

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
12.08.2021	17.08.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NOS.13396 & 13404 OF 2021

C.N.Siva Shankaran .. Petitioner in both petitions

- Vs -

The State
rep. By DSP
CB-CID, OCU-II
Chennai.

.. Respondent in both petitions

Criminal Original Petitions filed u/s 439 Cr.P.C. praying this Court to
enlarge the petitioner on bail arrested by DSP, CB-CID, OCU-II, Chennai Police
Station in Crime Nos. 1 and 2 of 2021.

For Petitioner : Mr. A.Ramesh, SC, for
M/s. Gupta & Ravi

For Respondent : Mr. C.E.Pratap, GA (Crl. Side)

ORDER

The petitioner stands implicated for the offences u/s 354, 363, 365, 366
r/w 109 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of

Women Act, 2002 and Section 8, 10, 12 r/w 17 of the Protection of Child from Sexual Offences Act, 2012 pursuant to the complaint lodged by the respective defacto complainants in Crime Nos.1 and 2 of 2021 on the file of the respondent.

2. It is the case of the prosecution that the petitioner, under the guise of a spiritual head, running a school under the name and style of “Sushil Hari International Residential School”, had behaved in an inappropriate manner with the girl students studying in the school. Based on the complaint lodged by a respective victims, who have alleged that the petitioner misbehaved with the one of the victim in the year 2015 and with the other victim later in point of time, the criminal machinery was set in motion by the registration of the case against the petitioner.

3. It is the further case of the prosecution that the petitioner was arrested on 13.6.16 at New Dehil and on the basis of the Transit Warrant, the petitioner was brought over to Chennai and remanded to judicial custody and is lodged in Central Prison, Puzhal, Chennai. It is the further case of the prosecution that in all, three complaints have been filed against the petitioner leading to registration of three cases against the petitioner for the offences supra.

4. Mr.Ramesh, learned senior counsel appearing for the petitioner submits that the whole fabric, on which the case is woven by the prosecution, smacks with *mala fide* intent, as there is no probable and plausible material implicating the petitioner with the commission of any of the offence, except for the delayed complaint by the complainants. It is the submission of the learned senior counsel for the petitioner that the complaint, leading to the registration of Crime No.1/2021 clearly reveals that the act alleged against the petitioner is said to have taken place on 18.12.2015, but the complainant has kept silent all along and only now, after a lapse of six years, on 12.6.21, has come out to lodge the present complaint. It is the further submission of the learned senior counsel that though the complainant has stated that the adverse nature and publicity was the factor, which desisted her from lodging the complaint at the first instance, even when she was 15 years of age, however, at the age of 21 years, when it is more detrimental, the complainant has come out and lodged the complaint, which falls foul. It is the further submission of the learned senior counsel for the petitioner that apart from the direct perverted attack, alleged by the complainant, by the petitioner on her, all the other allegations are mere hearsay and cannot be the basis for implicating the petitioner in the offence. It is the further submission of

the learned senior counsel that the complainant, that on her own accord, the complainant had accepted that the alleged incident is said to have taken place in December, 2015, yet she has been continually performing her dance programmes in the said school run by the petitioner more than a few dozen times after the alleged misbehaviour of the petitioner with the complainant.

5. It is the further submission of the learned senior counsel for the petitioner that even in the year 2019 after the complainant had performed her dance programme, she had given an interview, which is in the public domain, in which she had not whispered any misbehaviour of the petitioner; rather she has spoken high of the petitioner and also of the very many talents, which she had developed while studying in the school run by the petitioner. It is therefore the submission of the learned counsel for the petitioner that the complaint alleged to have been given by the complainant is not in line with the stand which she had taken in the year 2019, when she had addressed in the public domain highly about the school and the petitioner, which clearly shows that the present complaint is at the instance of vested interest and not genuine and only with a view to tarnish and malign the reputation of the petitioner. It is the further submission of the learned senior counsel for the petitioner that though the

petitioner is said to have misbehaved with the complainant as early as in the year 2015, yet till the year 2021, the complainant had not only been performing in the school, which is under the control of the petitioner, but had also spoken high of the petitioner and the school, which clearly reveals that there is a fallacy in the prosecution theory and *prima facie* it shows that the complaint against the petitioner is doubtful.

