

Sri Jayendra Saraswathi Swarnigal

... Petitioner

Vs.

State by
Inspector of Police,
B-2, Vishnu Kanchi Police Station,
Kanchipuram

... Respondent

REPLY FILED BY THE RESPONDENT TO THE REJOINDER OF
THE PETITIONER

I, S.P. Sakthivelu, son of V. Palaniappan, Hindu, aged about 57 years, having office at No.1, Saravana Street, Orikkai, Kanchipuram, Kanchipuram District, do hereby solemnly affirm and sincerely state as follows :-

1. I am the Additional Superintendent of Police, Prohibition Enforcement Wing, Kanchipuram, Kanchipuram District and also the Chief Investigating Officer in the team of officers formed to investigate the above case and as such I am well acquainted with the facts and circumstances of the case. I am filing this reply to the rejoinder of the petitioner. To take advantage of the judgements of the Supreme Court's "Preventive Measure" as pronounced in D.K.Basu's Case, a

belated rejoinder was filed by the petitioner with full of falsehood, knowingly that it is false. The persons who have prepared the rejoinder was not informed or not aware that the entire proceedings of the arrest has been videographed with sound track that will expose the entire falsity and drum beating of the so called "violations" and plunged them into silence. The police officers even at higher level addressed the petitioner only as "Swamiji" throughout the proceedings with folded hands and pleaded with him in soft voice. It is the petitioner who looked angry and directed his men not to acknowledge the arrest memo containing the details about the petitioner's arrest. When it was informed that the arrest of the petitioner was necessary in connection with the murder of Sankara Raman, the petitioner described him as "அவன் கெட்டவன்". All these things are visible and available.

2. I crave leave of this Honourable Court to display the Compact Disc in order to establish that the averments contained in the Rejoinder filed by the Petitioner are blatantly false. The videographing was done by one of the police officers and it displays the entire incident that took place at Mehboob Nagar, Andhra Pradesh at the time of the arrest of the Petitioner.

3. It is respectfully submitted that there is absolutely no violation of Article 21 of the Constitution of India, and the requirements laid down by the Apex Court in D.K. Basu's judgment has been fully met.

4. It is respectfully submitted that in the Rejoinder it has been repeatedly alleged that the counter affidavit is delightfully vague. Since the investigation is in progress, it is but proper that only salient features required to oppose the bail alone are indicated in the counter affidavit. It is in accordance with the dictum of the Full Bench of this Honourable Court reported in 1988 Law Weekly Criminal page 503.

5. It is respectfully submitted that only because of the resistance put forth by the Government of Andhra Pradesh for about twelve hours, as admitted by the Honourable Chief Minister of Andhra Pradesh himself and reported in newspapers and electronic media and the delaying tactics adopted by the Petitioner, the arrest could be effected only at 10.00 P.M., even though steps were taken for the arrest of the Petitioner around 10.00 A.M. itself. This eventually led to bring the petitioner by the state owned aircraft, since it will

avoid further delay in the production of him before the Magistrate.

6. It is respectfully submitted that the arrest was effected in the presence of the Junior Pontiff and the close employees of the petitioner and after explaining the rights of the Petitioner as envisaged in the judgment of the Apex Court in D.K. Basu's case. The contention that the Petitioner was not informed his rights under the Constitution and the decided cases of the Honourable Supreme Court is deliberate falsehood and the petitioner was fully apprised about his rights.

7. Since the Compact Disc will clearly establish the real truth by visual representation it is not necessary for me to refer to each and every averment contained in the rejoinder specifically in paragraph 5 (a) to (d) of the rejoinder and specifically deny the same. The respondent craves leave of this Honourable Court to play the audio tape recorded at Kancheepuram to establish that the procedures were correctly followed at the time of remand and the averments contrary to this found in the rejoinder are false.

8. It is respectfully submitted that the allegation that the remanding Magistrate did not put any questions to the Petitioner is incorrect. The remand order was passed by the Magistrate only after going through the custodial remand report which was submitted along with the Case Dairy and the learned Magistrate having gone through the same and after having been fully satisfied, issued the remand order. While doing so, the Magistrate observed duly every formality that is required in the matter. The allegation that the Petitioner was remanded to judicial custody by the remanding Magistrate without making enquiries mandated by the Supreme Court judgment is equally false. As envisaged under the illustration (e) to Section 114 of the Evidence Act, it is for the Petitioner to establish that the judicial act of issuance of remand order was not properly passed by the learned Magistrate. It is true that attempts were made by a group of people to prevent the Magistrate from passing the order of remand. However, the learned Magistrate was able to discharge his official duty in a proper manner after being fully satisfied that a case was made out with solid reasons and grounds for the remand of the Petitioner.

9. It is respectfully submitted that the averments made in paragraph 6 of the Rejoinder are untenable and incorrect. As submitted earlier, the details necessary to oppose the application for bail alone are submitted at this stage. The investigating agency is not expected to disclose anything more than this. If fuller details are revealed at this stage of investigation, it will only enable the conspirators to the murder to destroy the available evidence. The averments of the Respondent detailed in paragraph 6 of the Rejoinder would be established beyond all reasonable doubts at the appropriate stage namely trial.

10. The petitioner is not right in denying the fact that he proposed to flee to Nepal. There is reliable information regarding the plan of the Petitioner to flee away to Nepal to escape from the clutches of law. The display of the Compact Disc would also illustrate the comment of the Petitioner that instead of travelling in a Government plane he could use the private plane. This could illustrate that arranging an aircraft is no difficulty to him. In addition to the above, while the Petitioner was escorted from the place of arrest a voice in Telugu language was being heard which meant that it would have been better had he escaped. The cumulative effect of all

these would illustrate that it is indeed possible for the Petitioner to escape.

