

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 11TH DAY OF JUNE 2010

BEFORE

THE HON'BLE MR.JUSTICE SUBHASH B.ADI

CRIMINAL PETITION No.2328/2010

C/W

CRIMINAL PETITION Nos. 2344/2010 & 2329/2010

IN CRL.P 2328/2010

BETWEEN:

Nithyananda Swamy
Formerly known as Sri. Thiru Rajashekarana
S/o late Arunachelam
Age about 33 years
R/o Nithyanand Dhyanapeetam
Nithyanandpuri, Bidadi
Ramanagar District
Karnataka State - 562 109. ...PETITIONER

(By Sri. B.V.Acharya & Sri.Nanjunda Reddy, Senior Counsels
for Sri.Vedavyasa S.R., M.S.Shyam Sundar & Subramanya. M.
Advs.)

AND:

The State of Karnataka
(vide its C.R.No. 141/2010
registered at Bidadi Police Station
as transferred C.R.No.112 of 2010
registered at Central Crime Branch,
Chennai) ...RESPONDENT

(By Sri.Satish R.Girji, HCGP)

IN CRL.P 2344/2010

BETWEEN:

Nithyananda Swami
 Formerly Known as Thiru Rajashekarani
 S/o late Arunachelam
 Age about 33 years
 R/o Nithyanand Dhyanapectam
 Nithyanandpur, Bidadi
 Ramanagar District.

...PETITIONER

(By Sri. B.V.Acharya & Sri.Nanjunda Reddy Senior Counsels
 for Sri.Vedavyasa S.R., M.S.Shyam Sundar & Assts., Adv.)

AND:

The State of Karnataka
 (Through Bidadi Police Station
 vide C.R.No.142/10, registered
 on transferred
 FIR in CCB Crime No.16/10 registered
 By IOS Park Police Station, Combaitore)

...RESPONDENT

(BY Sri. Satish R.Girji, HCGP)

IN CRL.P 2329/2010

BETWEEN:

Nithya Bhaktiananda
 Formerly known as Sri. Gopala Reddy Sheelum
 S/o Sheelum Malla Reddy
 Age about 47 years,
 R/o. Nithyanand Dhyanapectam
 Nithyanandpuri, Bidadi
 Ramanagar District,
 Karnataka State - 562 109.

...PETITIONER

(By Sri. B.V.Acharya & Sri.Nanjunda Reddy, Senior Counsels
 for Sri. Vedavyasa S.R., Sri.M.S.Shyam Sundar & Assts., Adv.)

AND:

The State of Karnataka
(vide its C.R.No.141 of 2010
registered at Bidadi Police Station
as transferred C.R.No.112 of 2010
registered at Central Crime Branch
Chennai)

.. RESPONDENT

[BY Sri.Satish R.Girji., HCGP]

Criminal Petition No.2328/2010 is filed under Section 439 Cr.P.C. praying to enlarge the petitioner on bail in Crime No.141/2010 of Bidadi P.S. Ramanagar Dist., Crl.Misc.A.No.248/2010, which is registered for the offence punishable under Sections 295(A), 376, 377, 420, 506(1) and 120(B) of IPC.

Criminal Petition No.2344/2010 is filed under Section 438 Cr.P.C. praying to enlarge the petitioner on bail in the event of his arrest in crime no.142/10 of Bidadi P.S.Ramanagara dist., which is registered for the offence punishable under Sections 295(A), 376, 377, 420, 506(1) and 120(B) on transferred FIR in crime no. 112/10 registered by Central Crime Branch, Chennai.

Criminal Petition No.2329/2010 is filed under Section 439 Cr.P.C. praying to enlarge the petitioner on bail in Crime No.141/2010 of Bidadi P.S. Ramanagar Dist., Crl.Misc.A No.248/2010, which is registered for the offence punishable under Sections 295(A), 376, 377, 420, 506(1) and 120 (B) of IPC.

