IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

FRIDAY, THE 11TH DAY OF SEPTEMBER 2015/20TH BHADRA, 1937

Bail Appl..No. 3490 of 2015 ()

CRIME NO. 923/2015 OF CENTRAL POLICE STATION, ERNAKULAM DISTRICT.
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PETITIONER/ACCUSED:

K.N. MARZOOK, AGED 57 YEARS,
S/O. KASMI, FLORA, PHED SIDE ROAD,
JANATA, PALARIVATTOM, KOCHI - 17.

BY ADVS.SRI.S.RAJEEV,
SRI.K.K.DHEERENDRAKRISHNAN,
SRI.V.VINAY.

RESPONDENTS/STATE:
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1. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031,
(CRIME NO. 923/2015 OF CENTRAL POLICE STATION,
ERNAKULAM DISTRICT).

2. STATION HOUSE OFFICER,
CENTRAL POLICE STATION,
ERNAKULAM DISTRICT - 682 018,
(CRIME NO.923/2015 OF CENTRAL POLICE STATION,
ERNAKULAM DISTRICT).

* ADDL. R3 IMPLEADED

3. M.K. ANSARI, S/O.M.K. KOCHUMUHAMED,
AGED 52 YEARS, RESIDING AT 4G SI MANDALAY POINT,
BYEPASS JUNCTION, EDAPPALLY, KOCHI, PIN-682 024,
MANAGING PARTNER, TAP WORLD, KUNHALUS PLACE,
P.T.USHA ROAD, COCHIN-682 011.

* ADDL. R3 IS IMPLEADED AS PER ORDER DATED 11/09/2015 IN
CRL.MA. NO.5857/2015.

R1 & R2 BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN.
ADDL.R3 BY SRI.C.C.THOMAS, SENIOR ADVOCATE.
ADVS. SRI.C.S.AJITH PRAKASH,
SRI.P.S.SYAMKUTTAN.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09-09-2015, ALONG WITH BA. NO. 3500 OF 2015 AND CONNECTED CASES, THE COURT ON 11/09/2015 PASSED THE FOLLOWING:

rs.

A.HARIPRASAD, J.

B.A. Nos.3490, 3500, 3502 & 3539 of 2015

Dated this the 11th day of September, 2015

COMMON ORDER

Applications under Section 438 of the Code of Criminal Procedure, 1973.

2. Accused persons involved in Crime No.923 of 2015 of Ernakulam Central Police Station registered for the offences punishable under Sections 406 and 420 read with Section 34 of the Indian Penal Code seek pre-arrest bail.

3. Heard the learned counsel appearing for the petitioners, learned Senior Counsel appearing for the defacto complainant/intervenor and the learned Public Prosecutor.

4. Summary of prosecution case is as follows: Accused 1 to 4, being the Directors of Kerala Chamber of Commerce & Industry (hereinafter mentioned as "KCCI") without the permission of the Board of Directors or the members in the Annual General Body Meeting (hereinafter mentioned as "AGM") transferred ₹2,45,68,600/- to another company, viz., India Middle East Broadcasting Network (Pvt.) Ltd. (hereinafter mentioned as "IMEBN") and thereby the accused committed the aforementioned offences. It is the further case of the prosecution that the KCCI is a

charitable company registered under Section 25 of the Companies Act, 1956 (corresponding to Section 8 of the Companies Act, 2013). Prosecution contended that as per the resolution of the AGM of KCCI held on 29.12.2012, a decision was taken authorising the KCCI to start a TV channel of its own or with any other person or group of persons as a joint venture. Contrary to the said decision of the AGM, the accused persons transferred amounts to IMEBN for starting a TV channel. Name ascribed to the TV channel earlier was “TV Now” and re-christened as “TV New”. The said TV channel is neither owned by KCCI nor is the product of a joint venture with any person or group of persons by agreement. Further, the prosecution contended that the first accused is disqualified to be the Director of any TV channel as objected to by the Central Home Ministry on security reasons. The defacto complainant and the prosecution alleged that it is reliably understood that crores of rupees have been brought from outside India violating the Foreign Exchange Management Act (hereinafter mentioned as “FEMA”). The defacto complainant and the accused persons have locked their horns in various civil cases and writ petitions too. It is also submitted that IMEBN, a private limited company formed by accused 1 to 4, along with others, purchased shares of another company, viz., Real Video Impact Pvt.Ltd., which was possessing a satellite license for starting a TV channel. Accused 1 to 4, who are the Directors of KCCI, formed another company, viz., IMEBN and under the cover of the said company, they syphoned off amounts from KCCI. The accused are liable to be punished for the aforementioned offences.

