



Crl.O.P.Nos.7132 & 7185 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

CORAM

THE HON'BLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.O.P.Nos.7132 & 7185 of 2023

Sankar ... Petitioner in Crl.O.P.No.7132 of 2023

1.Kaliyappan

2.Elumalai

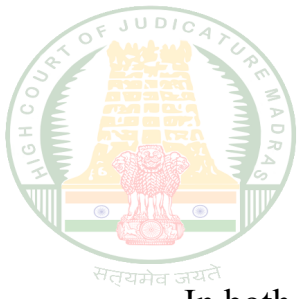
3.Karthikeyan ... Petitioners in Crl.O.P.No.7185 of 2023

Vs.

1.The State represented by,  
The Inspector of Police,  
Thiruvannamalai Town Police Station,  
Thiruvannamalai 606 601.

2.The Assistant Commissioner,  
HR & CE,  
Arulmigu Arunachalaeshwarar Thirukovil,  
Thiruvannamalai. ... Respondents in both Crl.O.Ps  
(R2 suo motu impleaded as per order dated 03.04.2023  
in Crl.O.P.Nos.7132 and 7185 of 2023)

**COMMON PRAYER:** Criminal Original Petitions filed under Section 439 of Cr.P.C., pleased to enlarge the petitioners/accused on bail, in connection with the Crime No.140 of 2023, pending investigation on the file of the respondent Police.



Crl.O.P.Nos.7132 & 7185 of 2023

In both Crl.O.Ps

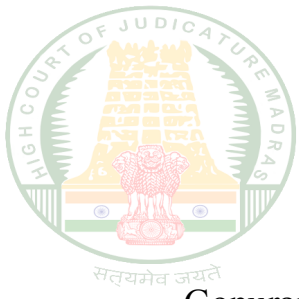
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For Petitioners : Mr.R.C.Paul Kanagaraj  
For Respondent : Mr.Hasan Mohamed Jinnah  
State Public Prosecutor  
Assisted by Mr.C.E.Pratap  
Government Advocate (Crl.side) for R1  
Mr.N.R.R.Arun Natarajan  
Special Government Pleader(HR & EC) for R2

### **COMMON ORDER**

The petitioners, who were arrested and remanded to judicial custody on 22.03.2023 for the offences punishable under Sections 147, 447, 294(b), 353 of IPC r/w Section 3(1) TNPPDL Act, in Crime No.140 of 2023 on the file of the respondent police, seek bail.

2. The case of the prosecution as per the defacto complainant, who is the Deputy Commissioner/Executive Officer, (additional responsibility) Deputy Commissioner/Verification Officer at Arulmighu Arunasalesuvarar Thirukovil, Thiruvannamalai, is that a land in Survey No.1377, Ward No.1, Block No.22, with an extent of 23800 sq. ft situated at North Othavadai Street belongs to Arulmighu Arunasalesuvarar Thirukovil, Thiruvannamalai. A1 had illegally occupied the building opposite to Ammaniyamman



CrI.O.P.Nos.7132 & 7185 of 2023

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Gopuram for many years. Further, as per the order passed by the District Court, Thiruvannamalai in Original Suit No.04/2022, on 13.03.2023 and also as per the order passed by the Joint Commissioner, HR & CE, Thiruvannamalai District, in M.P.No.70 of 2021/A2 dated 15.03.2023, the officers of the Revenue Department along with the officers of HR & CE were present at the said place on 18.03.2023 to remove the illegal encroachers and it was resumed on 19.03.2023 in the Thirukovil property, during which time the accused persons illegally trespassed into the said place and abused the officials in filthy language and also prevented them from discharging their official duty. Based on the complaint given by the defacto complainant, the present case came to be registered.

3.Mr.R.C.Paul Kanagaraj, learned counsel appearing for the petitioners submitted that the petitioner in CrI.O.P.No.7132 of 2023 is arrayed as A1 and the petitioners in CrI.O.P.No.7185 of 2023 are arrayed as A4 to A6. He further submitted that A1, who is an Advocate and Public Spirited Person, has been taking legal action for protection of heritage building in and around Thiruvannamalai. He further submitted that the incident has happened when of HR & CE officials attempted to illegally



