

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

CrI. O.P.No.            of 2004

Sri Jaynedra Saraswathi Swamigal .....Petitioner

Vs

State by

Inspector of Police

82, Vishnu Kanchi Police Station

Kanchipuram

.....Respondent

**REJOINDER FILED BY THE PETITIONER**

The petitioner herein begs to state as follows:

1. The Petitioner has been arrayed as an accused in the above case for alleged offence u/s 302 r/w 34 IPC as could be discerned from the counter filed by the investigating officer.
2. At the outset, it is respectfully submitted that the Petitioner is innocent and has been falsely implicated. He is in no way connected with the alleged murder of Sri. Shankararaman on 03.09.2004 in respect of which a case in B2, Vishnu Kanchi Police station has been registered and is now pending investigation on the file of the respondent herein.
3. Before traversing upon various averments contained in the counter affidavit, the petitioner is advised to state that there has been a flagrant violation of Article 21 of the Constitution of India under which life and liberty of a citizen could be tampered with only under procedure established by law which is fair, just and equitable as has been laid down in a series of decisions of the Apex Court and our High Court.
4. The Petitioner is advised to state that the guarantee given under Article 21 and 22(1) of the Constitution of India has been flagrantly breached in this case besides breaching mandatory procedure prescribed in the Code of criminal procedure, circumscribing the circumstances under which arrest is to be affected, the information which is to be furnished at the time of arrest and while remanding the accused.
5. The following are the flagrant violation by the authorities:
  - a. It is respectfully submitted that the grounds of arrest were never furnished to the Petitioner when he was taken into custody at Mehboob Nagar pursuant to the warrant of arrest issued by the concerned Court at Kancheepuram nor at any time before the order of remand was made by the Learned Judicial Magistrate on 12.11.04. The Petitioner has no means of finding out whether the arrest was in execution of a warrant or under

Police powers. If the former is the case, the police are bound to show that Section 78, 79,80 & 81 of the Cr.P.C. were complied with. In the alternative, there has been a flagrant violation of Section 50 of the Criminal Procedure Code besides the Constitutional mandate enshrined in Articles 21 and 22 of the Constitution of India.

- b. The Petitioner states that he was virtually whisked away by the Police immediately after performing Puja at Mehboob Nagar on the night of 11.11.2004, when he was being attended by a number of devotees. The Police merely informed the Petitioner that he was required for the purpose of investigation or interrogation at Kancheepuram to which the Petitioner responded that he would come on his own violation and make himself available at Kancheepuram. However the Police did not accede to such a request but insisted upon the Petition being taken on a special aircraft brought by them exclusively to take the petitioner to Kancheepuram. The petitioner was neither offered legal help nor provided with a lawyer nor indeed informed his rights under the constitution and decided cases or the Honorable Supreme Court.
  - c. The Petitioner states that he was brought to Chennai airport at about 2.45 a.m. on 12.11.04 and thereafter taken in a Tata Sumo Car followed by a convoy of police vehicles and reached Kancheepuram at 4.15 a.m and made to wait in a Women Police Station. Here again without furnishing any reasons for being taken from Behboobnagar to Hyderabad or the transportation thereafter from Hyderabad to Chennai and then to Kancheepuram, where he was directed to stay put in the office of the Women Police Station at Kancheepuram. The petitioner was not allowed to meet lawyers whose presence was arranged by a well wisher of the Petitioner despite request made by the assembled lawyers and the Petitioner himself.
  - d. The Petitioner states that about at about 6 a.m. on 12.11.2004, he was produced before a Magistrate at Kancheepuram at his chambers. The remanding Magistrate did not put any questions to the Petitioner nor did he permit the lawyers who were present outside to come inside and represent his case. Though the lawyers were shouting at the top of their voice, that they should be heard before any order of remand was passed, their very entry into the Court hall (Behind Magistrate's chamber) was blocked by the Police. Therefore the order of remand was passed without hearing the Counsel for Petitioner and without giving them an opportunity for representation. The Petitioner was remanded to judicial custody by the remanding Magistrate without making the enquiries mandated by Supreme Court judgements.
6. The Petitioner specifically denies all the allegations contained in the Counter Affidavit filed by the Respondent except to the extent hereinafter specifically admitted. The affidavit is delightfully vague, devoid of any particulars and makes it impossible to disprove except by a bare denial. Illustrations of this vagueness are in para 2 about incriminating documents, para 3 avers bricking and associates and evidence establishing the complicity or Petitioner in the alleged

assault on Radhakrishnan, attempts to grease palms of some people, conspires with whom, the goonda etc. par 4-22 accused arrested or to be arrested and witnesses who are willing to give 164 statements. Para 5 Petitioner wanting to run away to Nepal. Persons to whom telephone calls were made and the dates of the calls. It is specifically denied that the Petitioner was wanting to run away to Nepal. This allegation is false, incorrect to say the last.

