

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ASHOK MENON

FRIDAY, THE 13TH DAY OF AUGUST 2021 / 22ND SRAVANA, 1943

BAIL APPL. NO. 5010 OF 2021

OR NO.4/2021 RC7(S) 2021/SC/II/NEW DELHI OF CB/SCII/NEW DELHI

PETITIONER/S:

P.S. JAYAPRAKASH
AGED 71 YEARS
S/O.N.SUDHAKARAN, DEPUTY CENTRAL INTELLIGENCE OFFICER
(RETD.), AJAYASREE, 48/489D, PRA 115, POOVAMPILLY LANE,
DESHABHIMANI ROAD, ELAMAKKARA P.O.,
KOCHI - 682 026.

BY ADVS.
SRI.KALEESWARAM RAJ
SRI.VARUN C.VIJAY

RESPONDENT/S:

1 CENTRAL BUREAU OF INVESTIGATION
REPRESENTED BY THE CBI PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
KOCHI - 31.

2* S.NAMBI NARAYANAN
AGED 81 YEARS, S/O SANKARALINGAM, SANGEETHA, T.C NO.
36/978, NSS LANE, PERUMTHANNI, TRIVANDRUM
*(IS IMPEADED AS PER ORDER DATED 01.07.2021 IN CRL. MA
NO. 1/2021 IN BA NO. 5010/2021)

BY ADVS.

R1 BY SHRI.P.VIJAYAKUMAR, ASG OF INDIA

R2 BY SRI.C.UNNIKRISHNAN (KOLLAM)

OTHER PRESENT:

SRI.S.V.RAJU, ADDL SOLICITOR GENERAL OF INDIA -CBI

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
11.08.2021, ALONG WITH Bail Appl..5109/2021 & 5809/2021, THE COURT ON
13.08.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ASHOK MENON

FRIDAY, THE 13TH DAY OF AUGUST 2021 / 22ND SRAVANA, 1943

BAIL APPL. NO. 5109 OF 2021

RC7(S) 2021/SC/II/NEW DELHI OF CB/SCII/NEW DELHI

PETITIONER/S:

- 1 VIJAYAN
AGED 65 YEARS
SON OF N.R. PADMANABHAN, TC6/1983(4), SWANTHANAN,
KOTHU ROAD, ELIPPODE, VATTIYOORKAVU,
THIRUVANANTHAPURAM, PIN - 695013.

- 2 THAMPI S DURGA DUTT
AGED 60 YEARS,
SON OF SANKARAN NAIR, TC10/196-5, NANTHIYAR HOUSE, 48C,
SWATHI NAGAR LANE -2, PIPEEN MOODU ,
THIRUVANANTHAPURAM, PIN - 695005.

BY ADV SASTHAMANGALAM S. AJITHKUMAR

RESPONDENT/S:

- 1 CENTRAL BUREAU OF INVESTIGATION
SCII NEW DELHI, REPRESENTED BY ITS STANDING COUNSEL HIGH
COURT OF KERALA , ERNAKULAM
ERNAKULAM, PIN - 682031.

2* S.NAMBI NARARYANAN
AGED 81 YEARS, S/O SANKARALINGAM, SANGEETHA, T.C. NO.
36/978, NSS LANE, PERUMTHANNI, TRIVANDRUM
*IS IMPEADED AS ADDL R2 AS PER ORDER DATED 26/7/2021 IN
CRL MA 1/2021

BY ADVS.

R1 BY SHRI.P.VIJAYAKUMAR, ASG OF INDIA

R2 BY SHRI.C.UNNIKRISHNAN (KOLLAM)

OTHER PRESENT:

SRI.S.V.RAJU, ADDL SOLICITOR GENERAL OF INDIA -CBI

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
11.08.2021, ALONG WITH Bail Appl..5010/2021 AND 5891/2021, THE COURT
ON 13.08.2021 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ASHOK MENON

FRIDAY, THE 13TH DAY OF AUGUST 2021 / 22ND SRAVANA, 1943

BAIL APPL. NO. 5809 OF 2021

FIR NO.RC050 2021 S0007 OF SC-II DELHI POLICE STATION

PETITIONER/S:

R.B.SREEKUMAR (IPS RETD.)
AGED 74 YEARS, FORMER DGP
GUJARAT, PLOT NO.193, "SREELEKSHMIDEEPAM", SECTOR-B,
GANDHINAGAR.

