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Our first edition of Kanchi Digest brings to you the transcripts of key court decisions that have been passed. Please feel free to make copies for other devotees, relatives and friends who are very concerned about this issue. Copies may also be made available in places of congregation like temples, kutcheries, and other functions where a large number of people gather. Use the facts here to spread the truth. That is what Kanchi-Sathya is all about.

“Prima facie a strong case for grant of bail...”

The Supreme Court Judgment granting bail to HH Sri Jayendra Saraswathi Swamigal on 10/1/2005

It is noteworthy that the Supreme Court order granting bail to HH Sri Jayendra Saraswathi Swamigal was 17 pages long which is unusual by the standards of the Apex court in such cases.

<http://judis.nic.in/supremecourt/qrydisp.asp>; CASE NO.: Appeal (crl.) 44 of 2005; PETITIONER: Jayendra Saraswathi Swamigal; RESPONDENT: State of Tamil Nadu; DATE OF JUDGMENT: 10/01/2005; BENCH: CJI R. C. Lahoti, G. P. Mathur & P.P. Naolekar JUDGMENT: J U D G M E N T (Arising out of SLP(Crl.) No. 6192 OF 2004) G.P. MATHUR, J

1. Leave granted.

2. This appeal, by special leave, has been preferred against the order dated 8.12.2004 of Madras High Court, by which the petition for bail filed by the petitioner under Section 439 Cr.P.C. was rejected.

The incident...

3. An F.I.R was lodged at 7.00 p.m. on 3.9.2004 at Police Station B-2, Vishnu Kanchi by Shri N.S. Ganesan. It was stated therein that at about 5.45 p.m. on 3.9.2004 while he was in the office of Devarajaswamy Devasthanam, two persons armed with aruvai came there and caused multiple injuries to Sanakararaman, In-charge Administrative Manager, who was sitting on a chair. Three persons were waiting outside and the assailants escaped on their motor cycles. After the case was registered, necessary investigation followed and several persons have been arrested. According to the case of the prosecution, the actual assault upon the deceased was made by A-6 and A-7, while four persons, namely, A-5, A-8, A-9 and A-10 were standing outside.

4. The petitioner, Shri Jayendra Saraswathi Swamigal, who is the Shankaracharya of Kanchi Mutt, Kanchipuram, was arrested on 11.11.2004

from Mehboob Nagar in Andhra Pradesh. He moved a bail petition before the High Court of Madras, which was rejected on 20.11.2004 and the second bail petition was also rejected by the impugned order dated 8.12.2004.

The motive according to the Prosecution...

5. According to the case of the prosecution, the petitioner had entered into a conspiracy with some other co-accused for getting Sankararaman murdered. The motive for the commission of the crime is said to be various complaints alleged to have been made by the deceased levelling serious allegations, both against the personal character of the petitioner and also his style of functioning as Shankaracharya of the Mutt. In the reply statement filed on behalf of State of Tamil Nadu, it is averred that the deceased had filed a complaint before the Commissioner HR&CE not to allow the petitioner to visit China. He filed a writ petition in the Madras High Court claiming the same relief which was later on dismissed as a statement was made by the petitioner that he had no intention of going to the said country. The deceased sent several letters alleging that the petitioner was selling properties of the Mutt; was indulging in corruption and misappropriation of funds. He also made complaint before Special Commissioner, HR&CE that

the petitioner was not observing the rules of Sanyasa Asrama Dharma; was leading a luxurious life enjoying mundane comforts; not performing the Pooja and promoting commercial ventures. It is also the case of the prosecution that the deceased sent a letter under the name of Somasekara Ganapadigal alleging that the petitioner was indulging in immoral activities and was having relationship with women and finally a letter was sent by him on 30.8.2004 to the petitioner as "last warning" wherein it was said that when the petitioner went to Thalakeverj, Kaveri river dried; when he went to the only Hindu Kingdom of Nepal, the entire royal family was wiped out; and when he went to Kumbakonam, there was a fire tragedy and many innocent lives were lost. Shri K.T.S. Tulsii, learned senior counsel for the State, has submitted that after receipt of this letter dated 30.8.2004 described as "last warning", the petitioner called accused A-2, A-3 and A-4 and a conspiracy was hatched for eliminating the deceased.

No evidence of resentment...

6. In order to establish the aforesaid motive for commission of crime, the prosecution relies upon copies of 39 letters which were allegedly recovered from the house of the deceased himself. What the prosecution claims is that the deceased used to keep copies of all the letters and complaints which he made against the petitioner and it is these copies which have been recovered from the house of the deceased. The prosecution claims that of these 39 letters or complaints 5 complaints were found in the office of HR&CE, Chennai which relate to the period 14.8.2001 to 23.1.2002, one in the residence of A-4 and 2 in the residence of the petitioner. In our opinion, the recovery of these letters from the house of the deceased himself is not a proof of the fact that they were actually received by the petitioner or were brought to his notice. The deceased was not an employee of the Mutt but was working as In-charge Administrative Manager of another Dharamsthanam which has nothing to do with Kanchi Mutt and at least since 1998 he had no connection with the said Mutt. Though according to the case of the prosecution, the deceased had started making complaints against the petitioner since August 2001, there is absolutely no evidence collected in investigation that the petitioner made any kind of protest or took any kind of action against the deceased. Even otherwise, many letters or complaints etc. are addressed to people holding high office or position and it is not necessary that they read every such letter or complaint or take them seriously. There is absolutely no evidence or material collected so far in investigation which may indicate that the petitioner had ever shown any resentment against the deceased for having made allegations against either his personal character or the discharge of his duties as Shankaracharya of the Mutt. The petitioner having

kept absolutely quiet for over three years, it does not appeal to reason that he suddenly decided to have Sankararaman murdered and entered into a conspiracy for the said purpose.

No evidence of ICICI accounts –stand then changed...

7. Shri F.S. Nariman, learned senior counsel for the petitioner, has submitted that the specific case of the prosecution at the time of the hearing of the first bail application before the High Court was that a huge sum of money amounting to Rs.50 lakhs was withdrawn from an account of the Mutt maintained in ICICI Bank, Kanchipuram for being paid to the hirelings. The same stand was taken by the prosecution when the second bail application was heard by the High Court. In the two orders passed by the High Court by which the bail petitions were rejected, the plea of the State that the money was withdrawn from the account of the Mutt in ICICI Bank, Kanchipuram for payment to the hirelings is clearly mentioned. When the special leave petition was heard for admission on 17.12.2004, a detailed order was passed by this Court, wherein the State was directed to give particulars of the bank account wherefrom money is alleged to have been withdrawn by the petitioner for payment to the assailants and also to produce the copy of the account and the passbook, if any, seized by the investigating agency. However, in the statement in reply which has been filed in this Court by the State on 6.1.2005, a different stand is taken that an agreement had been entered into for sale of 50 acres of land belonging to Kanchi Janakalyan Trust to Bhargava Federation Pvt. Ltd. for Rs.5 crores, wherein an advance of Rs.50 lakhs in cash was received on 30.4.2004 and an endorsement regarding receipt of the said amount was made on the reverse side of the first page of the agreement. It was this money which was retained in cash by the petitioner all along from which payment was made to the hirelings after the conspiracy was hatched soon after the receipt of the alleged letter dated 30.8.2004 sent by the deceased which was described as "last warning". No documents of the account in ICICI bank have been produced in support of the plea which was twice taken by the prosecution before the High Court while opposing the prayer for bail made by the petitioner.

Land Sale monies properly documented...

8. N. Sundaresan (A-23) who is Manager of the Mutt was arrested on 24.12.2004 and was produced before the Judicial Magistrate, Kanchipuram at 1.45 p.m. on 25.12.2004. He stated before the Magistrate that he had received Rs.50 lakhs in cash on 30.4.2004 and the said amount was deposited in Indian Bank, Sankara Mutt Branch on 7.5.2004. Learned counsel for the

petitioner has placed before the Court copies of two accounts bearing nos.124 and 125 which the Kanchi Kamakothi Peetham Shri Sankaracharya Swam has in the Indian Bank at No.1, Salai Street, Kanchipuram. This statement of account shows that on 7.5.2004 an amount of Rs.28,24,225/- was deposited in cash in account no.124 and an amount of Rs.21,85,478/- was deposited in cash in account no.125. Thus the total amount which was deposited in cash comes to Rs.50,09,703/-. Learned counsel has explained that in addition to Rs.50 lakhs which received in cash an extra amount of Rs.9,703/- was deposited in order to liquidate the overdraft over which penal interest was being charged by the bank. The statement of account clearly shows that after deposit of the aforesaid amount the entire overdraft was cleared. This clearly shows that the entire amount of Rs.50 lakhs which was received in cash on 30.4.2004 was deposited in Bank on 7.5.2004. This belies the prosecution case, which was developed subsequently after the order had been passed by this Court on 17.12.2004 directing the State to produce copy of the ICICI Bank account, that the cash money was retained by the Petitioner from which substantial amount was paid to the hirelings.

Confession retracted...

9. The prosecution also relies upon confessional statement of Kathiravan (A-4) recorded under Section 164 Cr.P.C. on 19.11.2004, wherein he stated that he went to the Kanchi Mutt on 1.9.2004 and in the presence of Ravi Subramaniam and Sundaresan, the petitioner said that Sankararaman had written letters and had filed cases and it was not possible for him to bear the torture any longer and, therefore, he should be killed on the same day. It is important to mention here that A-4 retracted his confession on 24.11.2004 when his statement was again recorded under Section 164 Cr.P.C. The prosecution also relies upon confession of Ravi Subramaniam (A-2) which was recorded on 30.12.2004 wherein he made a similar statement that the petitioner offered him Rs.50 lakhs on 1.9.2004 for getting rid of Sankararaman.

Confession of a co-accused has little evidentiary value...

10. Shri Nariman has submitted that in view of Section 30 of the Evidence Act confession of a co-accused is a very weak type of evidence which can at best be taken into consideration to lend assurance to the prosecution case. He has referred to the decision of the Privy Council in Bhuboni Sahu v. The King AIR 1949 PC 257, wherein it was observed that confession of a co-accused is obviously evidence of a very weak type and it does not come within the definition of evidence contained in Section 3 as it is

not required to be given on oath, nor in the presence of the accused and it cannot be tested by cross-examination. Learned counsel has also referred to *Kashmira Singh v. State of M.P.* AIR 1952 SC 159 where it was held that the confession of an accused person is not evidence in the ordinary sense of the term as defined in Section 3 and it cannot be made the foundation of a conviction and can only be used in support of other evidence. It was further observed that the proper way is, first to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing such evidence which without the aid of the confession he would not be prepared to rely on for basing a finding of guilty. Reliance has also been placed upon the Constitution Bench decision in *Haricharan Kurmi v. State of Bihar* AIR 1964 SC 1184, where it was held that the Court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. It was further observed that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusion deducible from the said evidence. It has thus been urged that the confession of A-4 which was retracted by him subsequently and also that of A-2 have very little evidentiary value in order to sustain the charge against the petitioner.

11. Shri K.T.S. Tulsi, learned senior counsel, has, on the other hand, placed strong reliance on Section 10 of the Evidence Act and has submitted that this being a specific provision dealing with a case of conspiracy to commit an offence, the principle laid down in the authorities cited by Shri Nariman would not apply and anything said, done or written by any one of the accused is a relevant fact as against each of the person conspiring to commit a crime. In this connection he has referred to *State of U.P. v. Buta Singh* 1979 (1) SCC 31, *State of Maharashtra v. Damu* 2000 (6) SCC 269, *Firozuddin Basheeruddin & Ors. V. State of Kerala* 2001 (7) SCC 596, *Prakash Dhawal Khairnar*

v. State of Maharashtra 2002 (2) SCC 35 and State of H.P. v. Satya Dev Sharma & Ors. 2002 (10) SCC 601.

No prima facie evidence...

12. The opening words in Section 10 are "where there is reasonable ground to believe that two or more persons have conspired together to commit an offence". If prima facie evidence of the existence of a conspiracy is given and accepted, the evidence of acts and statements made by anyone of the conspirators in furtherance of the common object is admissible against all. Therefore, there should first be a prima facie evidence that the person was a party to the conspiracy before his acts or statements can be used against his co-conspirators. No worthwhile prima facie evidence apart from the alleged confessions has been brought to our notice to show that the petitioner along with A-2 and A-4 was party to a conspiracy. The involvement of the petitioner and A-2 and A-4 in the alleged conspiracy is sought to be established by the confessions themselves. The correct import of Section 10 was explained by the Judicial Committee of the Privy Council in *Mirza Akbar v. King Emperor* AIR 1940 PC 176 as under:

"The words of S.10 are not capable of being widely construed so as to include a statement made by one conspirator in the absence of the other with reference to past acts done in the actual course of carrying out the conspiracy, after it has been completed. The words "common intention" signify a common intention existing at the time when the thing was said, done or written by one of them. Things said, done or written while the conspiracy was on foot are relevant as evidence of the common intention, once reasonable ground has been shown to believe in its existence. But it would be a very different matter to hold that any narrative or statement or confession made to a third party after the common intention or conspiracy was no longer operating and had ceased to exist is admissible against the other party. There is then no common intention of the conspirators to which the statement can have reference."

Here, the confessions of A-2 and A-4 were recorded long after the murder when the conspiracy had culminated and, therefore, Section 10 of the Evidence Act cannot be pressed into service. However, we do not feel the necessity of expressing a concluded opinion on this question in the present case as the matter relates to grant of bail only and the question may be examined more deeply at the appropriate stage.

No dying declaration...

13. Shri Tulsi has also submitted that there is also evidence of dying-declaration in order to fasten the liability upon the petitioner and for this reliance is placed upon the statement of S. Vaidyanathan, which

was recorded under Section 164 Cr.P.C. on 28.12.2004. This witness has merely stated that he knew deceased Sankararaman and used to talk to him and further that at 1.30 p.m. on 3.9.2004 Sankararaman contacted him over phone and told him that his petition presented to HR&CE Department was numbered and if any danger came to him, Jayendra alone will be responsible for the same. Since the telephonic conversation which the Sankararaman had with this witness, did not relate to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, the same does not come within the purview of Section 32(1) of the Evidence Act and is not admissible in evidence.

Improbable that a murder would be commissioned in the hearing of strangers...

14. Shri Tulsi, learned senior counsel for the respondent, has also referred to certain other pieces of evidence which, according to him, showed the complicity of the petitioner with the crime in question. He has submitted that the petitioner had talked on phone to some of the co-accused. The material placed before us does not indicate that the talk was with A-6 and A-7 who are alleged to have assaulted the deceased or with A-5, A-8, A-9 and A-10, who are alleged to have been standing outside. Learned counsel has also submitted that there are two other witnesses who have heard the petitioner telling some of the co-accused to eliminate the deceased. The names and identity of these witnesses have not been disclosed on the ground that the interrogation is still in progress. However, these persons are not employees of the Mutt and are strangers. It looks highly improbable that the petitioner would talk about the commission of murder at such a time and place where his talks could be heard by total strangers.