Crl.O.P.Nos.7132 & 7185 of 2023

WEB COPY

evict the lessees in the premises and attempted to demolish the heritage structures of the Mutt. He further submitted that the disputed property does not belong to the HR & CE and the above property belonged to one Bangalore T.A.Vaiyapuri Chettiar Trust. He further submitted that originally there was a Choultry known as Bangalore T.A.Vaiyapuri Chettiar and Ammani Ammal Choultry and it was founded by one Ammani Ammal, who constructed the northern Gopuram of the Temple which was known as Ammani Ammal Gopuram. He further submitted that at the time of construction, the building known as Madam was used for storing the construction materials for the Gopuram and later when the Gopuram was completed, the building was left by the said Ammani Ammal for providing shelter for pilgrims. In the year 1764, the said Ammani Ammal entrusted the management of the Choultry to some trustees. Later, there were disputes pending between the legal heirs of the trustees, which culminated into filing of a suit. Against the order passed in the suit, some of the legal heirs of the trustees filed first Appeal in A.S.No.347 of 1987, which came to be disposed by this Court on 21.08.2002. This Court, while disposing the first appeal, had passed the following order (in paragraph 13):

*“In view of the wishes of the testator in Ex-A1*



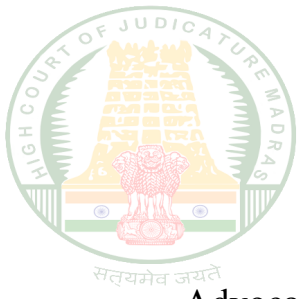
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CrI.O.P.Nos.7132 & 7185 of 2023

*and the obvious practical difficulties faced by the appellants to manage the Trust and to protect it from persons like the respondents who might grab it for personal use, a direction is given to the appellants to co-ordinate with the Executive Officer of the Thiruvannamalai Devasthanam so that the Devasthanam Authorities or any other charitable trust like the charities mentioned in Ex-A1 are made trustees along with the family of the appellants.”*

Thereafter, the Mutt was directed to be managed by the officials of HR & CE. While so, as stated above, the HR & CE officials had attempted to demolish the Mutt and trust building illegally and it was objected to by A1, who is a public spirited person. He further submitted that since the petitioners had prevented the officials from demolishing heritage structures of the Mutt, a false complaint has been given, as if, the petitioners illegally interfered and prevented them from discharging duties, based on which, the petitioners were arrested on 22.03.2023. He also submitted that based on a representation made on the earlier hearing that apart from the alleged illegal structures, heritage structures of the mutt were illegally demolished by the HR & CE Authorities, this Court had appointed one M/s.G.Vrinda Ramesh,



Crl.O.P.Nos.7132 & 7185 of 2023

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Advocate to inspect the property and to file a report. He reiterated that the petitioners had only attempted to protect the illegal demolition and thereby would pray for grant of bail.

4.The respondent has filed a detailed counter.

5.Mr.Hasan Mohamed Jinnah, learned Public Prosecutor appearing for the first respondent submitted that the petitioners are habitual offenders and land grabbers. A1, under the guise of taking the lesser extent of the Mutt property on lease in the name of his wife, had illegally encroached the property measuring to an extent of 23800 sq.ft belonging to the Mutt and in violation of the intention of the Trustees, had put up a illegal residential structure. The temple authorities, as per the order in O.S.No.4 of 2022 dated 13.03.2023 and as per the order of the Assistant Commissioner of HR & CE, Thiruvannamalai District in Miscellaneous Petition No.70 of 2021/A2 dated 15.03.2023, attempted to remove the illegal construction put up by the encroachers on 18.03.2023 and had also continued the work on 19.03.2023, whereas, the accused have illegally prevented the officials from discharging their official duty. He further submitted that the HR & CE Officials have started recovery of possession, following due procedure under the HR & CE Act, after obtaining the order of the statutory authority. The illegal occupants



Crl.O.P.Nos.7132 & 7185 of 2023

WEB COPY

have also approached this Court, by filing W.P.No.9631 of 2023 and this Court, by an order dated 29.03.2023, had dismissed the Writ Petition by directing the petitioners to approach the appropriate forum. Suppressing those facts, the petitioners have filed an application before this Court, as if, they are public spirited persons preventing the officials of HR & CE from demolishing the heritage building in Thiruvannamalai. He also submitted that the petitioners have got three previous cases of similar nature. Hence, he opposed for grant of bail to the petitioners.

6.On the earlier hearing i.e., 03.04.2023, this Court (Dr.G.Jayachandran.J.) taking into consideration the rival submissions made by the learned counsel on either side with regard to allegation of demolition of heritage structures, had passed the following order”:

*" Bail petition has been filed by one Kaliyappan and Sankar in connection with complaint given by the Assistant Commissioner (Hindu Religious and Charitable Endowment Trusts) of Arulmigu Arunachalaeshwarar Thirukovil, alleging that they prevented the authorities in the course of evicting the illegal encroachers of the building known as Bangalore T.A.Vaiyapuri Chettiar and Ammani Ammal*



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CrI.O.P.Nos.7132 & 7185 of 2023