6. It is the further submission of the learned senior counsel for the petitioner that though the petitioner was arrested on the basis of the first complaint which was registered in Crime No.1/2021 which was given on 12.6.2021 and on the very same day, the complaint was given in Crime No.2/2021 also, however, in the said complaint, the arrest of the petitioner was shown on 13.7.21, though the petitioner has been in judicial custody all along and also in police custody for a period of two days. Only with a view to nullify the effect of default bail, which the petitioner would be entitled in the event of the investigating agency not filing the report within the mandatory period prescribed u/s 167 (2) Cr.P.C., the petitioner was arrested in the second complaint, which was also given on 12.6.2021, only on 13.7.21, almost a month after the initial arrest of the petitioner on the basis of the first complaint. It is therefore the

submission of the learned counsel for the petitioner that the act of the investigating agency in arresting the petitioner belatedly, inspite of the complaint having been given on the very same day clearly reveals that the act of the investigating agency is only to harass the petitioner and to negate the default bail, which would stand accrued to the petitioner on the completion of the mandatory period, as the petitioner, as on date, had completed 57 days of incarceration and on the completion of a period of 60 days, in the absence of report being filed by the investigating agency, the petitioner would be entitled for default bail. Learned senior counsel for the petitioner, drawing the attention of this Court to the decision of the Andhra Pradesh High Court in **Viswanathan – Vs – State of A.P. (2018 SCC OnLine Hyd 484)**, submitted that the non-production/non-remand of the accused in respect of similar complaint, though the accused is in custody, by means of a PT warrant, would not negate the right of the accused to default bail and that the accused would be deemed to be in custody and would be entitled to default bail in the case in which he was shown arrested initially, on completion of the mandatory period.

7. Learned senior counsel appearing for the petitioner further submitted that though the respondent had taken the petitioner into police custody for a

period of three days after filing necessary application for the purpose of enquiry, yet, the respondent have remanded the petitioner back within two days of taking into custody for reasons best known to the respondent.

8. Learned senior counsel for the petitioner further submitted that since the arrest of the petitioner and remand, the petitioner has suffered cardiac arrest thrice for which stent fixing was performed in the heart and he was also admitted in the Government Hospital for serious cardiac ailments and that the petitioner is a person, aged about 74 years, who is suffering multiple ailments and, therefore, this Court, considering all the aforesaid infirmities and the *prima facie* case in favour of the petitioner and also taking into consideration his medical condition, may enlarge the petitioner on bail by imposing any suitable condition.

9. Learned senior counsel for the petitioner relied on the following decisions in support of his contentions above :-

- i) *Johinder Kumar – Vs – State of UP (1994 (4) SCC 260)*;
- ii) *Rakesh Kumar Paul – Vs – State of Assam (2017 (5) SCC 67)*;
- iii) *Viswanathan – Vs – State (2018 SCC OnLine Hyd 484)*;
- iv) *Dataram Singh – Vs – State of UP (2018 (3) SCC 22)*;
- v) *M.Kishore – Vs – Inspector of Police (2021 SCC OnLine Mad 113)*;

vi) *Sanjay Chandra – Vs – Central Bureau of Investigation*
(2012 (1) SCC 40);

vii) *Chandrakant Vishnu Chuodhary – Vs – State of Maharashtra* (2019 SCC OnLine Bom 6961);

viii) *Uday Chand – Vs – Sk. Mohd. Abdullah* (1983 (2) SCC 417)

10. Per contra, learned Government Advocate (Crl. Side) appearing for the respondent submitted that the allegations against the petitioner are so grave that they warrant an in-depth investigation and that the petitioner being a person with rich influence, there are all possibilities of the petitioner influencing the witnesses and threatening the victims. Learned Government Advocate further submitted that the medical condition cannot be taken in aid by the petitioner for enlarging him on bail as at best the medical condition could be an additive factor only when a *prima facie* case is made out by the petitioner for grant of bail. It is the further submission of the learned Government Advocate that the manner in which investigation should be done and arrest should be made are within the contours of the investigating agency and this Court would not interfere with the investigative process so long as the same is done within the four corners of law. In this regard, learned Government Advocate submitted that the decision of the Andhra Pradesh High Court cannot be taken in aid by the petitioner, as the investigating agency, on the basis of the materials collected during investigation

with regard to the particular complaint, is well within its rights to arrest the petitioner and the petitioner cannot merely allege that the investigating agency has ill-motive against the petitioner, without showing any material whatsoever to substantiate the said plea. It is the further submission of the learned Government Advocate that though the offence in both the cases are similar in nature, yet the investigation has to be done based on the materials as is disclosed in the individual complaints and it is not within the realm of the petitioner to claim that composite investigation should be undertaken. It is the further submission of the learned Government Advocate that the statement of the victim has also been recorded u/s 164 Cr.P.C. in which the victims have categorically spoken about the perverted acts of the petitioner against them and there is a clear implication of the petitioner in the said statements and in such circumstances, this Court may decline bail to the petitioner.