15. Shri Tulsi has lastly submitted that the prohibition contained in Section 437(1)(i) Cr.P.C. that the class of persons mentioned therein shall not be released on bail, if there appears to be a reasonable ground for believing that such person is guilty of an offence punishable with death or imprisonment for life, is also applicable to the Courts entertaining a bail petition under Section 439 Cr.P.C. In support of this submission, strong reliance has been placed on a recent decision of this Court in *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav & Anr.* 2004 (7) SCC 528. The considerations which normally weigh with the Court in granting bail in non-bailable offences have been explained by this Court in *State v. Capt. Jagjit Singh* AIR 1962 SC 253 and *Gurcharan Singh v. State (Delhi Admn.)* AIR 1978 SC 179 and basically they are the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being

secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case. The case of Kalyan Chandra Sarkar (supra) was decided on its own peculiar facts where the accused had made 7 applications for bail before the High Court, all of which were rejected except the 5th one which order was also set aside in appeal before this Court. The 8th bail application of the accused was granted by the High Court which order was subject matter of challenge before this Court. The observations made therein cannot have general application so as to apply in every case including the present one wherein the Court is hearing the matter for the first time.

Prima facie a strong case for grant of bail...

16. For the reasons discussed above, we are of the opinion that prima facie a strong case has been made out for grant of bail to the petitioner. The appeal is accordingly allowed and the impugned order of the High Court is set aside. The petitioner shall be released on bail on his furnishing a personal bond and two sureties to the satisfaction of the Chief Judicial Magistrate, Chengleput. Shri Nariman has made a very fair statement that till the investigation is under progress, the petitioner shall not visit the Mutt premises. We accordingly direct that till the submission of the charge sheet in Court, the petitioner shall not visit the Mutt premises. He shall also surrender his passport before the CJM.

17. Before parting, we would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for bail made by the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the trial court seized of the trial. We have only formed a prima facie opinion and placed the same on record in fairness to the learned senior counsel for the State who raised those pleas and vehemently urged the same by citing various provisions of law and the authorities.

***“Prima facie:
Petitioner not a
conspirator!”***

**High Court Judgment granting bail to HH Sri
Vijayendra Saraswathi Swamigal on
10/2/2005**

IN THE HIGH COURT OF JUDICATURE AT MADRAS;
(Criminal Jurisdiction) Thursday, the 10th day of February Two thousand five; PRESENT: THE HONOURABLE THIRU JUSTICE M THANIKACHALAM; CRIMINAL ORIGINAL PETITION NO. 3107/2005; SANKARANARAYANAN, SRI VIJAYENDRA SARASWATHI SWAMIGAL PETIONER/ACCUSED VS THE INSPECTOR OF POLICE, B-2, VISHNU KANCHI POLICE STATION, NOW INVESTIGATED BY ADDL.S.P.PEW, KANCHEEPURAM. CRIME NO.914 OF 2004; For Petitioner: MR K.S.DINAKARAN FOR MR.M. SATHYANARAYANA..ADVOCATE For RESPONDENT: MR. K.DURAI SAMY PUBLIC PROSECUTOR (FOR RESPONDENT) PETITION FOR BAIL UNDER Sec. 439 Cr.P.C.

ORDER: The Court Made the following Order:-

The second accused in cr.No. 914/2004 on the file of the respondent herein has moved this bail application since he is detained in prison, after his apprehension on and from 10.1.2005 for the alleged offences said to have been committed by him along with other accused totalling 24 or 25.

No new evidence: Prosecution...

2. The learned counsel for the petitioner/accused Mr.K.S.Dinakaran submitted, that to link or connect or implicate this petitioner as accused in the murder case, practically there is no material and nil evidence, except the statement of one Ravi Subramaniam recorded under Section 164 of Cr.P.C. who has turned as an approver and in addition to the alleged confession statements of the co-accused, which cannot be treated as substantial evidence in proving the serious offence of this nature and based on these materials, further detention is unwarranted. It is the further submission of the learned counsel, that the first accused was already ordered to be released on bail by the Hon'ble Apex Court considering the same materials relied on by the prosecution and this petitioner being placed similarly, the benefits extended to the first accused should be extended to the second accused also, since there is no reason to deny that benefit, or advantage, the further fact being even as per the materials placed before the Court, no prima facie case has been made out.

Ravi Subramaniam's testimony key evidence: Prosecution...

3. Mr. K.Duraisamy, the learned Public Prosecutor countering the above submission submitted, that the materials are plenty in this case, to make out a prima facie case against the petitioner and that the grounds on which the first accused has been released on bail are not at all available to this accused, since he is not placed in the similar circumstances of the first accused. In support of his submission, aid was sought from the statement of Ravi Subramaniam/ approver given under Section 164 of Cr.P.C. as well as the statement of Raghu/A4, 161 Cr.P.C. statement of Appu, in addition to some other statements given by the Mutt employees viz., Subramaniam & Kannan.

4. On 3.9.2004, at about 5.45 p.m. when Mr. Sankara Raman, an Administrative Manager of Shri Devarajaswamy Devasthanam, Kancheepuram was in the precinct of Sri Varadaraja Perumal Temple, Kancheepuram, attending his duty, he was brutally attacked by some persons, showing their muscle power, spreading the waves of terror in the region, thereby terminating his life instantaneously and prematurely, for which there cannot be any parallel. On the basis of the complaint given by one Shri. N.S. Ganesan at about 7.00 p.m. on the same day, a case has been registered under Section 302 r/w 34, 120(B) I.P.C. in Cr.No.914/2004. Though originally the names of the petitioner and A-1. do not find place in the first information report, the investigation conducted by the special team formed, for the specific purpose of investigating this case, brought to surface the involvement of this petitioner also, along with others and in this view, after interrogating twice or so, this petitioner was arrested on 10.1.2005. Being aggrieved, as if he is detained, without any base, as mentioned supra, the petition is moved for bail, claiming innocence which is countered, labeling this petitioner also the cause for murder.

Right of bail cannot be denied totally...

5. As ruled by the Apex Court in Kalyan Chandra Sarkar etc. Vs. Rajesh Ranjan @ Pappu Yadav and another (2005 SCCL.COM 43), and in plethora of decisions of the various courts, it is trite law that personal liberty cannot be taken away, except in accordance with the procedure established by law. In this case, the accused petitioner is detained under the criminal law of this country, which should be construed that the detention is in accordance with the procedure established by law and there cannot be any dispute. Only on the ground that the petitioner was arrested or shown as an accused of non bailable offence, his right of bail cannot be denied totally and in order to deny that right, it must be shown that there is 'prima facie' case against this petitioner, warranting

an unquestionable interference at least for the offence under section 302 r/w 120-B I.P.C. since it is said this petitioner is one of the conspirators, and in case of his release, there is every possibility to come to the conclusion that by using his position as Junior Pontiff of Shri Shankara Mutt, Kancheepuram, he would wield influence over the witnesses, thereby tampering the witnesses, crippling the further progress of the case. If these things are not established, though once accused stands charged for the non bailable offence, his claim for bail could be considered favourably, since law also favours so. Further as ruled by the Apex Court, even if the court is satisfied, for reasons to be recorded, that in spite of the existence of prima facie case, there is a need to release such person on bail, where fact situations require it to do so, the claim of the bail should be considered, since the liberty of the individual takes predominant role, that too the legal position being, when a man is charged for an offence, until his guilt is proved, he is to be presumed as innocent.

6. In order to contain the law and order situation, and lawlessness and to infuse security in the mind of law abiding citizens, certainly it is the duty of the investigating Officer not only to collect the materials to fix the accused, especially when a gruesome murder was reported then to file the final report, but also the duty extends till the end of the trial, since he is expected to preserve that materials in tact, beyond the reach of the accused hands, to safeguard the materials collected by the investigating agency, while considering the liberty of an individual, his alleged role, position in the society, his conduct in case of his release are to be taken into consideration, since the law mandates, the guilty should not be allowed to escape from the clutches of law.

Not proper to oppose bail solely on the ground that the Petitioner may interfere...

7. In this case, the bail application is opposed mainly on the ground, that the petitioner being the Junior Pontiff of Kanchi Kamakoti Peetam, having powerful followers and some of the witnesses being the employees of the said Peetam, there is every chance for this petitioner to meddle with the materials, which cannot be ruled, out so easily considering the admitted position. At the same time, taking into account this fact alone, ignoring the other position, such as, whether prima facie case is available or not and what would be its effect, it may not be proper to say outright that the petitioner is not entitled to be released on bail.

8. Before law, the status of a person is immaterial, the position being, whatever may be status of the accused, his post, command in the society, followers, wielding power over the ruling, his is bound to obey before the

law, when it is said he had committed some offence and the law should deal with him, treating on par with an ordinary citizen. Law does not favour an individual or law should not consider the status of an individual, to decide whether that person should have committed the offence or not. Whereas it is expected from Court of law, whether the materials produced before the court are sufficient to rope in the accused unquestionably, warranting conviction. This kind of situation would arise in a criminal case at the time of the trial, recording evidence, evaluating, appreciating and apprising the same. While considering the bail, the duty of the court is to see prima facie, whether any offence has been made out, if so, whether the release of the petitioner on bail would prejudice or jeopardize the further investigation if any, or trial.

Responsibilities at the pre-trial stage:

9. Further, at the pre-trial stage, when the presumption is available in favour of the accused, that he is innocent, till the guilt is proved, the Court should not embark upon in analyzing the evidence, in order to reach a conclusive finding, regarding the points urged by either party, as ruled by the Apex Court. But at the same time, while granting or refusing the bail, the court should not shirk its responsibility in assigning the reasons. For that purpose, the paramount consideration should be the nature of offence, as well as its severity of punishment in case of conviction and accusation, reasonable apprehension of tampering the witnesses on apprehension of threat to the complainant in certain cases where the complainant claims that he is also an affected party or the complainant claims that he is an eye witness in addition to prima facie satisfaction in support of the charges whether directly or indirectly on the basis of the evidence of the eye witness or on the basis of circumstantial evidence or on the basis of some other extraordinary attending circumstances. While doing so and exercising the judicial discretion in granting or refusing the bail, the liberty of the individual should not be unnecessarily and unduly abridged and at the same time, justice should not suffer, as ruled by the Apex Court in Gurubachan Singh v. State (Delhi Admin.) AIR 1978 SC 1979. On the above basis alone the materials sought to be relied upon against this Petitioner/accused have to be scanned to certain extent, certainly not in order to give a finding, whether those materials are admissible in evidence, leading to conviction etc.

Petitioner not directly involved...

10. The learned Public Prosecutor, Mr. K. Duraisamy argued that on 1.9.2004, there was a conspiracy between Senior Acharya (A-1), Ravi Subramanian, Appu, Kathiravan and Iyer (Sundaresa Iyer), wherein they have decided to terminate the life of Sankara

Raman, since he was the perennial trouble maker, accusing Senior Acharya, implicating him in so many matters, to the detriment of the interest of the mutt, by way of writing letters, giving final warning also. It is not the case of prosecution as narrated before me that at the time of said prosecution, Junior Acharya viz. the Petitioner was present, participated, involved himself directly, giving idea or indirectly supporting the conspiracy said to have been hatched between the above said persons. It is the further submission of Learned Public Prosecutor that A-1 requested the above said accused, to contact the Petitioner, to inform the same, have financial help for committing the murder of Sankara Raman and accordingly Ravi, Appu, Kathiravan and Iyer informed the matter to the Petitioner, who readily agreed to oblige and in pursuance of the same, he has also directed his brother Raghu (A-4) to make the initial payment of Rs.5 lakhs. In this way the prosecution wants to connect the present Petitioner with the other accused labeling him also, as one of the conspirators.

Prima facie: petitioner not a conspirator...

11. From the facts narrated above, in the absence of the actual involvement of the Petitioner or his participation to agree to do an illegal act or so cause to be done, a doubt should arise, whether he would come within the meaning of conspirator, attracting Sec. 120-A and 120-B of the IPC warranting prima facie case, under Sec. 302 r/w 120-B IPC, which has to be decided also, after recording evidence during the trial. In the absence of clear materials, to prove the meeting of minds between the conspirators, at present, it may not be possible, to say even prima facie, this petitioner was a party to the conspiracy. Assuming for the purpose of this case, (not giving any conclusive finding) that this petitioner carried out the mandate of the Senior Acharya, if at all, it could be said that he obeyed the direction of his senior, being the junior, bound to carry out the instructions, without any intention. If the case of the prosecution is true or it is to be accepted, even it could be said, the petitioner has carried out the direction of the first accused, through his brother and carrying out such direction would attract the penal provision or not, is a matter to be decided later on after recording evidence. But prima facie, a doubt should arise regarding the participation of this petitioner as co-conspirator. In support of the above contention, some materials were produced for my perusal, to show as if at the direction of this petitioner, his brother, Raghu had paid a sum of Rs.5 lakhs to Ravi, Appu and Kathiravan, thereby showing his involvement, with others.

No proof that payments were made as part of a conspiracy...

12. Sri Kamakoti Ghatikashramam Trust is also under the control of Kanchi Mutt, though it appears, it has its own directors. The incident had taken place on 3.9.2004 at about 5.45 p.m. In pursuance of the conspiracy, as initial payment, if any amount has been paid, it should be before the incident. But the materials produced for my perusal would suggest, it is not so. Though a cheque is said to have been issued on 3.9.2004 i.e. the date of the incident, it is not established before me, that in pursuance of the same, the DD was drawn on the same day, handed over to the hirelings to carry out the mandate of A-1, one of the conspirators. This being the position, even it could be said, there is no advance payment before the actual murder, the fact being, the murder took place at 5.45 p.m. on 3.9.2004. On 3.9.2004, it is said Mr. Raghu (A-4) had written a letter to ICICI Bank Ltd., Kancheepuram requesting to debit from their account, a sum of Rs.5 lakhs, further requesting to issue a DD in favour of M/s. Residency Builders payable at Chennai. No materials have been placed before me informing that M/s. Residency Builders, belongs to any one of the accused at present. This letter dated 3.9.2004 also accompanied a self cheque for Rs.5 lakhs dated 3.9.2004 for the purpose of favouring DD. This withdrawal of the amount or issue of cheque is taken advantage by prosecution, to say, as if in pursuance of the conspiracy hatched between the accused, and as directed by the Senior Acharya, the Junior Acharya has given direction to carry out the mandate of Senior Acharya, by providing fund, for murdering Sankaraman. If that is so the DD should have been drawn in favour of M/s. Residency Builders. For that no document has been produced for my perusal. Therefore, it is impossible, at present, to say, that in pursuance of the conspiracy hatched between the Senior Acharya and other accused, on information, this petitioner carried out the same and therefore, he should come within the four walls of Sec. 120-B of I.P.C.

Other payments do not lend support...