BY ADVS.
S.SREEKUMAR (SR.)
P.MARTIN JOSE
P.PRIJITH
THOMAS P.KURUVILLA
R.GITESH
AJAY BEN JOSE
MANJUNATH MENON
SACHIN JACOB AMBAT
HARIKRISHNAN S.

RESPONDENT/S:

CENTRAL BUREAU OF INVESTIGATION, THROUGH ITS DIRECTOR,
6TH FLOOR, LODHI ROAD, PLOT NO.5-B, JAWAHARLAL NEHRU
STADIUM MARG, CGO COMPLEX, NEW DELHI - 11.

BY SHRI.P.VIJAYAKUMAR, ASG OF INDIA

OTHER PRESENT:

SRI.S.V.RAJU, ADDL SOLICITOR GENERAL OF INDIA -CBI

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
11.08.2021, ALONG WITH Bail Appl..5010/2021 AND 5109/2021, THE COURT
ON 13.08.2021 DELIVERED THE FOLLOWING:

COMMON ORDER

[Bail Appl. Nos.5010/2021, 5109/2021, 5809/2021]

Dated this the 13th of August 2021

The petitioner in B.A.No.5010/2021 is the 11th accused; the petitioners in B.A.No.5109/2021 are accused 1 and 2; while the petitioner in B.A.No.5809/2021 is the 7th accused in Crime No.RC/050/2021/S0007 of SC-II Delhi Police Station. The case which was registered by the Central Bureau of Investigation (CBI) alleging offences punishable under Sections 120B, 167, 218, 330, 323, 195, 348, 365, 477A and 506 of the I.P.C. against 18 persons, including the petitioners, who were all officers either with the Kerala Police or with the Intelligence Bureau (IB).

2. The allegation in brief, is that, on 20.10.1994 Crime No.225/1994 was registered on the basis of a report submitted by the 1st accused, Inspector of Special Branch of Kerala Police at Vanchiyoor Police Station against a Maldivian National, namely, Mariyam Rashida under Section

14 of the Foreigners Act, 1946 for overstaying in India after the expiry of the Visa. During the investigation of the said case, on the basis of the report submitted by the 1st accused, another crime was registered as Crime No.246/1994 on 13.11.1994 at the same Police Station alleging offences punishable under Sections 3 and 4 of the Official Secrets Act, 1923 read with Section 34 of the I.P.C. against the aforesaid Mariyam Rashida and another lady named Foauzia Hasan, also a Maldivian National, on the allegation that they had in collusion with some others had taken part in the activities against the sovereignty and integrity of India and indulged in activities, which would harm the cordial relationship of India with the neighbouring countries. The investigation in the aforesaid two crimes, registered on the basis of the report submitted by the 1st accused, was initially conducted by the 2nd accused, who was then the Sub Inspector of Police, Vanchiyoor Police Station. Later, on 15.11.1994, the investigation of both these cases was entrusted to the

Special Investigation Team constituted by the DGP of Kerala Police, headed by the then DIG of Crimes, Siby Mathews, who is the 4th accused here. In Crime No.246/1994, six persons, including the aforesaid two Maldivian ladies were arrested. That included D.Sasikumaran, K.Chandrasekhar, Nambi Narayanan, Sudhir Kumar Sharma, who were all Scientists in the Liquid Propulsion Systems Centre (LPSC), alleging that they were involved in espionage activities relating to the Indian Space Research Organisation (ISRO). During the police custody, all these persons were subjected to interrogation by a number of officers of the Kerala Police and Intelligence Bureau. Later, the investigation was handed over to the C.B.I. on 03.12.1994 and the crimes were re-registered as RC.10(S)/1994-CBI/SIU.V/SIC.II (Foreigner's Act Case) and RC.11(S)/1994-CBI/SIU.VI/SIC.II (Espionage Case) respectively. The C.B.I. submitted a closure report before the designated court, the Chief Judicial Magistrate Court, Ernakulam, on 16.04.1994 stating that the allegations pertaining to espionage could not be proved and