11. The above view entertained by the Police is further strengthened by the fact that a Helicopter was hired from Pune and was kept ready at the Hyderabad Airport, which on enquiry indicated that it was intended to go to Mehboob Nagar since no aircraft could land there except a Helicopter. The flight chart and flight plan obtained from the Additional General Manager, Air Traffic Control (ATC), Hyderabad could illustrate the above version. The helicopter was procured by the friend of the Mill owner at whose premises Chandramouleeswarar Pooja was performed by the petitioner.

12. It is respectfully submitted that the allegation found in paragraph 7 of the Rejoinder is incorrect and untenable. There is no deviation between the stand taken by the Prosecution on 12.11.2004 and the stand taken on 13.11.2004. The averments regarding withdrawal of funds was based on the confession of Kathiravan who is a co-accused resulting in recovery. While investigation is carried on these informations led to many revelations. Information obtained from co-accused during investigation is different from admissibility of evidence on oath before the court of law.

Further investigation revealed that huge amounts were withdrawn from Indian Bank, Sankara Mutt Branch, Kancheepuram. There are materials to show that the basic statements namely phone calls, withdrawal of amount from the Bank and disbursal to assailants and recovery of the letter of the deceased from the accused are correct.

13. It is respectfully submitted that the averments contained in paragraph 8 of the Rejoinder are incorrect. There are materials to show that the Petitioner was using cell phone and contacting undesirable elements. This is not the stage where further details in this regard can be disclosed.

14. When the Petitioner says that he had no account in ICICI Bank at Kanchipuram, he has not come out with the real truth because the Petitioner has accounts in ICICI Bank, Kancheepuram in the name of one of the Trusts associated and under the command with the Mutt.

15. It is respectfully submitted that the averments contained in paragraph 9 are incorrect. The allegation that the letter of the deceased was planted by the Prosecution is false and hereby denied. The fact remains that the last letter of the deceased addressed to the Petitioner was found in the

possession of the accused Kathiravan and the same was recovered.

16. It is respectfully submitted that the averments contained in paragraphs 10, 11 and 12 are untenable. The Petitioner was arrested in exercise of the power of the Police and not pursuant to any warrant issued by the learned Magistrate. The procedure mandated by the statutory provisions and the decisions of the Apex Court was strictly followed, which will be evident from the Compact Disc. The allegation that the dictum of the Supreme Court in D.K. Basu's case was not followed is false.

17. The allegation that the Respondent acted against the Constitution of India in getting the warrant from the Magistrate is untenable. The further allegation that all the procedures required were violated is incorrect.

18. It is respectfully submitted that the contention found in paragraph 13 is incorrect and untenable. It is up to the Prosecution to seek Police custody at any time within 14 days of the arrest.

19. It is respectfully submitted that the contention found in paragraphs 14 and 15 are incorrect. The dictum of

the Full Bench of this Honourable Court reported in 1988 Law Weekly Criminal page 503 was strictly followed. The contentions that the averments in the counter were made only to defeat the rights of the Petitioner to secure his liberty by way of bail is incorrect and hereby denied.

20. It is respectfully submitted that the contentions made in paragraph 15 of the Rejoinder that the arrest is unjustified is incorrect. Only after being thoroughly satisfied that the arrest is absolutely essential the Petitioner was arrested.

21. The Supreme Court in 1993 Supreme Court Cases (Criminal) page 1171 (Union of India and another Vs. W.N. Chadha) has, in paragraphs 80 and 81 clearly laid down that the principle of audi alteram partem has no place at the stage of investigation and remand.

22. It is respectfully submitted that there are no merits in the contentions found in paragraphs 16 to 18 of the Rejoinder. There is absolutely no justification to release the Petitioner on bail. As stated in the counter affidavit, if the Petitioner is released on bail, the witnesses will be intimidated and likely to be tampered.

23. It is respectfully submitted that there are absolutely no merits in any of the contentions found in the Rejoinder and they are liable to be rejected.

24. Under these circumstances, it is most humbly prayed that this Honourable Court may be pleased to dismiss the above application for bail and thus render justice.

S.P. Saktivelu
 (S.P. SAKTIVELU)
 ADSP, ADW., KPM
 (Chief Investigation Officer)

Solemnly affirmed at Chennai on this the 17th day of November, 2004 and signed his name in my presence.

BEFORE ME

ADVOCATE, CHENNAI

Crl. O.P. No. 35490 of 2004

Sri Jayendra Saraswathi

Petitioner

Vs.

State by
Inspector of Police,
Vishnu Kanchi Police Station,
Kancheepuram

Respondent

COUNTER AFFIDAVIT TO THE AFFIDAVIT FILED BY
N.SUNDARESAN

I, S.P. Sakthivelu, son of V. Palaniappan, Hindu, aged about 57 years, having office at No.1, Saravana Street, Orikkai, Kanchipuram, Kanchipuram District, do hereby solemnly affirm and sincerely state as follows :-

1. I am the Additional Superintendent of Police, Prohibition Enforcement Wing, Kanchipuram, Kanchipuram District and also the Chief Investigating Officer in the team of officers formed to investigate the above case and as such I am well acquainted with the facts and circumstances of the case.