11. This Court has paid its undivided attention to the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record.

12. Before proceeding to analyze the materials to come to a conclusion, whether the petitioner could be enlarged on bail on the basis of the materials available, it is to be pointed out that inspite of the digital explosion and awareness of the public with regard to the perversion that is meted out to women folk, which has spread to the nook and corner of the globe not only through the digital media, but also through the print media, yet it is lamentable that the nocturnal nature of the predators to satisfy their lust engulf the women folk.

13. The facts that have crystallised from out of the investigation leaves this Court shocked at the manner in which the common man, inspite of his intellect and faculties, is, day-in and day-out, being taken through the rigmarole of being brainwashed by the so-called persons, who, under the guise of spiritual awakening and intellectual liberation, commit perverted acts on the women folk, as is alleged in the present complaints. It is yet more shocking that such acts, of late, are being perpetrated by the so-called godmans and also teachers, who are the spiritual and intellectual minds of the common man. Yet, the said godman and teachers, unmindful of their position and the pedestal in which they are placed by the public, to satisfy their lust, prey on their devotees/students,

thereby tarnishing the image of the genuine noble minded souls, who have invested their lives for the spiritual and intellectual upliftment of the common man.

14. This Court, resonating its mind one step further, feels that the godman, under the guise of popular support from the persons at the helm of affairs and also with the support of their aides, who, in total abstinence to their normal intellect, fall prey to the guiles of the said persons, not only yield themselves, but also make other devotees yield to the evil minded acts of such persons. The act of such persons, both godman and teachers, has boomeranged to such an extent that the once noted noble profession of teachers and the divine position of godman are belittled by unscrupulous persons and the truly genuine spiritual souls have been placed under a scanner, thereby demeaning their status. The political and money power also acts as a catalyst in these persons crystallizing their evil intentions and yet maintaining their social status only due to the tendency of the common man, who, without due diligence to their intellect and intelligence fall at the feet of such persons to gain spiritual salvation and intellectual emancipation.

15. This case is one such example of how the alleged perverted acts of the petitioner, who is a self-styled godman, has created a havoc in the society, which is witnessing this incident on the heels of the incident, which was committed by certain teachers against their students. In fact, the victim has pointed out in her complaint that only due to the complaint given by a victim as to the incorrigible act committed by the teacher in the school, had given the complainant the courage to come out in the open to point a finger on the petitioner. In the present case, the allegation is that the petitioner has involved in perverted acts against his devotees, who are none else than his students in the spiritual arena. However, the petitioner, both as a godman and a teacher has indulged in these wicked acts, not only against his devotees, but equally among his students, who study under him in the schools run by him.

16. A perusal of the complaint reveals that there are pointed acts against the petitioner, which is alleged to have been done by him to the complainants. The complainants, in the said complaints, have also spoken about such acts having been perpetrated against the other students as well, which has come to their knowledge and such knowledge, being hearsay, this Court cannot touch upon the same, but regardless of the said hearsay evidence, direct allegation

made by the complainants against the petitioner pointing out his immoral and perverted acts, which the petitioner had committed against the complainants definitely requires to be considered by this Court by taking into consideration the complaints as also the statement of the victims u/s 164 Cr.P.C.

17. It is the submission of the learned senior counsel that the act alleged by the complainants have been alleged to have taken place almost five to six years back and yet the complainants were active participants in the school activities, even after their schooling and that one of the complainant has also spoken high of the petitioner in the year 2019, when she had performed some dance shows in the school premises, which speech of the complainant is in the public domain and, therefore, the present allegation made by the complainant is only at the instance of certain vested interest and, therefore, collectively seen, the allegation falls like a pack of cards.

18. However, the aforesaid argument placed by the learned senior counsel for the petitioner and material to the effect translating the speech made by the complainant in the public domain placed before this Court, which material this Court has gone through, could only safely be said that the said view of the

complainant in the public domain would in no way bolster the case of the petitioner as the material falls short of holding high the status of the petitioner. The whole speech, which is said to be in the public domain, only shows about the inputs which the complainant had received in the course of her studies in the school, which had enured to her benefit. Other than that, there is not much material, which gives a clean chit to the petitioner. Passing reference to the friendly nature of the petitioner with his students cannot be taken to mean that the petitioner has not committed any of the alleged acts. Therefore, the said material on which reliance is placed to absolve the petitioner of the imputed acts cannot gain any mileage while considering the case of the petitioner. It is not only in the complaint, the complainant has spoken about the acts of the petitioner, but even in her statement recorded u/s 164 Cr.P.C., the complainant has threadbare spoken about the acts committed by the petitioner, which are in consonance with the complaint given by her.