These petitions coming on for orders this day, the Court made the following:

ORDER

Petitioner in Criminal Petition Nos.2328/2010 and 2344/2010 is accused No.1 in Crime No.141/2010 registered on 18.3.2010 by Bidadi Police Station, Ramanagara District. The said crime was registered on transfer of F.I.R. in Crime No.112/2010 registered by Central Crime Branch, Chennai for the offences punishable under Sections 295-A, 376, 377, 420, 506 sub-section (1) and 120-B of the Indian Penal Code. Another Crime No.142/2010 is registered by Bidadi Police Station, Ramanagara District. that is also on transfer of F.I.R. in CCB Crime No.16/2010 registered by IOS Park Police, Station, Coimbatore for an offence punishable under Sections 295-A and 420 of IPC. Petitioner in Criminal Petition No.2329/2010 is accused No.2 in Crime No.141/2010.

2. Complainant in Crime No.141/2010 is one Nithya Dharmananda @ K.Lenin, son of L.Karuppannan. He lodged a complaint on 4.3.2010 at about 20 hours before the Central Crime Branch, Chennai *inter alia* alleging that, he is a B.B.A. graduate and he left the job after listening the preaching of accused No.1 and became his follower. He joined the Ashram at Bangalore in 2006 and stayed there only. Accused No.1 changed the complainant's name from K.Lenin to Nithya



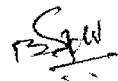
Dharmananda. According to the Ashram rules, there was restriction to watch T.V., read the newspapers, use of mobile phone. Accused No.1 used to collect membership fee from Rs.1,000/- to Rs.4,00,000/- per person. That, one Vimalananda Swamy, a disciple of accused No.1 informed him that, accused No.1 is a homosexual and had performed homosexuality on him. Complainant suspected the acts and conducts of accused No.1 with women also. In this regard, one Nithyananda Gopika also informed that accused No.1 has physically and mentally tortured her to fulfill his desire. Accused No.1 used to ask the followers to render service to him in Ashram.

3. These acts of the accused No.1 made the complainant to expose accused No.1 to the whole world. He alleges that, one Ranjitha stated to be a film actress used to visit the Ashram and accused No.1 had travelled with her to various countries and she used to travel with him and whenever she used to come to Ashram, she used to reside next to the bungalow of accused No.1. With the assistance of one of the Secretaries of the Ashram, he got the movie camera installed in the private room of the accused No.1 and recorded the live acts of the accused No.1 with said Ranjitha. The movements

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of the complainant were suspected by some of the disciples of accused No.1 and there was threat of complainant being caught, as such, the complainant escaped from the Ashram and he further alleges that, he took the videograph of the accused No.1 with Ranjitha so as to expose the misdeed of the accused No.1. Based on these allegations, the Central Crime Branch, Chennai registered the case for offences mentioned in the F.I.R., however, considering the jurisdiction, the said complaint was transferred to Karnataka and same was given Crime No.141/2010 by Bidadi Police, the F.I.R. was sent to the jurisdictional Magistrate, further, on the basis of the complaint, the Police took up the investigation. Ever since the registration of crime, accused No.1 was not available in the Ashram and was apprehended at Bikrampur, Solan Dist., Himachal Pradesh and was brought to Bangalore.

4. During the course of investigation, the Police recorded the statements of the devotees, disciples and various other persons. For the purpose of investigation, several remand applications were filed before the learned Magistrate for the purpose of further investigation. Number of statements have been recorded, however, the statements of these witnesses do not reveal any offence alleged in the F.I.R. Most of the



witnesses either have shown their ignorance to the alleged crime or have denied, in turn, some have reposed 100% trust on the accused No.1. Since the Investigating Officer could not get any material against the accused No.1 and nobody came forward to give complaint, he issued paper publication, inviting the general public and victims, if any, and also the persons interested to give statement or complaint as regard to the alleged offence and it is now revealed that, so far nobody has come forward to give statement or complaint against the accused No.1. It is now fairly admitted by the learned Government Pleader that, there is no material against the accused No.1 and a memo to that effect is also filed.