13. The other materials produced probably to prove the payment to the mercenaries or hirelings, at present, also failed to give any support. It is not the case of prosecution, before me, apart from Rs.5 lakhs referred above, some more amounts have been paid, enabling the mercenaries or hirelings, for causing the murder of Sankara Raman. The documents produced for perusal indicate, that four self cheques were drawn for Rs.3 lakhs on 31.5.2004 by S.S.S.V.S. Patashala Trust; Rs.12 lakhs on 25.7.2004, Rs.5 lakhs on 29.7.2004 and Rs.5,000/- on 3.8.2004. Since all the cheques are dated prior to the actual incident and since no case was projected before me, that prior to

1.9.2004, amounts were paid to the hirelings, I am unable to understand, how these documents could connect this accused with the conspiracy, which was hatched even according to the prosecution only on 1.9.2004. No material is placed before me that the cash received, on the basis of above documents, were retained by Raghu, in order to say, that amounts would have been paid later directly. In this view of the matter, by going through the material produced for payments also, at present, it is not possible and desirable to say unhesitatingly, unless it is corroborated or connected by other evidence, that this petitioner should have given direction to A-4 to pay the amount, in order to say that his hands are also involved in the conspiracy.

Confessions of a co-accused have no evidentiary value...

14. The Learned Public Prosecutor invited my attention to the confession statement of Krishnasamy @ Appu, to show prima facie, that this petitioner should have paid the amount. By going through the confessional statement of Krishnasamy @ Appu, though it is inadmissible in entirety, I am unable to find out any materials directly connecting this petitioner with the crime, whether under conspiracy or otherwise. At one place, it reads, as if Krishnaswamy @ Appu went to the room of Shri Vijayendra Saraswathy Swamigal, viz., the petitioner herein along with Ravi Subramaniam and the petitioner called Raghu, informed the message of Senior Acharya about his direction to murder Sankara Raman. It is also stated in the confession statement that, for this, the petitioner also gave consent, not on his, but obeying the direction of his Senior and it is also stated that, since the Senior has stated so, the Junior had agreed to carry out the same, directed Raghu to give amount, if necessary. The confession statement of co-accused may not have any evidentiary value and if at all, it must pass the test prescribed under Section 10 of the Indian Evidence Act. That apart, even no prima facie material is available therein, to rope in this petitioner, as conspirator/accused.

Ravi Subramaniam's statement insufficient in absence of supporting evidence...

15. One of the accused by name Subramaniam @ Ravi Subramaniam has given a statement before the Judicial Magistrate under Sec.164 Cr.P.C. and its aid is sought to rope in the accused. The said Ravi Subramaniam appears to have turned as an approver, receiving tender of pardon. The statement given by Ravi Subramaniam, connecting this petitioner also, in my considered opinion, at present, may not be sufficient, in the absence of any corroboration or supportive evidence, since it reads

(In Tamil)

The above statement, if admissible in evidence, which is to be tested and scanned at the time of the trial, may not positively suggest that this petitioner, who is described as Bala Periyavar also involved in the offence, being the conspirator. After all, as per the statement given by Ravi Subramaniam, it seems, the decision taken by the Senior Pontiff was conveyed to the Junior Pontiff (Petitioner), that too, as per the direction of the senior. It is not the case of Ravi Subramaniam, that this petitioner affirmed the same or reiterated the decision taken by the Senior Pontiff, describing the activities of Sankara Raman who deserved elimination, it appears, from the above statement, this petitioner requested Raghu to make arrangement for the payment. As I have already adverted to the above, at present, it is not established that by the direction of this petitioner, payment was made by Raghu, to the hirelings. Therefore, this statement, whether it is admissible or not, fails to make a prima facie case of conspiracy against this petitioner.

16. The confession statement of Raghu (A-4) also at present fails to make a prima facie case of conspiracy against this petitioner, since he does not disclose the actual payment, supported by any documents. The statements given by M.S. Subramaniam and Kannan as if they have seen Ravi Subramaniam, Krishnaswamy @ Appu, Kathiravan coming out from the room of Senior Pontiff and went to the Junior room must have the support of other materials, so as to say, that the conspiracy was conveyed to Junior Pontiff and the same was affirmed, for which I find no material. The letters said to have been written by the deceased Sankararaman to the Senior Pontiff have not been placed before me, so as to say, wherein he has implicated this petitioner also for the alleged irregularities in the mutt, including immoral activities etc in the mutt etc., so as to say this petitioner also should have grievance against Sankara Raman, thereby conspiring or supporting the conspiracy hatched by the Senior Pontiff along with some of the accused. Thus analyzing, for the limited purpose of seeing prima facie case of conspiracy, the materials relied on by the learned Public Prosecutor appear to be insufficient and in view of this findings, it can be said that the petitioner has made out a case for bail, if it is not otherwise barred.

Chances of tampering with witnesses appear to be remote and unfounded...

17. The main thrust of the Learned Public Prosecutor, before me, was that if the petitioner is released on bail, there is every possibility of this petitioner tampering the witness and no other reasons or

grounds were urged to negative the plea or to deny the right of liberty. True, because of the position held by the petitioner, the apprehension of the prosecution may appear reasonable. But, considering the materials available on record, as far this petitioner is concerned, the tampering of witnesses pleaded, may not come in the way of granting bail to the petitioner, since tampering appears to be remote. One of the accused, after giving 164 statement, turned as an approver and now he is in the custody and there is no possibility of him coming out under the law. Hence meddling with the statement given by Ravi Subramaniam may not arise for consideration. As far as the statements of other co-accused are concerned, question of tampering may not arise since its validity and admissibility are under the shade of cloud. The other witnesses viz., employees of the Mutt may be influenced since the accused petitioner is the junior head of the Mutt. But the statements given by the two employees of the Mutt have no direct bearing regarding the offence, except seeing some of the accused coming out from the Senior Pontiff's room and then going to the room of the petitioner in the Mutt, which may be usual courtesy, being the devotees or usual visitors.

No prima facie case made to deny bail...

18. Considering all these facts and the attending circumstances of the case, I am of the considered opinion, tampering of witnesses, urged on behalf of the prosecution, appears to be not well founded and the apprehension also may not be reasonable, considering the quality of materials collected by the prosecution and this apprehension is probably aimed to deny the right of bail, is not acceptable to me. Admittedly, the entire investigation is over and all the materials have been collected by the competent Special Investigation Team, who has the power to retain the materials till the end of the trial. Considering all these facts, for reasons assigned Supra, I am constrained to say, at present, for the limited purpose of this application, that no prima facie case has been made out against the petitioner, warranting him to detain further, whereas it should be said that a case has been made out for bail.

19. The Learned Counsel for the Petitioner submitted that the first accused viz., Shri. Jayendra Saraswathi Swamigal (A-1) has been ordered to be released on bail by the Apex Court considering the same materials, which are sought to be enforced on the present petitioner and the benefit extended to A-1 should be extended to this petitioner also, since he stands in a better position, for which I am unable to say no. The Apex Court had observed while granting bail to the first accused Shri Jayendra Saraswathi Swamigal that "Nothing contained in this order shall be construed as an expression of final opinion on any

of the issue of fact or law arising for decision in the case which shall naturally have to be done by the trial court seized of the trial". Therefore, as a matter of right under law, the benefit extended to Shri Jayendra Saraswathi Swamigal cannot be extended to the present petitioner. However, I cannot ignore the case projected by the prosecution against the first accused and the case projected by the prosecution against the second accused/petitioner. As said Supra, it is the case of the prosecution that the first accused alone had conspired to commit the murder of Sankara Raman taking the aid of other accused, for payment. For that, some materials have been placed and the Hon'ble Apex Court felt that they may not be sufficient. In this case the materials relied on as discussed above to rope in this petitioner, is not so strong as that of A-1 and the role said to have been played by this petitioner is very limited, even according to the prosecution, as submitted before me. Thus considering the facts of the case, even independently against this petitioner, I am satisfied at present, that the petitioner has made out a case for bail. The apprehension of the prosecution that the possibility of tampering the witness could be curtailed by imposing conditions, for which, denying the right of liberty may not be proper and legal.

20. For the foregoing reasons, the petitioner is ordered to be released on bail on the following conditions that:-

(i) The petitioner shall executed a bond for a sum of Rs.50,000/- (Rupees Fifty thousand only) with two sureties each for a like sum to the satisfaction of the Chief Judicial Magistrate, Chengalpattu ;

(ii) The petitioner shall remain within the Corporation limit of Chennai, except the days on which his presence is required before any other Court, in connection with this case, or any other cases;

(iii) The petitioner shall report to the Thousand Light Police Station, every Sunday at 10.00 a.m., until further orders;

(iv) The petitioner shall surrender his passport, if any, to the Chief Judicial Magistrate, Chengalpattu and

(v) The petitioner shall file on affidavit before the Chief Judicial Magistrate, Chengalpattu stating that he will not tamper the witnesses, or make any attempt even to tamper the witnesses or the materials collected and connected in this case, by any manner, and in any form, till the end of the trial.

Sd/- 10/02/2005

“Action for freezing the accounts of the Mutts is ultra vires, illegal and liable to be set aside”

In the High Court Judicature at Madras dated 11/2/2005

CORAM: THE HONOURABLE MR. JUSTICE K.P. SIVASUBRAMANIAM
W.P. NO. 1050 OF 2005 and WPMP 1173/05
His Holiness Sri Kanchi Kamakoti Peetadhipathi Jagadguru Sri Sankaracharya Swamigal Srimatam Samasthanam
Rep. by its Manager, No.1, Salai Street, Kancheepuram 631 502
..... Petitioners

Versus

1. The State of Tamil Nadu rep. by the Secretary to Government, Home Department Fort, St. George, Chennai – 9
2. The Secretary to Government, Hindi Religious and Charitable Endowments Department, Fort, St. George, Chennai – 9
3. The Additional Superintendent for Police, Special Investigating Team, Kancheepuram
4. The Manager, Indian Bank, Salai Street, Kancheepuram
5. The Manager, State Bank of India, Kancheepuram
6. The Manager, Canara Bank, Kancheepuram
7. The Manager, Union Bank of India, Kancheepuram
8. The Manager, Indian Overseas Bank, Kancheepuram.....
Respondents

PRAYER: Writ petition under Article 226 of the Constitution of India for the issue of a writ of mandamus forbearing respondents 1 to 3 from interfering with the right of the petitioner to manager and administer its affairs, property, including the bank account in various banks held in its name and in the names of its various endowments and trusts connected with it.

For Petitioner: Mr. T.R. Rajagopalan Senior Counsel for Mr. K. Chandrasekaran

For Respondents – 1 & 3: Mr. K. Doraisami, Public Prosecutor;

For 2nd Respondent: Mr. A.L. Somayaji, Addl. Advocate General Assisted by Mr. S. Venkatesh, Special Government Pleader; Mr. G. Sukumaran, Special Govt. Pleader, HR & CE

ORDER

By consent of both parties, the writ petition itself is taken up for hearing.

Writ Petition to forbear respondents from interfering in right to manage own affairs...

2. This writ petition has been filed by the Senior Pontiff of Sri Sankaracharya Swamigal Srimatam Samasthanam, represented by its Manager. The

petitioner has prayed for a writ of Mandamus to forbear respondents – 1 to 3 from interfering with the right of the petitioner to manage and administer its affairs, property, including the bank accounts, in various banks held in its name and in the names of the various endowments connected with it.

3. In the affidavit filed in support of the writ petition, after referring to the advent of Sree Adi Sankara and his preachings, it is stated that Adi Sankara was intimately associated with Kanchi and he established the Mutt for his residence during his last years and also nominated a young boy as his successor Sree Sankara Mutt, established by Sree Adi Sankara at Kancheepuram in an organization built around Advaita Philosophy for its propagation and that the Mutt has a definite name and is a religious denomination within the meaning of Article 26 of the Constitution. The petitioner, is, therefore, entitled to administer and manage its affairs and property without interference from the State.

4. On 11.12.2004, the Senior Pontiff was arrested at Mahaboob Nagar, Andhra Pradesh, on alleged charges under Section 302 read with Sections 120-B and 34, I.P.C. on the allegation that he conspired with others to do away with one Sankararaman of Kancheepuram on 3.9.2004. He was brought to Kancheepuram and remanded to custody. From then he was remaining in custody till he was released on bail by the Order of the Supreme Court on 10.1.2005 in Criminal Appeal No. 44 of 2005. It is alleged that during the custody, he underwent and suffered mental torture and that several other innocent persons connected with the activities of the Mutt and several employees were taken into custody and harassed by the Special Investigating Team, Kancheepuram.

Intimidation and harassment by Investigating team...

5. The Manager of the Mutt was called at least 15 times for interrogation and was arrested on 24.12.2004. The Junior Pontiff was also arrested on 11.1.2005 and during the arrest, police had trespassed into the Mutt premises and took custody of him, without caring about the religious sentiments of the devotees of the Mutt. Such high-handed action on the part of the police was totally uncalled for, even though the Junior Pontiff and other employees of the Mutt were totally cooperating with the Investigating Team. The police created terror in the minds of the devotees, resulting in the thinning of the visit of devotees of Mutt to a great extent. It is further alleged that the police appears to be interested only in tarnishing the sacred image of the Mutt and the reputation of the Pontiffs. They were also indulging in leakage of information to the Press drawn with ulterior motives. There were unannounced raids by

the police in the Mutt premises and a trial was being conducted by the press.

Mutt a Legal Entity separate from Madaathipathi...SIT has no jurisdiction to freeze accounts...

6. It is further stated that the police have also called for title deeds relating to the property which have no connection with the case. The latest action of the Special Investigation Team is a series of communications sent to various banks in which the Mutt has account, but, the copies of communications have not been furnished to the Mutt. But the Mutt has been advised by the banks that all their accounts have been frozen. The petitioners contend that most of the accounts represent the endowments created by the various devotees for carrying out the religious functions of the Mutt. The endowments are placed in the banks as fixed deposits and the income derived therefrom is utilized for performing the various religious functions. Thus, the amounts standing to the credit of the Mutt in the various banks is property belonging to a religious denomination. The State has no right to interfere with the administration and management of the property. The Mutt is a legal entity and is distinct from the Pontiffs, who preside over the Mutt. The petitioner contends that the Special Investigation Team (S.I.T.) has absolutely no jurisdiction or power under any of the provisions of the Criminal Procedure Code to freeze the accounts of the Mutt. Endowments are not the properties of the Matadhipathi and the Mutt has full control over the endowments created by various devotees. The freezing of the accounts have now rendered the performance of the religious duties impossible, due to the illegal action of the police. It is only with a view to sully the image of the Mutt, the secret communication appears to have been sent to various banks, directing freezing of accounts. The petitioner further contends that in terms of the various judgments of the Supreme Court and this Court, the right of the Mutt to manage its own affairs in matters of religion is a fundamental right of a religious denomination, which, even a Legislature cannot take away. It is, therefore, not open to the police to interfere with the religious affairs of the Mutt. Performance of religious practices is an integral part of the activities of the Mutt and the various poojas conducted to the presiding deities of the Mutt are to be performed everyday. All such activities will come to a standstill if the bank account stands frozen. The power of the police to freeze any account can be exercised only if there was any direct nexus between the crime and the said account. The freezing of the accounts have been resorted to only in the case of misappropriation and corruption.