were found to be false. The report submitted by the C.B.I. was accepted by the Chief Judicial Magistrate Court, Ernakulam on 02.05.1996, and the entire proceedings against the aforesaid persons came to an end. It was also alleged in the report that the lapses were committed by the earlier investigating agencies/ interrogators. Copies of the report were also sent to the Government of India and to the Government of Kerala, requesting suitable action against the erring officials. The Kerala Government pursued to reopen the espionage case and ordered re-investigation. The said order of the State Government was challenged in **K.Chandrasekhar and others v. State of Kerala** and others and ultimately the Hon'ble Supreme Court quashed the orders of the State Government directing reopening of investigation in the espionage case holding that the State Government's notification seeking re-investigation was *mala fide*. The Government of Kerala decided not to take any disciplinary action against the State Government police officers for the alleged lapse. Nambi Narayanan, one of

the accused in the case, challenged the matter before the Apex Court, and vide judgment dated 14.09.2018 in Civil Appeal No.6637-6638/2018, the court ordered compensation of Rs.50 lakhs to be paid to Nambi Narayanan on several grounds, including wrongful imprisonment, malicious prosecution and humiliation suffered by him. In the aforesaid judgment, the Apex Court also ordered the constitution of a committee regarding the arrest and false implication of Nambi Narayanan to find out the ways and means to take appropriate action against the erring officials. Accordingly, a committee was constituted under the Chairmanship of the Former Judge of the Supreme Court Shri Justice D.K.Jain. The enquiry committee observed that the confinement of Mariyam Rashida without registration of the F.I.R., suppression of material and facts from the official records of investigation, unauthorised interrogation of Mariyam Rashida by officials of Intelligence Bureau without creating any records, by flouting of several mandatory procedures relating to

depriving a person, including a foreigner, of his right to life and personal liberty and registration of a crime under Sections 3 and 4 of the Officials Secret Act without any basis and the deliberate leaking of the information to the media and press by the investigating agency to create a narrative implicating the Scientists of the LPSC and others and arrest of Scientists referred to above, without any material on record to show their involvement in the espionage and consequent torture of the Scientists, Nambi Narayanan and K.Chandrasekharan by the interrogators while they were in police custody, requires a detailed investigation. The Committee also noticed that the interrogators/investigators had even coerced Nambi Narayanan to falsely implicate his immediate bosses Dr.Muthuyangam and Prof. Dr.U.R.Rao of the ISRO in the matter and that there were deliberate attempts to remove him from the development of Cryogenic Technology and that there was a design to harm the development of Cryogenic Technology in ISRO. The Committee submitted its report on

25.03.2021 before the Hon'ble Supreme Court and the Committee had pointed to the involvement of 18 officers who could have been involved. And accordingly, the present crime was registered for the offences mentioned in the F.I.R. The petitioners reasonably apprehend that they may be arrested, subjected to torture and humiliated. They have, therefore, approached this Court for a pre-arrest bail stating that the accusation made against them is pertaining to an incident that happened in 1994 and that they had only performed their official duties and that even when the C.B.I. had taken over the investigation of the case, they too had sought custody of the accused for the purpose of interrogation and it was only thereafter, that the closure report was submitted. The petitioners are all septuagenarians suffering from various ailments and in case they are incarcerated and subjected to rigorous interrogation and torture, it could even pose a threat to their lives, and therefore, they seek the indulgence of this Court for anticipatory bail.

3. Heard the learned Counsel Sri.Sasthamangalam S.Ajithkumar appearing for accused 1 and 2, Advocate Sri.Kaleeswaram Raj appearing for the 11th accused and Senior Advocate Sri.S.Sreekumar appearing for the 7th accused. Senior Advocate Sri.S.V.Raju, ASG appeared for the C.B.I. Records perused. It included the report submitted by Shri Justice D.K.Jain.

4. It is pointed out by accused 1 and 2 that they were only very junior officers in the lower rung of the Kerala Police and that they had registered the case on reasonable suspicion of overstay by Maldivian ladies and also on suspicion of their having connection with certain high officials and Scientists in the ISRO. It is at the request of the DGP Kerala State, that a Special Investigating Team was constituted, in which the officers of the I.B. and other agencies were included. The 2nd accused was an I.P.S.Officer of Gujarat Cadre, who ultimately retired as DGP of Gujarat. He was, at the relevant point of time, entrusted with the investigation of