5. Whatever material that is available with the Investigating Officer, same has been placed before the court. The material collected by the Investigating Officer only shows the statements of the devotees or the disciples of accused No.1. One of the statements is stated to be of one K.V.Narayanappa recorded on 3.4.2010 shows that, he was cheated by accused No.1 by collecting Rs.50,000/- by assuring that, the black mole appearing on his right hand is a bad sign for his progress and he would remove it. Except the said allegation, there is no other material.

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6. The offences alleged against the accused No.1 are punishable under Sections 295-A, 376, 377, 420, 506 sub-section (1) & 120-B of IPC. Section 295-A of IPC deals with a person, who with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

7. Complainant alleges that, the accused No.1 pretended and claimed that, he is an incarnation of Lord Shiva, Vishnu, Brahma and also Krishna and used to preach the devotees and disciples, however, he is indulged in acts of unbecoming of a Swamiji or Sanyasi or Guru and the conduct of the accused No.1 hurts the sentiments of large number of devotees. It is in this regard, he alleges that the act of the accused No.1 is an offence punishable under Section 295-A of IPC.

8. However, to attract the provisions of Section 376 of IPC, the video clipping, which alleged to have been taken by



the complainant stated to have been telecasted on various T.V. channels and provoked large number of public questioning the becoming of Sanyasi is not supported by any complaint. However, the Police during the course of investigation in order to find out the truth in the said allegation had tried to secure the presence of the alleged actress Ranjitha to record her statement. Unfortunately, as could be seen from the investigation papers, so far no statement has been recorded by the Police and her father, whose statement was recorded, has stated that the said actress is not in india and there is no evidence to show that the Police is likly to record the statement of the said actress. Unless the alleged victim gives complaint or alleges any offence against the accused No.1, it is not possible for this Court to deny the bail on the ground that the crime is registered for offence punishable under Section 376 of IPC. Even in the complaint, the complainant does not allege the offence punishable under Section 376 of IPC. He only alleges that the accused No.1 and the said Ranjitha lived and travelled together, this will not amount to an offence under Section 376 of IPC.

9. As far as Section 377 of IPC is concerned, in the complaint, a reference is made to the name of one Nithya



Vimalananda and in this regard, the Police made an effort to record his statement and it appears that, he promised to give statement by sending E-mail, but has not resulted in recording of any statement of Nithya Vimalananda. The other offences alleged against the accused No.1 are under Sections 506 sub-section (1) and 120-B of IPC.

10. Looking at the entire material collected by the prosecution and the alleged video clippings telecast on the T.V., no doubt it touches the sentiments of the devotees and the followers. However, it may at the best attract the offence punishable under Section 295-A of IPC and the said offence is punishable with imprisonment, which may extend to three years. The memo filed by the Investigating Officer reads as under:

“ . . . As on today, no witness come forward to lead evidence against Nithyananda and part of the investigation is completed and Nithyananda - A-1 does not require for further interrogation . . . ”

In support of the memo, a status report is also enclosed. Except this material, there is no other material so far collected by the prosecution and the Investigating Officer also states that the presence of accused No.1 is no more required.



11. In these circumstances, the question arises as regard to the life and liberty of an accused. Under Article 21 of the Constitution of India, no person would be denied of right to life and personal liberty except in accordance with law. In order to detain or deny the right of liberty, there must be something against the accused to detain him. No doubt, serious offences are alleged against the accused No.1, but same is not supported by any material. Just based on the allegation, the liberty of person cannot be denied. Further, the Investigating Officer has filed a memo stating that there is no material against the accused and has also stated that, presence of the accused is not required for investigation.