Mutt's accounts used to fund range of activities...

7. The Petitioner Mutt has approximately 183 accounts with various banks. The daily collections of the Mutt from the devotees are deposited into the bank accounts and the money is required to be drawn to meet the expenditure of the Mutt towards daily pooja, feeding the devotees, Annadhanam at two places, feeding of the animals including 100 cows maintained in the Go shelter or for its salary of the staff, statutory dues like telephone charges, electricity charges, property tax etc. will have to be made from the amounts in the accounts standing to the credit of the mutt in various banks. As a result of the high handed action of the Special Investigating Team, the Petitioner religious denomination has no other alternative except to approach this Court.

8. In the first counter affidavit filed by the third respondent, the Chief Investigating Officer of the Special Investigating Team, the various contentions raised by the Petitioner in support of the writ petition have been denied, while seeking leave to file a detailed counter affidavit. The allegation that the activities of the Mutt will come to a stand still by the freezing of the bank accounts was incorrect and untenable. The communication of the Special Investigation Team was not contrary to law nor beyond the powers vested with the police. The contention that great prejudice will be caused if an order of injunction was not granted is also untenable. By an order dated 18.1.2005, this court permitted the petitioner to operate one savings bank account and one current account on condition that details of deposits and withdrawals should be furnished to the Chief Investigating Officer, daily. The petitioner has not properly complied with the conditional order and has furnished details only for a few days, and for the remaining days, though bank statement was furnished, details were not furnished. The said action has affected the further progress of investigation. Therefore, the interim order was liable to be vacated.

SIT denies all claims by the petitioner...

9. Subsequently a detailed counter affidavit has been filed by the respondents in the writ petition. It is stated that in the affidavit of the Petitioner, it is not disclosed to be a registered body and that unless it was a registered body, the writ petition was not maintainable at the instance of the petitioner. The petitioner cannot seek relief in respect of the 183 bank accounts standing in the names of various institutions. The prayer in the writ petition was very vague. The petitioner has not made it clear as to what was his right to manage and administer the properties and bank accounts. The endowments and trusts which are

alleged to have opened bank accounts will be juridical parties and the petitioner was not entitled to seek relief on behalf of those juridical parties. In the absence of specific mention or the account standing in the name of the petitioner, the writ petition was liable to be dismissed. The allegation that several innocent persons connected with the activities of the Mutt were harassed and taken into custody was also denied. The further allegation that when the Junior Pontiff was arrested, the police has trespassed into the Mutt premises was also denied as incorrect. There was no basis for allegation that the religious sentiments of the devotees were not cared. The further contentions that the employees of the Mutt were co-operating with the investigating team and that the police were creating a terror in the minds of the devotees were also incorrect. The further contention that there was a witch hunt by the Special Investigation Team and the aim of the police was to tarnish the sacred image of the Mutt was false. The allegation that statements made by persons in the custody had been leaked to the press was also false. The investigation team was in no way responsible for the display of video clippings in the TV channels. It was the Mutt which was responsible for the conduct of the trial by the press by giving costly advertisements in the newspapers. The Special Investigation Team has jurisdiction under the provisions of the Criminal Procedure Code to freeze the accounts and the contention that freezing of accounts had rendered the performance of the religious duties impossible is also incorrect. The action of the police was authorized under Section 102 of the Criminal Procedure Code. The allegation that the action of the police in freezing of the accounts was malafide and intended to create terror and to bring the activities of the Mutt to a standstill was incorrect and untenable. The further contention that the money was required to draw to meet the expenditure of the Mutt towards daily poojas, etc. was also incorrect. Large amounts running to crores were put in various accounts numbering more than 108 at Kancheepuram alone and large amounts have been withdrawn in various accounts in cash and being utilized for non-religious purposes. The investigation reveals that there was no differentiation made in the various accounts of the mutt, towards the trust, endowments etc. It also reveals various transactions without proper accounts. No accounts were maintained regarding the cash receipts and cash withdrawal of several lakhs of rupees. Investigations further revealed that large amounts running to lakhs of rupees were utilized for illegal purposes for perpetuating the heinous offence of murder and attempt to murder. Investigation reveals that Rs.75 lakhs was received in cash in lieu of cheque on withdrawal of amount from various accounts. The investigation conducted subsequent to the Order of the Supreme Court in the bail application reveals that more than Rs.50 lakhs have been deposited into the bank and the challan did not

contain the signature of the remitter and also the denomination of the currencies. Raghu, one of the co-accused, has drawn money from various banks without any authority for utilizing the same, for illegal purposes. It is also seen that substantial amounts have been withdrawn not only for the commission of the offences, but also for tampering with the evidence. The accounts in the various banks are tainted with illegality, since funds of various religious and charitable trusts have been transferred to other accounts and are withdrawn for illegal purposes. Offences of criminal breach of trust have also been committed with reference to the various accounts, which are being investigated. Several pages of the books have been removed at the instance of the Petitioner. The investigation into the other offences namely, attempt to commit murder and tampering of evidence are also under investigation. Therefore, the freezing of accounts in various banks at this juncture was not only justified, but absolutely essential. There are materials to disclose that the amount already withdrawn was utilized by the petitioner for tampering with the investigation. The investigation into the remaining cases were underway. Even though final reports were submitted in Crime No. 914 of 2004, the trial was yet to commence. If the petitioner was allowed to operate the accounts, he will withdraw huge amounts of money and utilized the same for tampering with the evidence. Unless investigation was completed in the remaining cases, it will not be possible to ascertain the manner and extent to which the funds were utilized for illegal purposes. Therefore, freezing the accounts was absolutely essential to unearth the truth. The claim that the petitioner was a religious denomination and the police was interfering with activities was also untenable. There was no basis for the allegations or malafides or vindictiveness or the action being aimed at tarnishing the image or to create a reign of terror in the Mutt. The contention that the bank accounts represented substantial endowments and intended for the purpose of the poojas in the Mutt was also denied. Special Investigation Team has acted within its power. There is no basis for the claim that the Mutt should have been granted opportunity before the amounts were sought to be frozen. The police have not interfered with the religious activity of the Mutt and the steps taken by the police are restricted to the criminal activities of the persons connecting with the Mutt as conspirators. The day to day activities and the poojas of the Mutt are, in no way affected by freezing the other accounts, considering that the court had already permitted to operate two of the accounts. Therefore, the writ petition was liable to be dismissed.

10. Mr. T.R. Rajagopalan, Learned Senior Counsel for the Petitioner, contends that from the beginning, the prosecution has been indulging in mudslinging as against the Mutt and the head of the Mutt, terrorizing

the hierarchy of the Mutt and its devotees and freezing the bank accounts, which have no nexus to the criminal case, all with a hidden motive to destroy the Mutt.

Properties have to be directly referable to a crime to be frozen...SIT's motives malafide...

11. Section 102 of Cr.P.C. which has been invoked by the police does not justify their action. The provision as well as the interpretation of the provision by the Supreme Court clearly indicates that it can relate only to the property, assets or funds, which are directly referable to the crime and not otherwise. All facts and evidence have been collected by the investigation team and a chargesheet has also been filed in the murder case. Even against the accused person, can, at best, relate only to the past events and evidence or accounts and transactions. The Special Investigating Team already had access to all such materials and several accounts have been taken by them. Freezing of bank accounts and the activities of the Mutt can have absolutely no relevance to the investigation into the offences, which relate to the past, against the Head of the Mutt. Therefore, the impugned action can be only either to force closing down the activities of the Mutt or to gain control of the assets and income of the property of the Mutt in some pretext or the other, with oblique motives. Learned Senior Counsel further contends that the property and assets of the Mutt, comprise of donations and endowments for specific purposes, poojas etc., which cannot be stalled by the police on the excuse that they are investigating and dealing with a murder case against the Head of the Mutt. The Matadhipathi does not hold the property as his own or for his personal use. Therefore, the interest of the innumerable devotees and donors who have given money for the conduct of the specific endowments should not be adversely affected. The Mutt as well as its devotees have a fundamental right to conduct the day-to-day activities without any hindrance from the State and their rights should be protected under Article 26 of the Constitution. Learned senior counsel also relies on the judgment of the Supreme Court in THE COMMISSIONER, HINDU RELIGIOUS ENDOWMENTS Vs. SRI LAKSHMINDRA THIRTHA SWAMIAR OF SRI SHIRUR MUTT (Shirur Mutt Case) (1954 Supreme Court Reports, 1005)

12. As regards the scope of Section 102 of Cr.P.C., learned senior counsel contends that though deposits in banks would also be covered under the said provision, such an order could be passed only in respect of money which is actually involved in the offence.

13. Reference is made to the judgment of the Supreme Court in STATE OF MAHARASHTRA Vs. TAPAS

D NEOGY ((1999) 7 SCC 685). Reliance is placed on the observation that the Police Officer could issue prohibitory orders from operating the bank account only when the police officer reaches the conclusion that the amount in the bank was the outcome of commission of the offence by the accused.

The Police's interest in the Mutts properties appear to go beyond the case...

14. As regards the amounts said to have been utilized for paying the hirelings to carry out the murder, the prosecution has been taking contradictory stands. Before the High Court (bail petition), it was stated that an amount of Rs.50 lakhs was withdrawn from the account of the Mutt maintained at ICICI Bank. But, before the Supreme Court, a different stand was taken, namely, that pursuant to an agreement of sale of 50 acres belonging to Kanchi Mutt, an advance of Rs.50 lakhs was received in cash on 30.4.2004 and that it was the said amount which was utilized to pay to the hirelings. The Supreme Court refused to accept this story, as the petitioner was able to produce materials to show that the amount was received as advance towards sale agreement and the said amount has also been deposited in the Indian Bank. Learned senior counsel further contends that the interest which is shown by the police over the accounts and assets of the Mutt appears to be more than for the purpose of investigation of the murder case, which is rather strange.

15. Learned Public Prosecutor, while opposing the petition, contends that the writ petition was filed by the "Samasthanam" and not by the Mutt and therefore, the petitioner is not entitled to maintain the writ petition. Even though the learned counsel for the petitioner was requested to furnish information regarding whether the Mutt was a registered establishment or not, no particulars have been furnished. Therefore, as the writ petition has been filed by an unidentified body, the same is not maintainable. On verification, it is found that the Samasthanam has only one account in S.B.No.8030, Indian Bank. All the other accounts are either in the name of the Mutt or the various Trusts. The Samasthanam cannot pray for any relief in respect of the accounts/deposits in relation to other Trusts or Endowments. The Head of the Mutt cannot claim to have any control over the assets of the other bodies/institutions. But he appears to have full control over all the accounts, while, legally, he has no right to operate the other accounts. He is exercising full control of the entire assets, however, without any legal rights. There is strong evidence to show that the hirelings have been paid hefty from and out of the income of the Mutt and therefore, it has become essential to freeze the accounts. The prosecution has to monitor the accounts closely, especially the

spendings by the Mutt, in order to have a close watch on the possible misuse of funds for tampering the evidence. The Mutt and the supporters are resourceful people, enjoying higher power and money and if there is no proper check of their activities, the funds are bound to be used for illegal purposes for tampering the witnesses. There is already an instance of a witness having retracted his earlier statement. The police has also filed a complaint against the Accountant and the Manager in Crime No. 10 of 2005, alleging cheating and forgery in respect of the funds and they stand charged under Sections 420, 463, 465, etc of I.P.C. They are charged for having tampered with the accounts.

Releasing accounts would hamper proceedings: Prosecutor

16. Learned Public Prosecutor would also submit that the financial transactions of the Mutt were handled in an illegal manner and would particularly refer to transaction relating to the sale of land at Kancheepuram by Sree Kanchi Jana Kalyan Trust, whereby, a total advance of Rs.75 lakhs had been received. Though, originally, a cheque had been issued earlier, later, cash was received in lieu of the cheque, which reveals ulterior purposes. The amount also appears to have been deposited in some other account. This is not properly explained, before the Supreme Court, when the issue of payment to the hirelings was heard on the contention of the Mutt that a sum of Rs.50 lakhs had been received at the Indian Bank, there was not time for the respondents to verify whether the statement on behalf of the Mutt was correct or not. Therefore, there are series of facts relating to the accounts and misuse of funds for illegal activities, which have to be curtailed. One of the accused, Raghu, the brother of the junior Pontiff, who has absolutely no official status in the Mutt, was allowed to operate the accounts and funds, and he was one of those instrumental in the commission of various offences now being dealt with by the Special Investigation Team. It was incorrect to say that no criminality was attached to the accounts. Section 102 Cr.P.C. is applicable not only to corruption cases or economic offences, but also to all offences, the assets having some nexus to the crime. Large amounts have been drawn for facilitating fake surrender of some other individuals, intended to deliberately misdirect the investigation. Therefore, permitting the accounts to be operated by the Mutt would only result in helping the accused and would adversely affect the proceedings. The present interim order permitting the Mutt to operate the specific accounts was sufficient to meet the requirements of the Mutt.

17. Learned Public Prosecutor also referred to rulings in support of his contention that even bank accounts would be property and within the scope of Section

102 of Cr.P.C... and directions can be issued, restricting the operation of the accounts.

Mutt enjoys protection under Article 26 of the Constitution...

18. Mr. T.R. Rajagopalan, learned senior counsel, in reply, contends that the stand that the Mutt being an unregistered body cannot file a writ petition, is unsustainable. It is an institution which has been in existence for several years and the Shirur Mutt case was also only by a religious entity, but unregistered. It is, therefore, a juridical person, which can sue and be sued and thus enjoy the protection of Article 26 of the Constitution. Honourable Chief Minister herself has stated in the Assembly that the Mutt was several hundred years old.

No real explanation about how future transactions can affect a crime from the past...

19. Learned senior counsel also contends that the Public Prosecutor has not satisfactorily explained as to how the future transactions and activities of the Mutt can have any nexus to the crime of the past and the Special Investigation Team had already collected the materials relating to the occurrence and also subsequently till the filing of the charge sheet. Thus, the investigation having been completed, there was no further need to check on the accounts, much less freeze the activities of the Mutt. He would also deny the contention that the present operation of the two accounts by virtue of the interim order was very sufficient. Substantial amounts are required not only for performing the daily poojas and rituals, but also for paying salary to the staff. In view of the financial constraints, the Mutt was facing a very difficult situation and not being able even to pay the salary to its several employees and other regular philanthropic and religious commitments. The very idea of freezing the accounts was, therefore, aimed at destroying the Mutt in an indirect way.

