

**(1996) 08 MAD CK 0009**  
**In the Madras High Court**  
**Case No : Criminal O.P. No. 3980 of 1996**

S.D. Somasundaram

APPELLANT

Vs

The Superintendent, Central Bureau of Investigation

RESPONDENT

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**Date of Decision :** 12-08-1996

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 437

**Citation :** (1996) 2 CTC 496 : (1996) 2 LW(Cri) 563

**Hon'ble Judges :** Shivappa, J

**Bench :** Single Bench

**Advocate :** Rajive Dharam, for M. Vellaichamy and A. Saleem, for the Appellant;  
P. Rajamanickam, Special Public Prosecutor, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Shivappa, J.—The case of the prosecution is that one Advocate by name Vijayan was attacked by the accused persons inflicting grievous

injuries on him, when he was leaving his house on 21.7.1994 to attend a case in the Supreme Court on 22.7.1994 against 69% reservation policy

of the Tamil Nadu State Government. A case was registered for offences under Sections 147, 148 and 307, I.P.C. by the local police, later

investigation was banded over to CB CID on 7.8.1994. On 18.8.1994, on an interlocutory application the Supreme Court ordered the CBI to

take up the investigation and directed the Tamil Nadu State Police to hand over the case to CBI for further investigation.

2. Challan has been filed by the CBI for offences under Sections 143, 147, 148, 449, 324, 326, 307 and 120B read with 149, I.P.C. on the file

of the X Metropolitan Magistrate, and has taken cognizance of the offences against the accused persons.

3. According to the respondent, six witnesses have given statement confirming the involvement of the petitioner in the alleged conspiracy. On the basis of confirmatory materials, the petitioner was arrested on 11.6.1996 and the case against him is that he who sponsored the organized murderous attack on Advocate Vijayan by entering into criminal conspiracy with other accused. In the scheme of conspiracy, according to the prosecution, it was the petitioner who played the major role in organising the attack through accused Nos. 1 and 2 by engaging professional assassins for committing the alleged murderous attack on the said Vijayan, which resulted in Vijayan sustaining grievous injuries with a permanent disability of his limb.

4. The learned counsel for the petitioner contended that the petitioner was a Member of Parliament, Member of Tamil Nadu Legislative Council and also a Minister in the State Cabinet and has no bad antecedents. He further contended that the investigation had already been over and having regard to his age and that there is no likelihood of tampering he sought for enlargement on bail.

5. The Petitioner approached the learned Sessions Judge, Madras for bail. By his order dated 14.6.96 the learned Sessions Judge after considering the Prima facie case, background of the petitioner and the consequences on the prosecution witnesses in the event of release, recorded a finding that the release on bail is not conducive for fair trial and further held that the life of the witnesses will be in danger and dismissed the petition. The petitioner has raised more or less the same grounds in this petition.

6. It is submitted by the respondent that it was due to his instigation and his holding out benefits to persons who carry out the object of the alleged conspiracy the other ;accused, namely, Madhavan and Adhi Rajaram became his partners in the alleged Crime in organising the attack through professional hirelings and he having inspired the nainous offence against a professional man has become a law breaker cannot claim the benefit of the provisions of bail.

7. One of the salutary principle in granting bail is that the Court should be satisfied that the accused being enlarged on bail will not be in a position to tamper with the evidence. When allegation of tampering of evidence is made, it is the duty of the Court to satisfy itself whether these allegations

have any basis and if the allegations are not found to be concocted, it would not be a proper exercise of jurisdiction in enlarging the accused on

bail. Although nature of the charge is vital factor and nature of evidence also is pertinent, yet another relevant factor is whether the course of justice

would be thwarted by him who seeks bail, if a bail is granted. In essence, refusal of bail is not for punitive purpose but for the bi-focal interest of

justice - to the individual involved and the society affected.

8. This Court in *State by Superintendent of Police Central Bureau of Investigation Vs. Adi Rajaram*, following 1989 (1) MWN 1 has held thus:-

Tampering may have two phases, one during investigation preventing the investigating agency from collecting the evidence and the other during

trial, preventing the prosecution from placing the evidence so collected before the Court. In fact, the second phase is as important, if not more

important than the first phase. This is so because, investigation is not an end in itself. It is a process which precedes a trial. Evidence has to be

collected, but the indictment comes only after the evidence is placed before the Court appreciated and accepted. If by proper safeguards the

evidence collected during investigation is not allowed to be preserved and placed before the court and if in the intervening stage, through the

operation of extraneous forces the evidence is allowed to be underlined or erased, the entire investigation become an exercise of futility and the

guilty escape the arms of justice. The possibility of the evidence being tampered is, therefore, serious aspect to which the court has to give due

consideration.

9. In the instant case, having regard to the statement of six witnesses and the nature of participation, namely, organising an attack holding out

benefits to persons who carry out the object of the conspiracy on a professional man is a social crime, that too when he happened to be an

administrator in the affairs of the State, during the relevant time. Having regard to his political clout, standing in public life, his release will have

serious impact on the witnesses and there may not be a conducive atmosphere for trial. There is every possibility of witnesses being put to psychic

fear and also threat. When the petitioner has gone to the extent of engineering a conspiracy to attack a professional man realising the consequences

of his own acts, in order to free from the clutches of law, he may even not

hesitate to set up his followers to do any act interfering with the course of trial. Education and age as urged by the counsel may not be a relevant circumstances in a given case, having regard to the participation alleged against the petitioner. The worst thing that can happen to an educated man is to have to surrender his freedom of thought and conscience. When the allegation is, that petitioner conspired through the hirelings to attack a professional man is nothing but a thoughtless act without conscience of his duties toward the society and when age has not brought wisdom, it is of no relevance. Therefore, the contentions that being a politician he occupied high offices, educated, aged, no bad antecedents are of no relevance, having regard to the facts and circumstances of this case, namely, according to the prosecution he engineered the conspiracy, enables to engage hirelings, held at promise in the event of execution of conspiracy, that too, to attack a professional man. This makes all the difference that the case in which he is involved assumes importance. As has been held by this Court in Crl.O.P. No. 4470 of 1996 that ultimate goal of denial of bail is not to put more people in jail but merely to provide conducive atmosphere for trial to get at the truth to reestablish respect for law. Therefore, the contentions urged by the counsel for the petitioner are liable to be rejected,

10. Before parting with the case, it is just and necessary to place on record that the case has already been committed to Court of Session and the other accused persons are in custody, therefore, the jurisdictional Court is directed to give top priority to this case and to complete the trial on day today basis within three months from today. The petitioner is at liberty to move the Sessions Court, if so advised, after completion of the prosecution evidence, for similar relief.

11. For the reasons stated above, the petition is dismissed.

Learned counsel Mr. Vellaichamy submitted before pronouncement of the order that the petitioner herein is brought to the Government General

Hospital and admitted in the Intensive Care Unit for treatment. The authorities to take all necessary steps for proper medical assistance with the

best of Government Doctors, if facilities are not available in the prison hospital.

Any expressions made in the order and in connected cases are only meant for the disposal of the bail application and uninfluenced by these

observations the trial Judge to dispose of the case in accordance with law.