

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 04TH DAY OF NOVEMBER 2019 / 13TH KARTHIKA, 1941

Bail Appl..No.7525 OF 2019

CRIME 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, KANAYANOR 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-682031(VC 01/2019 OF VACB UNIT, ERNAKULAM
DISTRICT)

BY SPL.P.P.SRI.A.RAJESH

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
31.10.2019, ALONG WITH Bail Appl..7445/2019, Bail
Appl..7575/2019, THE COURT ON 4/11/2019 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 04TH DAY OF NOVEMBER 2019 / 13TH KARTHIKA, 1941

Bail Appl..No.7445 OF 2019

CRIME 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.

OTHER PRESENT:

SPL.PP SRI.A RAJESH

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
31.10.2019, ALONG WITH Bail Appl..7525/2019, Bail
Appl..7575/2019, THE COURT ON 4/11/2019 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 04TH DAY OF NOVEMBER 2019 / 13TH KARTHIKA, 1941

Bail Appl..No.7575 OF 2019

CRIME NO.1/2019 OF CBCID, 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.SOJAN MICHEAL
SRI.B.RAMAN PILLAI (SR.)
SRI.R.ANIL
SRI.M.SUNILKUMAR
SRI.SUJESH MENON V.B.
SRI.T.ANIL KUMAR
SRI.THOMAS ABRAHAM (NILACKAPPILLIL)

RESPONDENT/COMPLAINANT:

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

R1 BY PUBLIC PROSECUTOR SRI.S.SAJJU

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
31.10.2019, ALONG WITH Bail Appl..7445/2019, Bail
Appl..7525/2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

COMMON ORDER

Applicants are accused Nos. 1, 2 and 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 Sections 409, 420, 511 of 366, 34 and 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. 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 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. 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. Though repair works were done by RDS, 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. 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. On 30/8/2019, petitioners herein were arrested and are in custody since then. The third accused who is the Joint General Manager of the KITCO was also arrested along with them. He was granted bail later, by this Court.

5. The first accused is the Managing Director of contractor company, the second accused is the former AGM of RBDCK and the 4th accused is the then Principal Secretary, PWD, Government of Kerala. He 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. This is the second bail applications filed by the above accused, after the dismissal of their earlier bail application Nos.6713, 6721 and 6732 of 2019 by common order dated 09.10.2019. The earlier bail applications were dismissed essentially having regard to the seriousness of allegations, the stage of investigation and the possibility of the accused interfering in the investigation. It was held that the allegations against the accused were serious, since it involved embezzlement of public money. It was noted that, investigation was at a crucial stage at that time. It was also held that, first accused was highly influential, had roots throughout the country, main allegations were attributed to him and that he was financially benefited by the alleged corruption. Regarding accused No.3, it was held that, he was involved in the tendering, awarding of tender, release of the mobilization advance and for supervision of the construction of the

flyover. Regarding the 4th accused, it was held that, he was also involved in the process directly in different capacities. He was a former civil servant and several witnesses were his former colleagues and employees. There were several other complaints which were under enquiry against the petitioners.

8. Seeking bail, learned senior counsel for the first accused and the fourth accused and the learned counsel for the second accused contended that the investigation has substantially progressed. They also contended that, final report has not yet been filed and all the records in relation to the transactions have been seized. It was further contended that, prosecution has no allegation that the accused are likely to be abscond or that, they have in any manner influenced the witnesses or interfered in the investigation. It was further contended that the first accused was aged, his business was badly affected and no further investigation is liable to be conducted as against him. On behalf of the second accused, it was also contended that, he stands on a different footing from the first and fourth accused and the allegation against him was not very serious. Regarding the allegations against the 4th accused, learned senior counsel contended also that, he has since retired and has no influence over any of the witnesses to be questioned.

