IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 205 OF 2015

Mr. Churchil Alemao,
66 years of age,
Indian National,
Businessman by profession,
R/o H.No.150,
Varca, Salcete Goa,
Presently in Judicial Custody
through next friend
Mr. Savio Alemao,
28 years of age,
Bachelor,
r/o H.No.150, Varca,
Salcete Goa. …. Applicant

V e r s u s

1. State
   Through P. P.
   High Court of Bombay at Panaji,

2. Police Inspector,
   Crime Branch,
   Goa Police,
   Ribandar Goa. … Respondents

Mr. Ashok Mundargi, Senior Advocate with Mr. Arun Bras De Sa, Advocate for the applicant.

Mr. S. R. Rivankar, Public Prosecutor for the respondents.

CORAM : K. L. WADANE, J

ORDER RESERVED ON : 09.09.2015

ORDER PRONOUNCED ON : 14.09.2015

O R D E R :

The present application is filed by the applicant for bail under the provisions of Section 439 of the Criminal Procedure Code.

2. The brief facts of the case may be stated as follows :

On 21.07.2015 an FIR in terms of Section 154 of the Criminal Procedure Code came to be registered at Crime Branch, Ribandar against the Ministers in the Government of Goa in the year 2010 and M/s Louis Berger International Inc., alleging therein that as per the newspaper report in the local daily, a foreign company namely M/s Louis Berger International Inc., had allegedly paid an amount of USD 9,76,630 to some Ministers in the Government of Goa in the year 2010, thereby in that process they have committed an offence punishable under Sections 7, 8, 9 and 13 of the Prevention of Corruption Act, 1986 read with Section 120-B of the Indian Penal Code. On the basis of the complaint lodged by the Under Secretary (Home), Government of Goa, an offence came to be registered under Crime No.93/2015.

3. According to the applicant, the Indian Government assisted by the Japanese Government initiated five years Goa Water Supply and Sewerage Project to expand, rehabilitate and build water and sewerage facilities and M/s Louis Berger International Inc., was part of a consortium for the project in Goa. The consortium included two Japanese firms namely NSC and NJS and the Indian Partner

namely Shah Technical Consulting and amongst them NSC was the leading partner.

4. It is further alleged by the prosecution that on 26.08.2010 a consortium partner prepared a payment tracking schedule stating that the company had paid USD 9,76,630 as a bribe in connection with Goa project. On 17.08.2010 a consortium partner sent an Email to Mr. James McClung (Senior Vice President LBG) stating "as discussed I enclose the details as provided by (the third party intermediary)". He also added the details of the amount paid to (the company) as of date by (the consortium partner) in the same sheet.

5. It is contended by the applicant that the then PWD Minister in the erstwhile cabinet had no role in JICA of whatsoever nature either in drafting and allotting of the tender under JICA and/or the approval in the work of Project Management Consultancy Services for augmentation of water supply and sewerage for Goa State under JICA ODA Loan Project. According to the applicant, he was not a member of the Goa State Works Board for the work of the Project Management Consultancy Services for augmentation of water supply. The members were the Chief Secretary, Secretary (Finance), Secretary (PWD) etc. In short, the applicant has no role to play of whatsoever nature in any manner either directly or indirectly in the

negotiation which can be seen from the minutes of the negotiation in the said file. According to the applicant, he is not directly or indirectly responsible for the allotment of the work or agreement between the Goa Government and JICA. So he is not remotely responsible for any alleged misdeed committed by the others and therefore, he lastly prayed to grant him bail.

6. The Investigating Officer filed its say and thereby contended that the applicant is the person who actually changed the earlier committee and formed a committee in his Chairmanship. That was only with an intention to have a complete control over the activities of JICA project. The applicant himself had prepared a note and thereby recommended to change the earlier committee and replace the committee headed by the applicant. He got it sanctioned from the Chief Minister. So according to the prosecution, this applicant is a main person behind the crime. Further more, from the statements of the witnesses recorded, it reveal that there was direct evidence against the present applicant to say that the applicant had accepted the bribe. With these and other contentions, the prosecution has prayed to dismiss the bail application.

7. I have heard the arguments of Mr. A. Mundargi, learned Senior Counsel appearing for the applicant and Mr. S. R. Rivankar, learned Public Prosecutor appearing for the respondents.

8. During the course of the arguments, Mr. Mundargi, learned Senior Counsel has argued that the FIR is based upon the information received from the press report and after registering the crime, the applicant was called by the concerned police for interrogation. The applicant followed the directions given by the police and has attended the office of the police department. Mr. Mundargi further argued that when the Goa Government signed an agreement with the JICA, at that time the applicant was not holding any post. He further argued that the applicant has cooperated in the investigation and after considerable police custody, he is remanded to the MCR. Therefore, now he is entitled to be released on bail. Secondly, Mr. Mundargi has argued that the allegations of missing of the noting file is against the co-accused Mr. Digambar Kamat, Ex-Chief Minister of the State.