2. With reference to the averments contained in paragraphs 1 to 4, it is respectfully submitted as follows :-

3. As far as the averments that the Petitioner did not express any resentment or hatred against the deceased is false and hereby denied. The allegation that the Petitioner is a person of abundant compassion and takes no notice of any comment on him is incorrect. The display of the Compact Disc took at Mehboob Nagar, Andhra Pradesh will clearly establish that the Petitioner had grievance about the comments made by the deceased Sankara Raman against him. The Petitioner has told categorically that the said Sankara Raman gave him trouble and lowered his prestige.

4. It is respectfully submitted that the allegation that the deponent Sundaresan was kept in the Police Station is incorrect. He offered to come and waited in the Police Station for the Petitioner to arrive and to render personal services to the Petitioner. In fact the deponent rendered personal services to the Petitioner when he arrived.

5. It is respectfully submitted that the averments contained in paragraph 5 of the affidavit are incorrect. The allegation that the deponent Sundaresan was asked to remove the rings, chain, watch, etc. and hand them over to one Mr. Viswanathan is incorrect. The deponent was at no point of time arrested. As stated earlier, coming to know that the

Petitioner was arrested, he himself offered to wait in the Police Station to render personal services to the Petitioner.

6. It is respectfully submitted that the allegation that the deponent was kept in the office and he was not allowed to move out is false and hereby denied. The allegation that the deponent was not permitted to call his lawyer is also incorrect since he was not confined against his wish.

7. Many of the averments contained in the affidavit of Sundaresan are based on hearsay and therefore no reliance could be made on them. It is respectfully submitted that no credence may be given to any of the averments found in the affidavit of Sundaresan and this Honourable Court may be pleased to reject the same outright and thus render justice.

S. P. Saktivelu
 (S.P. SAKTIVELU)
 ADSP, P.W., KDM
 (Chief Investigation Officer)

Solemnly affirmed at Chennai
 on this the 17th day of
 November, 2004 and signed
 his name in my presence.

BEFORE ME

ADVOCATE, CHENNAI

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Crl. O.P. No. 35490 of 2004

in

Crime No. 914 of 2004
(Vishnu Kanchi Police Station)

Sri Jayendra Saraswathi Swamigal

... Petitioner/ 1st accused

Vs.

State by
Inspector of Police,
Vishnu Kanchi Police Station,
KANCHIPURAM
(Investigation Officer – Special Duty)

... Respondent/Complainant

COUNTER AFFIDAVIT FILED TO THE AFFIDAVIT FILED BY
Y.THIYAGARAJAN

I, S.P. Sakthivelu, son of V. Palaniappan, Hindu, aged about 57 years, having office at No.1, Saravana Street, Orikkai, Kanchipuram, Kanchipuram District, do hereby solemnly affirm and sincerely state as follows :-

1. I am the Additional Superintendent of Police, Prohibition Enforcement Wing, Kanchipuram, Kanchipuram District and also the Chief Investigating Officer in the team of

officers formed to investigate the above case and as such I am well acquainted with the facts and circumstances of the case.

2. With reference to the averments contained in paragraphs 1 to 5 of the Affidavit of Thiru. Thiyagarajan, it is respectfully submitted as follows :-

3. The allegation that the J.M.M., Kanchipuram was waiting in his chamber from 3.30 A.M. is false. Since huge crowd collected and the smooth functioning of the Court was likely to be disturbed, it became necessary for the learned Magistrate to sit in his chamber and examine the Petitioner and issue the order of remand after perusing all the materials and after subjectively satisfying himself.

4. It is respectfully submitted that the averments that the deponent was not permitted to discuss the matter with the Petitioner at the time of remand is false. He had access to the Petitioner and in fact he had discussions with the Petitioner. The further allegation that by the time the deponent entered the chamber, the learned Magistrate was filling the application in green ink is false.

5. It is respectfully submitted that the averments contained in paragraph 7 are incorrect. The allegation that the Inspector of Guduvancheri was standing behind the learned Magistrate with a revolver in his waist is false and denied. It is unfair on the part of the Advocate to make such an allegation belatedly after much water has flown under the bridge. It is sad that the lawyer has stooped to the level of attributing allegation of intimidation of the learned Magistrate.

6. It is respectfully submitted that the averments contained in paragraph 8 of the Affidavit are false and incorrect and denied. The allegation that the learned Magistrate refused to receive the petition and urged the deponent to make oral submission is false. The uncharitable remarks made by the deponent who is a practicing lawyer against the learned Magistrate who is a Member of the Judiciary are contrary to the principles laid down by the Supreme Court in 1993 Supreme Court Cases (Criminal) page 1171 (Union of India and another Vs. W.N. Chadha). In paragraphs 80 and 81 of the said judgment, the Apex Court has clearly laid down that the principle of audi alteram partem has no place at the stage of investigation and remand. In fact

the Apex Court has laid down that to insist upon the application of the rule of audi alteram partem at this stage will defeat the ends of justice.

7. It is respectfully submitted that the allegation that the remand report was snatched by the Police officer and returned afterwards is false and hereby denied. The allegation that the remand report or any other document was not read over or furnished is false.

8. It is respectfully submitted that in spite of the fact that the deponent is a practicing Advocate, he has chosen to make such frivolous, untenable and reckless allegations against the Presiding Officer only with the object of helping the Petitioner and getting him out on bail somehow or other. It reflects neither the professional decorum nor a minimum decency expected of a lawyer. If necessary, Honourable Court may be pleased to call for a report from the learned Magistrate to find out the veracity of the allegation made by the said Advocate.