*Choultry which is owned by the temple. Whereas, the learned counsel for the petitioners contended that the said building owned by the Trust and one of the petitioner Sankar a practising lawyer in Thiruvannamalai is one of the Trustee while he objected to the illegal trespass by the defacto complainant with the help of police, he was arrested illegally.*

*2. In the course of hearing, the learned counsel appearing for the petitioners submitted that the act of the Joint Commissioner, HR&CE, with the help of police, in the guise of evicting the encroacher, had demolishing the four hundred years old structure over which the right and title of the temple itself is doubtful. Photographs of the demolished structure shown to the Court to substantiate the claim. However, the learned Additional Public Prosecutor denying the allegation. This Court cannot be a silent spectator of the act of bull dozing the structures of persons whom they dislike when the fact remains the structure is a choultry meant for pilgrims.*

*3. Though the learned counsel for the petitioners states that as a Trustee the petitioners has right to protect it, the entire building four*





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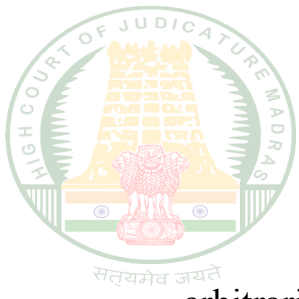


CrI.O.P.Nos.7132 & 7185 of 2023

*hundred years has been demolished by the defacto complainant. However, this is controverted by the learned Additional Public Prosecutor. He would submit that in the course of removing the unauthorised construction, a portion of the building got collapsed. To ascertain the fact, M/s.G.Vrinda Ramesh, Chamber next to Indian Bank, High Court of Madras, Chennai, Cell No.9789080973 is appointed as an Advocate Commissioner to inspect the place and file report on 06.04.2023.*

*4. Post this matter on 06.04.2023. The Assistant Commissioner, HR&CE is sue motu impleaded as a party respondent to explain his claim over the disputed structure and authority to demolish.*

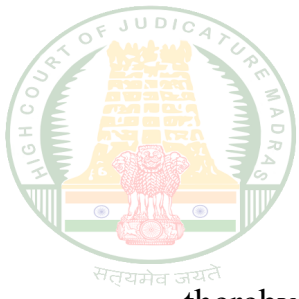
7.Mr.N.R.R.Arun Natarajan, Special Government Pleader appearing for the impleaded second respondent submitted that A1 claiming to be trustee of Bangalore T.A.Vaiyapuri Chettiar and Ammani Ammal Madam Trust has leased out a portion of the property to his wife namely Deepa and they have in deviation of the object of the trust and in clear violation of the judgment of this Court in A.S.No.347 of 1987, have illegally constructed a residential building in the Mutt premises. He had also



CrI.O.P.Nos.7132 & 7185 of 2023

WEB COPY

arbitrarily registered a supplemental lease deed. The HR & CE officials finding that the same was against the intention of the founder of the trust had initiated departmental action against the trespasser under Section 78 of HR & CE Act. While the proceedings before the HR & CE officials were pending, the said A1 had set up one Amsammal to file a suit in O.S.No.4 of 2022 before the Additional District Munsif Court, Thiruvannamalai. The Executive Officer/Joint Commissioner of Arulmigu Annamalaiyar Temple has filed a petition under Order 7 Rule 11 CPC to reject the plaint in O.S.No.4 of 2022 and the Additional District Munsif, Thiruvannamalai, by order dated 13.03.2023 had rejected the plaint. Meanwhile, the Joint Commissioner, has also passed an order of eviction on 15.03.2023 and had directed the HR & CE officials of Arulmighu Annamalaiyar Temple, Thiruvannamalai to evict the encroachers. The encroachers had against the order passed by the Joint Commissioner, dated 15.03.2023, had filed W.P.No.9631 of 2023 and this Court by order dated 29.03.2023 had dismissed the Writ Petition, by directing the petitioners to approach the proper forum by filing revision under the HR & CE Act. He further submitted that the encroachers have put up constructions blocking the way to the temple. The illegal constructions were put up by the encroachers and



Crl.O.P.Nos.7132 & 7185 of 2023

thereby, after following due process of law, the eviction was done. He further submitted that only the illegal construction were removed in the interest of the temple.

