

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

Bail Appl..No. 5611 of 2015

**CRIME NO. RC 5(E)/2015/CBI-SCB/TVPM OF THE CBI-SCB,
THIRUVANANTHAPURAM**

PETITIONER(S)/ACCUSED NO1:

**RAJEEV MENON, AGED 43 YEARS,
FLAT NO.G-10, 10TH FLOOR, JAIN EIFEL GARDEN,
NO.167-A, ARCOT ROAD, VADAPALANI,
KODAMPAKKAM, CHENNAI-26, NOW RESIDING AT FLAT NO.606,
KGL, MARINE DRIVE, ERNAKULAM.**

**BY ADVS.SRI.C.S.MANU
SRI.S.K.PREMRAJ**

RESPONDENT(S)/COMPLAINANT & THE DE-FACTO COMPLAINANT :

- 1. CENTRAL BUREAU OF INVESTIGATION,
REPRESENTED BY THE SUPERINTENDENT OF POLICE, CBI/SCB,
THIRUVANANTHAPURAM, PIN- 695 010.**
- 2. P.V.MOHAMMED,
AGED 62 YEARS, S/O.VEERANKUTTY, PUTHENPEDIAKKAL HOUSE,
265, CHELAKODE, THALAPPILLY TALUK,
THRISSUR DISTRICT, PIN- 680 587.**

**R1 BY ADV. SRI.P.CHANDRASEKHARA PILLAI, C.B.I.
R2 BY ADVS. SRI.G.HARIHARAN
SRI.PRAVEEN.H.**

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 10-12-2015, ALONG WITH BA.NO.5612 OF 2015, THE COURT
ON 18-12-2015 PASSED THE FOLLOWING:**

Msd.

A.HARIPRASAD, J.

B.A. Nos.5611 & 5612 of 2015

Dated this the 18th day of December, 2015

COMMON ORDER

Accused 1 and 2 in Crime No.RC 5(E)/2015/CBI-SCB/TVPM of CBI/SCB, Thiruvananthapuram seek pre-arrest bail under Section 438 of the Code of Criminal Procedure.

2. Brief allegations against the accused are that the first accused represented himself as the Project Director of Rail Land Development Authority (hereinafter referred to as "Authority") and promised the defacto complainant that the former would arrange lease of railway land near Kozhikode City Railway Station for construction of a multi-storied complex. Defacto complainant effected payment of ₹10,57,880/- on 12.11.2010 and a further sum of ₹95,04,000/- to the Authority as lease money. Authority denied all the transactions and therefore the defacto complainant contended that the first accused cheated him. Allegation against the second accused is that she being the wife of the first accused was also a party to the financial fraud and cheating.

3. The defacto complainant approached this Court with W.P.(C) No.23659 of 2014. First respondent in the writ petition is the Authority.

Accused persons were not made parties to the proceedings. The defacto complainant (writ petitioner) prayed in the writ petition for a direction to the Authority to finalise further proceedings for development of railway land situated near the City Railway Station, Kozhikode. In that matter the Authority took a stand that their operation in the State of Kerala was started only in the year 2012 and not in 2010 as stated by the defacto complainant. According to the Authority, none of the documents produced by the petitioner (defacto complainant) was issued from the office of the Authority. Even the letter head of the Authority relied on by the defacto complainant is entirely different from the original one. Entire story set up by the defacto complainant is false. He produced fabricated documents. These are the contentions of the Authority. On the basis of these contentions, a learned Single Judge of this Court passed the following directions:

“In the above circumstances, there will be a direction to the 3rd respondent to conduct a preliminary enquiry into the allegations raised in the Writ Petition as well as in the counter affidavit in respect of the alleged transactions, within a period of three months from the date of receipt of a copy of this judgment and to proceed in accordance with law, based on the findings arrived at therein.”

Accordingly a preliminary enquiry was conducted by the Central Bureau of Investigation (CBI) and they started investigation.

4. Heard the learned counsel for the petitioners and the learned Standing Counsel for the CBI. Learned counsel appearing for the defacto complainant is also heard.

5. Learned counsel for the petitioners submitted that the registration of case and investigation by the CBI are illegal and those are against the stipulations in the CBI Manual. According to the learned counsel for the petitioners, the averments in the writ petition cannot be taken as the first information statement in the crime.

6. Per contra, learned Standing Counsel for the CBI submitted that there is no violation of CBI Manual and as directed by this Court, CBI had taken over the investigation and found prima facie that there are materials to register a case and proceed with investigation. Unless the petitioners are questioned thoroughly, the investigation may not move forward. It is interesting to note that the petitioners, though not parties to the writ petition, did not take any steps to challenge the order of the learned Single Judge.

7. Another contention raised by the learned counsel for the petitioners is that violation of Foreign Exchange Management Act (FEMA) cannot be investigated by the CBI. Chapter 4 of the CBI Manual relating to Economic Offences Division was pressed into service by the learned counsel for the petitioners to contend that the issue at hand is outside the purview of the investigative powers of the CBI. In answer to this argument,

learned Standing Counsel for the CBI submitted that CBI is duty bound to investigate a matter when constitutional courts entrust them with the duty.

8. Relying on a Division Bench decision of the Gauhati High Court in **Navendra Kumar v. Union of India and another (2013 Cri.LJ 5009)**, learned counsel for the petitioners contended that the said Court has declared that the DSPE Act, 1946 is not a valid piece of legislation and CBI is neither an organ nor a part of the DSPE and it cannot be treated as a 'police force' constituted under the said Act. Learned Standing Counsel for the CBI submitted that operation of the judgment of the Gauhati High Court has been stayed by the Apex Court and the ratio in the Division Bench decision does not operate now. It is true that various cases investigated by the CBI are pending at various stages through out the length and breadth of the country. The contention of the petitioners that CBI has no investigative powers cannot be countenanced in the light of the subsequent developments. The ratio in **Lalita Kumari v. Govt. of U.P. (AIR 2014 SC 187)** is also pressed into service by the learned Standing Counsel.

9. Another contention raised by the learned counsel for the petitioners is that there is a compromise talk between the defacto complainant and the accused persons in order to settle the matters out of court. Investigation revealed falsification of documents relating to the Authority, a division of Ministry of Railways, Union of India. Even if one

assume that the parties could patch up their differences by paying off money by one to another, the offence, if any committed, will not get obliterated. Therefore that contention of the petitioners also cannot be accepted.

10. Various decisions have been cited by the learned counsel for petitioners to challenge the authority of the CBI to investigate. As they are not relevant for resolving the issue on hand, I am not detailing the same as they are beyond the scope of a bail application.

11. From the entire facts and circumstances, I am of the view that the petitioners need to be questioned thoroughly to find out the magnitude, dimension and nature of the impugned documents purported to be generated by the Authority. Reckoning the entire facts and circumstances, I am of the view that interrogation of the petitioners is essential and therefore, they are not entitled to get any order of pre-arrest bail.

Applications are dismissed.

A. HARIPRASAD, JUDGE.

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