9. It is respectfully submitted that the averments contained in paragraph 9 of the affidavit are false. The allegation that the Petitioner could not exercise the right of

consultation with the lawyer after his remand and before boarding the van is false and denied.

10. It is respectfully submitted that if a report is called for from the learned Magistrate, the fact that the deponent has come forward with utter falsehood will be exposed. The tenor of the Affidavit strikes at the very root of the majesty of law warranting suo motu action by this Honourable Court to punish the deponent for contempt of Court.

11. It is respectfully submitted that the very fact that the deponent did not raise his little finger from 12.11.2004 till 16.11.2004 and only now he has come forward to make such violent allegations would clearly establish that the deponent is bent upon supporting the Petitioner with ulterior motive without any regard for the truth.

S. Saktivelu
(S.P. SAKTIVELU)
ADDP, P.W. KPM
Chief Investigation Officer
BEFORE ME

Solemnly affirmed at Chennai
on this the 17th day of
November, 2004 and signed
his name in my presence.

ADVOCATE, CHENNAI

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Crl. O.P. No. 35490 of 2004

Crime No. 914 of 2004
(Vishnu Kanchi Police Station)

Sri. Jayendra Saraswati Swamigal ... Petitioner/1st Accused

Vs.

State by the Inspector of Police
Vishnu Kanchi Police Station
KANCHIPURAM

(Investigation Officer – Special Party) ... Respondent/Complainant.

AFFIDAVIT FILED BY Y. THYAGARAJAN

I, Y. Thyagarajan, S/o Y. Chandrappa Naidu, Hindu, aged about 59 years, residing and practicing as an Advocate at Kanchipuram Town, Taluk and District, having temporarily come down to Chennai, do hereby solemnly affirm and state as follows:

1. I am a practising Advocate at Kanchipuram for the past 37 years.
2. I am one of the Advocates who was present at the time of remand of the above prisoner, Sri. Jayendra Saraswati Swamigal before the J.M.1 of Kanchipuram on 12.11.2004.
3. The Senior Counsel, Mr. K.S. Chellappa, who is also the Srikaryam and Agent of Kamakshi Ambal Devasthanam rang me up late night that there is disturbing news of Sri. Jayendra Saraswati Swamigal having been arrested in Mehboob Nagar, Andhra Pradesh and that he would be airlifted to Madras and remanded to prison or Police custody at Kanchipuram and that we may

have to oppose the remand on legal, health and his food, religious prayer requirements, etc. He met me along with Advocate, Mr. A. Shanmugam.

4. I state that thereupon, with such information furnished by Mr. K.S. Chellappa who personally knows Sri Jayendrar and in view of the past press statements and interviews of Sri Jayendrar denying any connection or involvement in the above case, we have drafted an omnibus petition on general lines of defence and rush to the Court of Judicial Magistrate by about 3.30 a.m.

5. I found that the entire Taluk Office was barricaded and on disclosing our identity, we were allowed to reach the Court. By that time, the entire Court staff, including the J.M. 1, Kanchipuram was waiting in his chambers. We waited in the Court Hall since then, expecting the Magistrate to sit in the Court Hall. After a long wait, by about 6 a.m., Sri Jayendra Saraswati Swamigal was brought in a van with heavy police escort occupied by high ranking police officials.

6. We were expecting him to be produced in the Public Court Hall and the Magistrate to sit there. To our shock and sudden surprise, the police have whisked away Sri Jayendra Saraswati Swamigal into the chambers of the Magistrate and the Police blocked entry to any person. In spite of the fact that we were in our robes at the odd hours at least for the sake of identity, the police did not permit us to meet Jayendra Saraswati Swamigal before he was taken into the chambers of the Magistrate. Thereupon, I had to vehemently pleaded and raised my voice stating that the police had no right to block the access to the Court or the chamber of a Magistrate when judicial acts are performed. With great difficulty, a few minutes later, we had to

literally sneaked through the Police blockade imposed outside the chambers of the Magistrate. By that time, the learned Magistrate was filing a warrant with green ink.

7. As I went and complained to the Magistrate regarding the blockades of entry to his chambers, he asked me not to make an issue and proceeded further in filling up the warrant. I thereupon in fact presented a petition and wanted to argue for opposing remand either to Judicial custody or police custody. Sri Jayendra Saraswati Swamigal was seated in a corner of the Chamber on a bench at a distance of about 10 to 12 feet from the Magistrate. In the chambers, there were about 5 to 6 high ranking Police Officials, including Mr. Sakthivel who I came to know later to be the Chief Investigation Officer. One of the Police Officers behind the Magistrate who is said to be the Inspector of Guduvancherry was having a revolver in his waist.

8. The Learned Magistrate said, "Why a Petition now, you may make oral submissions" and that he would consider them after finishing the formalities of filling up warrant etc. I was disturbed and said that it may not be legal and there is no meaning in hearing me later. The Learned Magistrate chided me for my pressing for hearing, stating by that, he is unable to properly fill up the warrant and he has written on the top what he should have done downwards. I was on my legs continuously addressing the Learned Magistrate that the nature of arrest and the manner of remand being done is illegal and at odd hours. In fact, I heard the press was raising its tone outside at a distance of about 60 to 70 feet as to why the press is not permitted to cover the proceedings and whether the proceedings are held in camera. I also stated that there are no other materials before the Magistrate than a remand report for remanding the prisoner. The Learned Magistrate