9. Opposing the applications, learned Public Prosecutor for the VACB as well as for the Government contended that the allegation against the petitioners is a very serious one and involves

serious offence of embezzlement of public money. It was contended that, offences involved can be treated as socio-economic offences and have to be dealt with in a different manner.

10. To substantiate the above contention, learned Public Prosecutor relied on the decisions reported in ***Ram Govind Upadhyay v. Sudarshan Singh (2002 KHC 576)***, ***Kalyan Chandra Sarkar v. Rajesh Ranjan (2004 KHC 754)*** and ***State of Bihar and another v. Amit Kumar @ Bacha Rai (2017 KHC 6329)***. In ***Ram Govind Upadhyay's*** case (supra), it was held that, when an earlier bail application was rejected and the subsequent bail application is considered, it is the duty incumbent on the High Court to explicitly state the reasons as to why the sudden departure in the order of grant as against the rejection just about a month ago. In ***Kalyan Chandra Sarkar's*** case (supra), it was held by the Supreme Court that, while considering bail applications, the nature of accusation, the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering of the witness and the prima facie satisfaction of the court in support of the charge are also relevant considerations. It was also held that, when earlier bail applications have been rejected, there is a further onus on the court to consider the subsequent application for grant of bail by noticing the grounds on which earlier bail applications have been rejected. In ***State of Bihar's*** case (supra), it was held by the

Honourable Supreme Court that, Supreme Court in ***Nimmagadda Prasad v. CBI (2013(7) SCC 466)***, ***Y.S.Jagan Mohan Reddy v. CBI (2013(7) SCC 439)*** had held that socio-economic offences constituted a class apart and needed to be visited with a different approach in the matter of bail. It was held that, such offences has deep rooted conspiracies affecting the moral fiber of the society and causing irreparable harm.

11. Relying on the decision in ***Jamiruddin Ansari v. Central Bureau of Investigation and Another (2009) KHC 4644*** it was contended by the learned prosecutor that, when there is no change of circumstance, the mere lapse of time in between the dismissal of the earlier application and also the subsequent bail application cannot be treated as a ground for granting bail. It was contended by both the Prosecutors that the allegations against the accused are very serious, especially against the first accused ,who was stated to be the kingpin of the entire allegations.

12. In the background of the above legal position, it has to be considered whether the further continuance of the accused in jail is justified or not.

13. The prosecution has filed separate objections in the case of each of the accused. It was stated that, the offence involved was very serious and that, there was no change of circumstance. It was stated that the first accused was the kingpin

of the entire transaction. He colluded with others. He is highly influential and possibility of influencing the witnesses and tampering of records could not be ruled out. A search was conducted in his house and computers and laptops which are stated to contain financial dealings of the first accused were seized. Laptop and computers were sent to the FSL. It was reported that the above were password protected and unless the first accused or his employees co-operated, the experts could not access the above data. It was also stated that the person who designed the bridge has now been arrayed as an accused and the possibility of he being influenced cannot be ruled out. Regarding the third accused, it was stated that, sanction of the then Minister of PWD for prosecution has been sought and consent is awaited. After the dismissal of the original bail applications, 10 witnesses including experts have been questioned and their statements recorded. Several documents from the Registrar's office, revenue office and banks have been seized and are being examined. The third accused allegedly had good liaison with other accused and other influential persons. He has allegedly played a pivotal role. He has considerable influence over the witnesses. Regarding the 4th accused, the prosecution stated that, he had purchased property in favour of his son and investigation into the entire transaction and the connected transactions are going on. One person had recently moved the Enquiry Commissioner and Special Judge, Muvattupuzha, with a complaint alleging corruption by the

4th accused in relation to the construction of Chamravattom bridge. The Special Judge had directed to register an FIR, after getting appropriate sanction. On the basis of these objections, learned Public Prosecutor's opposed the applications.

