

8765/4

C.V. Nagesh Rao

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18<sup>TH</sup> DAY OF JULY 2011

BEFORE

THE HON'BLE MR JUSTICE K N KESHAVANARAYANA

CRIMINAL PETITION Nos. 2458 & 2459 OF 2011

**BETWEEN:**

THE STATE OF KARNATAKA,  
BY C.I.D.POLICE,  
BANGALORE.  
REPRESENTED BY ITS  
STATE PUBLIC PROSECUTOR.

...PETITIONER  
(COMMON IN BOTH PETITIONS)

(BY SRI.C.H.JADHAV, SPECIAL PUBLIC PROSECUTOR)

IN CRL.P.NO.2458/11

**A N D:**

NITHYA BHAKTHANANDA,  
FORMERLY KNOWN AS  
SRI.GOPAL REDDY SHEELUM,  
S/O SHEELUM MALLA REDDY,  
AGED ABOUT 47 YEARS,  
R/AT NITHYANAND DHYANAPEETAM,  
NITHYANANDPURI, BIDADI,  
RAMANAGAR DISTRICT,  
KARNATAKA STATE-562 109.

....RESPONDENT

(BY SRI.C.V.NAGESH, SENIOR COUNSEL FOR  
SRI.RAGHAVENDRA RAO, ADVOCATE)



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IN CRL.P.NO.2459/11

**AND:**

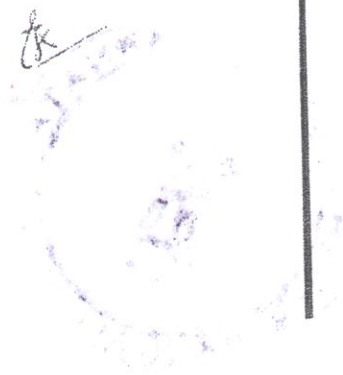
NITHYANANDA SWAMY,  
FORMERLY KNOWN AS  
SRI.THIRU RAJASHEKARAN,  
S/O LATE ARUNACHALAM,  
AGED ABOUT 33 YEARS,  
R/AT NITHYANAND DHYANAPEETAM,  
NITHYANANDPURI, BIDADI,  
RAMANAGAR DISTRICT,  
KARNATAKA STATE-562 109.

....RESPONDENT

(BY SRI.C.V.NAGESH, SENIOR COUNSEL FOR  
SRI.RAGHAVENDRA RAO, ADVOCATE)

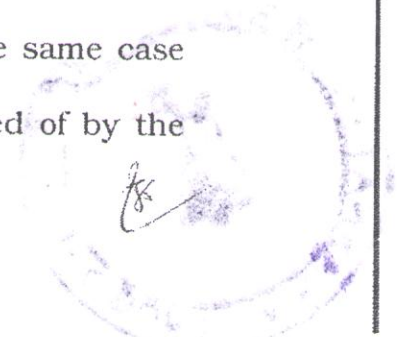
THIS CRIMINAL PETITION Nos.2458/11 AND 2459/11  
ARE FILED UNDER SECTION 439(2) CR.P.C. PRAYING TO  
CANCEL THE BAIL OF THE RESPONDENT-ACCUSED  
GRANTED BY THIS HON'BLE COURT IN  
CRL.P.No.2328/2010 AND CRL.P.No.2329/2010  
RESPECTIVELY DATED 11.06.2010 AND BE PLEASED TO  
DIRECT THAT THE RESPONDENT BE ARRESTED AND  
COMMITTED TO CUSTODY TILL THE CONCLUSION OF  
TRIAL.

THESE PETITIONS COMING FOR ORDERS ON THIS  
DAY, THE COURT MADE THE FOLLOWING:



**ORDER**

These two petitions are filed by the State of Karnataka by CID Police, Bangalore, under Section 439(2) of Cr.P.C. seeking cancellation of bail granted to the respective respondents. The respondent in criminal petition No.2459/2011 has been arraigned as Accused No.1 while respondent in Criminal Petition No.2458/2011 has been arraigned as Accused No.2 in Crime No. 141/2010 of Bidadi Police Station within the Ramanagara Rural Circle, registered for the offences punishable under Sections 295A, 376, 337, 420 & 506(1) and 120-B of IPC. During investigation of the said case, both these accused persons were apprehended and remanded to judicial custody. Their prayer for bail came to be rejected by the Sessions Court. Therefore, they moved this Court under Section 439 of Cr.P.C. seeking the relief of bail in Criminal Petition Nos. 2328 and 2329/2010. Those two petitions along with other petitions arising out of the same case were heard by this Court and were disposed of by the





common order dated 11.06.2010 granting bail to the respondents herein subject to conditions. Two important conditions imposed in the said order were: (i) They shall mark their attendance once in 15 days before the jurisdictional police; (ii) They shall not tamper with the prosecution witnesses or material evidence. Pursuant to the said order, the respondents were released from custody on their furnishing necessary sureties before the jurisdictional Court. Complaining violation of the conditions imposed in the order of this Court, the State has presented these petitions seeking cancellation of bail granted to the respondents. The ground on which the State has sought for cancellation of the bail are that, the respondents through their followers have intimidated and threatened the original complainant by filing several false complaints against him before JMFC at Ramanagar. It is also alleged that Accused No.1 had interfered with the course of investigation by preventing the Investigating Officer from taking the specimen signature of one of the



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witnesses who was reported to be in the Ashram of Accused No.1, when the Investigating Officer went to the Ashram for the said purpose and also managed to send away the material witness from the Ashram at the time of the visit of the Investigating Officer. It is also the contention of the State that, the respondents-accused are not co-operating in the investigation of the case with the Investigating Officer, therefore, the respondents are not entitled to remain on bail, as such, the bail granted to them is required to be cancelled and they are required to be taken to custody.

2) The respondents have opposed the petitions. Detailed statement of objections have been filed by them.

3) I have heard Sri. C.H. Jadhav, learned Special Public Prosecutor appointed for prosecuting the case before the High Court and Sri. C.V. Nagesh, learned Senior Counsel appearing for the respondents. Perused the petition and the records produced.



*[Signature]*

4) At the out set, it is necessary to state that rejection of the bail in a Non-Bailable case is one thing while cancellation of the bail already granted is another thing, which has to be considered and dealt with on different basis. It is now well-settled law by catena of decisions that very cogent and overwhelming circumstances are necessary for an order directing cancellation of the bail already granted. The grounds for cancellation of the bail, generally speaking, broadly could be categorized as attempt to interfere with the due course of administration of justice or evasion or attempt to evade due course of justice or abuse of the concession granted to the accused in any manner. It is also well-settled by catena of decisions of the Apex Court that, *bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.* [ **Dolat Ram and others Vs. State of Haryana**





( 1995) 1 SCC 349) J.. In **State of Gujarat Vs. Salimbhai Abdulgaffar Shaikh & Others (2003) 8 SCC 50**], the Apex Court has held that, while hearing an application for cancellation of bail under Section 439(2) of Cr.P.C., the Courts generally do not examine the merits of the order granting bail. What is normally relevant to be examined in such a proceeding is, whether the accused is trying to tamper with the evidence subsequent to his release on bail or has threatened the witnesses or has committed any other offence while on bail or is trying to adopt dilatory tactics resulting in delay of trial or has absconded or that the offence committed by him has created serious law and order problem. The Court has to see as to whether the accused has misused the privilege of bail granted to him'. In **Mahaboob Dawood Shaikh Vs. State of Maharashtra [2004 SCC (Cri.) 551]**, the Apex Court has held that, rejection stands on one footing, but cancellation of bail is a harsh order because it takes away the liberty of an individual granted and is not to be lightly resorted to. In the said



decision, the Court has reiterated its earlier view as to the circumstances under which the bail granted can be cancelled. In this decision, the Apex Court has further held that, *'Mere assertion of alleged threat to witnesses should not be utilised as a ground for cancellation of bail, routinely. Otherwise, there is ample scope for making such allegation to nullify the bail granted. The further observation in the said decision is that, the Court before which such allegation are made should in each case carefully weigh the acceptability of the allegations and pass orders as circumstances warrant in law'*.

