

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
( Criminal Jurisdiction )

Wednesday, the Twenty Ninth day of August Two Thousand Eighteen

PRESENT

**The Hon`ble Mrs.Justice R.THARANI**

**CRL MP (MD) No.4841 of 2018**

**IN**

**CRL RC (MD) No.312 of 2018**

GIDEON JACOB

... RESPONDENT/ACCUSED/RESPONDENT

Vs

STATE REP.BY,  
THE INSPECTOR OF POLICE,  
CBI, SCB, CHENNAI.

... COMPLAINANT/PETITIONER/  
RESPONDENT/RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to vacate the Interim stay order dated 14/06/2018 passed by this Honourable Court in Crl.M.P.NO.4327 of 2018 Crl.R.C.312 of 2018 and thus render justice.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of MR.J.ISAAC MOHANLAL, Senior Counsel for MR.K.SAMIDURAI, Advocate for the petitioner and of MR.N.NAGENDRAN, Special Public Prosecutor on behalf of the Respondent, the court made the following order:-

Heard Mr.Isaac Mohanlal, learned Senior Counsel for Mr.K.Samidurai, learned counsel appearing for the petitioner and Mr.N.Nagendran, learned Special Public Prosecutor appearing for the respondent.

2.This petition is filed to vacate the interim stay order dated 14.06.2018 passed by this Court in Crl.M.P.No.4327 of 2018 in Crl.R.C.(MD)No.312 of 2018.

3.The petitioner has filed the criminal revision petition for setting aside the order passed by the learned District and Sessions Judge, Trichy dated 24.05.2018 in Crl.M.P.No.247 of 2018.

4.A case was registered against the petitioner under Sections 120(b) r/w. 361, 368, 201, 370 and 370(A) of IPC, Sections 34 r/w. 33 and 81 of the Juvenile Justice (Care and Protection of children) Act, 2015 and Section 20 r/w. 6 of Tamil Nadu Hostels and Homes for Women and Children (Regulation) Act, 2014. The petitioner was

arrested by the respondent on 27.10.2017 for offence under Sections 120(b) r/w. 361, 368, 201, 370 and 370(A) of IPC, Sections 34 r/w. 33 and 81 of the Juvenile Justice (Care and Protection of children) Act, 2015 and Section 20 r/w. 6 of Tamil Nadu Hostels and Homes for Women and Children (Regulation) Act, 2014. The petitioner filed a bail petition before the learned Chief Judicial Magistrate, Trichy and the same was dismissed on 01.11.2017. Another bail petition was filed by the petitioner before the learned Principal District and Sessions Judge, Trichy in Crl.M.P.No.3774 of 2017 and the same was dismissed on 16.11.2017. The petitioner filed bail petitions before this Court in Crl.O.P.(MD)Nos.15909 and 17112 of 2017 and they were dismissed on 28.11.2017 and 05.01.2018 respectively. Later the petitioner was released on 'Statutory Bail' on 25.01.2018 by the learned Chief Judicial Magistrate, Trichy, after the completion of 'Statutory Period' of 90 days. The condition imposed upon the petitioner is to appear before the Investigating Officer CBI, SCB, Chennai at 10.00 a.m., and 05.00 p.m., daily and to remain at Chennai.

5.The petitioner complied with the condition from 31.01.2018 and he filed a petition before the learned Chief Judicial Magistrate, Trichy in Crl.M.P.No.306 of 2018 for the relaxation of the condition. The respondent herein filed a petition in Crl.M.P.No.371 of 2018 before the learned Chief Judicial Magistrate, Trichy to cancel the bail given to the petitioner. The learned Chief Judicial Magistrate, Trichy dismissed both the petitions. Subsequently, the petitioner filed a petition in Crl.M.P.No.608 of 2018 on 125.04.2018 before the learned Chief Judicial Magistrate, Trichy for relaxation of the bail condition and the condition was relaxed on 04.05.2018 and the petitioner was directed to sign before the CBI once in a day until further orders. Later he filed a petition in Crl.M.P.No.247 of 2018 before the learned District and Sessions Judge/Vacation Judge, Trichy for relaxation of the modified bail condition and the learned Vacation Judge, Trichy relaxed the bail condition on 24.05.2018. The CBI filed a Criminal Revision Case in Crl.R.C.(MD)No.312 of 2018 before this Court to stay the order passed by the lower Court in Crl.M.P.No.247 of 2018 and obtained the said order. This petition is filed by the petitioner herein to vacate the interim stay passed by this Court.