14. No doubt, the serious nature of the allegations cannot be lightly seen. However, the entire objection indicate that, considerable volume of Registers, records and documents have been seized from the custody of the accused, their offices, Government offices and other related Government establishments. It is seen that after the dismissal of the earlier bail applications, 10 more witnesses have been questioned and their statements recorded. Considerable materials relied on by the prosecution are documentary in nature. It also appears from the objections that the process now going on relates to the questioning of the witnesses on the basis of the documents seized. The investigation has no case that the further detention of accused is required for the recovery of any further evidence. It emerges from the objection that at least the substantial part of collection of documentary evidence touching the role of the petitioners have been done. According to the prosecution, the designer of the flyover is arrayed as an accused. Even though, the prosecution has an apprehension that the designer is likely to be influenced by the accused, records show that, he was questioned initially and his statement recorded. Necessarily, he is to be questioned with the drawings which are already available on record.

15. The investigation has a definite apprehension that, accused nos.1 and 4 are likely to influence the witnesses. However, they have no case that, either during the course of investigation or after the dismissal of the earlier bail applications, any of the above accused has influenced or attempted to influence any of the witnesses. Hence the contention regarding the possibility of influencing the witnesses remain within the domain of an apprehension. Prosecution has another apprehension that accused may tamper the evidence. Honourable Supreme Court in ***P.Chidambaram v. Central Bureau of Investigation (Crl.Appeal.No.1603 of 2019)*** and Delhi High Court in ***D.K.SHivakumar v. Directorate of Enforcement (B.A.No.2484 of 2019)*** have considered the bail applications in the light of the above objection regarding tampering with evidence. Supreme Court held that since the documents are in the custody of the prosecuting agency, there was no chance of appellant tampering with the evidence. It was also held that in both the above cases, the "flight risk" can also be taken care of by imposing adequate conditions. Definitely, in this case, prosecution has no case that accused are likely to flee from justice.

16. The objections do not indicate that the investigation is now passing through a crucial stage, atleast as far as the petitioners are concerned. Of course, investigation has disclosed that, sanction is sought for prosecuting the then PWD Minister and reply is awaited. To that extent, investigation has to progress. In

this regard investigating agency has already questioned the fourth accused and recorded his statement. Except for this, investigation seems to have considerably progressed.

17. Regarding the apprehension that the first accused is not likely to co-operate with the investigating agency, in relation to access to laptop, I feel that, appropriate conditions can be incorporated to allay that apprehension also.

18. Having evaluated the above inputs, I feel that, no purpose will be served by the further detention of the above petitioners. Hence, I am inclined to grant bail to all the petitioners. Accordingly, bail applications are allowed as follows:

(I) Each of the above petitioner shall execute a bond for a sum of Rs.2,00,000/- (Rupees two lakhs only) with two sureties for the like sum each to the satisfaction of the jurisdictional court.

(ii) They shall surrender their passports before the trial court, if not already surrendered, within a period of 10 days from the date of execution of the bond. If any petitioner has not in possession of passports, affidavit shall be filed before this court within 10 days.

(iii) They shall not in any manner, directly, indirectly or through any other agent, threaten, coerce or intimidate or attempt to influence the witnesses or attempt to interfere in the investigation in any manner.

(iv) They shall co-operate with the investigation, which includes, production of all records, registers and documents, including bank details, passbook in relation to their accounts, if any of the such documents are found to be in possession of the respective petitioner and demand

is made by the investigating agency for its production.

(v) They shall co-operate with the investigating agency in disclosing their e-mail id, telephone numbers used by them, and produce the mobile phones or other electronic gadgets used by them for communication if demanded by the investigating officer and shall also enable the investigation agency to access to the hardware and software of any of the electronic gadgets used by them, including the mobile, laptop and computer.

vi). Petitioners shall appear before the Investigation officer as and when called for and shall also inform the travel details, if they propose to leave the State and shall also furnish the contact details.

(vii) Breach of any of the above conditions will entail cancellation of bail.

Sd/-

SUNIL THOMAS

JUDGE

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