9. According to Mr. Mundargi, another accused Mr. Digambar Kamat, was released on an anticipatory bail by the Special Court against which similar allegations are levelled. Therefore, the present applicant is entitled for bail on the ground of parity. According to Mr. Mundargi, the investigation is only based upon the statements of the witnesses recorded under Section 164 of the Criminal Procedure Code which are not substantive evidence. Further more, the relevant and important papers from the District Court, New Jersey, USA have not been procured which are the base

upon which the offence came to be registered. Mr. Mundargi further argued that when the contract was already signed in the year 2007 and the work of the project was already commenced, therefore, the question of payment of bribe in the years 2009 and 2011 does not arise and such allegations are beyond the imagination. According to Mr. Mundargi, there must be a preliminary inquiry to find out the alleged demand of the bribe and its payment details.

10. As against this, Mr. Rivankar, learned Public Prosecutor appearing for the respondents has argued that the present applicant had played a very important role in changing the earlier committee to control the project. By referring the various documents, Mr. Rivankar, has argued that initially to monitor the work and its progress, the committee consisting of the Secretaries of the various departments and the Chief Engineers were formed. However, this applicant has prepared and sent a note thereby proposed to change the earlier committee and replaced the new committee consisting of the Chairman and PWD Minister, (the then PWD Minister). According to Mr. Rivankar, this activity was done by the applicant only with an intent to control an entire project and its activities and this was done only with an intent to obtain a bribe. It is further argued by Mr. Rivankar, that during the investigation, the statements of the various witnesses including the statements under Section 164 of the Criminal Procedure Code came to be recorded and from the

statements of the witnesses, it is very much clear that the bribes were paid to the present applicant and the co-accused Mr. Digambar Kamat through Hawala. Mr. Rivankar further argued that the offence came to be registered when the Goa Government learnt from the media that the Ministers in the Goa Government had accepted the bribe. Such information was based upon the admission of the guilt by the official of Louis Berger International Inc., company before the District Court, New Jersey. Therefore, the question of involvement of the present applicant in the crime due to the political rivalry does not arise. Mr. Rivankar further argued that when the applicant was a PWD Minister, he deliberately kept the file pending regarding the project for illegal demand by abusing the public office and when Mr. McClung assured the payment of bribe, then the contract was signed. So according to Mr. Rivankar, there is sufficient evidence against the applicant to show that he had accepted the huge bribe. Therefore, there are reasons to believe that the applicant has committed the cognizable offence. Hence, he lastly prayed for the dismissal of the bail application.

11. Mr. Mundargi, learned Senior Counsel appearing for the applicant has relied upon the following authorities :

1. In the case of **Joginder Kumar V/s State of U. P. and others,** reported in **1994 STPL (LE)**

18838 SC.

2. In the case of **Menino Lopes V/s State of Goa,** reported in **1995(1) Bom. C. R. 334.**
3. In the case of **Khemlo Sakharam Sawant V/s State,** reported in **2002(1) Bom. C. R. 689**.
4. In the case of **Sanjay Chandra V/s Central Bureau of Investigation**, reported in **(2012) 1 SCC 40.**
5. In the case of **Sharad Kumar and others V/s Central Bureau of Investigation**, reported in **(2012) 1 SCC 65**.
6. In the case of **Arnesh Kumar V/s State of Bihar and another**, reported in **(2014) 8 SCC 273.**
7. In the case of **Ram Karan V/s State of Rajasthan and others,** reported in **(2014) 8 SCC 282.**
8. In the case of **Mr. Calvert Gonsalves V/s Police Inspector ACB/Vigilance Police Station and Anr.**, in **Criminal Application (Bail) No. 97 of 2015**.
9. In the case of **Gurbaksh Singh Sibbia Etc., V/s State of Punjab**, reported in **1980 STPL (LE) 10130 SC.**

