IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

Bail Appl..No. 3661 of 2015 ()

CRIME NO.RC 08(A)2015-CBI/COCHIN OF CENTRAL BUREAU OF INVESTIGATION, ACB, COCHIN.
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PETITIONER/ACCUSED NO.2:-

PUTHENVEEDU JOSEPH MATHEW, AGED 70 YEARS,
SON OF THOMAS JOSEPH, FLAT NO.102, KINGS APARTMENT,
JUHU TARA ROAD, JUHU, MUMBAI - 400 049.

BY SRI.M.K.DAMODARAN, SENIOR ADVOCATE.
ADVS. SRI.GILBERT GEORGE CORREYA,
SRI.NISHIL.P.S.,
SRI.J.VIMAL,
SRI.ANTONY ROBERT DIAS,
KUM.P.K.RESHMA (KALARICKAL).

RESPONDENTS/STATE & COMPLAINT:
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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 682 031.

2. THE CENTRAL BUREAU OF INVESTIGATION,
(CRIME NO. RC 08(A) 2015 - CBI/COCHIN OF
CENTRAL BUREAU OF INVESTIGATION,
ACB, COCHIN) (CBI), ANTI-CORRUPTION BRANCH,
COCHIN - 682 018, REPRESENTED BY
SPECIAL PROSECUTOR, HIGH COURT OF KERALA,
KOCHI-682 031.

BY ADV. SRI.P.CHANDRASEKHARA PILLAI, SC, C.B.I.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07-08-2015, ALONG WITH BA NO.4079 OF 2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

rs.

K. ABRAHAM MATHEW, J.

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B.A.Nos. 3661 & 4079 of 2015

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Dated this the 7th day of August, 2015

C O M M O N O R D E R

Petitions filed under Section 438 Cr.P.C.

2. Petitioners are accused in Crime No. RC 08(A) 2015-CBI/COCHIN of Central Bureau of Investigation. Petitioners in Bail application No. 3661 of 2015 and 4079 of 2015 are accused 2 and 3 respectively. The second accused is the proprietor of M/s. Mathrew International and the third accused is proprietor of M/s. Munavaara Associates. Both of them are recruiting agents under the Emigration Act. The head office of both these accused are in Mumbai. The first accused Protector of Emigrants, Kochi is a Central Government Officer. The third accused obtained an order from the Ministry of Health, Kuwait for recruitment of nurses. The allegation is that though the second accused did not get an order from the Ministry of Health, Kuwait for appointment of nurses in February, 2015 he recruited nurses in Kerala using the label of the third accused. He collected from each selected nurse about Rs.20,00,000/- instead of Rs.19,500/-. This was pursuant to the conspiracy entered into between all the accused.

The first accused allowed the other accused to commit the illegalities and abused his office as a public servant. All of them have thus committed the offences under Sections 120B, 420 of the Indian Penal Code, Sections 13(2)read with Section 13(1)(d) of the PC Act, 1988 and Section 24 of the Emigration Act, 1983.

3. Heard the learned senior counsel Sri. M.K.Damodaran appearing for the second accused and the learned senior counsel Sri.V.K.Beeran appearing for the third accused and Sri. P. Chandrasekhara Pillai learned counsel appearing for the CBI.

4. The defence version is that the second accused did not recruit anyone in Kerala, he only allowed the third accused to use his premises in Kerala as the third accused did not have an office in the State. The third accused had obtained a request letter from the Ministry of Health, Kuwait for appointment of nurses. He informed the protector of Emigrants, Mumbai about the details of the exercise he would undertake for the recruitment. The protector of Emigrants, Kochi, the first accused had no role in the process. That being so, the CBI has no power to register the case and conduct investigation.

5. It is an admitted fact that an advertisement was given in leading Malayalam newspapers inviting application for the post

of nurses. Annexure 7(a) is a copy of such advertisement. The name of the third accused appears in very small letters in the advertisement. His address is not given. On the other hand, the name of the second accused is given conspicuously. His Kerala address as well as Mumbai address are also given in detail. If the second accused only permitted the third accused to use its premises, it was unnecessary for giving the Mumbai address of the second accused. And, there is no explanation for not giving the address of the third accused.

6. The CBI has collected evidence showing that every step in the process of recruitment took place in Kerala. The argument of the learned senior counsel that only the bio-data of the nurses was collected in Kerala cannot be accepted. There is evidence to prove that the money also was collected from the candidates in the office of the second accused. The amount collected from each candidate is Rs.20,00,000/-. The maximum amount an agent can collect from each candidate is Rs.19,500/- only.

7. As protector of Emigrants, the first accused had a duty to protect the interests of nurses and to ensure that recruiting agents complied with the provisions in the Emigration Act and the Rules framed thereunder. It is very strange that he did not even

take notice of the advertisements given in the leading Malayalam newspapers. The statements of the witnesses recorded by the CBI show that he was a troubleshooter for the second accused. The second accused had the patronage of the first accused. There is every reason to draw an inference that there was *quid pro quo.*

8. Learned senior counsel for the second accused submits that the second accused even recruited nurses without charging any service fees in proof of which he has produced certain documents. That appears to be true. But the amount he gave up is Rs.19,500/- each. On the other hand, the amount he illegally collected from the other candidates is about Rs.20,00,000/-. Any act of charity on the part of the second accused will not absolve him of the criminal liability he has incurred.

9. Learned senior counsel Sri. M.K. Damodaran submits that the second accused has nothing to disclose to the Investigating Officer and his detention is not necessary as he is not ready to make any disclosure. He relies on the decision of this Court in ***Fr. Bendict v. State of Kerala*** [1967 KLT 466] and ***Sreedharan v. State of Kerala*** [1980 KLT 829]. But these decisions have not been followed by this Court in its subsequent decisions in ***Velu Viswanathan & Ors. v. State*** [1971 KLT 80],

Kochu Varkey v. The Circle Inspector of Police [ILR 1985 (2) Kerala 574] and ***C.H Kunhikannan v. State*** [2006(4)KLT 469]. So the submission of the learned senior counsel cannot be accepted.

10. The above facts indicate that there was a conspiracy to which each of the accused was a partner. It is to be ascertained where the huge amount collected illegally has been concealed. Detention of the petitioners is necessary to find out the place of concealment. So it is not at all proper for this Court to grant anticipatory bail to the petitioners.

In the result, these applications are dismissed.

Sd/-

K. ABRAHAM MATHEW,
JUDGE

DST

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P.A. To Judge