6.On the side of the petitioner, it is stated that on hearing the pendency of the case, the petitioner voluntarily came from Germany and appeared for the case. It is further stated that the petitioner was in custody for a period of 90 days and he was released only on 'Statutory Bail'. Even after the completion of 200 days after the arrest of the petitioner, the Investigating Agency could not complete the investigation. It is not a fit case for investigation and the copy of the report submitted by the Hon'ble Justice Mr.K.N.Basha will make it clear that the respondent is acting under misconception of facts. The petitioner has no intention to hide in Germany. The case was registered on 11.02.2016 and the investigation is going on for the past two years. On 30.11.2016,

this Court had granted nine months time to file the final report. The time has lapsed on 30.08.2017 itself. The statements of the all the witnesses were already recorded by the Investigating Officer and separate fact finding was made by the Hon'ble Apex Court. Three Judicial Officers have filed reports about all the inmates before this Court. Justice K.N.Batchu, Former Judge of this Court has recorded the statements of the inmates as per the direction of the Hon'ble Supreme Court of India. There is no question of tampering the witness. The statement of the petitioner is recorded on 26.10.2017 and 27.10.2017 and the petitioner has answered all the questions. The petitioner is not aware of the passport impounding proceedings made by the complainant. Since all the conditions were already relaxed, the petitioner booked flight ticket and return ticket for travelling to Germany. There is no intention on the part of the petitioner to escape from the clutches of law. The petitioner is advised to undergo Knee Replacement. The petitioner is aged about 63 years old and having chronic bronchitis, hyper tension and diabetes militus and chronic astero arthritis problem and therefore, it is necessary to vacate the interim stay order dated 14.06.2018 passed by this Court.

7. On the side of the respondent, it is stated that during the course of investigation, the CBI initiated Look Out Circular to take action to prevent subject from leaving India and inform Originator and LOC was opened accordingly against the petitioner herein by the Bureau of Immigration, Ministry of Home Affairs, New Delhi vide LOC Suspect No.1840512 vide No.1/SIC/ACK/2018-1028 dated 29.01.2018 and the respondent communicated to the Regional Passport Officer, Chennai vide letter dated 25.01.2018 and requested to impound the Passport No.Z-4212230 (Old Passport No.Z-1754619) of the petitioner.

8. In the meantime, the petitioner tried to escape from the clutches of law and approached the Immigration Department for his departure clearance for Flight No.LH 759 on 13.06.2018 to Frankfurt from Chennai Airport without informing or obtaining any order either from the Court or from CBI and suppressing the fact that he is on bail in the CBI case.

9. On verification, the Immigration authorities found that DRILL STATUS indicated as 'Impounded' and they came to know about the existence of criminal cases against the petitioner registered by the CBI. The petitioner was off-loaded by making an endorsement 'CWOP' - Cancellation without Prejudice in his passport. The Immigration Department forwarded the copy of the passport with the CWOP endorsement to the respondent. The respondent filed a petition incorporating the attempt made by the petitioner to leave the country and to set aside the order in CrI.M.P.No.247 of 2018 before the learned District and Sessions Judge, Trichy. Subsequently, the petitioner is appearing before the CBI Officer at 10.00a.m., from 22.06.2018 onwards.

10. On the side of the respondent, it is stated that to avoid the presence of the petitioner at Trichy, he was prayed to sign before the CBI Officer, Chennai. The condition was imposed in the Court because the petitioner was influencing the inmates and relaxing the condition will make the investigation useless. The petitioner did not turn up from Germany for 1 ½ years and only after the coercive steps taken by CBI to compel his presence, the petitioner came to India. The petitioner is not co-operating for the voice test. The petitioner tried to run away from India and prayed this petition to be dismissed.

11. On the side of the petitioner, it is stated that passport was 'Impounded' without giving notice to the petitioner. The petitioner is a NRI residing at Germany. The petitioner's wife is at Germany and she is undergoing spine surgery. The petitioner has to sign the necessary forms. The petitioner obtained the ticket to Germany and the petitioner also booked the return ticket after 13 days and there is no judicial order restraining the petitioner from travelling abroad. The period fixed for completion of investigation is already over. No revision can lie against an Interlocutory petition. The petitioner was not called for interrogation during those period. The petitioner has educated 89 orphans and they are above 20 years old now. The petitioner educated them up to 12<sup>th</sup> standard. Due to filing of this case, he was not able to educate them further.