7. At the outset, it is submitted that even though the Counter Affidavit prefaces with the statement that "the minimum factual details of the case" are set out therein, the averments and allegations are as Vague as Vagueness could be. This is not all. Most of the crucial allegations regarding the alleged incriminating circumstances referable to the Petitioner are diametrically opposed to the submissions made by the Learned Public Prosecutor during the proceedings held on 12<sup>th</sup> November 2004. Needless to state these submissions were made in the presence of and on the instructions of high ranking Police officials including the Chief investigating Officer and his team of officials who were present in Court as referred to in the Counter Affidavit. To illustrate, the 3 basic submissions made by the Learned Public Prosecutor opposing even the temporary release are as under:
  1. Immediately preceding the alleged occurrence on 03.09.2004 and thereafter, the Petitioner made telephone calls from his cell phone to the assailants in the case who were subsequently arrested.
  2. That substantial amounts had been withdrawn from the ICICI Bank at Kancheepuram traceable to an account of the Mutt and these very notes/currencies were subsequently recovered from the actual assailants, who according to the prosecution are hired assassins.
  3. That a letter written by the deceased to the Petitioner herein was recovered from one of the assailants arrested by the Police and that the significance was that this letter contained particulars from which the location of the deceased could be fixed by the assailants.

It is respectfully submitted that the aforesaid 3 basic statements are not only incorrect statements made by the Public Prosecutor on instructions from the Chief Investigating Officer and his team present in court but that they have been so made without any basis whatsoever and purely to prejudice the mind of this Hon.'ble High Court. It is submitted that the Mutt has no account at all with the ICICI Bank at Kancheepuram and hence withdrawal of monies from the said account and subsequent disbursement to the assailants in the case is but a figment of imagination of the Prosecution and the submission made on that is highly deplorable. It is significant to note that the prosecution having realized this aspect of the matter has now chosen to conveniently omit any reference to ICICI Bank, Kancheepuram or for that matter the subsequent disbursement and recovery of currency notes, recovered from the very possession of the assailants. This would only show the anxiety of the prosecution to link the Petitioner in the crime under investigation by them.

8. As far as the conversation in the cell phone is concerned, the specific contention of the state was that the cell phone belonged to the Petitioner herein and calls were made there from to some of the assailants immediately after the occurrence. This submission was however modified and it was represented in Court that the cell phone did not belong to the Petitioner but it was the Manager of the Mutt who owned the cell phone. While answering this submission of the Learned Public Prosecutor, Defence Counsel vehemently contended that the argument of the state was fallacious and the state was called upon to prove it here and now itself. The Learned Public Prosecutor was unable to meet this challenge and merely took time to file detailed counter in this regard. It is ironic that no tangible particulars are furnished in the counter about these phone calls or for that matter the cell phone numbers. More importantly, the contention of the prosecution that the cell phone belonged to the Manager of the Mutt is also untrue and the assertion of the prosecution was denied by the defence Counsel even at the time of arguments on 12.11.2004.
9. As regards the letter of deceased which according to the prosecution was recovered from the assailants, the less said about it the better. The short point is that it is inconceivable that the Petitioner would have given such a letter to the assailant for the purpose of knowing the address of the deceased when Kancheepuram is itself a small town and the deceased was working in a famous temple. The obvious inference is that this letter was apparently been planted to create nexus between the petitioner and this alleged crime and the recovery is listed upon the arrested accused from whom it is alleged to be recovered. This material fact also does not specifically find place in the Counter. The affidavit does not even disclose whether the letter is original or copy. Copies were sent to hundreds of people.
10. If the Petitioner was arrested on a warrant issued by an appropriate Court, then the Counter is delightfully silent on the procedure required to be followed while executing such a warrant against an accused who was found at a place beyond the jurisdiction of the Court issuing the warrant. The failure to follow procedures which is apparent from the facts narrated above would make the custody illegal.
11. The Respondents have also failed to follow the norms prescribed by the Hon'ble Supreme Court in D.K.Basu Vs. State of West Bengal (AIR 1997 SC 610) . This is also apparent from the narration of the facts above and also from the counter.
12. The Respondents have acted against the Constitution of India in getting the warrant from a Magistrate which power could not be available to aid an investigation. None of the procedures required have been followed.
13. The day of the remand as also 13.11.2004 are holidays. At the time of the remand no prayer was made for police custody. Therefore the question of the order being passed that too on a Saturday, Public holiday for courts could never arise. This is very unfortunate that such false averments are being made to defeat a claim for liberty made before the highest court in the state.

14. It may be mentioned that even in the counter not a single statement is made disclosing the need for police custody. The reasons cannot be secret. Criminal rules of practice require an affidavit disclosing reasons for police custody to be filed. This also shows that the averments in the counter have been made only to defeat the rights of the Petitioner to secure his liberty by way of bail.
15. The arrest in this case in any view of the matter is unjustified. It does not justify any of the norms laid down by the Honorable Supreme Court of India to justify an arrest.
16. The Petitioner has already suffered imprisonment for 6 days. It is a common case that there had been total and full co-operation at the time of investigation. The Petitioner would abide by all or any conditions that may be imposed as a condition for grant of bail.
17. The Petitioner is 70 years old and highly diabetic, he is under constant medical supervision. Besides he is totally incapacitated from performing any of the rituals ordained upon him as the senior pontiff of an ancient mutt.
18. In the context of the facts and circumstances of the case, it is inconceivable that the Petitioner would resort to the tampering of any witnesses. In the event of his release of bail he will abide by any condition imposed by this Hon'ble Court.

It is therefore prayed to this Hon'ble Court that it may be pleased to enlarge the Petitioner on bail in Crime No. 914 of 2004 pending investigation on the file of the respondent and thus render justice.

Dated at Chennai on this the 16<sup>th</sup> Day of November 2004.

Counsel for Petitioner