

BA Nos.6713,6721,6732 & 6734 of 2019

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 09TH DAY OF OCTOBER 2019/17TH ASWINA, 1941

Bail Appl..No.6713 OF 2019

V.C. NO.1/2019 OF VACB, ERNAKULAM , Ernakulam

PETITIONER/ACCUSED NO.2:

M.T.THANKACHAN,
AGED 64 YEARS
S/O.THOMAS, MUNDACKAL VEEDU, BEENA ANCHUMANA
ROAD, EDAPPALLY NORTH VILLAGE, KANAYANNOOR
TALUK, ERNAKULAM (FORMER AGM, RBDCK) .

BY ADVS.
SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY
SRI.D.FEROZE
SRI.K.ANAND (A-1921)

RESPONDENT/STATE:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM -682 031 (VC 01/2019 OF VACB
UNIT, ERNAKULAM DISTRICT) .

R1 BY SPECAL PUBLIC PROSECUTOR A.RAJESH

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
03-10-2019, ALONG WITH Bail Appl..6721/2019, Bail
Appl..6732/2019, Bail Appl..6734/2019, THE COURT ON 09-10-
2019 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 09TH DAY OF OCTOBER 2019 / 17TH ASWINA, 1941

Bail Appl..No.6721 OF 2019

V.C. NO.1/2019 OF VACB, ERNAKULAM , Ernakulam

PETITIONER/ACCUSED NO 4.:

T.O.SOORAJ
AGED 60 YEARS
S/O.OSMAN KHAN, B-5, KENT NALUKETTU, C.C.NO.681,
VENNALA P.O., KOCHI-682028.

BY ADVS.
SRI.S.SREEKUMAR (SR.)
SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.M.A.MOHAMMED SIRAJ
SRI.THOMAS P.KURUVILLA
SRI.AJAY BEN JOSE
SRI.SACHIN JACOB AMBAT
SHRI.HARIKRISHNAN S.

RESPONDENT/S:

- 1 THE STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM-682031.
- 2 STATE OF KERALA,
REPRESENTED BY DEPUTY SUPERINTENDENT OF POLICE,
VACB, ERNAKULAM-682017.

R1-2 BY SPL. PUBLIC PROSECUTOR A.RAJESH

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 03-10-2019, ALONG WITH Bail Appl..6713/2019, Bail Appl..6732/2019, Bail Appl..6734/2019, THE COURT ON 09-10-2019 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 09TH DAY OF OCTOBER 2019 / 17TH ASWINA, 1941

Bail Appl..No.6732 OF 2019

V.C. NO.1/2019 OF VACB, ERNAKULAM , Ernakulam

PETITIONER/ACCUSED NO.1:

SUMEET GOYAL,
AGED 64 YEARS
S/O. M L GOYAL, PH2 RDS RHYTHM, PADAMUGAL,
KAKKANADU, ERNAKULAM DISTRICT

BY ADVS.
SRI.B.RAMAN PILLAI (SR.)
SRI.R.ANIL
SRI.M.SUNILKUMAR
SRI.SUJESH MENON V.B.
SRI.T.ANIL KUMAR
SRI.THOMAS ABRAHAM
SRI.THOMAS SABU VADAKEKUT
SMT.S.LAKSHMI SANKAR
SRI.SOJAN MICHEAL

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, KOCHI 682 031

R1 BY PUBLIC PROSECUTOR
R1 BY SRI.SUMAN CHAKRAVARTHY SENIOR PUBLIC
PROSECUTOR

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 03-10-2019, ALONG WITH Bail Appl..6713/2019, Bail Appl..6721/2019, Bail Appl..6734/2019, THE COURT ON 09-10-2019 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 09TH DAY OF OCTOBER 2019 / 17TH ASWINA, 1941

Bail Appl..No.6734 OF 2019

V.C NO.1/2019 OF VACB, ERNAKULAM , Ernakulam

PETITIONER/ACCUSED NO. 3:

BENNY PAUL,
AGED 57 YEARS
S/O.PAULOSE, PULLYTTU HOUSE, PUTHENCRUZ P.O.,
ERNAKULAM.

BY ADVS.
SRI.GEO PAUL
SRI.SANU MATHEW
SRI.C.R.PRAMOD
SRI.RADHIKA RAJASEKHARAN P.

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
THROUGH DY.SP, VIGILANCE AND ANTICORRUPTION BUREAU,
ERNAKULAM REPRESENTED BY PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM- 682031.

