

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

Bail Appl..No. 5780 of 2015 ()

(SC.NO.412/2015 OF SPECIAL COURT, CBI, THIRUVANANTHAPURAM)

PETITIONER/6TH ACCUSED:

**SANTHOSH KUMAR A.S., AGED 43 YEARS,
S/O.V.S.ANANDAN, H.NO.138, SANTHOSH BHAVAN,
MANGALAM NAGAR, MANGAD VILLAGE, KILIKOLLUR,
KOLLAM, NOW RESIDING AT FLAT NO.1-A,
KAYALORAM APARTMENT, THEVARA FERRY, THEVARA,
ERNAKULAM DISTRICT.**

**BY ADVS.SRI.ANIL THOMAS
SMT.K.V.RESHMI**

RESPONDENT/RESPONDENT:

**CENTRAL BUREAU OF INVESTIGATION,
SCB THIRUVANANTHAPURAM UNIT MALABAR HOUSE,
KESTON ROAD, TC 11/304, VELLAYAMBALAM,
THIRUVANANTHAPURAM-695 003,
REPRESENTED BY ITS DIRECTOR.**

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

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 29-10-2015 , THE COURT ON 19-11-2015 PASSED THE FOLLOWING:**

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A.HARIPRASAD, J.

B.A. No.5780 of 2015

Dated this the 19th day of November, 2015

ORDER

Application under Section 439 of the Code of Criminal Procedure.

2. 6th accused in RC 1(S) 2013/CBI/SCB/TVPM registered by the Central Bureau of Investigation (CBI), awaiting trial before the Court of Special Judge (SPE/CBI), Thiruvananthapuram, is the petitioner.

3. Heard Shri Anil Thomas, learned counsel for the petitioner and Shri P.Chandrasekhara Pillai, learned Standing Counsel for the CBI.

4. Brief facts relevant for disposal of the matter are as follows: Kollam East Police Station Crime No.484 of 2011 was initially registered under Section 174 of the Code of Criminal Procedure (in short, "Cr.P.C."). Gist of the allegations in the First Information Report (FIR) is that the defacto complainant's friend by name Rajesh @ Happy Rajesh, who was an autorickshaw driver, was found missing from the night of 27.04.2011. At about 5.00 a.m. on 28.04.2011, he was found laid in an unconscious state in his autorickshaw parked by the side of a hospital. Although he was taken to the hospital for treatment, he died. On the basis of this FIR, local Police started investigation. Dissatisfied with the progress in the

investigation by the local Police and CBCID, deceased man's widow approached this Court with W.P.(C) No.16408 of 2011 seeking a direction to the CBI to take over investigation of the case. As per the judgment dated 20.12.2012, this Court allowed the prayer and directed the CBI to take over investigation of the case. Although the counsel for the petitioner raised some challenge against that judgment at the time of hearing, the fact remains that it has become final. Pursuant to the direction of this Court, CBI had taken over the investigation.

5. Shri P. Chandrasekhara Pillai, learned Standing Counsel for CBI, contended that the petitioner is involved in other crimes. His complicity in this case had been revealed from the evidence so far procured by the CBI. Police registered the case originally against Prakash S.K. @ Kuttan @ Vettukuttan, Penty Edwin Austin @ Penty, S.G.Krishnakumar @ Krishnakumar, Shryadas H @ Surya and Nidhin A. @ Rony under Sections 120B, 302 and 201 read with Section 34 of the Indian Penal Code (in short, "IPC"). It is the case of the prosecution that during the course of investigation, the role of the petitioner was revealed. A former Deputy Superintendent of Police (Dy.S.P.) in the State Police by name Shri M.Santhosh Nair is also having complicity in the murder, according to the CBI. Therefore, the petitioner and Santhosh Nair are made accused 6 and 7 respectively.

6. Further prosecution case is that on investigation, it was revealed that another earlier incident, wherein a news reporter by name Unnithan was attempted to be murdered, was the starting point of this case. Crime No.441 of 2011 of Sasthamcotta Police Station registered in that regard had been initially transferred to the CBCID and later taken over by the CBI. Prosecution contended that V.B. Unnithan, the staff reporter of a leading Malayalam daily, reported about an incident happened in the Government Guest House, Kollam regarding a revelry and sleaze by certain persons, including some senior Police Officers. Irated by this report, the seventh accused with the help of the petitioner engaged deceased Happy Rajesh, who was a goon in the locality, to finish off the staff reporter. It is the prosecution case that he executed the assignment as directed by the petitioner and Unnithan suffered very serious injuries in the attack. In order to efface any link between the said incident and some Police Officers, who masterminded for retribution, the accused persons decided to do away with Happy Rajesh and the petitioner arranged another criminal gang, who in turn committed the murder. This is the basic allegation against the petitioner.