both the crimes by the D.G.P. of Kerala and that the investigation team performed under the supervision of the Joint Director of S.I.B., Thiruvananthapuram. The I.B. had deputed officers for assisting the Kerala Police and 2nd accused was one among them. Some other senior officers were also included in the team. The 11th accused was the Assistant Central Intelligence Officer Grade I of the S.I.B. at Kochi. The 7th accused states that he was tasked by the 13th accused, the Joint Director, for interrogating the Scientist D.Sasikumaran alone and he had submitted a report of interrogation to him, who was compiling all inputs of the espionage case and informing the I.B. Headquarters as also to the Kerala Police. The 7th accused states that he did not meet or interrogate the Scientist named Nambi Narayanan at all. The 11th accused states that he was only a middle-level officer, Assistant Central Intelligence Officer Grade-I of the S.I.B., Kochi, who was part of the team which was helping the Kerala Police to investigate the case from 04.11.1994 to 30.11.1994 alone,

and thereafter, he left the team. He also did not take part in any manner in the interrogation or arrest of Nambi Narayanan. He had interrogated only Mariyam Rashida and D.Sasikumaran. Apart from these brief instances, he was in no way connected with the incident and he also states that he did not even meet Nambi Narayanan. Implicating him as an accused is an abuse of the process of law. He is 71 years old and suffering from various ailments. Accused 1 and 2 are aged 65 and 60 respectively. They also submit that apart from the registration of the crime in the initial stage, they were in no way concerned with the interrogation of the Scientists and the allegation that they had an ulterior motive in registering the case and had done all these at the behest of some foreign power, is baseless.

5. *Per contra*, the learned ASG Sri.S.V.Raju submits that even though the offences now included in the F.I.R. may not be so grave; but there is a clear indication that the petitioners were part of a team, which had ulterior

motives to torpedo the attempts of ISRO for manufacturing the ingenious Cryogenic Engine in India. The investigation is still at a nascent stage and the conspiracy could only be revealed as and when the investigation goes further. For that purpose, interrogation of the officers is very essential. The learned ASG also takes this Court through the judgment of the Apex Court wherein it is very clearly stated that a senior Scientist like Nambi Narayanan was subjected to torture, and therefore, it is most essential to find the reasons why the investigating officers had, without any concrete materials, implicated the Scientists, who were engaged in a very important project, to incarceration and humiliation. It is considering the gravity of the act done by the accused persons that compensation of Rs.50 lakhs was awarded to Nambi Narayanan, and therefore, it is submitted that the petitioners are not entitled to the extraordinary and exceptional remedy of anticipatory bail.

6. The Scientist Nambi Narayanan got himself

impleaded in all the three Bail Applications and Sri.C.Unnikrishnan appearing for him vehemently opposed the applications for bail stating that there is a clear indication that the accused persons were acting at the behest of some foreign power. He also has produced certain materials to show that the C.I.A. was interested in seeing that the Cryogenic Engine is not supplied to India and as a consequence of that, Russia has refused to supply Cryogenic Engines to India with the intention to stall the entire development of the rocket technology in the Country. It is stated that because of the registration of this crime, the progress that India had achieved in developing its own indigenous technology of manufacturing a cryogenic engine had come to a stall and the Country was pushed back several years on its way to the development of rocket technology. It is further stated that it is a clear case of foreign interference in the Country's space research, which has to be dealt with an iron hand and the Committee constituted by the Apex Court had clearly found that there were some

suspicious reasons behind the police officers acting in the manner that they did, and that has to be investigated in great detail.

7. The learned Counsel appearing for accused 1 and 2 Sri. Sasthamangalam S.Ajithkumar submits that there were very strong materials available against Nambi Narayanan and others so as to implicate them in the case of espionage. He has also relied on certain documents to indicate that Nambi Narayanan had acquired properties in Tamil Nadu, which were transferred to the wife of a senior police officer and also to an officer in the C.B.I., which had ultimately led to the filing of closure report.

8. It is argued by the learned Counsel appearing for the accused that there is no sufficient material collected against the petitioners herein to indicate that they were acting at the behest of some foreign power so as to falsely implicate the Scientists of ISRO in a false and fictitious case. It is also pointed out that the only bailable offences alleged at present against the petitioners is

under Sections 195 and 365 of the I.P.C. and for the investigation of an offence coming under those Sections, apart from the documents which have been already collected, custodial interrogation of the petitioners may not be necessary. They are all officers, who have served the Country well and after retirement, they have settled down in various places. They are willing to cooperate with the investigation. The petitioners have produced documents to show that the departmental enquiry which was initiated against the officers, both by the Central and State Governments, ended in a closure without any action being taken against them.