20. I have considered the submissions of both sides.

Submissions restricted to bank accounts:

21. Having regard to the scope of the prayer in the writ petition seeking for a Mandamus to forbear the respondents – 1 to 3 (which include the Secretaries of the Home Department and H.R. & C.E. Department) from interfering with the right of the petitioner to manager and administer its affairs, property, including bank accounts, etc., I had pointed out to the learned senior counsel for the petitioner that the sweep of the prayer appears to include any action which the Government may be entitled to take against the Mutt, under the provisions of the Hindu Religious

Endowments Act, 1959, hereinafter called “the Act”) or any other legal provisions. The submissions were restricted only to the action initiated by the Special Investigation Team with reference to the bank accounts alone and the prayer in the interim petition was also restricted only to that extent. Learned senior counsel for the petitioner made it clear that the scope of the writ petition is restricted only to the action taken by the respondents under Section 102 of Cr.P.C. freezing the bank accounts and not as regards any other issue.

22. The relevant factual background which led to the impugned action by the respondents is simple, namely, that the Head of Sri. Kanchi Kamakoti Mutt as well as the Junior Pontiff are arrayed as accused, along with others, for having allegedly committed the murder of one Sankararaman. They were also stated to be involved in three cases, as detailed below. To appreciate the submissions of both sides, it is necessary to consider the nature of the charges against them and I had directed the respondents to file a statement of pending cases against the Head of the Mutt or the Administration of the Mutt. On 1.2.2005, learned Public Prosecutor has submitted the details of such cases, four in number, as follows:

(1) PATTINAPAKKAM P.S. CRIME NO. 899/02: Under Sections 452, 324, 323, 307, 120(b) & 201 I.P.C. read wutg 34, I.P.C.

(Under investigation)

Date of Offence: 20.09.2002; Date of report: 20.09.2002; Scene of occurrence: No.8/9 Norton Road; Mandaveli, Chennai; Complainant: S. Radhakrishnan, Male, Aged 50 years; S/o Subramanian; No.3/9 Norton Road; Mandaveli, Chennai. Accused: 1. Anandakumar; 2. Lakshmanan; 3. Boominathan, 4. Chinnakumar 5. Kannan, 6. Sundaram, 7. Kadiravan; 8. Appu 9. Ravisubramaniam; 10. Jayanthirar; 11. Sundaesan.

All the above accused were arrested and remanded (2) B-2 VISHNU KANCHI P.S. CRIME NO. 914/04: Under Sections 120(b), 302, 449, 213, 214, 201 I.P.C. read with Section 109 and 34, I.P.C. (FINAL REPORT FILED)

Date of Offence: 03.09.2004 at 17:45 Hours Date of report: 03.09.2004 at 18:00 Hours Scene of occurrence: Varadharaja Perumal Temple Office. Kanchipuram

Complainant: N.S. Ganesh, S/o Shanmugham Accused: 1. Jayendra Saraswathi & 22 others All the above accused were arrested and remanded.

(3) F-4 THOUSAND LIGHTS P.S. CRIME NO. 1670/04: Under Sections 324 & 307 I.P.C.: (Under Investigation)

Date of Offence: 03.08.2004

Date of report: 03.11.2004

Scene of occurrence: Greame Road, Thousand Lights, Chennai.

Complainant: Thirukottiyur Madhavan
 Accused: Not yet known: None was arrested.
 (4) SIVA KANCHI P.S. CRIME NO. 10/2005:
 Under Sections 420, 463, 465, 468, 471 & 474 I.P.C.
 (Under Investigation)
 Date of Offence: Before 4.1.2005
 Date of report: 04.01.2005
 Scene of occurrence: Sankara Mutt, No.1, Salai
 Street, Kanchipuram
 Complainant: Dhakshinamurthy, Sub Inspector of
 Police, Special Branch, Kanchipuram
 Accused 1. Kaladi Viswanathan, (Accountant of
 theMutt); 2. Sundaresa Iyer, (Manager of the Mutt)
 The above two accused were arrested and remanded.

23. The crux of the issue which is raised for consideration is whether in the background of the above charges, the Special Investigation Team is justified in ordering the freezing of the bank accounts of the Mutt in exercising the power under Section 102 of Cr.P.C.

24. I would first deal with the preliminary objection of the learned Public Prosecutor that the writ petition at the instance of the Samasthanam, as shown in the cause title, is not a registered body and hence, the writ petition is not maintainable. The Samasthanam had only one account. The Samasthanam is not a juridical person and hence, cannot initiate any legal proceedings.

Mutt an ancient religious institution...Judge

25. I am unable to sustain the said objection. It is not disputed that the Mutt is an ancient religious institution in existence for more than several hundreds of years. The institution, though it is popularly known as "Kanchi Mutt" in common parlance, appears to bear a traditional name as "Srimatam Samasthanam". It is stated to be headed by Sri Kanchi Kamakoti Peetadhipathi. The Mutt is, therefore, a religious institution, entitled to constitutional protection, as envisaged under Article 26 of the Constitution.
 "Religious institution" is defined under Section 6(18) of the Act as math, temple or specific endowment. "Math" is defined under Section 6(13) as a Hindu Religious Institution with properties attached thereto and is presided over by a person, the succession to whose office devolves in accordance with the directions of the Founder of the Math.

Mutt recognized as a juridical person...

26. Such institutions, in view of their antiquity and acceptance to a large section of the members of the society as representing their faith, are also accepted as institutions/juridical persons and they are entitled to sue or liable to be sued, and such rights have never been disputed or questioned. The same conclusion

would apply to other ancient institutions belonging to other religions also, such as, Christianity and Islam. There are several ancient institutions subscribing to Christian faith, churches, mosques, wakfs, functioning and recognized as legal entities, without registration under any Act. There are several unregistered wakfs which were governed by the provisions of the earlier Wakf Acts and it is only under the Wakf Act, 1955, registration of the wakfs have been made compulsory, and that too, only with the Wakf Board and not under any general statues or authorities relating to registration of companies, societies or other organizations. Registration of such religious institutions may not also be possible in terms of such general statues under which any institution, society or a company would be usually registered. There is no possibility of such institutions conforming to the various statutory requirements of having various offices like President, Vice President, Secretary, etc., much less elections to such offices in the case of a religious institution like Mutt. Further, unlike Wakf Act, 1995, there is no corresponding provision under the Tamil Nadu Act 22 of 1959, requiring compulsory registration at least under that Act.

27. It is only in the said background, such institutions have always been recognized by the Courts and other authorities as juridical persons who can sue or be sued even though they are not registered under any of the modern statutes. As pointed out by the learned senior counsel for the petitioner, there are several examples of Court proceedings including writ petitions where such institutions have been parties, one such example being the Shirur Mutt Case which went up to the Supreme Court. Therefore, it follows that the petitioner Mutt or Samasthanam, in whatever name it is called, being a Mutt and religious institution as defined under Section 6(13) and Section 6(18) of Act 22 of 1989, can maintain a writ petition.

When can Section 102 of Cr. P.C. be invoked?

28. Now, coming to the scope of Section 102 of Cr.P.C., which is, admittedly, the provision which has been invoked by the Special Investigation Team to freeze the bank accounts, it relates to "any property which may be alleged or suspected to have been stolen or which may be found under circumstances which create suspicion of the commission of any offence". It would be appropriate to extract Section 102 of Cr.P.C., which is as follows:

102. Power of police officer to seize certain property.
 – (1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer,

(3) Every police officer acting under sub section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court – as to the disposal of the same (Emphasis supplied).

29. Though “bank accounts” is not explicitly mentioned under the said provision, the Supreme Court and High Courts have consistently taken the view that the word “property” would include bank accounts also. Learned senior counsel for the petitioner does not dispute this position and it therefore follows that the power under Section 102 of Cr.P.C., should be extended to bank deposits/accounts also and the competent authority can take steps to freeze the accounts, if the other requirements are satisfied.

The scope of the power of Section 102 of Cr. P.C. is restricted to narrow limits...

30. A reading of the provision clearly indicates the scope of the power under the provision and that it is an exhaustive provision. Only two categories of properties are mentioned, namely, (1) alleged or suspected to have been stolen, or (2) which may be found under circumstances which create suspicion of the commission of any offence. No other categories can be included or deemed to be included as may otherwise be possible in an expansive definition by using certain other expressions in addition such as “as the case may be”, “as the authorities deem fit and necessary”, etc., which may render the provision an inclusive and illustrative one and not an exhaustive one. The language of Section 102 of Cr.P.C. is very clear and it is clearly an exhaustive provision, as it should be. Otherwise, the provision would be arbitrary and unconnected to the offence and would be liable to be misused for ulterior purposes. Therefore, designedly, the Parliament has restricted the power under Section 102 of Cr.P.C. to specific and narrow limits.

31. In STATE OF MAHARASHTRA Vs TAPAS D NEOGY ((1995) 7 SCC 685), the Supreme Court had occasion to consider the scope of Section 102 of Cr.P.C., vis-à-vis, what constitutes “property”. While holding that bank account would also fall under the provision, the Supreme Court also held that the amount has to be the outcome of commission of offence by the accused, if such assets have direct links

with the commission of the offence for which the Police Officer is investigating into.

32. The legal position for invoking Section 102 of Cr.P.C. is thus very clear, namely, that bank deposits can also be brought under the provision, provided, the deposits represent either stolen money or should be connected with the commission of any offence. In short, there must be nexus to the crime alleged and the money to be seized. The charge in this case is not of theft, and therefore, the first alternative, which is specific, is not satisfied. The second alternative, which is general in nature, has to be examined in the light of the factual background of this case.

33. The Head of the Mutt is suspected of being involved in the murder of one Sankararaman. The investigation into the murder case, according to the prosecution, revealed his involvement in two other cases, namely, Crime No. 859 of 2002 relating to assault on one Radhakrishnan and attempt to murder and Crime No. 1670 of 2004 of having caused injury and attempted to murder one Madhavan. We may deal with the last case (Crime No.10 of 2005) separately.

Police cannot invoke Sec 102 of Cr. P.C. for future transactions or regular mutt activities...

34. In all these three cases, the allegations relate to offences affecting human body (Chapter XVI of I.P.C.) and the related offences are Section 120-B, I.P.C. (conspiracy) and Section 201, I.P.C. (suppression of evidence and giving false information). They do not relate to any money transaction except to the extent of the allegation of having allegedly paid money to the hirelings who are said to have been engaged by the accused to carry out the crime. It is true; all the reported cases arising under Section 102, Cr.P.C. pertain to economic offences and cases of corruption and cheating, etc. But the contention of the learned senior counsel for the petitioner that Section 102, Cr.P.C. has to be specifically restricted to economic offences alone cannot be accepted. There would be certain other category of cases wherever money or property is involved, intrinsically connected with the offences. In these cases, the connecting link with Section 102, Cr.P.C. is prima-facie available, namely, one part of the conspiracy being the money paid to the hirelings. There could be no doubt about the position that if the money or consideration in any form paid to the hirelings are now available with anyone, the police can certainly invoke Section 102, Cr.P.C. and seize the same. The police can also collect all evidence regarding the payment of money or consideration in any other form and evidence relating to the same such as bank accounts, which may reflect the payment of such amounts, evidence of deposits of withdrawals which may have relevance to such payment to the

hirelings. To that extent, the police would be definitely justified in seizing the account books of the Mutt, calling upon the Mutt as well as their bankers to furnish all information and records pertaining to a reasonable period, immediately before and after the commission of the offence. However, the offence having been completed long back, the checking of the accounts in relation to the aforementioned three cases can be only as regards past events and accounts. Any checking would be relevant only with reference to past transactions. Section 102, Cr.P.C. cannot have any nexus to the future transactions or the regular activities of the Mutt. The day-to-day activities of the Mutt and the money which they receive or spend for such day-to-day activities can have absolutely no relevance to the offences alleged to have been committed earlier by the Head of the Mutt or for the investigation into these offences. The money or the assets of the Mutt in relation to their future activities, cannot, by any stretch of imagination, be brought under Section 102, Cr.P.C. It is not the case of prosecution that the Mutt is, as on date, possessed of any money which can be treated as anything to do with the commission of the offence. Even if it is available, the police can seize only that money or consideration, in whatever form, if available with the Mutt or any of the accused. But, having regard to the nature of the charges against the accused in this case and the charges being relatable only to past events and period, I am unable to comprehend any possibility or justification to invoke Section 102, Cr.P.C. as regards future activities of the Mutt.

35. During the hearing itself, I had made it clear to the learned Public Prosecutor that the Special Investigation Team would be entitled to seize and retain all account books of the past period, if required for investigation relating to the charge of payment of money to the hirelings and also to call upon all the banks to furnish the necessary information regarding such past transactions. Learned Public Prosecutor has not been able to point out any single reason for freezing of accounts in the context of Section 102, Cr.P.C., except for expressing apprehension that the Mutt may use the funds for gagging or tampering with the witness. Certainly Section 102, Cr.P.C. is not intended or visualized for such a contingency. Such activities can have no relevance to the "commission of any offence" which is the essential ingredient of Section 102, Cr.P.C., and in this case, the commission of offence, either murder or paying money to hirelings are all past events. Therefore, the apprehension or the possibility of the accused making use of the funds for influencing or tampering the witness in future cannot be brought under the scope of Section 102, Cr.P.C., much less can it be an excuse to stifle the activities of the Mutt. If there be so, in every prosecution under I.P.C. offences, Section 102 of Cr.P.C., can be invoked.

It is unwarranted for the police to oversee accounts...

36. Even so, in this case, the police can be permitted to oversee the accounts of the Mutt, their deposits and withdrawals in the bank by making the Mutt to furnish statement of accounts periodically. In fact, learned senior counsel for the petitioner also agreed to comply with any such direction which the Court may issue. Strictly speaking, in terms of Section 102, Cr.P.C., even the said direction cannot be justified or sought for by the police. However, having regard to the apprehensions expressed by the police, and the agreeability of the petitioner to furnish statement of accounts, such directions can be issued so that the police would be able to oversee the accounts for some reasonable time, even though it is wholly unwarranted. I do not think that the prosecution can point out any single instance of such a direction being given in their favour in the context of Section 102, Cr.P.C., vis-à-vis the apprehension of the police that the accused may use the funds for tampering of witnesses.

Mutt is not the accused...

37. In this case, another perspective which renders Section 102, Cr.P.C., inapplicable to freeze the accounts of the Mutt, is that the Mutt is not the accused. It is the Head of the Mutt who is the accused. If there is any personal or individual account of the accused, the police could very well invoke Section 102, Cr.P.C. as against the said account. The Mutt or the Trust is an independent body by itself and can have nothing to do with the commission and omission of the Head of the Mutt in his personal capacity. Though, strictly speaking, the Head of the Mutt cannot be equated to a Trustee or Manager, his relationship with the Mutt is only in a fiduciary capacity. The property, assets and income of the Mutt belongs to the Mutt and does not belong to the Head of the Mutt. He has not proprietary or individual rights or interest over the property. In fact, even the "Paadha Kaanikkai" given to him in the capacity of Head of the Mutt would also belong only to the Mutt and accountable vide Section 62 of Act 22 of 1959. Therefore, for the offence alleged against the Head of the Mutt, Section 102, Cr.P.C., cannot be invoked as against the property, assets and income of the Mutt, which is a separate organization and legal entity by itself. To hold otherwise, would lead to unreasonable and shocking situations.

Mutt a separate entity from its Head...