was carrying on his work of filling up the warrant in discussion with his head clerk. I have been fervently requesting the Magistrate to consider my petition for providing at least his basic requirements for performing puja and to keep him in any hospital outside the prison on grounds of his age and health. The Learned Magistrate directly asked Sri Jayendra Saraswathi Swamigal as to whether he is a diabetic patient. He replied in a faint voice obviously being tired with closed eyes that he is indeed a diabetic and a heart patient. Thereafter, the Learned Magistrate said he would endorse on the back of the warrant directing a check up and giving medicines inside the prison. When I asked whether the police are requesting for a Police custody, the reply was **No** in chorus by the Learned Magistrate and the Police present in the chambers. Regarding my request for considering hospitalization and making arrangements for his puja in the way a pontiff is accustomed to, the Learned Magistrate said that he would call my petition on 16.11.2004 and directed me to meet the jail authorities for such demands and also stated that if they refuse, he said he would consider them on 16.11.2004. After finishing the remand formalities including the signing of the warrant which was literally pulled by the Police from the hands of the Learned Magistrate, the Magistrate wanted the remand report with some endorsement made by him, to be signed by Sri Jayendra Saraswathi Swamigal. Mr. Saktivel, the Superintendent of Police, went to Sri Jayendrar and wanted to know the name of his father which was revealed to him, who in turn revealed to the Magistrate. When I was asked by the Magistrate to get his signature, Sri Jayendrar said that he is not in the habit of signing any papers and Mutt seal alone used to be affixed on his behalf. The Learned Magistrate took the

remand report back from the Police Officer. No remand report or any other document was read over or furnished to any, either to Jayandrar or to us.

9. I state that immediately, Sri Jayendrar was taken out of the chambers. Even while I was on my legs pressing for some order on my petition, I and another Advocate, Mr. A. Shanmugam, came out to reach Sri. Jayendrar for any instructions. Sri Jayendrar, while being escorted to the van after remand in the presence of the Police officials could utter only one sentence in passing that the case is a fabricated one and he is falsely implicated and harassed like this with the sole view to damage the reputation of his and his Mutt by various forces. I affirm that we could not exercise our right of consultation with Sri Jayendrar before his remand or exercise the same effectively after his remand before boarding the van.

I swear the same on oath.

Solemnly affirmed at Chennai this
the 16th day of November 2004
and signed his name in my
presence.

BEFORE ME.

ADVOCATE.

5th & Last Page.

Corrns.

Cri.O.P.No

of 2004

Sri Jayendra Saraswathi Swamigal

... Petitioner

-Vs-

State by

Inspector of Police,

B.2, 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 offences 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 3/9/04 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 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 effected, the information which is to be furnished at the time of arrest and while remanding the accused.

5. The following are the flagrant violations 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 11/11/04, 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 volition and make himself available at Kancheepuram. However the Police did not accede to such a request but insisted upon the Petitioner 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 of the Honourable Supreme Court.

(c) The Petitioner states that he was brought to Chennai airport at about 2.45 AM 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 AM and made to wait in a

Women Police Station. Here again without furnishing any reasons for being taken from Mehboobnagar 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 AM 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 (learned 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 of 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 least.

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 12th 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 realised 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 has apparently been planted to create nexus between the petitioner and the alleged crime and the recovery is foisted 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 to on a Saturday, a 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 satisfy any of the norms laid down by the Honourable 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 16th Day of November 2004.

Counsel for Petitioner.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Crl. O.P. No.

of 2004

Sri Jayendra Saraswathi

Petitioner

Vs.

State by Inspector of Police
Vishnu Kanchi Police Station
Kancheepuram

Respondent

AFFIDAVIT OF N.SUNDARESAN

I, N.Sundaresan, S/o. Natesa Sastrigal, Hindu aged about 67 years, working at Sree Kanchi Kamakoti Peetam, Kanchipuram, now come down to Chennai, do hereby solemnly affirm and sincerely state as follows:-

1. I am the Manager of Sree Kanchi Kamakoti Peetam since 1994. I was appointed as Manager by the earlier Pontiff Sri Sri Paramacharya. He attained Samadhi soon after I took over. I have continued to work in the same capacity from then and till date. I knew the deceased Sri Sankararaman as an occasional visitor to the Mutt. He came to my particular notice when in the year 2001, 7 years after the Samadhi of Paramacharya, when he filed a Writ Petition challenging the decision of the present Sankaracharya, the Petitioner herein to proceed to China. The Petitioner had been to Manasarovar earlier. The deceased made a very strange argument that Swamiji in visiting china was committing a breach of the ancient traditions of the Mutt. The petition was dismissed. As far as I remember, in the year 2002 I had started receiving copies of letters addressed to the Petitioner making some frivolous allegations. These

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copies were sent to many others and were freely circulating amongst the members of the public. As far as I remember, about 12 such letters were received and the last one was received 3 months back. As usual a copy was sent to me and another copy was sent to Sreekaryam and Agent and the original was addressed to the Petitioner. By this time we had got so used to these letters and nobody used to consider them seriously. The Petitioner had not at any time expressed any resentment or hatred against the deceased. He is a person of abundant compassion and takes no notice of any such attacks. Not one of the letters was replied to.

3. In the usual course the Petitioner had left the Mutt in Kancheepuram for his usual religious performances and duties on 23-9-2004. After visiting some other places he had landed in Mehboob Nagar on the afternoon of 10th November 2004. Between the 3rd of September 2004 and 23rd of September 2004 the Police never visited the Mutt nor did they attempt to contact either the Petitioner or me. For the first time the Police called me on 29th September at about 9:00 A.M. They kept me in the Police Station for about 3 hours in the morning and another 2 hours in the evening. I gave them whatever information they wanted. No question of any kind was put to me either about a cell phone or a bank account or withdrawal or anything remotely suggesting the complicity of the Petitioner with the occurrence of murder on 3rd September 2004.