9. It is also pointed out that the Hon'ble Supreme Court had, when approached by Nambi Narayanan, observed thus:-

"We make it clear that it will be open to the CBI to treat the report as a preliminary inquiry report and proceed in the matter appropriately.

We, however, make it clear that this report shall not be made public. In other words, report is not for public circulation. It can be used by the C.B.I. during further enquiry/investigation process that is required to be undertaken by the

CBI as recommended in the report.

Nothing further is required to be said except to observe that the private respondents will be free to pursue all the pleas, as may be available to them in the proceedings that may follow if and then initiated by the Central Bureau of Investigation."

It is stated that even though the C.B.I. had registered the crime and started an investigation apart from the offences mentioned, there is no allegation against the accused of having acted against the interest of the Country. And therefore, it is prayed that the petitioners may be granted anticipatory bail.

10. The provisions of Section 438 of the Cr.P.C. for granting of anticipatory bail in the light of Article 21 of the Constitution of India came up for consideration before a Constitutional Bench of the Apex Court in **Gurubarksh Singh Sibbia & others v. State of Punjab, (1980) 2 SCC 565,** the Court held as thus:

"15. Judges have to decide cases as they come before them, mindful of the need to keep passions and prejudices out of their decisions. And it will be strange if, by employing judicial artifices and techniques, we cut down the discretion so wisely conferred upon the Courts, by devising a formula which will confine the

power to grant anticipatory bail within a strait jacket. While laying down cast iron rules in a matter like granting anticipatory bail, as the High Court has done, it is apt to be overlooked that even Judges can have but an imperfect awareness of the needs of new situations. Life is never static and every situation has to be assessed in the context of emerging concerns as and when it arises. Therefore. even if we were to frame a 'code for the grant of anticipatory bail'. which really is the business of the legislature, it can at best furnish broad guidelines and cannot compel blind adherence. In which case to grant bail and in which to refuse it is, in the very nature of things, a matter of discretion. But apart from the fact that the question is inherently of a kind which calls for the use of discretion from case to case, the legislature has, in terms express, relegated the decision of that question to the discretion of the court, by providing that it may grant bail "if it thinks fit". The concern of the courts generally is to preserve their discretion without meaning to abuse it. It will be strange if we exhibit concern to stultify the discretion conferred upon the Courts by law"

It was further held thus:

"35. S.438 (1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has "reason to believe" that he may be arrested for a non bailable offence. The use of the expression "reason to believe" shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief', for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that 'some one is going to make an accusation against him, in pursuance of

which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested S.438 (1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise the number of applications for anticipatory bail will be as large as, at any rate, the adult populace. Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely. Secondly, if an application for anticipatory bail is made to the High Court or the Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for grant in such relief. It cannot leave the question for the decision of the Magistrate concerned under S.437 of the Code, as and when an occasion arises. Such a course will defeat the very object of S.438. Thirdly, the filing of a First Information Report is not a condition precedent to the exercise of the power under S.438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an F. I. R. is not yet filed. Fourthly, anticipatory bail can be granted even after in F. I. R. is filed, so long as the applicant has not been arrested. Fifthly, the provisions of S.438 cannot be invoked after the arrest of the accused. The grant of "anticipatory bail" to an accused who is under arrest involves a contradiction in terms, in so far as the offences for which he is arrested, are concerned. After arrest, the accused must seek his remedy under S.437 or S.439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested."

10. Several other decisions were rendered by the Apex Court after referring to Sibbia's case (supra). The concept of invoking the provisions of Section 438 of Cr.P.C. in extraordinary circumstance was considered by the Apex Court again in Siddharam Satlingappa Mhetre v. State of Maharashtra & others, (2011) 1 SCC 694, wherein it was held after referring to Sibbia's case that Section 438 of the Cr.P.C. is not extraordinary in the sense that it should be invoked only in exceptional or rare cases, where great ignominy, humiliation and disgrace is attached to arrest and where the Court is of the considered view that the accused has joined the investigation and is fully cooperating with the investigating agency and is not likely to abscond, in that event custodial interrogation should be avoided and anticipatory bail should be granted. The Apex court held thus:

"95. The gravity of charge and exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases

the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the court. 96. It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. 97. A great ignominy, humiliation and disgrace is attached to the arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre - conviction stage or post - conviction stage. Whether the powers under S.438 CrPC are subject to limitation of S.437 CrPC.?"