12. The learned Senior counsel appearing for the petitioner relied on the Judgment passed by the Hon'ble Supreme Court in the case of Amarnath and Others v. State of Haryana and another reported in (1977) 4 Supreme Court Cases 137, which reads as follows:

*"While we fully agree with the view taken by the learned Judge that where a revision to the High Court against the order of the Subordinate Judge is expressly barred under sub-Section (2) of Section 397 of the 1973 Code the inherent powers contained in Section 482 would not be available to defeat the bar contained in Section 397(2).*

*The powers of revision conferred by Sub-section (1) shall not be exercised in relation to any interlocutory order passed ;in any appeal, inquiry, trial or other proceeding."*

13. It is further stated that this Court has granted time frame of nine months in its order dated 13.10.2016 and the nine months was already expired. The respondent has not filed any petition for extension of time before this Court.

14. On the side of the petitioner, it is stated that Medical Certificate of the wife of the petitioner reveals that his wife needed surgery and the signature of the husband is necessary for the surgery. The petition filed by the CBI to cancel the bail is also dismissed by this Court. The petitioner is obeying the conditions

for the past 138 days.

15. On the side of the respondent, it is stated that the petitioner is not voluntarily appearing before the CBI and only after the coercive steps taken by the CBI to compel the presence of the petitioner, the petitioner came forward to visit India. The delay in the investigation is only due to the fault of the petitioner. The petitioner is not at all cooperating for the investigation. The petitioner was taken into the Police custody for 5 days it does not mean he co-operated for investigation. The petitioner did not open his mouth at all and he was released on 'Statutory Bail' after the completion of 90 days. The petitioner is influencing the inmates and the inmates are still in the orphanage run by the petitioner.

16. The allegation against the petitioner is that he is abusing the female children and only to avoid the petitioner influencing the inmates, the conditions to appear before the CBI at Chennai is imposed. If the petitioner is permitted to leave Chennai, he may again influence the inmates and there will be further delay in the investigation process. The petitioner tried to flee from India however, he was prevented by the passport authorities. There is no need for the passport authorities to issue notice to the passport holder before impounding the passport. If the stay is vacated, the petitioner will again influence the inmates and entire investigation will be affected.

17. Records perused. It is seen that the petitioner was released on 'Statutory Bail' after the completion of 90 days custody. A condition was imposed on the petitioner to appear before the CBI at morning 10 a.m., and evening 05.00 p.m., and to reside at Chennai. Later the condition was modified and the petitioner was directed to appear before the CBI at morning at 10 a.m., later the condition was totally relaxed. The relaxation order was stayed by this Court. It is stated that the petitioner is now obeying the conditions and is signing before the CBI daily at 10 a.m.

18. Though this Court has fixed a time to CBI for investigation, the CBI has not completed the investigation within the time frame. On the side of the respondent, it is stated that the delay is only due to the non-cooperation of the petitioner. The petitioner has not consented for the voice test and the petitioner is trying to flee from India. The petitioner is also influencing the inmates and only due to the activities of this petitioner, the investigation could not be completed within the time frame.

19. The condition imposed in the bail petition is to co-operate for the investigation. But the petitioner has obtained ticket for the flight to Germany and he tried to travel to Germany. Obviously, the petitioner has not reported either to the Court or to the CBI regarding his travel to Germany. In the above circumstances, if the interim stay is vacated, there may be a chance for the petitioner to

influence the inmates. Hence, the petitioner is directed to obey the conditions till 26.10.2018 and to co-operate investigation and the respondent is directed to file a status report on or before 26.10.2018.

17.Post the matter on 26.10.2018.

sd/-  
29/08/2018

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

TO

- 1 THE DISTRICT AND SESSIONS JUDGE, TRICHY
- 2 THE INSPECTOR, OF POLICE  
CBI, SCB, CHENNAI
- 3 THE SPECIAL PUBLIC PROSECUTOR FOR CBI CASES  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to MR.M.SIDDHARTHAN, Advocate SR.No.16465

ORDER

IN

CRL MP(MD) No.4841 of 2018

IN

CRL RC(MD) No.312 of 2018

Date :29/08/2018

PK/JC/SAR-1/31.08.2018 : 6P/5C

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