Aswathdhasan

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4. The Accountant of the Mutt was called on the next day. I learnt from the said Accountant Mr.R.Vishwanathan that they questioned him about the accounts of the Mutt. They also asked copy of the Bank statement which was supplied to them. No question of any kind was asked about withdrawal from the bank. I do not know whether my statement or the Accountant's statement was recorded. None was read over to him or me.

5. At about 00.45 A.M on the night between the 11th and the 12th of November I was summoned to the Police Station. 15 or 16 Police Officers came to take me there. I was told that the petitioner was coming to Chennai and I am to arrange for a vehicle for him to come to Kanchipuram. I told them that this is not necessary as prior arrangements would have been made if the petitioner is coming to Chennai. A few minutes later, they told me that I have to come to SP's Office as SP would like to see me. I told them that at this odd hour, it is not possible for me to come for seeing the SP. Again, a few minutes later, they told me that they will take me to Chennai Airport as the petitioner is very keen that I should meet him at the Airport. Then, I relented and procured the driver and one Police Officer sat with me in the car. Instead of driving in the direction of Chennai, they took me near Superintendent's Office on the pretext that the Superintendent of Police wanted to see me before leaving for the Airport. At the Superintendent's Office, they detained me and did not allow me to go to the Airport or Chennai. At that place, I was told that the Petitioner was arrested at Mehboob Nagar and that he is being brought to Chennai Airport. The vehicle and the driver also remained there. They told me that I am also arrested and made entries in a register. I was asked to remove my rings, chain and watch and hand over the same to Sri. Viswanathan. To my query, they said that no arrest warrant is necessary in such cases. I was detained and in the morning when they offered

Gandhadasan

me some coffee, I told them that I will not take anything until I have taken bath and said my prayers. They did not allow me to leave. They only allowed me to send for necessary articles from home. They permitted me to ring up my wife who sent whatever I needed for my bath and oblations. I was kept in their office like this without any liberty of movement upto 6 P.M. in the evening. I wish to make clear that about 10.30 A.M. I was shifted from that place to the regular Police Station. Throughout the night I asked for permission to call lawyer, but they refused permission. During this period accountant Vishwanathan was also detained with me and I asked him to contact Mr.Tyagarajan Advocate, kanchipuram and Advocate K.P.Ananthakrishna in Chennai. They heard this and not only prevented Viswanathan from making the Telephone calls but also seized my cell phone, for which they neither prepared any document nor gave any receipt. Early morning Viswanathan was released. I am now informed that Mr.Thyagarajan remained present in the Magistrate's court. I had later learnt that persons who were accompanying the Petitioner had got in touch with lawyers in Chennai and requested them to render legal assistance to the Petitioner. In consequence of this many lawyers including Senior Advocate T.R.Rajajagopalan, S.Balasubramaniam, A.Ramesh and G.M.Subramaniam were present at the Airport but their efforts at speaking to the Petitioner and taking instructions from him or otherwise helping him in his defence proved futile. Since I was in custody at 6 A.M. I do not personally know what happened in the Magistrate Court.

In the circumstances, I submit that the arrest of the petitioner is illegal and pray that the present petition be allowed as prayed for, thus rendering justice.

Solemnly affirmed at Chennai
on this the 16th day of November 2004
and signed his name in my presence

AO W. A. / W. A. S. AO

Before me
Advocate, Chennai

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CrI. O.P. No. 36748 of 2004

in

F.I.R. No. 914 of 2004
(on the file of the Respondent Police)

Sri Jeyendra Saraswathi Swamigal,
Kanchi Mutt, Kanchipuram. ... Petitioner/Accused

-versus-

The Inspector of Police,
B-2 Vishnu Kanchi Police Station,
Kanchipuram ... Respondent

COUNTER AFFIDAVIT FILED ON BEHALF OF
THE RESPONDENT

I, S.P.Sakthivelu, son of V.Palaniappan, Hindu, aged about 57 years, having office at No.1, Saravana Street, Orikkai, Kanchipuram, Kanchipuram District, have now temporarily come down to Chennai do hereby solemnly affirm and sincerely state as follows:

1. I am the Additional Superintendent of Police, Prohibition Enforcement Wing, Kanchipuram, Kanchipuram District and also the Chief Investigating Officer in the team of officers formed to investigate the above case and as such I am well acquainted with the facts and circumstances of the case.

2. I perused the above Petition and deny all allegations found therein excepting those that are specifically referred to and admitted herein.

3. It is respectfully submitted that there are absolutely no merits in the above application.

4. It is respectfully submitted that the present application filed under Section 439 of the Code of Criminal Procedure is not maintainable.

5. It is respectfully submitted that none of the grounds raised in the Bail Petition is sustainable.

6. It is respectfully submitted that the averments contained in ground No.5 of the Bail Petition are incorrect and untenable. The allegation that Thiru N.Sundareshan was kept in the Police Station for three hours in the morning and another two hours in the evening on 29.09.2004 is false and hereby denied. The further allegation that Thiru Sundareshan provided all such information as was required from him by the Police is false. The question of asking about cell phone conversation or bank account of the Mutt and withdrawal of monies from the bank did not arise at that stage.