BY SPL.PUBLIC PROSECUTOR A.RAJESH

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 03-10-2019, ALONG WITH Bail Appl..6713/2019, Bail Appl..6721/2019, Bail Appl..6732/2019, THE COURT ON 09-10-2019 PASSED THE FOLLOWING:

COMMON ORDER

[Bail Appl..6713/2019, Bail Appl..6721/2019, Bail Appl..6732/2019, Bail Appl.6734/2019]

Applicants are accused Nos. 1 to 4 in V.C.No.1/2019 of the Vigilance and Anti Corruption Bureau, Ernakulam Unit, for offences punishable under section 13(1)(d), read with section 13(2) of the Prevention of Corruption Act and Section 120B of the Indian Penal Code.

2. The essential facts of the case for the purpose of consideration of the above bail applications, are as follows:

To reduce the acute traffic congestion felt in the National Highway-66 at the Palarivattom junction, Ernakulam, the Government by G.O.18/2014 approved a detailed project report of Kerala Road Fund Board (KRFB) to construct a Flyover at Palarivattom. Administrative sanction was granted by the Government on 31/10/2013 for Rs.72.6 Crores and directed to meet the expenses from the Kerala Road Fund Board (KRFB). Technical sanction was granted on 4/11/2014 for a sum of Rs.47.70 Crores for the construction of the fly over, excluding land acquisition with RCC girders and 17 spans. Kerala Roads and Bridges Development Corporation, Kochi (RBDCK) was the

implementing agency. It was responsible for the monitoring, physical verification of the project, ensuring the quality of construction and timely completion of the work. The Kerala Industrial and Technical Consultancy Organization (KITCO), an accredited agency of the Kerala Government was appointed as the project management consultant. For the funding, an agreement was entered into between RBDCK and KRFB on 22/1/2015. An agreement was entered into between the RBDCK and KITCO on 25/9/2015 for implementing the project. The detailed project report and estimate report was given by KITCO, which also prepared the tender document. RBDCK invited tenders, to which three tenderers responded. Technical bid as well as the financial bid were opened by the RBDCK and after processing it, forwarded to KITCO, for evaluation. Thereafter, with their approval, the tender of M/s. RDS Project which had quoted Rs.41,27,98,842 crores was approved and they were awarded the contract, to be executed as EPC(Engineering, Procurement and Construction) mode. An agreement for Rs.41.27 crores was entered into on 4/3/2013, with completion period of 24 months and a defect liability period of three years, from the date of completion. RDS got the structural drawings prepared by M/s.Nagesh Consultancy, Bangalore, which was claimed to be a reputed architect of

flyover and bridges. The foundation stone for the project was laid on 1-4-2014 and major structural work was over before May 2016. In the meanwhile, on 9/6/2014, contractor requested for sanctioning an advance of Rs.8 Crores, which was sanctioned by the Government recoverable with 7% interest from the bills payable to the contractor.

3. After completion of the work, project was opened for traffic on 12/10/2016. It emerges that, within few weeks after re-opening surface undulation developed and pot holes appeared. RBDCK, by their communication dated 17/10/2016 directed KITCO and RDS to rectify the defects. Though repair works were done, it did not last long. Since serious doubts were raised about the quality of construction, detailed inspection was conducted. It revealed serious defects on the bridge. Hence, the road was closed for traffic. In this background, the RBDCK requested IIT, Chennai to conduct a study and to give a detailed report. A detailed site inspection was done, samples were collected and a detailed report was submitted. In the meanwhile, the Government requested Sri.E.Sreedharan, the Principal Advisor, Delhi Metro Rail Corporation to inspect the flyover and to give a report. He, along with the experts conducted a detailed site inspection and submitted a detailed report. On the basis of the inputs, the

Government is stated to have decided to dismantle a substantial part of the flyover incurring huge expenses.

4. In the meanwhile, the Government decided to conduct a vigilance enquiry. The investigation was entrusted to the Dy.S.P. of Vigilance and Anti-Corruption Bureau, Ernakulam Unit. Accordingly, the above crime was registered. Officers of the Vigilance Department conducted a site inspection and with the help of experts, drew samples, which were sent to the Kerala Highway Research Institute, Trivandrum, to ascertain whether the samples satisfied the requisite standards of quality. A report was obtained. They conducted search in the office of the contractor, RBDCK, KITCO and various Government Departments and seized all the files in relation to the above project. They also questioned several witness. In the course of investigation, report was filed adding offences under Sections. 420, 409, 511 of 366 and section 34 IPC which were claimed to have been revealed in the course of investigation. On 30/8/2019, petitioners herein were arrested and are in custody since then.