10. In the case of **Hema Mishra V/s State of UP and others**, reported in **(2014) 4 SCC 453**.

12. Mr. Rivankar, learned Public Prosecutor appearing for the respondents has relied upon the following authorities :

1. In the case of **Y. S. Jagan Mohan Reddy V/s Central Bureau of Investigation**, reported in **(2013) 7 SCC 439.**

2. In the case of **Central Bureau of Investigation V/s V. Vijay Sai Reddy**, reported in **(2013) 7 SCC 452**.

3. In the case of **Nimmagadda Prasad V/s Central Bureau of Investigation**, reported in **(2013) 7 SCC 466.**

4. In the case of the **State V/s Captain Jagjit Singh**, reported in **1962 AIR 253.**

5. In the case of **Nanha s/o Nabhan Kha v/s State of Uttar Pradesh,** reported in **(1992) 0 Supreme (All) 535**.

6. In the case of **Gopikishan S/o Madhukar Mujaria V/s State of Maharashtra,** reported in **(2009) 0 ALLMR (Cri) 756.**

13. Keeping in mind the arguments advanced by both the parties and the facts and observations of the case laws cited across

the bar, it is necessary to examine the records as to whether such records are sufficient to infer that there are reasons to believe that the applicant has committed a cognizable offence.

14. It is pertinent to note that the minutes of the discussions of Goa Water Supply and Sewerage Project between JICA and PWD, Government of Goa is produced on record, from which it appears that the present applicant was not a party to the meeting. On behalf of the State Government one Mr. A. M. Wachasunder, Principal Chief Engineer and Mr. M. Modassir, Secretary, Ministry of Urban Development, Government of India were present.

15. The report submitted by the Principal Chief Engineer, PWD dated 10.10.2007 shows that the Secretary has proposed the committees as mentioned at A, B and C headed by the Principal Chief Engineer of PWD, Secretary PWD, Chief Secretary and it was approved by the Chief Secretary and the note was sent for approval of PWD Minister, the present applicant. However, he has not approved the said proposal nor rejected it. So from the record, it appears that the applicant was sitting on the proposal relating to the constitution of committees for effective implementation of the project.

16. On 15.01.2008, the Chief Secretary then reported the

matter to the Chief Minister for necessary proposals for constituting different committees as per the agreement put up by the Department in October, 2007 to the Minister (PWD) but the file was not cleared by the Minister (PWD) despite the several reminders. It was opined by the Chief Secretary that it is necessary to clear the necessary file immediately otherwise there is a risk that the JICA project may be withdrawn by the Japanese authorities. On the above report/note, the then Chief Minister passed a remark " *please discuss urgently*" and it was marked to the Minister (PWD). Immediately, on 24.01.2008 the present applicant prepared another note/proposal thereby proposed to constitute a PWD -level Coordination Committee headed by the Minister for PWD as a Chairman. The State Level Executive Committee was headed by the Minister for PWD as a Chairman. Pursuant to the proposal made by the then PWD Minister i.e. the present applicant, the State Level Coordination Committee was approved and notified under the Chairmanship of Minister for PWD. Therefore, it appears from the record that the applicant himself has proposed to constitute various committees headed by himself only. I think this is a very calculated move of the applicant to control the activities of the project.

17. It appears from the record that there was an attempt made to implement the project as per the Rules and Regulations of PWD by the applicant which was strongly objected by the Finance

Secretary and the JICA authorities as the condition was to implement the project as per the JICA guidelines. Further, it is seen that the relevant files were kept pending so as to pressurize the consortium partners for the consultancy contract. Therefore, it appears prima facie that some conspiracy was hatched during the time when the applicant was a PWD Minister.

18. The statements of the witnesses recorded by the Magistrate under Section 164 of the Criminal Procedure Code show that the present applicant has accepted certain amount. Such statements disclose the details of the amount accepted by the accused, with particulars of the time and place.

19. I have gone through the supplementary statement of Anand Wachasundar dated 25.07.2015, from which the conduct of the present applicant is very much clear i.e. in reference to the fulfillment of commitment towards the smooth functioning of the JICA. The statement of Prasana Shah recorded under Section 164 of the Criminal Procedure Code also throws light on the conduct and the attitude of the present applicant.

20. From the record, it is seen that there is sufficient material against the present applicant to infer or there are reasons to believe that the applicant has committed a cognizable offence.

21. There is no straight-jacket formula to either grant or reject the bail. It depends upon the seriousness of the crime, its impact on the society, quantum of the public money involved in the crime. Therefore, considering this aspect, a case has to be considered on its own facts and merits. In the present case, the applicant was holding responsible post as a PWD Minister and the record shows that he has not acted as per the guidelines of the JICA but he himself adopted different method to regulate the concerned project.

22. Mr. Mundargi, learned Senior Counsel appearing for the applicant has relied upon the judgment in the case of **Sanjay Chandra V/s Central Bureau of Investigation,** reported in **(2012) 1 SCC 40**, wherein it has been observed that in bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure appearance of the accused person at his trial by reasonable amount of bail. The object of the bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

23. Looking to the above observations, no doubt, the

presence of the present applicant can be secured as he is a permanent resident of Goa. However, at the same time one cannot ignore the fact that the applicant was a Minister of the State for some time. Obviously, he is having influence over the society. In such circumstances, if the applicant is released on bail then there is every possibility that the applicant may cause hurdle in the investigation and it may be directly or indirectly.