12. Hence, in the circumstances stated above, I find that the accused are required to be enlarged on bail.

13. No doubt, proper material might not have been collected or the Investigating Officer was not able to have an access to the evidence, but accused No.1 holds a position of spiritual head. It is common that, human mind is weak because of desire, achievement of well being, happiness, prosperity, etc., to achieve the same, the innocent people do get attracted by spiritual power, spiritual speech and fear of

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God, they just follow such persons. A person, who wants to be in such position, must be free from all attachments and he must have strong determination and courage to live to the expectation of the people. One misbehaviour may shock the confidence of such devotees. However, it is not a matter for the court to discuss since the issue was subsidized by the media by telecasting the incident and a question mark is created amongst the public as regard to the image of Sanyasi or Swamiji. If such an image is given to the Sanyasi or Swamiji or Godman, who claims to be in a position of God, it will definitely affect the sentiments and feelings of the people about the faith. Hurting the feelings of the people is more injurious than a stab injury, a stab injury could be cured or healed, but feelings, if hurt by the acts of the persons holding such position, it will not be cured easily. This being a court of law, court is concerned with the material on record and it cannot traverse beyond that.

14. Observations made during the course of the order are made only for the purpose of disposal of the bail petition.

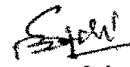


15. In view of the material collected and also the memo filed by the prosecution that there is no evidence so far collected against accused no.1, the court has no option except to enlarge the petitioner - accused No.1 on bail as his liberty is involved in this case. However, since the accused No.1 was arrested outside the State of Karnataka, he has to be put on terms.

Accordingly, CrI.P.No.2328/2010 is allowed. Petitioner - accused No.1 is enlarged on bail subject to following conditions:

- i) Petitioner shall execute a personal bond for a sum of Rs.1,00,000/- and two local solvent sureties for the like sum to the satisfaction of the court;*
- ii) He shall not leave the jurisdiction without the permission of the jurisdictional court;*
- iii) He shall mark his attendance once in 15 days before the jurisdictional Police;*
- iv) He shall also not undertake any preaching or classes except performing yoga till the investigation is completed and*
- v) He shall not tamper with the prosecution witnesses or the material evidence.*

Violation of any of the above conditions will disentitle him to continue on bail.



For the reasons stated in Criminal Petition No.2328/2010 and in view of the memo filed by the Investigating Officer in Criminal Petition No.2328/2010 and this accused having been interrogated in Crime No.141/2010, where the same offence is alleged, I find that there is no point in arresting the accused in Crime No.142/2010 once again, instead, he shall be granted anticipatory bail.

Accordingly, CrI.P.No.2344/2010 is allowed. In the event of arrest of the petitioner in Crime No.142/2010 registered for an offence punishable under Sections 295-A and 420 of IPC by Bidadi Police, Ramanagara District, the Police shall interrogate him and after interrogation, the petitioner shall be released on bail subject to following conditions:

- i) *Petitioner shall execute a personal bond for a sum of Rs.1,00,000/- and two local solvent sureties for the likesum to the satisfaction of the court;*
- ii) *He shall not leave the jurisdiction without the permission of the jurisdictional court;*
- iii) *He shall mark his attendance once in 15 days before the jurisdictional Police;*
- iv) *He shall also not undertake any preaching or classes except performing yoga and other things till the investigation is completed and*

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- v) *He shall not tamper with the prosecution witnesses or the material evidence.*

This order of anticipatory bail shall remain in force for a period of six weeks from today.

In view of the order passed in Criminal Petition No.2328/2010 and for the reasons stated therein, Crl.P.No.2329/2010 is allowed. The petitioner - accused No.2 is enlarged on bail subject to following conditions:

- i) *Petitioner shall execute a personal bond for a sum of Rs.50,000/- and one local solvent surety for the likesum to the satisfaction of the court;*
- ii) *He shall not leave the jurisdiction without the permission of the jurisdictional court;*
- iii) *He shall mark his attendance once in 15 days before the jurisdictional Police; and*
- iv) *He shall not tamper with the prosecution witnesses or the material evidence.*

Violation of any of the above conditions will disentitle him to continue on bail.

Petitioners - accused Nos.1 and 2 are at liberty to move the jurisdictional Magistrate to fulfill the conditions of bail for the purpose of their release in Crl.P.Nos.2328/2010 and

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2329/2010 subject to the convenience of the jurisdictional
Magistrate either on 12.6.2010 or on 13.6.2010.

Sd/-
JUDGE

KNM/-