5. The first accused is the Managing Director of contractor company, the second accused is the former AGM of RBDCK, the third accused is the Joint General Manager of the KITCO and the 4th accused is the then Principal Secretary,

PWD, Government of Kerala, who was also the member Secretary of KRFB and Vice Chairman of RBDCK, during the entire relevant period.

6. The crux of the allegation against the accused was that the named accused along with other unnamed accused entered into a criminal conspiracy to award contract to M/s. RDS who was facing financial difficulties at that time and to cause financial gain to the first accused and corresponding financial loss to the public exchequer. It was alleged that, nature of the project was altered to suit the first accused, the defective tender of the first accused was accepted, manipulated tender opening register and tender documents to make M/s.RDS the lowest tenderer and awarded contract to him. In furtherance of the criminal conspiracy, they permitted the first accused to compromise on the design of flyover, in the execution of work and the quality of materials used. Mobilisation advance of about eight Crores of rupees, which was not permitted by tender was released on favourable terms, to give pecuniary advantage to the first accused. It was also alleged that, with the aid of other accused, the first accused substantially compromised on the quality of the work at different stages of construction leading to structural defects, which were fundamental and were irreparable.

7. The allegation against the second accused was that, to help the contractor, the non production of sufficient documents to prove the eligibility criteria of the tenderer along with the tender was intentionally suppressed. There is a further allegation that, he along with others manipulated the tender opening register to ensure that the contract was awarded to the first accused. Though, he was also aware that the mobilization advance was not liable to be granted, he along with the other officials recommended for granting advance and got it sanctioned. He also did not supervise the qualitative execution of flyover and permitted the first accused to compromise on the quality of construction.

8. Allegation against the 3rd accused was that, he being the joint General Manager of KITCO, approved the tender of the first accused, which was defective. Instead of rejecting the technical bid, pursuant to the conspiracy, he qualified the tenderer along with other defect free tenders and thereby facilitated the acceptance of tender of the first accused. As the Joint General Manager, he failed to discharge his duties in conducting effective supervision of the construction. Most of the deficiency was due to the laches on the part of the 3rd accused and other officials of KITCO, it was alleged.

9. The crux of the allegation against the 4th accused was

that, he was the Principal Secretary of the PWD during relevant time and also held the additional charge of Member Secretary of KRFB and Vice Chairman of RBDCK. He approved the granting of mobilisation advance in collusion with the accused and unilaterally fixed a lesser rate of interest payable, which was much less than the Government rate and imposed conditions favourable to the first accused, for its recovery. This caused substantial loss to the Government, it was alleged.

10. Seeking bail, the learned senior counsel for the first accused contended that, he is the Managing Director of very reputed, well established construction company which had undertaken several contracts of various public sector, central and state Governments, public institutions, defence establishments and other semi government agencies, for about Rs.2,000/- crores. It was submitted that, they had done several works on behalf of the Kerala Government earlier. They had participated in the present tender and was the successful bidder. The flyover was designed by M/s. Nagesh Consultancy, which was one of the most reputed architects in the country. He was awarded contract which was to be executed within a period of 24 months. However, the Government directed the contractor to complete the project in 18 months. In the

meanwhile, Kochi Metro had given bulk orders for purchase of raw materials for completion of their works. This compelled him to mobilise the raw materials from every possible source. An advance was sought, which was granted by Government. The work was done under the strict supervision of officers of RBDCK and technically supervised by KITCO. There was no compromise on the quality of work at any point of time. After the completion of the work, some minor defects were noted, that had occurred due to various reasons, including the tarring done during rainy season and completion of work on a war footing. Unnecessary media publicity was given and public scare was created. To satisfy the public, vigilance investigation was ordered. The advance was utilised only for completing the work. Even if any repairs were to be done, the accused was willing to complete it and was bound by the terms of the default liability period. There was no major defect in the work and without conducting any proper scientific study, the Government took a decision to order demolition of substantial part of the flyover. There was no serious defect to the flyover. Load test was not conducted. None of the experts who conducted inspection had pointed out any material discrepancy other than those minor repairs pointed out by the contractor himself. Entire records of the company in relation to the above flyover

has been seized. Petitioner is an aged person and has been in custody since long. He has thoroughly co-operated with the investigation. His continued detention has caused substantial loss to the company, running into crores. Further custody is not warranted, it was argued.

