

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

Cr1.MC.No. 6164 of 2015

AGAINST ORDER IN Bail Appl. No.4184/2007 of HIGH COURT OF
KERALA DATED 12-07-2007
CRIME NO. 91/2007 OF HEMAMBIKA NAGAR POLICE STATION, PALAKKAD

PETITIONER/COMPLAINANT:

CENTRAL BUREAU OF INVESTIGATION,
SPECIAL CRIMES BRANCH, CHENNAI
REPRESENTED BY SUPERINTENDENT OF POLICE.

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

RESPONDENTS/ACCUSED NO. 2 & 3:

1. SHRI.V.K.RAMACHANDRAN,
S/O SHRI RAGHAVA PANICKER, "SANDHYA",
SOORYA NAGAR,
AKATHETHARA POST, PALAKKAD, KERALA-679001.
2. SMT. MALINI RAMACHANDRAN,
W/O SRI. V.K.RAMACHANDRAN, "SANDHYA",
SOORYA NAGAR,
AKATHETHARA POST, PALAKKAD, KERALA-679001.

R1,R2 BY ADV. SRI.P.VIJAYA BHANU (SR.)

R1,R2 BY ADV. SRI.VIPIN NARAYAN

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 09-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

Cr1.MC.No. 6164 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: COPY OF THE ORDER IN B.A NO.4184/2007 DATED 12.7.2007

RESPONDENT'S ANNEXURES:

ANNEXURE R1(A): COPY OF THE CLOSURE REPORT FILED BY THE CBI BEFORE CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM.

ANNEXURE R1(B): COPY OF THE ORDER IN C.M.P NO.4942/2010 OF THE COURT OF THE CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM DATED 12.9.2013.

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.6164 of 2015

Dated this the 9th day of October, 2015

O R D E R

The respondents herein are the accused Nos.2 and 3 in the CBI Crime No.RC 5(S)/2009/CBI/SCB/Chennai, involving the offence punishable under Section 304B of the Indian Penal Code. The crime relates to the commission of suicide by one Anitha Pathiyil, daughter of one Gopinathan who initiated the prosecution by filing a complaint before the learned Magistrate having jurisdiction. The said complaint was forwarded for investigation to the police under Section 156(3) of the Code of Criminal Procedure. Later the investigation was taken over by the Central Bureau of Investigation as ordered by this Court in W.P(C) No.4558/2009. During investigation these two petitioners were granted pre-arrest bail by this Court as per the order dated 12.7.2007 in B.A No.4184/2007, on certain conditions. One of the conditions is that the accused shall not leave India without prior permission of the learned Magistrate. After thorough investigation, the CBI submitted final report before the Chief Judicial Magistrate Court, Ernakulam, referring

the crime on the ground that no material could be collected to prove a case of dowry death. The learned Chief Judicial Magistrate was not inclined to accept the report, and accordingly a further investigation was ordered by the Court under Section 173(8) of Cr.P.C. Such investigation is now going on, and the CBI has not reached anywhere in the crime registered in 2007. Anitha Pathiyil committed suicide in 2004.

2. Now the CBI makes a request herein to cancel the bail granted to the respondents on two grounds. One is that effective interrogation of the accused is necessary in view of certain materials collected by the CBI on a search made in the house of the accused, and the other is that on certain occasions the accused had gone abroad in violation of the condition imposed by the Court and without obtaining permission from the court.

3. On hearing both sides, and on a perusal of the materials, I find that the request of the CBI to cancel the bail as such cannot be allowed. The prominent object of the CBI in making such a request is effective interrogation of the accused Nos.2 and 3 as part of the further investigation ordered by the Court. Of course, violation of the bail condition is also alleged by

the CBI.

4. It is well settled that once pre-arrest bail or regular bail is granted to the accused during the investigation process, and final report is submitted, the Court cannot cancel the bail even for the purpose of further investigation under Section 173(8) of Cr.P.C unless there are extraordinary circumstances and compelling reasons. This is the legal position settled by this Court and the Hon'ble Supreme Court on many occasions. In this case, I do not find any such compelling reason or extraordinary circumstance for such an extreme course, except that interrogation of the accused is required, or found absolutely necessary by the CBI, on the basis of something recently seized on search in their house. The CBI does not have any explanation why such materials could not be seized at the right stage in 2007 when investigation was vigorously in progress.

5. There is yet another very important aspect. The crime was registered in 2007, and now we are in 2015. It is submitted that some investigation was made by the investigating agency in California also during the relevant period. It is not known what is the result of such investigation. Anyway, the

investigating agency here is not the local police, but the CBI, having access in all ways possible even to go abroad for the purpose of investigation. It is really strange that the CBI has not been able so far to go to California and to interrogate the first accused as part of investigation. It is not known what materials the CBI will collect by interrogating the accused Nos.2 and 3 when the main first accused stands not interrogated in any manner for the last eight years. Anyway, in the interest of justice I find that the CBI can be given a limited permission to interrogate the accused Nos.2 and 3, without cancelling their bail.

6. Another ground urged by the CBI is that the accused Nos.2 and 3 had gone abroad on some occasions in violation of the condition imposed by this Court, or without obtaining previous permission of the Court. Every condition imposed by the court for bail will have an object to achieve. Such conditions are always imposed by this Court and the courts below in the interest of a fair investigation, or to ensure a smooth, fair and effective investigation. Here also the accused Nos.2 and 3 were prevented from going abroad, with the object of protecting the interest of the prosecution, pending

investigation. The said order was passed by this Court in 2007. Conditions imposed by the courts for bail cannot be mechanically enforced. When the court proceeds to enforce a condition, or even to cancel the bail on the ground of violation of the condition, the court's concern must always be whether the object intended by the court in imposing such a condition stands served. Here the condition imposed in 2007, still continues in force even now in 2015. The first final report referring the crime was submitted by the CBI long back. Practically and legally, the conditions imposed by the court will cease to have effect once final report is submitted. Anyway, the accused did not make an application to lift the conditions, and so it continues in force even now, when the further investigation is in progress. However, as already observed the court's concern must be whether the object intended by the court in imposing such a condition stands served, or must have been served. I do not think that the above condition cannot be rigorously imposed now in 2015, because the first round of investigation is over, and it culminated in a refer report. Further materials are yet to be collected by the CBI for a supplemental final report. In such a situation, this Court cannot cancel the bail simply on the ground

that the accused went abroad after two years from the date on which the condition was imposed by this Court. The learned counsel for the accused submits that the accused in fact went abroad after obtaining permission from the Court. Anyway, the CBI does not have anything to prove that the accused in fact went abroad without obtaining permission. However, as observed earlier, this Court is not inclined to enforce the condition quite mechanically. I find that on the said ground also the bail granted to the accused cannot be cancelled.

7. As observed earlier, I find that it will suffice that the CBI is granted permission to interrogate the accused Nos.2 and 3 as part of the further investigation process. The learned counsel for the accused submits that the accused will definitely co-operate with such process, and they will appear before the investigating officer on the date specified by the investigating officer.

8. In the result, this Crl.M.C is disposed of as follows:

- a) The request of the petitioner (CBI) to cancel the bail granted to the respondents is disallowed.

b) The CBI is permitted to interrogate the respondents (accused Nos.2 and 3) on a day specified by the CBI, within one month from this date, notice of which shall be given to the accused.

c) The interrogation process as permitted by this Court shall be conducted between 10 am and 5 pm.

**P.UBAID
JUDGE**

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