19. Though the complaint is attacked on the ground that the alleged acts pertain to the year 2015 and that the complainant had completed her schooling in the year 2018 and had not spoken about such acts till 2021, which casts a doubt as to the veracity of the complaint, yet it is to be pointed out that in cases

of this nature, the women folk do not come out with the sufferings that were meted out to them physically for the fear of society castigating them should also not be lost sight of. Though the delay in the complaint should also be an angle in which the investigating agency requires to probe into the matter as it cannot be said that the complaint would always be genuine and vested interests are ruled out, but delay alone cannot form the basis for negating the complaint as the societal impact on such complaints should also be kept in mind while dealing with the matter.

20. This Court also cannot lose sight of the fact that the petitioner is an influential person, a self-styled godman, as already stated, with devotees thronging around him, coming from all walks of life and also all strata of the society. It is therefore the stand of the respondent that the petitioner would exert influence on the victims and the witnesses, which would be detrimental to the investigation. The said stand of the respondent cannot be lightly brushed aside, as the petitioner, being a godman and having a large following, allowing the petitioner to walk out freely on bail, would definitely have a detrimental effect on the investigating agency in investigating the matter. Further, it is to be pointed out that the influence of the petitioner alone cannot be a bar for not

allowing him to walk out on bail, but in the case on hand, definitely there are other materials, which are equally persuasive, which *prima facie* implicates the petitioner in the commission of the offence. The mere fact that the complaint was a delayed one and that the medical complications of the petitioner are of such a nature that the allegations raised against the petitioner lacks *bona fide*, is too large an ask to be acceded to at this stage, when there are materials, which points to the complicity of the petitioner in the offence.

21. In regard to the contention of the learned senior counsel for the petitioner that inspite of complaints being filed on the same day, the arrest in the second and third cases have been shown on 13.7.21 and 2.8.21, which are done specifically for the purpose of frustrating the chances of the petitioner to come out on bail, which act of the investigating agency has been rebuked in the decision in *Viswanathan's case (supra)*, and, therefore, the petitioner is entitled to be considered for bail, more so, when the petitioner has completed a period of 57 days under incarceration and would be entitled to default bail shortly, however, it is to be pointed out that the above decision has been cited only for the purpose of default bail, which would enure to the petitioner on the completion of the mandatory period of 60 days, as envisaged u/s 167 (2) Cr.P.C.

In the case on hand, as fairly conceded by the learned senior counsel for the petitioner, the petitioner has been under remand for 57 days and the prescribed mandatory period has still not elapsed. In such a backdrop, the contention of the learned senior counsel in trying to take aid of the aforesaid decision in *Viswanathan's case (supra)* would not arise at this point of time. Therefore, this Court is not expressing any opinion on the same, but leaving the point open to be agitated by the petitioner as and when such a situation fructifies.

22. Learned senior counsel for the petitioner has drawn the attention of this Court to several decisions of the Hon'ble Supreme Court on the issue highlighting the power of the investigating agency to arrest, the incalculable harm that it would cause to the accused if bail is not granted and also on the other facets of the liberty of the accused in the matter of arrest. This Court is in respectful agreement with the ratio laid down by the Hon'ble Supreme Court in the decisions relied upon by the learned senior counsel for the petitioner. However, in the present case, the petitioner cannot draw in aid the said decisions for the reason that pursuant to investigation, arrest has been made and even subsequent to the arrest, the life and liberty of the petitioner has not been curtailed, in that the petitioner has been provided with all the necessities even in

respect of medical treatment of the highest standards at the Government Hospital, which is not even disputed by the petitioner.

23. No doubt, in the case on hand, the offences which have been mulcted on the petitioner, the punishment prescribed for the said offences range from one year to seven years, but mere period of punishment cannot be the yardstick to determine the gravity of the offence. The gravity of the offence should be viewed on the basis of the effect that the offence would have on the society at large and the mere fact that the punishment codified is within seven years cannot be the basis to assess the gravity. The depravity of the act alleged against the petitioner, more so, when the petitioner is revered not only as a godman, but also as a teacher, is of such a magnitude, that the collective conscience in which the society would view such an act should be the yardstick to assess its gravity. POCSO Act has been invoked against the petitioner, which means that the act has been perpetrated against young children, who were left at the divine abode for the purpose of gaining spiritual and intellectual salvation, but only to be pestered with the alleged ever groping alleged sexual attacks of the petitioner, which has had a telling effect, both physically and psychologically on the minds of the

tender kids. In such a background of facts, entertaining the prayer of the petitioner would not be in the interest of justice.