11. On behalf of the second accused, it was contended by the learned counsel that, he is innocent of the crime and was only one among the employees of RDBCK. KITCO was expected to directly supervise the construction of the flyover. On an allegation by certain vested interests that flyover was damaged, IIT Chennai, which is an expert body, had conducted inspection. They had not advised for demolition of the flyover. Petitioner had only a limited role in awarding of the contract and execution of work. However, petitioner alone was arrested. After opening the tender, it was duly processed by the officers of the RBDCK and technically approved by the KITCO. The request that came from the contractor for advance was processed by the various officers of RBDCK and was only forwarded to the Government for appropriate decision. All the transactions were borne by the records. The petitioner is innocent of the crime. No further purpose will be served by his continued detention.

12. Learned counsel for the third accused, contended

that, he is arrayed as the third accused on an allegation that, he was the Joint General Manager of the Company. In fact, he was not holding that post. He had an unblemished record of service and was not involved in any conspiracy and had not committed any misconduct. He had duly evaluated all the tenders and gave his independent, fair evaluation. He was in KITCO only till piers were constructed. He was posted elsewhere thereafter. He had not permitted the contractor to compromise on the quality of the work.

13. The learned counsel for the third accused further contended further that, at the most, the allegation against him can only be a breach of departmental instructions, code and circulars. It was contended that, criminal prosecution was not justified for codal violation as specifically held by the Supreme Court in **C.Chenga Reddy and Others v. State of A.P.**(1996 KHC 1264 (SC).)

14. Seeking bail, learned senior counsel for the 4th accused contended that, he was the former Secretary of the PWD Department and had an unblemished record of service. He was not involved at any stage in the awarding of the contract, execution of its work and its supervision. The request for granting advance to the contractor was placed before him, which was forwarded by him to his supervisor. The

Government decided to give advance payment. G.O. was issued strictly in accordance with the Government procedure. Though, there was no proposal for levying any interest, he had imposed condition regarding charging of 7% interest, which was beneficial to the Government. He cannot be penalized for having imposed a condition to charge interest, especially when other officers had not recommended imposition of any interest. He had co-operated fully with the investigation. No purpose will be served by detaining him. It was also contended that, there was no reliable and cogent material to hold that flyover had suffered any structural damage.

15. Refuting the above contentions and vehemently opposing the applications for bail, learned prosecutor for VACB contended that, it was a very serious case of corruption and misappropriation of public funds done by a caucus consisting of contractor, Government officials, engineers and administrators. It was also contended that the investigation till now conducted has revealed that, deep rooted conspiracy was hatched at different levels by the accused and the suspect persons, who are now under scanner, to illegally award the contract to the first accused and to derive pecuniary advantages. It was contended that, gross breach of Government circulars, Manual, and norms by several officials

and the persons at the helm of the affairs have been revealed, which was calculated to help the first accused, who was in financial difficulty during the relevant time. They had also permitted the contractor to seriously compromise on the design of the flyover and on the quality of construction. The first accused was favoured at the time of accepting tender, finalization of the tender, awarding of contract and in granting advance, which was not the part of the tender and was specifically declined in the pre-bid meeting. There was criminal laches on the part of the officers and they knowingly permitted the quality of the work to suffer, causing huge loss to the public exchequer and pecuniary advantage to the contractor. It was also contended that, even the original Government proposal for a BOT project was converted into an EPC contract, without the concurrence of the Government, which enabled the first accused to design the flyover, even seriously compromising on the technical aspects to reduce the construction cost. It was contended that, investigation was at a crucial stage and the role of several suspects are being ascertained. The accused are highly influential and if they are let on bail, they may threaten or influence the witnesses and the investigation may be sabotaged, it was argued.

16. All the accused, specifically accused No.1 contended

that, there was no compromise on quality of construction of flyover and the flyover did not suffer any defect in construction, except those which could be repaired. It was also contended by the learned counsel for the petitioners that, samples were not drawn by experts, nor was it scientifically drawn. Any minor error even in the drawing of the sample may cause substantial change in the ultimate result of test. On the basis of the reports, the Government jumped into a conclusion that the flyover was in danger, causing serious prejudice to the petitioners, it was contended.