7. Per contra, Shri Anil Thomas, learned counsel for the petitioner contended that the petitioner turned out to be an approver in Unnithan's murder attempt case and revealed the unholy connection of 7th accused in

the crime and another Dy.S.P. in the Kerala Police by name Abdul Rasheed. He also revealed the name of a senior IPS Officer, who is said to have connections with goons and other anti-social elements. Since he gave a true statement under Section 164 Cr.P.C. to the Magistrate concerned, he is falsely implicated in this case. Petitioner further contends that there was no occasion for him to cause the murder of Rajesh @ Happy Rajesh and he did not directly involve in Unnithan's murder attempt case. It is the contention of the petitioner that the prosecution attempts to save some Police Officers, who are having communal and political clout and he is made a scape goat. It is further contended by the petitioner that in spite of revealing the complicity of Dy.S.P. Abdul Rasheed, the CBI has not taken any step to conduct investigation in that direction. According to the petitioner, his personal liberty is curtailed by detaining him in custody without any legal justification. It is also contended that his fundamental rights are violated without any legal excuse.

8. Learned counsel for the petitioner contended that he is a businessman engaged in container transshipment business in Dubai since 1995. As part of his business and for resolving the local issues, he developed acquaintance with local Police Officers including Abdul Rasheed and Santhosh Nair who are in the rank of Dy.S.Ps. Petitioner admitted that due to the pressure exerted on him at various times, he arranged a local

gunda by name Happy Rajesh as required by the Police Officers to cause an assault on Unnithan. In this context, learned Standing Counsel for the CBI contended that petitioner has explicitly admitted his links with goons in the locality. Per contra, petitioner would contend that Abdul Rasheed and Santhosh Nair are having connections with criminals in the locality and the petitioner only facilitated the advancement of their interests. It is his further contention that all the accused persons have been released on bail, but for no reason petitioner is detained.

9. Learned Standing Counsel for the CBI took me to the voluminous case diary, especially the final report submitted by the CBI before the Court of Chief Judicial Magistrate, Ernakulam. In the memorandum of evidence, the statements of witnesses reveal the complicity of the petitioner. According to the prosecution, petitioner has close connection with more than three criminal gangs in the area. It is further contended by the learned Standing Counsel that if petitioner is released on bail, certainly he will influence and intimidate the witnesses and thereby a fair trial will be hampered. The witnesses are persons residing in and around Kollam District. This is the exact reason for dismissing the two earlier applications filed by the petitioner for bail as B.A.No.922 of 2015 and B.A.No.2070 of 2015. According to the prosecution, there is no change of circumstance warranting reconsideration

of petitioner's plea for bail.

10. Learned counsel for the petitioner contended that in Unnithan's assault case, further investigation has been ordered. Relying on **Vinay Tyagi v. Irshad Ali ((2013) 5 SCC 762)**, the distinctions between “further investigation”, “reinvestigation” and “denova investigation” have been pressed into service. That may not be relevant at this stage of the matter. However in Unnithan's case, admittedly the petitioner has been made an approver and remains in custody as provided in Section 306(4) (b) Cr.P.C. Learned counsel for the petitioner based on **Dipak Shubhashchandra Mehta v. Central Bureau of Investigation and another ((2012) 4 SCC 134)** contended that delay in trial resulting in incarceration for an indefinite period will be violative of Article 21 of the Constitution of India. Facts in that decision are different from the facts in our case. Similarly, the Constitution Bench decision cited on behalf of the petitioner in **Saravanabhavan and Govindaswamy v.State of Madras (AIR 1966 SC 1273)** laying down a principle that the antecedents of approver do not really make him either better or worse and his evidence can only be accepted on its own merits and with sufficient corroboration is not applicable at present in this case. Therefore, I am not impressed about the applicability of the principles to this case.

11. The voluminous case diary produced before this Court and the

materials therein indicate prima facie the role of the petitioner in the offence. Prosecution apprehension that the petitioner being an influential person may tamper with evidence and meddle with witness cannot be ruled out. Therefore, at this stage of the matter I do not find any reason to take a different view and to grant bail to the petitioner. I also do not find any change in the circumstances warranting reconsideration of the bail plea of the petitioner. Petitioner's contention that some Police Officers of higher rank is involved in this case is a matter which can be taken up even at the trial. If evidence comes up, court has ample power under Section 319 Cr.P.C. to add any additional accused. However, petitioner's anxiety of prolonged incarceration should be properly addressed. Hence the court below shall make all endeavours to expedite the trial of this case and try to finish it of within a period of six months from the date of receipt of this order.

With these observations, the bail application is dismissed.

A. HARIPRASAD, JUDGE.

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