vital witnesses are yet to be examined by the prosecution who are the associates of the Kanchi Mutt. Already there are materials to show that the accused threatened the family members of the deceased to go out of Kanchipuram and not to give any information to press, public or police. If he is released on bail there is genuine apprehension that same threat will be issued to other witnesses.

8. Liberty of any individual is subjected to due process of law which is to be administered keeping in mind the interest of the near and dear ones, the family members of the deceased who feel helpless and believe that there is no justice in the world and also collective interest of the larger section of the society. The collective interest of the community has taken into consideration. This Honourable Court may not be unduly influenced by the concept of individual liberty disregarding the facts of this case and the material collected by the prosecution. In a conflict between social security and individual liberty, this Honourable Court need not sacrifice the security of the society at the altar of individual liberty.

9. I submit that this Hon'ble Court may be pleased to take into consideration, the fact that many of the important witnesses who are yet to be examined by the prosecution are the inmates or associates of the Kanchi Mutt who are living at the mercy of the Petitioner and are employees of the Mutt itself. I am advised to state that it is well settled legal proposition that the Court while granting bail should exercise its discretion in a judicious manner and not as the matter of course at the stage of investigation. The admissibility or otherwise of confessional statements and the merits of the evidence that may be adduced are all matters to be considered at the stage of trial.

10. I am advised to submit that paramount considerations to be taken into account while considering this Bail Application are:

- I. The nature of accusation levelled against the Petitioner, the severity of punishment in the case of conviction and the nature of supporting evidence.

II. The reasonable apprehension of the Accused tampering with the witnesses or apprehension of threat to the complainant.

III. Prima Facie satisfaction of the Court in support of the charge.

IV. Frivolity and genuineness of the prosecution and it is only the element of genuineness that has to be considered in the matter of granting bail.

V. Circumstances which are peculiar to the accused, character of the evidence and larger interest of the society.

11. I submit that placement of the first accused in the society is immaterial in such grave crimes. His position alone cannot be guiding factor in the matter of grant of bail and the same should and ought always be coupled with other circumstances warranted for grant of bail. The nature of the offence is already of the basic consideration for the grant of bail. The offence committed by the Petitioner is more heinous one under section 302 IPC, namely, calculated, well designed and gruesome murder perpetuated through rowdy elements on payment of money.

12. I am advised to submit that as it was held by the Honourable Supreme Court of India, time and again, investigating of the offence is the field exclusively reserved for the police, they are expected to exercise the power legitimately in compliances with the provisions of law. This Honourable Court may be pleased to consider the fact that the Petitioner engineered and employed persons unconnected to the crime to be produced before the Court and were made to surrender. Such being the influence, money, power and character of the Petitioner, that can be put on a machinery meant for law and order, the release of the Petitioner will not allow any sane person to

co-operate without fear during investigation. With great difficulty and due to constant arduous work by the investigation team the materials were collected. All the efforts of the investigating agency will be thwarted if the Petitioner is released on bail at this stage.

13. I submit that the Petitioner being involved in criminal conspiracy engaging hirelings and providing money for the hirelings shows the manner how he dominates the will of men with poor moral fibre. Therefore, if the petitioner is released on bail, he will resort to anything to erase the evidence or to deter evidence being placed before the Court, which comes within the ambit of likelihood of tampering and likelihood of not ensuring effective investigation. If the Petitioner is released on bail, there is every possibility of creating a non-conducive atmosphere for further investigation. Therefore, this Petitioner may not be released on bail by this Honourable Court.
14. I submit that already there were incidents as mentioned in the earlier paragraphs of this counter affidavit that there were attempts made to tamper and threaten the family members of the deceased who are cited as witnesses in this case. Therefore, keeping in view of the position and status and the influential nature of the accused, possibility of evidence collected during investigation being tampered with cannot be ruled out.
15. Under these circumstances, it is most humbly prayed that this Honourable Court may be pleased to dismiss this bail application as devoid of merits allowing the investigation to be carried out in a free and fair manner and thus render justice.

Solemnly affirmed at Chennai
this 13th day of November 2004 and
signed his name in my presence

Before me,

Advocate, Chennai

IN THE HIGH COURT OF
JUDICATURE AT MADRAS

CrI. O. P. No. of 2004

COUNTER AFFIDAVIT