8.Pursuant to the order passed by this Court dated 03.04.2023, M/s.G.Vrinda Ramesh, Advocate Commissioner has conducted an inspection along with the chartered engineer and she has filed a report today. The report is taken on record. The findings and conclusion arrived by the Advocate Commissioner in her report is extracted hereunder:

*“Based on my visit, physical inspection of the place, based on what I saw with my bare eyes there, sustained by the report of the certified chartered engineer and the photographs, I came to a finding that the Ammani Ammal Madam was demolished with intention and the version of the respondent in Crl.O.P.Nos.7132 and 7185 of 2023 that “in the course of removing the unauthorized construction, portion of the Ammani Ammal madam building got collapsed”, is not believable.”*



CrI.O.P.Nos.7132 & 7185 of 2023

WEB COPY

9. When this Court confronted Mr.N.R.R.Arun Natarajan, learned Special Government Pleader, appearing for the impleaded second respondent based on the report of the Advocate Commissioner, he submitted that the respondent other than removing the illegal construction, have not demolished any other structure and the respondent have serious objections against the findings of the report filed by the Advocate Commissioner. He further submitted that if at all, the encroachers are aggrieved, they have to approach the appropriate forum. He reiterated that the accused are encroachers of the temple property and they have not approached the Court with clean hands and the petitioners have also approached this Court in W.P.No.3691 of 2023 and they have failed in their attempt and this Court had directed them to approach the appropriate forum.

10. Heard the learned Counsel for the petitioners, learned State Public Prosecutor for the first respondent as well as the learned Special Government Pleader (HR & CE) for the second respondent and perused the entire materials available on record including the report filed by the Advocate Commissioner.



CrI.O.P.Nos.7132 & 7185 of 2023

WEB COPY

11.It is the case of the prosecution that the officials of HR & CE attempted to evict the encroachers pursuant to an order passed by the HR & CE authority and that the accused have attempted to prevent the officials from removing the encroachers and prevented them from discharging their official duty, whereas, it is the case of the petitioners that since they attempted to prevent the officials from demolishing the heritage building, a false complaint has been registered against them.

12.This Court does not find it appropriate to decide the rival claims between the petitioners and the HR & CE Department with regard to possession/demolition which is already pending before the other forums. However, without going into merits or otherwise of the report of the Advocate Commissioner, the report of the Advocate Commissioner, is considered for the limited purpose of considering the bail application filed by the petitioners. In view of the above, this Court is inclined to grant bail to the petitioners with certain conditions:

13. Accordingly, the petitioners are ordered to be released on bail on their executing a separate bond for a sum of **Rs.15,000/- (Rupees Fifteen thousand only)** with **two sureties**, each for a like sum to the satisfaction of



CrI.O.P.Nos.7132 & 7185 of 2023

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the learned Judicial Magistrate No.I, Thiruvannamalai, and on further conditions that:

[a] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

**[b] the petitioners shall stay at Chennai and report before the Inspector of Police, Esplanade Police Station, everyday at 10.30 a.m., until further orders;**

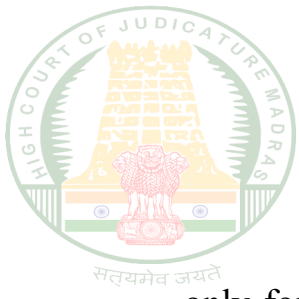
[c] the petitioners shall not abscond either during investigation or trial;

[d] the petitioners shall not tamper with evidence or witness either during investigation or trial;

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in *P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]*

[f] If the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

14. It is made clear that the observations made in this petition are



Crl.O.P.Nos.7132 & 7185 of 2023

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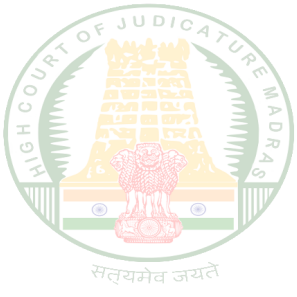
only for deciding the bail application and this will not have any impact on the proceedings pending between the parties before any other forum. The report of the Advocate Commissioner dated 06.04.2023 shall form part of this order.

15. The Advocate Commissioner is entitled to remuneration of Rs.70,000/- (which includes her professional charges and expenses). The fees of the Advocate Commissioner shall be equally borne by the petitioners and the second respondent. The petitioners shall pay a sum of Rs.35,000/- and the second respondent, HR & CE Department, shall pay a sum of Rs.35,000/- to M/s.G.Vrinda Ramesh, Advocate Commissioner, on or before 18.04.2023.

16. List the matter on 20.04.2023 for reporting compliance.

**06.04.2023**

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Crl.O.P.Nos.7132 & 7185 of 2023

**A.D.JAGADISH CHANDIRA.,J.**

*vkr*

To

1. The Judicial Magistrate No.I,  
Thiruvannamalai.
2. The Inspector of Police,  
Thiruvannamalai Town Police Station,  
Thiruvannamalai 606 601.
- 3.The Assistant Commissioner, HR & CE,  
Arulmigu Arunachalaeshwarar Thirukovil,  
Thiruvannamalai.
4. The Central Prison for Men  
Vellore.
- 5.The Inspector of Police,  
Esplanade Police Station,  
Chennai.
6. The Public Prosecutor,  
High Court of Madras.

**Crl.O.P.Nos.7132 & 7185 of 2023**

**06.04.2023**