It was further observed thus:

"118. SCOPE AND AMBIT OF ANTICIPATORY BAIL: A good deal of misunderstanding with regard to the ambit and scope of S.438 CrPC could have been avoided in case the Constitution Bench decision of this court in Sibbia's case (supra) was correctly understood, appreciated and applied. 119. This Court in the Sibbia's case (supra) laid down the following principles with regard to anticipatory bail: a) S.438(1) is to be interpreted in light of Art.21 of the Constitution of India. b) Filing of FIR is not a condition precedent to exercise of power under S.438. c) Order under S.438 would not affect the right of police to conduct investigation. d) Conditions mentioned in S.437 cannot be read into S.438. e) Although the power to release on anticipatory bail can be described as of an "extraordinary" character this would "not justify the conclusion that the power must

be exercised in exceptional cases only." Powers are discretionary to be exercised in light of the circumstances of each case. f) Initial order can be passed without notice to the Public Prosecutor. Thereafter, notice must be issued forthwith and question ought to be re - examined after hearing. Such ad interim order must conform to requirements of the section and suitable conditions should be imposed on the applicant. xxxxxxxxxxxxxxxxxxxxxxxx

122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

iii. The possibility of the applicant to flee from justice;

iv. The possibility of the accused's likelihood to repeat similar or the other offences.

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of S.34 and S.149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern; viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two

factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

123. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case."

11. In the instant case, what is to be borne in mind is that the petitioners have been called upon to answer an accusation made against them for an act which they had allegedly committed more than a quarter of a century ago. The Apex Court had come upon heavily against the investigating officers for having implicated the Scientists of ISRO in an espionage case without sufficient materials and even ordered compensation to the tune of Rs.50 lakhs to Nambi Narayanan. Some of the documents which have been produced for perusal indicate that there were certain

suspicious circumstances pointing towards the act of the Scientists in the ISRO and that is what induced the officers to proceed against them. The State Government thought that it is only appropriate that a Central agency conduct the investigation and accordingly the investigation was handed over to the C.B.I. But after an extensive investigation, the C.B.I. did not find the accusations to be correct and consequently, they filed a closure report.

12. There is not even a scintilla of evidence regarding the petitioners being influenced by any foreign power so as to induce them to hatch a conspiracy to falsely implicate the Scientists of the ISRO with the intention to stall the activities of the ISRO with regard to the development of Cryogenic Engine. Unless there are specific materials regarding their involvement, *prima facie*, it cannot be said that they were acting against the interest of the Country. The investigation was triggered by the apprehension of the Maldivian ladies, who were overstaying the Visa and during the investigation, the officers in the

lower rank like accused 1 and 2 found certain suspicious circumstances, as a result of which, they registered the crime and reported the matter to the higher-ups. An officer of the rank of DGP of Kerala had constituted a special investigating team consisting of investigating officers from the I.B. to assist the Kerala Police to arrive at a conclusion. The concerns of the Kerala Police at that stage cannot be said to be without any basis. But ultimately it was found that there is nothing in the accusation made against the offices and the investigation was dropped. The accused in the present crime should not be made to face a similar situation of being forced to undergo the ignominy of being incarcerated in the prison for interrogation at this old age after their retirement for an incident that took place a quarter of the century ago. There is no indication or material, apart from the rhetoric that a foreign power has a hand in persuading the petitioners, and therefore, I find that the petitioners are entitled to the remedy of anticipatory bail.

Under the above circumstances, the Bail Applications are all allowed and in the event of the petitioners being arrested, they shall be released on bail on the execution of a bond for Rs.1,00,000/- (Rupees one lakh only) each, with two solvent sureties each for the like amount to the satisfaction of the arresting officer, and on the following conditions:

- (i) They shall appear before the Investigating Officer as and when called and shall cooperate with the investigation;
- (ii) They shall not influence or intimidate witnesses or tamper with evidence; and
- (iii) They shall not leave the country without the permission of the jurisdictional court.

In case of breach of the bail conditions, the prosecution shall be at liberty to apply for cancellation of the bail before the jurisdictional court.

sd/-

ASHOK MENON
JUDGE

dkr