5. Common contentions raised by the accused persons can be summed up in the following manner: Defacto complainant was a former Director of KCCI. He was acting as the Vice Chairman of the company in the year 2013. The defacto complainant filed the complaint with a malafide intention. The reason for him is the internal disputes between members of KCCI. Originally there were 25 Directors in KCCI before the amendment to the Companies Act. When the Companies Act was amended, number of Directors were restricted to 15. The defacto complainant was expelled from the Director Board due to reconstitution of the Board by restricting the number. From that date onwards, he started to fight against the company. KCCI is a company incorporated under the Companies Act, 1956 with the object of helping the business community in Kerala. The company is not started with any charitable objective. KCCI decided to start a TV channel for the welfare of its members. A sub-committee was constituted for that purpose. They authorised Mr.Bhagath Chandrasekharan Pillai, a prominent television journalist to start the channel. The Director Board Meeting held on 29.12.2012 decided to form a separate company by name 'TV Now". Thereafter a studio space was arranged at Edappally. The

matter was again considered by the Director Board in its meeting held on 11.10.2012. On 08.11.2012, the second accused addressed the Board about the then status of the TV channel. Board authorised the first accused (Chairman of KCCI) to grant temporary loan from KCCI in this regard, to be paid back by the TV channel at the earliest. Based on this decision from 03.12.2012 onwards various payments were made by the KCCI to IMEBN for carrying out the TV channel operation. All these payments were routed through bank accounts only. All these aspects were brought to the notice of the Director Board. Allegation that the accused persons committed criminal breach of trust and cheating is false. The entire matter was placed before the 56th AGM. Annual report for the year 2012-2013 is produced for scrutiny to show that the entire dealings in connection with the TV channel was placed before the AGM for consideration and approval.

6. Petitioner in B.A.No.3490 of 2015 is the first accused. Petitioner in B.A.No.3500 of 2015 is the second accused. Petitioners in B.A.No.3502 of 2015 are accused 3 and 4. Petitioner in B.A.No.3539 is the fifth accused.

7. The Deputy Superintendent of Police, CBCID who is in charge of the investigation filed a report objecting to the plea of bail by the accused. In the report, the contentions raised by the defacto complainant

is greatly supported. The crime was registered in this case on 22.05.2015 in Ernakulam Central Police Station. It is seen from the report that not much progress was made during the initial days of investigation. On 24.07.2015, the case was transferred to the Crime Branch. Preliminary investigation revealed commission of the said offences. According to the investigating officer, the KCCI is a charitable company coming under Section 8 of the Companies Act, 2013. This a fact is strongly denied by the accused persons. According to them, the objective of the KCCI is not doing any charity, but the welfare of its members. However, that is a matter to be probed and decided at the appropriate time. From the report submitted by the investigating officer, it is revealed that the investigation is still at a preliminary stage.

8. Sri. Santhosh Mathew, learned counsel appearing for the second accused contended that the prosecution case, if at all accepted in toto, do not reveal any of the offences alleged against the accused persons. According to him, the personal ill-will of the defacto complainant is the reason for filing a false complaint and initiation of a criminal investigation. He further submitted that the entire transaction relating to the commencement of a TV Channel at the behest of KCCI was deliberated upon in various Board Meetings, it was timely informed to the General Body and sought its approval. Minutes of the Director Board Meetings

have been produced for scrutiny. Learned counsel further contended that the first accused was authorised to advance temporary loans from the funds of KCCI to the company for starting a TV channel. According to him, the resolution taken by the Director Board authorising the Chairman of KCCI is perfectly valid under Section 292(e) of the Companies Act, 1956.

9. I have been taken through various resolutions of the Board of Directors of KCCI by the learned counsel for the second accused to urge that nothing was done behind the back of the members of KCCI. Further, it is contended by the learned counsel that the defacto complainant was a party to all these proceedings. He was a Director and Vice Chairman of KCCI from 12.01.2013 to 10.01.2014. He was a consenting party in all the Board Meetings. Various minutes of the meetings show that he had signed therein.

10. Sri.S.Rajiv, learned counsel for the first accused also contended that KCCI is not a charitable company. Transfer of funds from KCCI to IMEBN took place from 03.12.2012 to July 2013. All these transfers were done with proper authorisation of the Board of Directors, including the defacto complainant. Learned counsel appearing for the accused persons submitted that none of the accused persons has anything to hide and they are fully prepared to co-operate with the investigation.