5) In **Nityanand Rai Vs. State of Bihar [ (2005) 4 SCC 178]**, the Apex Court reiterating its earlier view has held that, *'Grounds for cancellation of bail should be those which arose after the grant of bail and should be referable to the conduct of the accused while on bail.*

6) Keeping these principles in mind, I should proceed to consider the prayer made in these petitions





by the State for cancellation of bail. As noticed supra, the first ground urged for cancellation of bail is that the original complainant is being intimidated and threatened by filing frivolous and false complaints by the disciples of Accused No.1 and thereby, Accused No.1 has tampered the prosecution witnesses. It is pertinent to note that the basis for urging these grounds is the fact of filing several complaints by persons who are stated to be disciples of Accused No.1. It is also pertinent to note that in these petitions, the original complainant has not filed affidavit complaining that he is being intimidated or threatened by any of the accused persons or any of his devotees or disciples. Of course, the documents produced along with these petitions prima facie indicates that, certain complaints have been filed against the original complainant by some persons. According to the contents of those complaints, the complainants are devotees or disciples of Accused No.1. It is the contention of the learned Special Public Prosecutor that the allegations made in the complaints



are all false and frivolous and it is only with a view to intimidate the original complainant, these false complaints have been filed. It is pertinent to note that, on presentation of all these complaints, the learned Magistrate has referred them for investigation under Section 156(3) of Cr.P.C. It is reported that after investigation, the Investigating Officer filed 'B' summary report and each of the complainants have filed protest petitions and those protest petitions are pending. It is submitted that in one case, the learned Magistrate has taken cognizance, which act has been questioned by the original complainant in the present case by presenting petition before this Court under Section 482 of Cr.P.C. Merely because the complainants in these complaints are stated to be either the devotees or disciples of Accused No.1, it cannot be presumed or inferred that those complaints have been filed at the instance of Accused No.1 with a view to intimidate the person named as accused in those complaints. It is not for this Court in these proceedings



to brand those complaints as false complaints. It is for that Court to decide and record a finding as to whether the allegations made therein are all false and not acceptable. Several acts said to have been committed by the original complainant in this case have been stated in those complaints. It is for that Court to consider them and pass appropriate orders, as the protest petitions filed by the complainants are said to be pending before the jurisdictional Magistrate and any opinion expressed on those petitions would greatly prejudices the parties. Therefore, it is improper for this Court to make any observations as to the veracity of those complaints. It is suffice to state that on the basis of the complaints filed by some persons, who claims to be the disciples or devotees of Accused No.1 against the *de facto* complainant, it cannot be said that Accused No.1 or Accused No.2 have in any way intimidated or threatened the complainant and thereby have tampered the prosecution witnesses or evidence. As noticed





supra, the *de facto* complainant has not complained of any kind of intimidation or threatening.

7) The other ground urged is that the Investigating Officer visited the Ashram of Accused No.1, on receiving information that one of the material witness is staying in the Ashram, in order to take her specimen signature and at that, he was prevented by the inmates of the Ashram and stealthily the said witness was sent out of Ashram, thereby the respondents prevented the Investigating Officer from conducting investigation and that they also even threatened the Investigating Officer. These allegations are refuted by the respondents. On the other hand, it is brought to the notice of this Court by the respondents' counsel that even before the alleged date of visit to Ashram by the Investigating Officer, one Sriram Pillai Bhaskaran had presented the complaint before the jurisdictional Court on 05.03.2011 in PCR No.31/2011 alleging certain acts by the very Investigating Officer and the said complaint is still pending. The correctness



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of the allegations made in the private complaint is also required to be considered by the jurisdictional Court. Having regard to these developments, it cannot be said that the respondents have tried to interfere in the Investigation.

8) It is also nextly contended that the respondents have managed to file Civil suits in Cybarabad, thereby have interfered in the investigation and progress of the matter. If the aggrieved persons, in order to protect their civil rights over property, institutes civil suits, it cannot be said that they have tried to interfere with the investigation or progress of the matter. In fact, the civil suit filed before the Court of Additional Junior Civil Judge, Cybarabad at Rajendranagar in O.S. No.99/2010 has been decreed and the defendants therein have filed a suit for declaration for cancellation of the gift deed. Thus, the filing of a civil suit cannot be a basis to hold that the respondents have in any way interfered in the investigation of the case or progress of the matter.



9) Having regard to the facts and circumstances of the case, I find no reason much less overwhelming reasons for cancellation of the bail granted to these respondents. In this view of the matter, these petitions are dismissed.



Sd/-  
JUDGE

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*18/8/14*  
Section Officer  
High Court of Karnataka  
Bangalore-560 001

- 18/8/14
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