38. I ask myself a question as to whether the accounts of a company could be frozen if the Managing Director is charged with murder. If so, it could happen

to any Organisation, Institutions, registered under the Societies Registration Act, Clubs, Political Parties, Social Organisations, etc. Once the Head of the Institution is apprehended of any offence under I.P.C., the Institution can be brought to a grinding halt, and the police can, at the stroke of a pen, freeze bank accounts and consequently, freeze and paralyse the activities of the Institution. That certainly is not the scope of Section 102, Cr.P.C. Learned Public Prosecutor contended that the Head of the Mutt has the overall control of the administration of the Mutt. This is true, with respect to all the organizations as aforesaid, and that in the justification for invoking Section 102, Cr.P.C., I agree that the nature of administration of a Mutt cannot be compared with a Corporate Entity. But the fact remains that all these institutions, including the Mutt, are separate entities and cannot be bound or affected by the commissions and omissions of the Head of the Institution. In fact, at least in the case of a company, the Managing Director may have proprietary or ownership interest over the assets and properties to the extent of his share. But in the case of a Mutt, the Head of the Mutt has no personal rights over the assets and income which belong only to the institution. The petitioner institution is not one of the mushroom mutts or religious institution of recent origin, most of which are established with ulterior motives. The ancient mutts like the petitioner. Thiruvavaduthurai, Thirupanandal, Ahobilam Mutt, Madurai Adheenam, etc. were established by great saints. The Head of the Mutt today may or may not be involved in a crime. But that is no reason to subject the mutt to such action which would paralyse the mutt. Heads of Mutts will come and go, but the mutt should be allowed to function normally.

39. To repeat what has already been stated, the reasons to invoke Section 102, Cr.P.C. in this case are two fold. Firstly, the money of the Mutt having been paid to the killers/hirelings. Secondly, the police has an apprehension that the money could be used for tampering the witnesses. The first ground relates to past events and has no relevance to the future functioning of the Mutt. The second one, an apprehension of a future event, can never be a reason for invoking Section 102, Cr.P.C. It is true that the future possibility can also be a relevant factor in the sense, such as the need to “safeguard” the asset being the product of outcome of the illegal activities, illegal gratification, etc. which asset or money would have had direct link with the offence committed by the accused as a public officer vide STATE OF MAHARASHTRA Vs. TAPAS D NEOGY ((1995) 7 SCC 685) Supra. This is not a case of corruption or illegal gratification in which case the asset has to be “safeguarded”. In addition, the properties and assets belong to the Mutt and not to the Head of the Mutt.

No proof funds were misused...

40. I am also unable to sustain the contention of the learned Public Prosecutor that the Head of the Mutt in the present case can have no control over the other Endowments, Trusts, etc., but that in fact, he was exercising control over all the institutions in an improper manner. Apart from such a statement, no material or further submissions are made to substantiate the said contention. This contention on behalf of the respondent is really a double edged weapon. If the Accused has no legal rights and control over the Trusts and Endowments, it will not be possible for the police to invoke Section 102, Cr.P.C. with reference to the accounts relating to the other Trusts, Endowments, etc. Learned senior counsel for the petitioner positively states that all the trusts, endowments are attached to the mutt. This statement is not controverted by production of any material to the contra.

Police cannot interfere in the Mutt or future activities...

41. Now, we may consider the fourth and last case against the accused. The charges relate to the accounts of the Mutt and the Accountant and the Manager of the Mutt have been arrayed as accused. As on the date when the accounts were frozen, the Head of the Mutt has not been shown as an accused. Now a new Manager has been appointed against whom there are no charges, as pointed out by learned senior counsel for petitioner. Even so, we may assume for the sake of discussion that the Head of the Mutt is also arrayed as one of the accused. The accused stand charged with the offences of cheating, forgery, using forged documents as genuine, etc. All these allegations relate to the alleged manipulation of accounts only in the context of other charges of murder, assault, etc. Learned Public Prosecutor fairly agreed that the fourth case is also the outcome of and inter-connected with the cases of murder and assault and now the funds and accounts have been manipulated for the purpose of payment to the hirelings and for suppression of evidence. To my specific question as to whether the police are trying to probe into the general administration of the Mutt, learned Public Prosecutor has stated that the police was not concerned with the administration and management of the Mutt and that the fourth case related only to manipulation of accounts, vis-à-vis, the commission of crime of murder and assault and the payments made to the hirelings. If so, the very reasons as aforesaid for the other three cases, would apply to the fourth case also, namely, the allegations pertain to past events and accounts and the police is certainly entitled to collect all evidence relating to past activities, but cannot interfere with the administration

of the Mutt and the accounts relating to future activities.

42. A perusal of the communication from the Chief Investigating Officer to the various banks discloses that the reason for direction to freeze the accounts pertains only to the past events, and that too, only in the context of the murder case (Crime No. 914 of 2004) as shown in the reference column. Three sample letters of different dates to different banks have been produced before the Court by the police. The text of the letters are verbatim the same. The text of the letter is as follows:

During the course of investigation there is reasonable suspicion to indicate certain irregularities had crept in by way of money transactions to certain agencies through your bank till today. Hence it is expedient and necessary to stop all further transactions if any through your bank in future.

Therefore, I request that necessary steps may be taken immediately to freeze the account in the above reference No.1 on the file of your bank.

43. It is true that the letter to the bank need not spell out the specific reason except to indicate involvement in a criminal case. But, it is now known as to how "further transaction if any through the bank in future" would have any relevance to the murder made.

Discretion to use powers should be exercised cautiously...

44. The scope and applicability of Section 102, Cr.P.C. is under rare and exceptional circumstances and is to be applied only to the assets of the accused, which are the direct outcome of the crime and not to stifle the activities of the Mutt which is an institution unconnected with the offence. The power which is used for a particular purpose cannot be stretched to irrelevant matters and to extremes and to a breaking point, in the event of which, the Court, is compelled to interfere. Discretion to use the powers should be used and exercised cautiously, failing which, it becomes misuse of discretion and tainted with arbitrariness.

"All power has legal limits...should be exercised in good faith..."

45. Prof. Wade, in his magnum opus "ADMINISTRATIVE LAW" 19th Edition, Page 3431, observes as follows, while dealing with application of discretion":

"The first requirement is the recognition that all power has legal limits. The next requirement, no less vital, is that the courts show draw those limits in a way which strikes the most suitable balance between executive efficiency and legal protection of the

citizen. Parliament constantly confers upon public authorities powers which on their face might seem absolute and arbitrary. But arbitrary power and unfettered discretion are what the courts refuse to countenance. They have woven a network of restrictive principles which require statutory powers to be exercised reasonably and in good faith, for proper purposes only, and in accordance with the spirit as well as the letter of the empowering Act."

Action freezing accounts is illegal, ultra vires and liable to be set aside...

46. The Mutt is an organization of religious faith of innumerable people. So also is the Church, Mosque, Wakf etc. There are several endowments, Trusts and philanthropic activities attached to these organizations over which several devotees have personal interest, faith and sentimental devotion. One may or may not agree with the respective faith or behalf of others. But they have a right to establish and maintain institutions for religious and charitable purposes within the framework of law and such right is granted as a fundamental right under the Constitution vide Article 26. Such an organization cannot be paralysed or closed down virtually by writing a letter purporting to and under Section 102 Cr.P.C., only for the reason that the Head of the Mutt and few office bearers are alleged to be involved in some offences. A word of caution to the Special Investigation Team. By all means, take action in the criminal cases against the indicted individuals with a single minded determination if you feel convinced about their guilt. No one is above the law. But if you divert and deviate from that direction unmindful of the rights of innocent devotees of the Mutt, it would result not only in diluting the prosecution, but also cast a deep shadow on it. If there is anything wrong with the administration of the Mutt, it is for the H.R. & C.E. Department which has to comply with the procedure under the Act and to look after the said issues in terms of the provisions of the Act and it is not for the police to interfere with the functions of the Mutt while investigating a case of murder or assault. Even if any commission or omission amounting to a criminal misconduct is brought to light in so far as the administration of the Mutt is concerned in the opinion of the H.R. & C.E. Department, it may be open to the H.R. & C.E. Department to file a complaint before the police for appropriate action against the individuals concerned. It is not for the Special Investigation Team dealing with a murder and assault case to plunge into the accounts of the mutt, and paralyse its functions by invoking Section 102, Cr.P.C. With the result, I am inclined to hold that the impugned action of the third respondent in invoking Section 102 Cr.P.C. for freezing of accounts of the Mutt is ultra vires the said provision, illegal and liable to be set aside. The above order is, however, subject

to the direction to the petitioners that they shall submit a statement of accounts pertaining to all bank deposits to the third respondent once in a month till the completion of the trial in Crime No. 914 of 2004. The writ petition is allowed only to the extent of the third respondent having invoked Section 102 of Cr.P.C. No costs. Connected W.P.M.P. No. 1173 of 2005 is closed.

Sd/- Asst. Registrar /true copy/; Sd/-, Sub Asst. Registrar,

To: 1. The Secretary to Government
Home Department, Fort, St. George, Chennai – 9
2. The Secretary to Government, Hindu Religious and Charitable Endowments Department, Fort, St. George, Chennai – 9.
3. The Additional Superintendent of Police
Special Investigation Team, Kancheepuram
4. The Manager, Indian Bank, Salai Street, Kancheepuram
5. The Manager, State Bank of India, Kancheepuram,
6. The Manager, Canara Bank, Kancheepuram
7. The Manager, Union Bank of India, Kancheepuram
8. The Manager, Indian Overseas Bank
Kancheepuram
2 ocs to Mr. K. Chandrasekar, Advocate in SR 6183;
1 oc to PP in SR 6208; 1 oc to GP in SR 6211, Order in, W.P. No. 2050 of 2005, Dated
11.2.2005

“This must be a foisted case”...
Judge Thanikachalam

In the High Court of Judicature at Madras
(Criminal Jurisdiction)
28/1/2005

PRESENT
THE HONORABLE THIRU JUSTICE
M.THANIKACHALAM
CRIMINAL ORIGINAL PETITION NO.430 &
607/2005

1. T.A.RANGANATHAN
(PETITIONERS/ACCUSED)
2. R.SESHADRI IN CRL.O.. 430/2005
1. R.MUTHUKRISHNAN (PETITIONERS IN
CRL.O.P.607/05; 2. V.SELVAM
Vs.
INSPECTOR OF POLICE, (RESPONDENT IN
BOTH THE PETITIONS)
SPECIAL INVESTIGATION TEAM
D.F.C.BUILDING, KANCHEEPURAM
CR.NO.NOT KNOWN OF 2004

For Petitioners : M/S R.RAJENDRAN, ADVOCATE
(IN BOTH THE PETITIONS)
For Respondents: MR.V.JAYAPRAKASH
NARAYANAN, GOVT.ADVOCATE (CRL.SIDE)
**PETITION FOR ANTICIPATORY BAIL under
Sec. 438 Cr.P.C.**

ORDER: The Court made the following order:-
Petitioners in both the criminal original petitions were arrayed as accused in order No. 1670 of 2004 on the file of the Thousand Lights Police Station for the alleged offence said to have been committed by them, along with others, under Sections 324 and 307 IPC. Though originally, a case has been registered by Thousand Lights police, since for the incident that had taken place within its jurisdiction, for the reasons best known to the police within its jurisdiction, for the reasons best known to the Police or the investigating agency, now the case has been transferred to the respondent, for further investigation, probably because of the involvement of certain important persons serious offence or otherwise, as the case may be, which I am not concerned at present.

Petitioners claim they are not connected...

2. The Petitioners, apprehending that they would be taken into custody, for the alleged offences, under

Sections 324 and 307 IPC, and with a view to avoid unnecessary harassment of arrest, have filed the above petitions, for anticipatory bail, pleading innocence alleging, that they are respectable persons, that they have no connection of anything, either with the complainant, or in the alleged incident.

3. Opposing the anticipatory bail petitions, detailed counters have been filed, wherein it is stated inter alia that the de-facto complainant was the target of attempt to commit murder, on 3.8.2004, not only by these petitioners, but also by some other accused, who had actually committed the offence and to that effect, there are materials by way of statements recorded under Section 162 Cr.P.C. and confession statement of some other accused.

4. It is the further case of the investigating agency, that the petitioners being influential persons are likely to tamper with the witnesses and therefore, the release of the petitioners on anticipatory bail, is not desirable, considering the seriousness of the offence, and the further fact, that their custodial interrogation is also necessary to reach the legal end of the investigation, properly.

The history...

5. The incident had taken place on 3.8.2004 at about 9.30 a.m. in Grahams Road at Madras. At the time of the incident, it seems that defacto complainant was travelling in his two wheelers. In the said incident he sustained some injuries also for which he had taken treatment, in the Apollo hospital and discharged in August 2004 itself. The de-facto complainant, thereafter kept quiet not suspecting any foul play while sustaining the injuries and not suspecting any other hands also for his injuries and all of a sudden, wisdom dawn upon his mind on 3.11.2004 to tender a complaint, as if he was the target of attack aiming his life for that, these petitioners are also responsible. On the basis of the complaint, given by the defacto complainant Thirukottiyur Madhavan, a case has been registered as referred above, which is under investigation in the hands of the respondent police.

6. In order to ascertain or at least to see a prima facie, whether Thirukottiyur Mahavan would have been the target of attack, that too aiming his life on 3.8.2004 at about 9.30 a.m., we have to see the history behind the alleged attack as narrated by the de-facto complainant.

A Siva temple moved ...not to his liking...

7. Inside the Thirukkurangudi Perumal Temple, there was a Siva temple also. The villagers of Thirukarungudi had decided to renovate the temple. At that time, at somebody's advice, with the consent of the villagers or otherwise, it was decided to shift

the Siva Temple, from the precinct of Vaishnava temple, leading to some troubles, resulting in some litigations also including civil dispute also which are not so germane at present to decide this petition. The removal of Siva temple from the Precinct of Perunal temple at Thirukkarungudi, was not to the liking of the de-facto complainant.

8. On 28.7.2004, according to the defacto complainant when he visited Thirukarungudi along with one Krishnamachariar and represented before the Jeer Swamy concerned, about the demolition and shifting of lord Shiva Temple, Mr.Ranganathan, the first petitioner in CrI.O.P.No.430/95 warned him that he should not interfere in this matter, since the shifting had been done as per the order of Periyaval, for which Jeer Samy had also agreed, that too with the consent of H.R. & C.E. Commissioner. Further, it is the case of the complainant, he was threatened that if he interferes with this matter, despite the warning, he will have to meet the severe consequences. According to the defacto complainant, Ranganathan did not stop with that, but showing some persons, informed the defacto complainant, that they are hirelings and warned him, with dire consequences. It is also further averred in the complaint, even thereafter i.e., 31.7.2004, his friend Ravichandran contacted him over phone, warned him not to go in two wheelers and if he proceeds, he should be more cautious.

“Unexplained delay in complaining causes an inerasable doubt...”