24. On an overall consideration of the materials placed before this Court coupled with the statement of the victims, recorded u/s 164 Cr.P.C., this Court is of the considered view that in the present circumstance, it would neither be in the interest of the investigation nor in the interest of the victims to enlarge the petitioner on bail, as the likelihood of the petitioner indulging in acts, which are detrimental to both the investigation and the victims cannot be ruled out. Therefore, this Court has no hesitation, but to negative the prayer as sought for by the petitioner.

25. For the reasons aforesaid, the present criminal original petitions praying for enlargement on bail deserve to be dismissed and, accordingly, the same are dismissed.

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26. Before parting, it is to be reiterated that of late our society has been a hapless witness to the mushrooming of self-styled Godmen and Gurus who hold out promises of deliverance or salvation to the people who look upon them for

answers for all their inner struggles, who are being driven to the point of despair and despondency. The society that is all pervasively influenced by myriad religious people, become invariably susceptible to machinisations at the hands of the phoney Gurus. The Society's collective gullibility in matters of faith come in handy for the fake Godmen and the so called spiritual Gurus for exploitation to the hilt. The reverential faith reposed in such spurious Gurus by their multitude of minions stand betrayed at the eventual exposure of their wickedness hid behind the mask of spirituality.

27. Unfortunately, in the meanwhile, many people of all age groups become victims of their own blind faith. The society need to guard itself against the attempts by such Gurus in exploiting the people's emotional dependence on external agencies/forces. Ultimately, these struggles and the trepidations of the followers whether find answers or not, perfidious spiritual Gurus, invariably end up exponentially successful in aggrandizement of their wealth, power and influence, which has a cascading detrimental effect on the common man.

17.08.2021

Index : Yes / No
Internet : Yes / No
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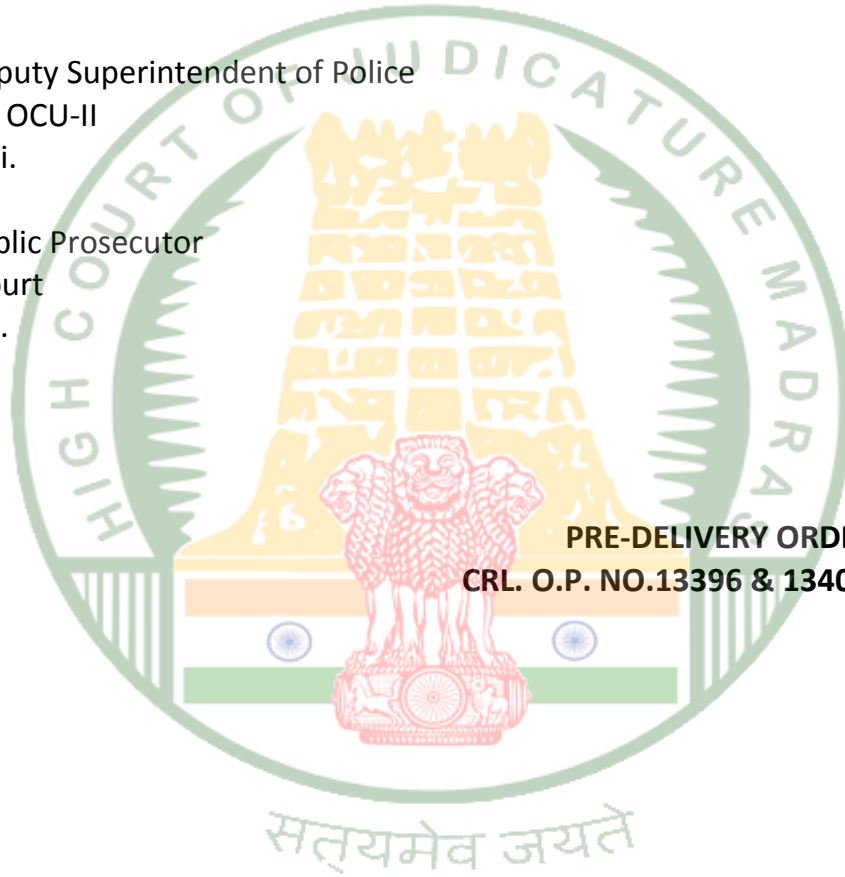
20/21

M.DHANDAPANI, J.

GLN

To

1. The Deputy Superintendent of Police
CB-CID, OCU-II
Chennai.
2. The Public Prosecutor
High Court
Madras.



**PRE-DELIVERY ORDER IN
CRL. O.P. NO.13396 & 13404 OF 2021**

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**Pronounced on
17.08.2021**