7. It is respectfully submitted that the allegations in ground No.6 are incorrect and untenable. The allegation that the Petitioner could never flee from Mehboob Nagar is untenable. According to the Prosecution, to enable the Petitioner to escape,

a helicopter was stationed at Hyderabad with flight schedule for Mehboob Nagar. At no point of time it was alleged by the Respondent that the Petitioner would flee along with his commandos. These issues are mere repetition of what was alleged while disposing of the earlier bail petition. Hence these issues cannot be raised at this second Bail petition on the principle of issue in estoppel. These allegations cannot be permitted to be repeated again and again, since they were already raised and answered.

8. With reference to ground No.7 it is respectfully submitted that apart from the confessional statements of Kadiravan and Rajini @ Chinna, there are other materials which clearly establish the involvement of the Petitioner in the conspiracy and hiring of assassins to murder Sankararaman for monetary consideration.

9. The averments contained in ground No.8 are incorrect. The Petitioner took a specific stand that there is no account in Kanchipuram Branch of ICICI Bank in which the Mutt is interested. However, on behalf of the Prosecution, sufficient proof was produced to substantiate the fact that the Mutt is having about ten accounts in various names of the Trusts which are under its control in the Kanchipuram Branch of ICICI Bank. The contention that the stand taken by the Prosecution was ambivalent at different stages is incorrect. The contention that it is inconceivable that merely because the deceased had been criticising the Petitioner, the later would resort to engaging the

services of contract-killers to do away with the deceased is untenable. The deceased was making allegations not only regarding the management and affairs of the Mutt but also threatened to expose the personal conduct of the Petitioner which was unbecoming of an Acharya (sanyasi) which, even according to the Petitioner, hurt his feelings and lowered his image in the estimate of public.

10. In this connection it will not be out of place to mention that there are materials to show that the Petitioner was in the habit of talking to a deserted woman by name Usha at Sri Rangam during early morning hours. The conversation used to last even for 900 pulse units. She had been provided with free quarters to stay. Substantial sums of money had been periodically transferred to her through Bank. She has withdrawn the entire money from her account and she is absconding. Therefore the Petitioner had every reason to believe that his misconduct would be exposed by the deceased Sankararaman. Apart from the above, her involvement in the conspiracy and other allied matters are being probed since the Petitioner was regularly speaking to her before and after the incident, apart from transmission of funds. The extent of her involvement in the crime also has to be probed further in the light of materials available.

11. The said deceased continued his mission of exposure of the petitioner in a zealous manner by filing a Writ Petition, by seeking accounts of remaining 65 kgs. of gold imported for making Golden Chariot to which only 35 kgs. was

utilised and the remaining 65 kgs. gold remain unaccounted, creation of various Trusts doing commercial activities than in concentrating on Vedic and Godly affairs, presence of women in the Mutt after 10.00 P.M., extravagant life lead by the relatives of the Pontiffs. He went on protesting that the Mutt has indulged in various kinds of activities and drifted away from the path of Holy Peetathipathis and in particular taking a different path from that of the earlier Pontiff.

12. With reference to ground No.9, it is respectfully submitted that the earlier Bail Application was resisted not only on the ground that custodial interrogation of the Petitioner was necessary but also on various other valid grounds. There was need for getting extension of the Police custody beyond 22.11.2004 to complete the interrogation on the basis of new incriminating materials collected. However the same was denied by the learned Judicial Magistrate. Merely because Police custody was not granted, further it cannot be contended that investigation is over and the Petitioner is entitled to come out on bail. The fact remains that two main accused are still at large.

13. The averments contained in ground No.10 of the Bail Petition are incorrect and untenable. The contention that there is no more justification for keeping the Petitioner under incarceration is incorrect. The further contention that there is no possibility of the Petitioner resorting to any act by which the free investigation in the case would be impeded is false and hereby denied. The medical need of the Petitioner is properly taken care

of by the jail authorities and there is no justification in seeking bail on this ground.

14. Regarding ground No.11, it is respectfully submitted that this Honourable Court was pleased to consider all the grounds now raised at the time of hearing the previous bail application and all such grounds were rejected by this Honourable Court. The Petitioner is not justified in raising those grounds once again in the present application merely because this Honourable Court was pleased to observe at the end that the bail application was dismissed "at this stage".

15. It is respectfully submitted that the contentions found in ground No.12 are incorrect and untenable. There is absolutely no change in the circumstances which would entitle the Petitioner to prefer a second bail application. The refusal to order the application of the Prosecution for extending the Police custody will not enable the Petitioner to seek an order of bail.

16. It is respectfully submitted that the fact that two of the accused viz., Kadiravan and Rajini @ Chinna who have rescinded from their original stand itself will prove that grant of bail to the Petitioner will result in tampering with evidence. Kadiravan was sent to jail on 19.11.2004. Several Advocates met him after his confession under Section 164 Cr.P.C. was recorded and before he gave retracted statement before the learned Magistrate on 24.11.2004. The details of the Advocates who met Kadiravan are as follows:

| S.No. | Date | | Name of Visitor |
|-------|------------|-----|---|
| 1. | 22.11.2004 | (1) | Salomon Francis Advocate, High Court, Chennai. |
| 2. | -do- | (2) | R. Kumaran, |
| 3. | -do- | (3) | R. Vikram Advocates, High Court, Chennai. |
| 4. | 23.11.2004 | (1) | Darwin Wisdom, |
| 5. | -do- | (2) | T. Gandhiraj Advocates, Chennai. |
| 6. | -do- | (3) | Salomon Francis |
| 7. | -do- | (4) | M. Nirmal Kumar |
| 8. | -do- | (5) | R. Kumaran, Advocates, High Court. |
| 9. | 25.11.2004 | (1) | M. Nirmal Kumar |
| 10. | -do- | (2) | R. Kumaran, Advocates, High Court, Chennai. |