9. If the above facts narrated in the complaint, are true to the knowledge of the defacto complainant, since he claims a pious Vaishnavaite devotee he would have suspected, at the time of the incident itself that he was the target, only at the instigation of Ranganathan or because of his questioning about the removal of Shiva Temple in the precinct of Vaishnava temple. In that case, immediately he ought to have preferred a complaint that atleast suspecting, after the incident, whether it is a road accident fall or actually assaulted by some of the assailants using iron rod, as claimed very belatedly giving unexplained doubt. Curiously the defacto complainant, who claims that he had knowledge about the threat, made by the first petitioner by name Ranganathan, has preferred the complaint only on 3.11.2004, that too when some of the accused in some other case had been arrested and said to have given some confession statements, inter-linking this incident also, as if Kanchi Periyaval is the cause. The inordinate and unexplained delay creates an unerisable doubt in the minds of the court, whether the defacto complainant would have been the target of the assault on 3.8.2004 for his questioning the removal of Lord Shiva Temple from the precinct of Perumal Temple at Thirukkarungudi.

“Who protects him now?”

10. The Complaint reads that the defacto complainant was powerfully attacked with an iron rod, which caused him unconscious and somebody taking him to Apollo Hospital for treatment. He was treated in the Apollo Hospital from 3.8.2004 and discharged on 7.8.2004. For not preferring the complaint forthwith, an explanation is sought to be offered, as if fearing that police complaint may bring more danger to him, he did not give any complaint to the police immediately. If it is so it is unexplained at present, who has given the protection to prefer the complaint and at whose instance, the complaint was given, by the defacto complainant, as if the petitioners are the cause for sustaining injuries, by the defacto complainant on 3.8.2004.

11. It is the usual practice, whenever, a person who sustained injuries unnaturally or otherwise, was taken to hospital, the doctors concerned used to enquire the matter and make references in the Accident Register, as well as in the wound certificate also, probably, anticipating lego medical case. If the injured was conscious, the doctors used to enquire him, record the statement given by the injured. On the other hand, if the injured was unconscious, not capable of explaining what had happened to him, then the doctors used to enquire the person who accompanied the injured or who admitted the injured in the hospital regarding the incident, such as how the injured sustained injuries and on that basis, they use to make reference about the origin of injuries. Having the above said facts in mind, we have to see the medical certificate of the defacto complainant.

Nature of injuries and injury report both suggest a road accident...

12. Concededly Shri Madhavan the defacto complainant was admitted in the Appollo Hospital for treatment, for the injuries sustained by him on 3.8.2004, whoever may be the cause at the time of the admission, the patient was conscious, and he was not suffering from any fever, for which we find specific reference in the accident/injury report pertaining to the defacto complainant produced on behalf of the petitioners. This document is not challenged before me, The injury report also further says, his heart beat was normal, B.P. was also normal to certain extent, thereby showing defacto complainant was capable of describing the incident as well as how and under what circumstances he had sustained injuries etc. Therefore, at present, it shall be presumed that only on the statement given by the defacto complainant, the doctor should have made the entries in the accident/injury report. The injury report says that Madhavan sustained injuries in a road accident, while

riding his two wheeler, hit by a car from behind. The injuries are described as follows:

1. The lacerated injuries in the parieto occipital region measuring 4 cm x 2 cm and 6 x 2 cm respectively.
2. One linear abrasion on the upper back
3. Multiple superficial scratches on the dorsum of the right hand and right knee.

The nature of injuries also suggests that the defacto complainant might have sustained injuries only in the road accident or by fall. All the injuries are simple in nature and as per the wound certificate available. I do not find any reason at present, to doubt about the genuineness of the accident/injury report, issued by Apollo Hospital, which indicates that the defacto complainant, had sustained injuries only in the road accident, not as described by him in the complaint, which came to surface belatedly, at somebody's instigation. It is not the case of the defacto complainant, that by dashing the car, while he was traveling in a two wheeler, an attempt was made to commit murder, at least to fit in with the previous allegation in the wound certificate. Curiously, in the complaint, he has given a totally different version, as if seeing four persons when he attempted to escape, after stopping the two wheeler, he was powerfully attacked on his head. Considering the wound certificate and the reasons stated therein for sustaining the injuries by the defacto complainant and the belated stand taken by the defacto complainant after three months, at present I am unable to believe the statement of the defacto complainant even prima facie, that he should have been the target of attempt to commit murder, especially by these persons who are working in a reputed company holding respectable and responsible posts. Even in the belated complaint except the name of Ranganathan and Muthukrishnan, who are the first Petitioner, in both the applications, others name do not find place. It is also not that at the time of the incident he had seen these persons instigating the actual assailants and therefore, they should be held responsible. Even to presume at present that there was an incident on 28.7.2004, in which the defacto complainant was threatened no material has been placed before me.

Not persuaded that the petitioners were responsible for injuries...

13. The submission of the learned public prosecutor that during the course of investigation one Krishnan has given a statement regarding the incident, fails to persuade me to accept at present about the actual involvement of these petitioners in the same way, the statement said to have been given to the Police under section 161 Cr.P.c. by Madhavan mentioning the name of Jayendrar, Ranganathan, Selvan & Seshadri in respect of the incident said to have taken place at Thirukkarungudi also failed to persuade me, to say at least especially that these petitioners should be the

cause for the incident in which the defacto complainant sustained injuries. Under the above facts and circumstances of the case, considering the inordinate delay in preferring the complaint and the inconsistent stand taken by the defacto complainant, I am constrained to say, no prima facie case has been made out at present against the Petitioners, to say, that they should have committed the offence under Section 307 I.P.C.warranting refusal of Anticipatory Bail, thereby enabling the police to take them into custody, curtailing their liberty.

False case because money was not paid on demand: Petitioner

14. The submission of the petitioners that the belated complaint is motivated to be some what acceptable at present, considering the conduct of the defacto complainant. The first petitioner in Crl. O.P.No. 607/2005 is working as the Group Security Officer in Sundaram Clayton Group and the second Petitioner, is the Senior Manager (Civil) TVS Motor Company Limited, in which one Shri Venu Srinivasan is functioning as the Managing Director. The first Petitioner in Crl.O.P. No.430/2005 is the Senior Manager (P.R.) in M/s Sundaram Clayton Limited and the second Petitioner is the consultant of TVS Motor company Limited, Chennai. The defacto complainant is the administrative Secretary of Sree Sowmyanarayanan Emberumanar Charitable Trust, Thirukoshtiyur. Being a Vaishavaite, this man is also involved in the religious activities of the Vaishnavite Temple and TVS Group of Companies are also renovating Vaishnavite Temples and maintaining the same. As submitted by the learned counsel for the petitioners by producing a letter written by this Thirukoshtiyur Madhavan, he had requested Venu Srinivasan to provide funds for some religious purpose on 12.4.2003. Responding to the latter, TVS Motor Company had written a letter to Shri Mahavan on 24.7.2003, informing sanctioning of Rs. 1 lakh which was received by Madhavan on 02.08.2003. Not satisfied with the said amount and realizing the paying capacity of TVS Group, once again on 25.5.2004, the said Madhavan had written a letter to Venu Srinivasan, Managing Director, Sundaram Clayton, requesting Financial assistance for certain religious activities quantifying the amount for more than Rs. 6 lakhs. There was no favourable reply from TVS Group. It is the case of the learned counsel for the petitioners, aggrieved by this viz. for non compliance of his demand, a false case has been foisted to rope the people who are working in Sundaram and TVS Group, which cannot be ruled out at present. If this is not the motive, in the ordinary course, on the date of the incident itself, as indicated by me supra, the complainant should have preferred a complaint considering the previous failure would suggest positively, the complaint, presented at later

stage, must be false, unless it is established by any other clinching evidence, which is not available at present for my perusal.

No motive to attack the complainant...

15. The submission of the learned counsel for the petitioners, that these petitioners have no motive to attack the defacto complainant also appears to be acceptable in the absence of any evidence even prima facie. The defacto complainant is a vaishavaite and he may not be prejudiced in the shifting of the Lord Shiva Temple from the precinct of Perumal Temple at Thirukurungadi. If he had felt, that the removal of Lord Shiva Temple is against the rules of Agama Vedam, at the time of shifting itself, he should have agitated, which he has not done so. After the removal of Shiva Temple, litigation has also started and it is not the case of the prosecution before me, that this man took action against Vaishnavite for the removal of Lord Shiva Temple. This being the position, it is unacceptable to me, that he should have questioned the Jeer and at that time, the Petitioners in both the cases, would have warned him with dire consequences, if he interferes with this matter. Except the bare allegation, that he had challenged the removal of Lord Shiva Temple, for the actual role said to have played by this Madhavan, no material has been placed.

No prima facie case to refuse Anticipatory Bail...

16. Considering all these facts and circumstances of the case, as well as the inordinate delay in preferring the complaint, and considering the towering fact, that at the earliest opportunity, the complainant had reported that he had sustained injuries only in the road accident, I am of the undoubted view, that this case must be a foisted one or in other words, no prima facie case has been made out against the Petitioners for the refusal of Anticipatory Bail, since they have made out strong case that they would be taken into custody. Not only they have made out reasonable apprehension, but also they have made out a strong case for Anticipatory bail which is not actually negated.

17. Under the above said circumstances, all the petitioners after entitled to be released on Anticipatory Bail in their event of arrest or on their surrendering before the Court, on condition that each of them executes, a bond for a sum of Rs. 5,000/- (Rupees five thousand only) with two sureties each for a like sum to the satisfaction of the judicial Magistrate No.1 Kancheepuram and upon further condition that the petitioner shall report to the investigation officer once in a week, ie. on every Monday at 10.00.am. Until further order in addition to

complying with the conditions stipulated under Section 438 Cr.P.C.
The Petitioners shall surrender before the concerned Court within fifteen days from the date of receipt of copy of this order, failing which, the anticipatory bail granted shall stand cancelled.
/sd/
28.01.2005

This order, on being produced, be punctually observed and carried into execution by all concerned.
TRUE COPY
Sub-Assistant Registrar, (Statistics/C.S)
High Court, Madras – 600 104

1. THE JUDICIAL MAGISTRATE NO-II 2. THE CHIEF JUDICIAL MAGISTRATE
KANCHEEPURAM CHENGALPATTU (FOR INFORMATION)

3. THE PUBLIC PROSECUTOR 4. THE INSPECTOR OF POLICE
HIGH COURT, MADRAS SPECIAL INVESTIGATION TEAM
D.F.D.BUILDING
KANCHEEPURAM
c.c.to: M/S R.RAJENDRAN, Advocate on payment of necessary charges.

Justice Reddy indicts the Media and the State

“The importance of spiritual organizations and institutions can by no means be underestimated in the matter of building and shaping a country, or for that matter, the society”

**THE HON’BLE SRI JUSTICE
L. NARASIMHA REDDY**

WRIT PETITION NO. 23220 OF 2204
ORDER:

In a way and in a sense, this writ petition demonstrates the extent to which the institutions of ancient origin as well as the concept of public interest litigation have become vulnerable. It also indicates the abyssal levels, to which the norms of journalism have drifted.

Public Interest Petition filed...

2. The petitioner claims to be a registered organization, with an object of espousing the causes of labourers. It filed the writ petition seeking a direction to the respondents, viz. the authorities of Labour and Police Departments, to take immediate action in respect of criminal cases filed against Suryalaxmi Cotton Spinning Mill, Mahaboobnagar, and violation of labour laws therein after calling for records. The basis or inspiration for filing this writ petition is said to be the items of news, published in various newspapers, during the months of November and December, 2004.

Reference made in Petition to Sri. Jayendra Saraswathi

3. Two workers of the mill, referred to above, are said to have died in the year 1998. Investigation into the same is alleged to have been entrusted to the CBCID. In paragraph-6 of the affidavit, which constitutes an important portion of the pleading, it was stated as under:

“It is further submitted that it is reported that two teenaged women workers of 16 years and 18 years by name Tirupathamma and Nirmalamma were raped and murdered in the year March, 1998. The investigation was entrusted to the CBCID Department, but no action is taken against the culprits. It is reported in the press that the relatives of the management were involved in that case and also at the same time the Jayendra Saraswathi who was the Peethadhipathi of Kanchi Kamakoti came to the Surya

Laxmi Cotton Spinning Mill and performed Poojas and Yagnas. The rumours came out as two teenage women workers in the mill were killed in the name of "Bali" (Andhra Jyothi Daily on 5.12.2004)".

Reference is also made to the items of news published in other newspapers. Clippings of the press reports referred to above are filed as material papers to the writ petition.

Concern over way institutions and persons of repute are sought to be maligned...

4. The writ Petition came up for admission on 15.12.2004. During the course of hearing, it was enquired from the learned counsel for the petitioner as to what was the basis and relevance for making reference to Sri. Jayendra Saraswathi in this writ petition and it was adjourned to 21.12.2004, to enable the deponent to appear. The deponent filed W.P.M.P (SR) NO.127642 of 2004, seeking permission of the Court to delete the portion of the affidavit, extracted above. He also tendered unconditional apology for mentioning the name of Swamiji. On the next date of hearing, the attention of the learned counsel for the petitioner was drawn to Annexure-I to the writ petition, which reads as under:

1. The petitioners organization is registered one with Regd.No.4483 and our organization is affiliated to Mahaboobnagar District Palamoori contract labour union.
2. The Jayendra Saraswathi who was the Peethadhipathi of Kanchi Kamakoti came to the Surya Laxmi Cotton Spinning Mill and performed Pujas and Yagnas.
3. The Police didn't register the crime and no post mortem of the dead body was conducted. The same is reported in the press [(1) Andhra Jyothi Daily on 17.11.2004, 5.12.2004 and 07.12.2004, (2) Eenadu Daily on 04.12.2004]"

In fact, the learned counsel, Sri Prathipati Venkateswarlu, was shocked and surprised on seeing this, and immediately made a request to the Court to permit him to withdraw the writ petition, after receiving instructions from his client. There should not have been any difficulty for this court in acceding to his request. However, it is felt that a time has come, when the court has to discourage the indiscriminate proceedings in the name of public interest litigation, and guard itself from being used as a tool by certain interested persons to gain popularity, or to create sensation. Time has also come, to express concern over the way in which institutions and persons of high reputation are sought to be maligned.

Petitioner did not want to lag in denigrating a respected name with impunity...

5. The petitioner claimed to itself, the credit for the various steps stated to have been initiated by it, before the organizations within and outside the country, with an object of ameliorating the conditions of workmen. Several instances are cited in an index. To that extent, nobody can have any grievance, and even if a handful of workers are benefited out of such proceedings or steps, the petitioner deserves to be congratulated and appreciated for it. However, this court is compelled to observe that the only provocation for the petitioner to file this writ petition appears to be the recent unfortunate happenings in relation to a Seer of an Ancient, prestigious, glorious and reputed institution, with almost 2500 years of history. The petitioner made no secret of this and found it difficult to relate or connect the alleged causes, to the name, he has taken with impunity. When he was called upon to explain, he tendered apology and sought to delete the paragraph. To certain extent, the petitioner who appears to have been otherwise interested in the welfare of labourers was swayed away by the news items published in certain dailies and he did not want to lag behind in the unprecedented process of denigration of the religious institutions.