24. Mr. Mundargi further relied upon the judgment in the case of **Arnesh Kumar V/s State of Bihar and another,** reported in **(2014) 8 SCC 273** wherein the Hon'ble Apex Court has observed at para 5 thus :

> "**5**. Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that the police has not learnt its lesson; the lesson implicit and embodied in the Cr. PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been

> emphasized time and again by the Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive."

25. On the background of the aforesaid observations, it is necessary to mention here that there is sufficient material against the present applicant in connection with the alleged crime. Therefore, it cannot be said that his arrest was without any reason or without a ground.

26. Looking to the facts of the present case, it appears that the allegations of bribe made against the present applicant and the co-accused are in reference to the allotment of JICA project involving cost of Rs. 1031 crores. Looking to the huge amount of bribe allegedly accepted by the Ministers, Mr. Rivankar learned Public Prosecutor has argued that this is a very serious offence committed by the Ministers and therefore, he has relied upon the judgment in

the case of **Y. S. Jagan Mohan Reddy V/s Central Bureau of Investigation,** reported in **(2013) 7 SCC 439** wherein the Hon'ble Apex Court has observed at paras 34 and 35 thus :

> "**34**. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.
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> **35**. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the

> witnesses being tampered with, the larger interests of the public/State and other similar considerations."

27. Mr. Rivankar further relied upon the judgment in the case of **Central Bureau of Investigation V/s V. Vijay Sai Reddy,** reported in **(2013) 7 SCC 452** wherein the Hon'ble Apex Court has observed at para 34 thus :

> "**34**. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words "*reasonable grounds for believing*" instead of "*the evidence*" which means the

> court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond the reasonable doubt."

28. Mr. Rivankar further relied upon the judgment in the case of **Nimmagadda Prasad Vs Central Bureau of Investigation**, reported in **(2013) 7 SCC 466** wherein it has been observed by the Hon'ble Apex Court at para 26 thus :

> "**26**. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fiber of the country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In State of Gujarat vs. Mohanlal Jitamalji Porwal and Anr. (1987) 2 SCC 364 this Court, while considering a request of the prosecution for adducing additional

evidence, inter alia, observed as under:-

> "5.....The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest...."

29. Looking to the observations of the authorities cited by both the parties, it appear that the observations in the cases cited by Mr. Rivankar are perfectly and more appropriately applicable to the

facts of the present case because in the present case there are allegations levelled against the present applicant and the other co-accused for having been accepted bribe of more than six crores.

30. Mr. Mundargi, learned Senior Counsel appearing for the applicant has argued that another accused Mr. Digambar Kamat, Ex-Chief Minister of the State has granted bail having similar allegations against him. The material collected by the Investigating Officer is also the same. Therefore, the present applicant is entitled for bail on the ground of parity. The copy of the order granting bail to the co-accused Mr. Digambar Kamat is placed on record. I have gone through the said bail order from which it is seen that the learned Special Court has observed that there is prima facie material against the co-accused Mr. Digambar Kamat also. However, the bail was granted only on the ground that the Investigating Agency has failed to comply with the mandatory provisions of Section 41 of the Criminal Procedure Code and in view of the observations in the case reported in **Arnesh Kumar** (supra). The parity cannot be a sole ground for granting bail even at the stage of second or third or subsequent bail petition when the bail application of the co-accused had been earlier rejected or allowed and the co-accused is released on bail. Even then the Court has to satisfy itself that, on consideration of more material placed, further development in the investigation or otherwise and other different considerations, there

are sufficient grounds or not for releasing the applicant on bail. No doubt, the allegations and the material placed on record are one and the same against the present applicant and the co-accused. However, the co-accused has been granted bail on a technical ground i.e. non compliance of the mandatory provisions by the Investigating Agency and that ground is not available to the present applicant. Therefore, it cannot be said that the bail granted to the co-accused was on the basis of the material on record. Therefore, I do not agree with the submission of Mr. Mundargi that the applicant is entitled for bail on the ground of parity.

31. Further more, I have gone through the case diary, from which it is seen that the investigation is at a very crucial stage. In such circumstances, if the applicant is released on bail then he may create hurdle directly or indirectly in the investigation as the applicant being the influential person. Hence, I am of the opinion that the applicant is not entitled for bail. Hence, the application stands dismissed.

K. L. WADANE, J

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