His elder sister Shanthi and his uncle Malai Alangaram met Kadiravan on 23.11.2004. Again his elder sister Shanthi met him on 26.11.2004. However, in his retraction statement before the learned Magistrate, he had falsely said that no visitor was allowed to meet him and the only visitor permitted to meet him was his elder sister Shanthi, ~~that too only on 26.11.2004~~. The letters written by Advocates addressed to the jail authorities for arranging interview is sufficient to indicate their meetings with the accused. It is further submitted that as per investigation,

it has been revealed that the accused was made to retract his confession on the advice given to him during two consecutive days which has made him go back from his earlier version before the Judicial forum by way of confession. The Prosecution has got sufficient material to indicate how it was retracted.

17. As far as the conspiracy angle is concerned, the Prosecution has got credible and unassailable material evidence available through witnesses who speak about the meeting of minds between A-1 and other accused involved in the crime. If this Honourable High Court so feels such material available with the Prosecution as revealed by witnesses can be produced that would speak volumes against A-1 to A-4 who are very much and deeply involved in the conspiracy to murder Sankararaman. It is further submitted that the custodial interrogation of A-1 has revealed his complicity in the offence in very clear terms. Much cannot be stated now at this stage. The entire interrogation of the Petitioner is available with the Prosecution and the Prosecution is willing to submit the same for the kind perusal of this Honourable Court.

18. It is respectfully submitted that in fact Tvl. Salomon Francis, R.Kumaran and R.Vikraman, Advocates had interviewed Kathiravan for two hours from 3 p.m. to 5 p.m. on 22.11.2004. Tvl. Salomon Francis and R.Kumaran, Advocates once again met him the next day viz., 23.11.2004. Only thereafter on 24.11.2004 Kadiravan retracted his 164 Statement. Enough material is available with the Prosecution that such retraction was

made on ~~clear legal~~ advice. The allegation that Kadiravan was beaten up at the Police Station and Police forced him to read a statement as dictated by them and that Police forced him to make a statement under section 164 of Cr.P.C. are all false and were stated on tutoring.

Widwen

19. Thiru Darwin ~~Widwen~~ and Thiru T.Gandhiraj, Advocates met not only Kadiravan but also Rajini @ Chinna on 23.11.2004. It is obvious that Rajini @ Chinna made the false allegation that his teeth were broken during interrogation only on legal advise. The fact that neither Kadiravan nor Rajini @ Chinna made any complaint either to the learned Magistrate on the earlier occasions when they were produced nor before the Doctors attended on them of any ill-treatment or bodily injury will clearly establish that such allegations are false and made only for the purpose of getting the same flashed on the date on which the application seeking transfer of the case from the State Police to C.B.I. came up for hearing before the Honourable Supreme Court. Such false allegations were made in execution of a pre-plan with ulterior motive is proved by the repeated insistence that their statements should be recorded by the learned Magistrate.

20. It will be more interesting if one could look into the background of these developments. Some of them are Juniors of a Senior Advocate who regularly appears for Appu, the wanted accused and also associated in the Bail petition of the present Petitioner. It looks it is not a mere coincidence. Beyond these

issues, something much more is glaring which does not meet the eye. The close proximity and link to each accused can be easily seen in this background itself.

21. The allegation in ground No.12(c) that identification parade is completed in this case is incorrect. The conduct of identification parade is not yet over.

22. It is respectfully submitted that the Petitioner, even when he is in judicial custody, is able to influence accused and witnesses to support him. It is evidently clear that the Petitioner is already set to sabotage the witnesses. The Petitioner had already misused his position and tampered with the evidence and if he is let on bail, the Prosecution will be greatly prejudiced. The conduct of the Petitioner in organising fake surrender will speak volumes against the Petitioner in this regard. The fact that he influenced his own employee Sundaresan to give him a good conduct certificate by filing a false affidavit before the Honourable High Court and the way in which some of the accused who have given 164 Statements were persuaded to retract the same, making false allegations against the Police, contrary to the truth, would clearly establish that the Petitioner wields great power and influence. It will be unimaginably so if he is released on bail with such enormous fund and men at his disposal. Not only investigation on right direction suffers but the whole Justice system will suffer.

23. It is respectfully submitted that even when the Petitioner is in custody in connection with the Sankararaman murder case, he is able to influence the witnesses to support his case and the accused to retract their 164 Statements. If he is allowed to come out on bail, he will definitely interfere with the course of justice by tampering with the evidence. He influenced not only his employee Sundaresan to give him a good conduct certificate in the affidavit filed by him but also influenced accused Kadiravan to retract his statement under Section 164 Cr.P.C. The Petitioner also influenced Kadiravan to give him a good conduct certificate in the bail application filed by him. If the Petitioner is granted bail, he will definitely tamper with the evidence which would result in miscarriage of justice.

24. It is respectfully submitted that there are absolutely no merits in the above bail application and the same is liable to be dismissed.

25. For the reasons stated in the foregoing paragraphs, it is humbly prayed that this Honourable Court may be pleased to dismiss the above bail application and thus render justice.

Solemnly affirmed at Chennai,
this the 29th day of November
2004 and signed his name in
my presence.

BEFORE ME

ADVOCATE, CHENNAI.