A glorious institution targeted in an organized manner by State and Press

6. It is rather sad and sorrowful that an institution of such glory, that withstood foreign invasions, and social revolutions from time to time spread over past 25 centuries, is virtually targeted and persecuted in an organized manner, in an independent country. Not only individuals but also a section of institutions, such as, the State and Press, appear to be determined to belittle and besmirch the Peetham. The perfidy caused to it has shocked almost everybody in the society, cutting across the religions and borders of the country. The role of the Courts, though indirect, is by no means insignificant. Proponents of human rights, fair play and dignity to the individuals and institutions have maintained stoic silence. A powerful section is either celebrating it or is watching it, with indifference. The issue appears to be having a greater dimension than investigation into a murder. That however is a different aspect.

7. There are certain institutions in every country, which constitute their conscience and pride, and irrespective of the form of the Government, they are respected and revered. In doing so, the country and its people, in fact respect themselves. Even where any aberration occurs in such institutions, wise and prudent people make all efforts to address them in isolation and try to protect the institution, at all costs.

It is only the unwise and shortsighted that tries to protect the system or institution with reference to aberration. If at all anything, such measures indicate fall of moral and ethical standards. In the process, the institution has nothing to lose, but in the long run, the society will be heading towards self-destruction. The situation would be much more serious where the targeted institution is the conscious keeper of the society.

Opinions should be based on verification and not on propaganda

8. For example, few years ago, no less a personality than the Chief Justice of India, said at a meeting that there is considerable number of Judges whose reputation is not above board. This statement will certainly be matter of concern for everyone, but can never constitute a justification to denounce the judiciary as whole. Examples can be multiplied. Further, it is not uncommon that the institutions or persons of high reputation are subjected to virulent propaganda. One is required to be careful and cautious in forming opinions or acting on the basis of the same. Human ingenuity is so capable that it can make people to believe as true, what is in fact false, and vice-versa. It is for this reason that one has to reserve the opinions about others till a final adjudication or verification takes place.

The sacrilege inflicted on Sri Jayendra Saraswathi a barometer of social values...

9. In the recent history, we had an example. During the Rule of Sri Krishnadevaraya, one of the most celebrated kings of the time, a section of the family was successful in getting a verdict against the pillar of the dynasty; Mahamanthri Timmarusu, by creating false evidence and get his eyes removed by way of punishment. It was too late for the king to repent, when the truth came out and what happened thereafter is a matter of history. Unfortunately, those who are in search of immediate fame, publicity or protection, do not draw any lessons from such instances. The amount of disrepute and sacrilege inflicted upon Sri Jayendra Saraswathi, as of now, is so enormous, that it hardly has any comparables. Harshlest possible words and expressions were used either directly or in innuendo. For persons who have grown to the level of distinguishing the body from the soul, this may be of little consequence. However, the entire episode certainly indicates the levels of mercury in the barometer of social and moral values.

10. Today, he is subjected to the similar treatment, as was Draupadi, in the court of Kauravas. While some enjoyed the humiliation caused to her, others who were in a position to rescue her remained silent by citing their own personal reasons or pleading excuses.

It ultimately emerged that both the categories of the people had to pay the price. They lost their right to protest, when they were subjected to humiliation or injustice of a higher degree, at a later point of time.

The importance of spiritual organizations cannot be underestimated...

11. The importance of spiritual organizations and institutions can by no means be underestimated in the matter of building and shaping a country, or for that matter, the society. Some times, attempts are made to depict the spiritualism as an antithesis to scientific thinking. However, if one reads what Albert Einstein, a scientist of the highest order said, it would be evident as to how shallow, such an approach, is. He observed,

“I have made the Geetha and Sanskrit Literature, the main source of my inspiration and guidance for the purpose of scientific investigations and formation of my theories”.

The contribution of such institutions in the field of character building and preaching of morals, irrespective of the religions, to which they belong, hardly needs any emphasis. Any attempt to denigrate them, would be a pointer towards the progression of the society towards ethical and moral bankruptcy. When such bankruptcy and degradation reaches a point, the very connotation of civilization needs to be redefined. It is trite that denouncement of an institution of high reputation and importance on the basis of motivated or unproved allegations would be suicidal to the society.

Preconditions for Law to take its own course...

12. An expression which has gained considerable currency in the recent past is “Law will take its own course”. With due deference to those who coined it or those who firmly believe in it, it can be said that it is not true, at least in part. For this adage to become true there has to be sincerity and honesty at all levels in all those who are associated with administration of justice. The outcome of proceedings in law, particularly in criminal cases can be predicted with an element of objectivity and certitude, if only

- a) the prosecuting agency presents the case honestly,
- b) the witnesses depose truly,
- c) the provisions are law are clear, and
- d) The adjudicator is efficient and honest.

Lapse or deficiency on any of these aspects would have its own impact on the outcome of the case.

The Criminal Legal System in our country depends on the whims of those in power...

13. If the prosecution is to depend upon the whims and fancies of the prosecuting agency or the Government of the day, if the witnesses keep on changing their versions, if the law is framed or changed keeping certain individuals in view, and if the adjudicator is not upto the expected standards, the law will not take its own course. On the other hand, its course is determined by one or the several factors referred to above. The way in which cases foisted or withdrawn, particularly with the change of the Governments, the manner in which, the witnesses are coming forward, with conflicting versions, would illustrate phenomenon referred to above. The criminal legal system in the country has become so elastic and uncertain that persons can be put behind the bars for months or years together on the basis of unfounded allegations, whereas, those convicted for heinous crimes can be made to wander freely in the society by liberating them from jails, even before they have served the sentence. Much would depend upon the whims of those who control the system.

Trial by media and abuse of the freedom of speech...

14. In the recent past, the freedom of the prosecuting agency, and that of the Courts, to deal with the cases before them freely and objectively, is substantially eroded, on account of the overactive or proactive stances taken in the presentations made by the print and electronic media. Once an incident involving prominent person or institution takes place, the media is swinging into action and virtually leaving very little for the prosecution or the Courts to examine the matter. Recently, it has assumed dangerous proportions, to the extent of intruding into the very privacy of individuals. Gross misuse of technological advancements, and the unhealthy competition in the field of journalism resulted in obliteration of norms or commitment to the noble profession. The freedom of speech and expression which is the bed rock of journalism is subjected to gross misuse. It must not be forgotten that only those who maintain restraint can exercise rights and freedoms effectively.

No limits to irresponsible reporting...

15. If the press clippings filed as material papers in this writ petition are examined, it indicates the miserable levels to which the glorious profession of journalism was brought to. In the edition of 17th November of a Telugu daily, the heading of news item, loosely translated, reads "harassment to labourers and luxuries to Swami". The name of Sri

Jayendra Saraswathi was taken and it was written "since last two decades the management is inviting Swamiji by incurring huge expenditure for performing poojas, and it is facing the criticism of "killing crows and feeding vultures". In another news item of 5th December, 2004, of the same daily, indiscriminate reference is made to Swamiji and others in the context of death of women which is said to have taken place in the year 1998. It continued its tirade against the mill in the subsequent news items, and wrote very nasty about it. Another vernacular daily went a bit further. In its District Edition of 4th December, 2004, it has put a picture of noose used to hang the criminals, around the sign board of Surya Laxmi Cotton Mills. In the news item, the name of Swami Jayendra Saraswathi is taken and reference is made to several irregularities said to have taken place in the mill. Even before the writ petition is filed, the petitioner appears to have informed the daily, and in their District Edition on 11th December, 2004 a news item was published that the petitioner is going to file a writ petition. Here again, the name of the seer was taken.

16. A section of the electronic medium has reduced the entertainment and journalism to nauseating levels. For instance, a local Telugu Channel conducted a quiz, in the last week. The viewers were given the option to choose 'Bakara' among the 4 choices. They are 1) Sushil Kumar Shinde 2) Jayendra Saraswathi 3) Uma Bharathi and 4) the Cheetah, caught at Jubilee Hills. To say the least, the said news items and the presentations in the networks disclose the way of thinking or the standards set for themselves in the field of journalism, by those, who are running the same. The persons who have contributed the news items and those who published them have forgotten basic values of life, leave alone that journalism. Unfortunately, they are not rare exceptions.

17. At one stage, this Court thought of issuing notices to the concerned newspapers and the channel, directing them to show cause as to why the matter should not be referred to Press Council of India or any other concerned agencies. Two factors weighed with the Court, to give up the idea. One is that such a course of action is prone to be utilized for aggrandizement. The second is that, in the matters of this nature, effective results can be expected, if a proper message is conveyed, with the hope that wise counsel would prevail on the concerned. If they still pursue the same path, a day would not be too far when they would be shown their place in the society.

18. Freedom of speech and expression is a concept "deduced" (to adopt the words of Sri Soli Sorabji) by courts from the provisions of the Constitution of India. Though there is no direct provision in the constitution, the Courts, particularly the Supreme

Court and High Courts recognized the necessity and importance of a free press, to sustain a healthy democracy and the corresponding right was carved out, through the process of interpretation. It was nourished and nurtured by the Courts by protecting it from the onslaughts, from time to time. However, with the passage of time, the freedom came to be grossly misused by certain agencies. Thanks to the contribution of a section of the press, such a sacred freedom was brought to nauseating levels. The observation of the Supreme Court recently in relation to a photograph of a cine heroine and her friend; in a daily, indicates the gravity. One has only to realize that the courts which have “deduced” freedom of speech and expression and nurtured it for the past few decades, may not find it difficult to redefine it, if it is found to have been misused by certain persons or institutions, to the point absurdity. It is the cumulative effect of the various instances of the type referred to above, that may bring about such a situation or rethinking in the entire matter, and if that happens, the society may have to pay the proportionate price. The reason is that, freedom is always replaced by tyranny.

Society has a responsibility to itself...to follow basic principles of morality...

19. There is a broader angle to the matter. Though the Courts have rescued the situations many times, they have their own limitations. Much would depend on the values cherished by a society. If the state institutions and the members of the society do not identify for themselves, and follow the basic norms, much cannot be expected from the Courts. Once the society does not feel any responsibility to itself, and does not follow the basic principles of morality, mutual respect and tolerance, no Courts can help the situation. A famous Jurist and an American Judge, ‘Learned Hand’, in one of his celebrated speeches on “Contribution of an Independent Judiciary” observed as under:

“That a society so riven that the spirit of moderation is gone, no court can save’ that a society where that spirit flourishes, no court need save; that in a society which evades its responsibility by thrusting upon the courts the nurture of that spirit, that spirit in the end will perish. What is the spirit of moderation? It is the temper which does not press a partisan advantage to its bitter end, which can understand and will respect the other side, which feels a unity between all citizens – real and not the fictitious product of propaganda – which recognizes their common fate and their common aspirations – in a word, which has faith in the sacredness of the individual. If you ask me how such a temper and such a faith are bred and fostered, I cannot answer. They are the last flowers of civilization, delicate and

easily overrun by the weeds of our sinful human nature’ we may even now be witnessing their uprooting and disappearance until in the progress of the ages their seeds can once more find some friendly soil. But I am satisfied that they must have the vigor within themselves to withstand the winds and weather of an indifferent and ruthless world’ and that it is idle to seek shelter for them in a courtroom. Men must take that temper and that faith with them into the field, into the market-place, into the factory, into the council-room, into their homes; they cannot be imposed; they must be lived. Words will not express them; arguments will not clarify them; decisions will not maintain them...”.

He said about spirit of liberty almost similar tone. This aspect of the matter was clearly demonstrated in India, during emergency.

20. The necessity for this Court to undertake this discussion arose because of the fact that the pleadings of the petitioner are nothing but the manifestation of the feelings of a section of society and unless they are curbed at a stage, they may grow to monstrous proportions. Though Courts or other institutions may express their view points, much would depend on how the society at large, chooses to react. IT is said that when Thomas Jefferson came out of the Constituent Assembly, the waiters asked him as to what is the form of government, they have decided for America. His answer was “Democracy, provided you keep it”. What applies to form of government, equally, if not with greater force applies to the norms and values in the society.

Public litigation has been misused to tarnish the image of the seer...

21. The petitioner sought for action against the mill, by alleging certain acts and omissions against it. It was fundamental for it to have impleaded the mill. It has not chosen to do so. The obvious reason is that it was more anxious to tarnish the image of a seer than to protect the interests of the labourers. The whole episode reveals that the concept of public interest litigation evolved by Courts to protect public interest has been grossly misused by the petitioner.

22. For the foregoing reasons, the writ petition is dismissed. There shall be no order as to costs.

***To express your views without fear
or favor visit www.kanchiforum.org***



Campaign for Dharma – How can I Help

When the Tamil Nadu Government froze all the bank accounts of the Mutt, anxious devotees from all over the world spontaneously came out offering help. Even as we were looking for a solution, the High Court order releasing the accounts has come as a big relief.

Today the position on funds is as follows: The Mutt and several charitable organisations that operate with its blessings just about manage to make both ends meet. In addition, there is a substantial pressure on funds because of the increasing legal costs. While many of the legal counsel have graciously offered their time free, there are substantial expenses relating to Court Fees, documentation work, photocopying, travel and other sundry expenses. Given the fact that there are multiple cases at various courts at different times, this is indeed a significant figure.

Devotees who wish to help may send their contributions as follows:

1. Domestic contributions:

All cheques may be drawn in favour of “**Sri. Kanchi Kamakoti Peetam**” and sent to:

**Dr Bhaskar,
46, 3rd. Main Road,
Kasturibai Nagar,
Adyar,
Chennai - 600 020
INDIA
Tel : 044-52607685**

Please clearly mark your envelope “Campaign for Dharma” in bold.

2. International contributions

Devotees residing abroad may send their contributions drawn in favour of “**Sri. KKP Charitable Trust(REGD)**” and mail the cheques/drafts etc to:

**Dr Bhaskar,
46, 3rd. Main Road,
Kasturibai Nagar,
Adyar,
Chennai - 600 020
INDIA
Tel : 044-52607685**

Please clearly mark your envelope “Campaign for Dharma” in bold.

Please note that only this account has the requisite government permission to receive funds in foreign exchange.

Those who wish to send money by wire transfer may do so by following the instructions given below.

**Dr Bhaskar,
46, 3rd. Main Road,
Kasturibai Nagar,
Adyar,
Chennai - 600 020
INDIA
Tel : 044-52607685**

Remit through:

1. CITIBANK, New York for the credit of INDIAN BANK, Overseas Branch, Chennai A/C No: 36045868
- OR
2. AMERICAN EXPRESS BANK, New York AE IB US 33 Account Number 000712869 Indian Bank, Overseas Branch, Chennai

Several devotees have requested that the Mutt should accept payments by Credit Card. The Mutt is currently exploring this possibility.

All the devotees who have been waiting for this information, may now act and send their contributions as soon as possible