11. Per contra, Sri. C.C.Thomas, learned Senior Counsel

appearing for the defacto complainant contended that even the advertisement in the back cover of 56th annual report itself is misleading. It shows the bad intention on the part of the accused persons because they made the public believe that the TV channel is either wholly owned by KCCI or a joint venture of KCCI with another entity. According to the learned Senior Counsel, in reality the channel is the property of a newly formed company of which accused 1 to 4 are financially interested. It is, therefore, contended on behalf of the defacto complainant that in spite of taking various decisions in the Director Board Meetings regarding formation of a TV channel, ultimately what transpired is the formation of a different company wherein accused 1 to 4 acquired financial interest and for promoting that interest, the funds of KCCI was utilised. It is also contended on behalf of the defacto complainant that funds were obtained by the accused from abroad by holding out that the TV channel is owned by KCCI and therefore from an angle of a larger conspiracy, the matter needs to be probed. Laws relating to foreign exchange are also likely to have been violated. That is why the defacto complainant requested the authorities for a CBI investigation. Since it was not considered, he approached this Court for that purpose and the matter is pending consideration.

12. Sri. Rajesh Vijayan, learned Public Prosecutor also supported the contentions raised by the learned Senior Counsel for the defacto

complainant. Although the learned counsel for the accused raised an objection regarding the fact that CBCID had taken over the investigation, the report submitted by the investigating officer categorically shows that the investigation had been taken over by the CBCID and it is at an initial stage.

13. Materials produced before me show that there was a preliminary investigation conducted by an Officer in the rank of Deputy Superintendent of Police. It is alleged by the prosecution that the accused persons were directed by that Officer to submit relevant records for scrutiny for which they did not co-operate. In answer to this contention, learned counsel for the accused persons contended that whatever documents available in the possession of the accused were produced before the Officer concerned. As he insisted on certain documents not in the possession of KCCI, they could not comply with the direction.

14. After hearing the learned counsel appearing for the parties on both sides and after perusing the materials placed before me, I am of the definite view that the point to be decided here is whether the accused are entitled to get pre-arrest bail reckoning two aspects - (i) whether they are likely to interfere with the investigation, if enlarged on bail? and (ii) whether custodial interrogation is necessary to bring out truth? Sri. Santhosh Mathew contended that all the accused persons are businessmen having good reputation in their own sphere. They are rooted in the society.

Chance of their absconding is an absolute impossibility. It is also submitted that in spite of starting an investigation much early, they have not done anything to conceal or tamper with evidence. Sri. S.Rajeev, learned counsel appearing for the first accused also reiterated the same contentions. Smt.Radhika, learned counsel appearing for accused 3 and 4 contended that the accused persons are fully prepared to co-operate with the investigation and they are prepared to abide by any condition imposed by the court. It is also contended that aim of the defacto complainant is to tarnish the image of accused persons and thereby the image of KCCI as a whole by filing a false and frivolous complaint. The report submitted by the investigating officer itself would show that after registration of the crime, no serious attempt was made to speed up the investigation or to arrest the accused persons. Considering the apprehension raised by the learned Prosecutor and the learned Senior Counsel for the defacto complainant regarding the possible violations of FEMA and other allied laws as well known and not so well known NRI businessmen have invested money in the TV channel, it becomes the bounden duty of the investigating officer to probe into all such matters arising in this case. From the nature of allegations, I am of the view that custodial interrogation of the accused persons at this distance of time is not required since the case revolves around mainly on documentary evidence. Account books maintained by

KCCI, bank records, records relating to IMEBN, etc. should reveal the financial fraud, if any, committed by accused persons. Therefore, considering the entire facts and circumstances, I am of the view that all the petitions can be disposed with the following directions:

i. Each accused shall, within a period of one week, surrender before the investigating officer and submit himself for interrogation. Thereafter, each one of the accused persons shall execute a bond for ₹1,00,000/- (Rupees one lakh only) with two solvent sureties each for the like sum to the satisfaction of the investigating officer. In that event, they shall be released on bail in Crime No.923 of 2015 of Ernakulam Central Police Station.

ii. Each accused shall appear before the investigating officer at 10.00 a.m. on the next two consecutive days and submit themselves for interrogation.

iii. If the investigating officer requires the attendance of the accused on any further occasion than the days mentioned above, he can direct the accused in writing to appear and co-operate with the investigation.

iv. The accused persons shall surrender their passports before the Magistrate concerned in one week from the date of appearance before the investigating officer. If any of the accused does not have a passport, he shall swear to an affidavit showing that fact and submit it before the learned Magistrate having jurisdiction.

v. None of the accused persons shall influence or intimidate the witnesses. They shall not meddle in any manner with the investigation.

vi. The accused persons shall not leave the limits of State of Kerala without the permission of the Magistrate concerned.

vii. If any of the conditions above is violated, the Magistrate having jurisdiction is empowered to cancel the bail in accordance with law without referring the matter to this Court.

A. HARIPRASAD, JUDGE.

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