17. This Court while considering the bail applications is not considering whether the flyover is damaged or whether it should be demolished. This court is also not expected to consider whether the decision of the Government to undertake major work of the flyover is justified or not. The only point now considered is whether there is any prima facie material to support the allegation that all the accused, to generate unlawful pecuniary advantage to the first accused and to cause corresponding pecuniary loss to Government, permitted him to dangerously compromise in the designing of the flyover and in the quality of construction of the fly over. Three reports of three different agencies which conducted site inspection, took samples and conducted test are available on record. Experts

drawn from IIT, PWD, National Highways of India and RBDCK were present at the time of site inspections. Samples were drawn by the experts themselves from different parts of the flyover. All the reports indicate that, several scientific tests were conducted at the site and that the samples were tested at the labs of IIT Chennai and Kerala Highway Research Institute, using scientific equipments. Scientific reports indicate that there are substantial materials to doubt the strength of pier caps, girder and other superstructures. There are indications that pier caps, girders and the flyover as such were designed to achieve minimum quantity concrete and did not satisfy the requisite criteria. Even without live load, majority of girders and pier caps exhibited cracks. Some of the cracks were beyond permissible limits. Cracks were visible on the unimportant parts of the flyover also. The tests conducted on the flyover at the site itself indicated that the quality of concrete was doubtful. Substantial number of concrete cores drawn from the pier caps and girders, which were subjected to various scientific tests failed to satisfy the minimum standard compressive strength. Bearings above the pier caps got jammed immediately after the opening of the road and bearing parts of certain bearing were distressed. In the light of the visible cracks that have developed on the pier caps, girders and

other parts of superstructures, coupled with substantial materials indicating doubtful integrity of concrete used, the contention of the petitioners that load test was not conducted and that, there was no material to suggest that the quality of the construction was poor, should pale into insignificance.

18. The flyover was proposed to contain the acute traffic congestion felt at Palarivattom junction of the Ernakulam bypass stretch of NH-66. The above stretch of road not only formed part of the National Highway, but also was the by pass to the highly congested Kochi city. It also linked three other major National Highways. Logistically, the road plays a prominent part in the vehicular movement in Kerala, and damage to the bridge, that too, immediately after its opening for traffic, posing serious threat to the life and safety of public is a matter of very serious concern. The contention that this situation could not have normally happened, but for the serious criminal laches on the part of all persons involved, cannot be brushed aside at this stage. Prima facie, there are materials suggesting that, there has been a dangerous compromise on the quality of work done which could be for pecuniary gain. All the persons responsible are yet to be identified. It appears that, wider and deeper conspiracy is involved and what is revealed till now, may only be the tip of

the iceberg. Definitely, the investigation has to progress forward with determination, and taken to its logical conclusion.

19. Learned Public Prosecutor submitted that the conspiracy originated even prior to the inviting of the tenders. Administrative sanction was granted by the Government to construct a four lane bridge at Palarivattom under BOT scheme. It included acquisition of land with estimated amount of Rs.72.6 Crores. It was not envisaged as an EPC contract. However, while tenders were invited, at some level, it was decided to invite tenders without acquisition of land and by EPC. It was contended that the Government was not informed about it. On the basis of the EPC, the contractor was given the freedom to design the flyover. Though the design was subject to the approval by the experts, it permitted the contractor to design the bridge, even compromising on various structural factors of stability and utility, to make it cost beneficial to contractor, it was contended.

20. It was further contended by the learned prosecutor that as per the original tender submitted, the first accused had quoted a sum of Rs.47 Crores. On it, the tenderer gave a special rebate of 13.43% over the quoted amount. According to the prosecutor, this was not in order and the rate was not

expected to be quoted in percentage. However, by an artificial introduction of rebate over the quoted amount, the amount was brought down below the amount quoted by the next lowest tenderer, it was alleged. According to the learned prosecutor, rebate of 13.43% so offered seen on the tender may be a subsequent interpolation which, according to him is being investigated. It was alleged that, interpolation in the tender opening register and in the original tender is patent and can be established with the opinion of handwriting expert and the matter is being probed in depth.

21. The learned prosecutor contended that the allegation against the accused is extremely serious and an unparalleled one. It was contended that, Supreme Court has held that, in cases of such white collar crimes, while considering the application for bail, the Court should consider the nature of accusation and the peculiar circumstances. The prosecutor, to support the above contentions, relied on the decisions in ***Nimmagadda Prasad v. CBI (2013 KHC 4400)*** at para 26 and 27 and ***State of Karnataka v. J. Jayalalitha and Others (2017) 6 SCC 263***. In ***Jagan Mohan Reddy v. CBI (2013 KHC 4402)*** the Hon'ble Supreme Court had held that, economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously.

It was also held that, grant of bail in cases involving economic offences will have to be dealt with differently. The same view was followed by the Delhi High Court in ***P.Chidambaram v. CBI (B.A.No.2270 of 2019)***.

22. On an evaluation of the materials on record, the individual role alleged against each of the accused, seriousness of the allegations, the stage of investigation, the possibility of affecting the investigation, and other relevant factors, I feel that bail application of each of the accused is to be evaluated on merits. Evidently, the allegations against the accused are very serious. The investigation seems to be at a crucial stage now.

23. The first accused is the person against whom major allegations are raised. He is also stated to be the beneficiary of the mobilization advance given to him. He is the person against whom all the main allegations are attributed. According to the prosecution, he is highly influential and has roots through out the country. Allegations are raised against each of the accused, especially involving huge pecuniary loss to the public exchequer. There is an allegation that if bail is granted to the above accused at this stage, the witnesses are likely to be threatened or influenced. Several persons are yet to be interrogated. Most of them are the officers of the various

Government Institutions and other agencies. There is a possibility of them being influenced and the investigating process being interfered, if the first accused is granted bail now.

24. The 4th accused was not only the PWD Secretary, but also holding the administrative charge of the RBDCK as well as KRB. Very serious allegations of favouring the first accused are raised against him. Even though he claimed that he had charged interest over the mobilisation advance ordered, that was much below the rate at which the banking institutions advance loan. There was a further allegation that, easy recovery was ordered and the materials disclose that even thereafter several favours were made to the first accused, at different stages. It was also alleged by the prosecution that the 4th accused is highly influential and was in the top of hierarchy of administration for a long period. He has considerable influence even now over the various officers, who were his subordinates at different span of time, it was alleged. It was also alleged that only after questioning the accused during the a extended period of remand, he revealed the further details regarding the utilisation of huge unaccounted money for the purchase of an immovable property, immediately after releasing the mobilization fund. It was also pointed out

by the learned Public Prosecutor that the fourth accused is already facing charge sheet in a case involving amassing of wealth disproportionate to his known source of income and about 16 other complaints against him are being investigated. Considering the stage of investigation and the entire facts, I feel that granting of bail to the above accused is also not conducive to the further investigation.

25. The second and third accused are the officers of the RBDCK and KITCO respectively. The only allegation against the third accused is that he technically evaluated the tenders of all the three tenderers and approved the tenders. Even though the tender submitted by the first accused was defective, it was suppressed by him. It seems that he has given a detailed report evaluating each of the tender. The question, whether it amounted to willful suppression of material facts or whether it was only a codal violation, is a matter to be evaluated at the time of evidence. No other serious allegations are raised against him except the above allegation. It is also seen that though he was supervising the construction, he was transferred to another work in April 2015, after completion of the construction of piers. It is also seen that major structural defects are seen on the constructions made thereafter .

26. Considering the above facts and also considering the

fact that the essential materials in relation to the main allegation against the third accused have been seized, his period of detention and the progress made in the investigation in relation to the above accused, I am inclined to grant the benefit of bail to the 3rd accused .

27. However, the second accused is on different footing than the second accused. He was allegedly involved in the tendering process, participated in the bid meeting, the processing of tenders and all other later stages. Knowing that mobilisation advance was not liable to be granted as part of tender notice and that in the pre bid meeting, the request for it was specifically rejected, he was a party to recommendation of that application for advance, submitted by the first accused. He was also involved in the later activities also. There is an allegation that, even at the stage of tender opening there was manipulation. Investigation is still going on into the above details. He was also involved in the release of fund and recovery thereafter. Having considered this, I feel that the second accused is on a different footing from that of the third accused. Hence, at present I am not inclined to grant bail to him.

28. Having considered the entire facts, I am inclined to grant bail to the third accused alone. Bail applications of the

three other accused are dismissed.

29. The third accused shall be released on bail subject to the following conditions:

i). The third accused shall execute a bond for a sum of Rs. 1,00,000/- (Rupees One Lakh only) with two sureties for the like sum each to the satisfaction of the court below.

ii). He shall surrender his passport, within ten days from today before the court below and if he does not possess it, he shall file an affidavit before the trial court in that regard.

iii). He shall appear before the investigating officer as and when called for and co-operate with the investigation.

iv). He shall not interfere in the process of investigation. He shall not threaten, coerce or intimidate the witnesses.

In the result, bail application No. 6734/2019 of the third accused is allowed. Bail applications of the remaining accused filed as B.A.Nos.6713/2019, 6721/2019 and B.A.No.6732/2019 are dismissed.

Sd/-

SUNIL THOMAS

JUDGE

dpk