

**IN THE COURT OF THE ADDITIONAL SPECIAL SESSIONS JUDGE,
(SPE/CBI)-III, ERNAKULAM**

Present :-

SRI. SHIBU TOMAS, SPECIAL JUDGE.

Wednesday, the 20th day of September, 2023/29th Bhadra, 1945.

Crl. M.P. No. 615/2023

in

S.C.01/2023

- Petitioners/Accused No.2** : Smt. Swapna Prabha Suresh,
Aged 41/2023,
D/o Shri Sukumaran Suresh,
Vayalil House, Minchin Road,
Jagathy, Thiruvananthapuram &
Flat No.401, Fourth Floor, A3 Homes,
Ayyappa Nagar, Hoodi,
Bengaluru – 560 048.
- Accused No.3** : Shri Sarith P.S., S/o Shri S. Sadana Kumar,
“Mudra” TC 65/2055, HRA 48,
Thiruvallam P.O., Trivandrum – 695 027 &
Flat No.401, Fourth Floor, A3 Homes,
Anoop Layout, Krishnarajapuram,
Hoodi, Bangalore - 560 048.
- Represented By** : Advs. B.N. Shivshankar, R. Krishna Raj &
Tinu T. Joseph.
- Respondent/Complainat** : Asst. Director, Directorate of Enforcement,
Government of India,
Represented by it Assistant Director,
Cochin Zonal Office, Kanoos Castle,
A.K. Sheshadri Road (Mullassery Canal
Road West), Cochin – 682001.
- Represented By** : Adv.Govindu P. Renuka Devi.,
Special Public Prosecutor.

These petitions coming on for hearing on 20th day of September, 2023 in the presence of Counsel on both sides having stood over for consideration on the same day the Court delivered the following:

ORDER

This is a bail application filed by 2nd and 3rd accused. The second accused was granted bail and the third accused was granted interim bail by this Court vide order dated 23.06.2023. Therefore, I have heard the plea for bail by the third accused at this time.

2. The prosecution case is that FIR No. RC-0332020A0005 dated 24.09.2020 registered by CBI, Cochin Unit against M/s. Unitac Builders and Developers Pvt. Ltd and others alleging offences under Section 120B of IPC and Section 35 r/w Section 3 of Foreign Contribution (Regulation) Act 2010 (for brevity 'FCRA') on the basis of a complaint that M/s. Unitac Builders and Developers Pvt. Ltd and M/s. Sane Ventures LLP with concurrence of a Kerala state agency by name LIFE Mission had allegedly accepted AED 10 lakh from a UAE based humanitarian body named 'UAE Red Crescent' for executing LIFE Mission project at Wadakkancherry and violated the provisions of FCRA and a commission of ₹4.5 Crore was given to middlemen including state representatives and government officials out of the funds received from Red Crescent. The LIFE Mission project at

Wadakkanchery is being carried out in violation of the structural plan approved by the Town Planner and thereby an amount of Rs.1.5 Crore has been siphoned off by the construction agencies and evaded GST of Rs.3.5 Crores received from Red Crescent. Vigilance and Anti Corruption Bureau (for brevity 'VACB) Thiruvananthapuram registered FIR No. VC.02/2020/SIU-1 on 30.09.2020 against M/s. Unitac Builders and Developers Private Limited, M/s. Sane Ventures LLP & Others, for offences under Section 7(a), 7(b), 13(2) r/w 13(1)(a) of Prevention of Corruption Act 1988 (for brevity " PC Act') & 120-B of IPC, 1860. A complaint dated 18.08.2022 filed by Customs (Preventive), Commissionerate, Cochin as OR No. 13/2020 in the Court of Additional Chief Judicial Magistrate (EO) Ernakulam for offences under Section 137 r/w Section 135 of Customs Act, 1962, against Shri. Santhosh Eappen and others, which is numbered as CC.No.704/2022 of that Court. The offences charged under Section 7, Section 13(2) r/w 13(1)(a) of PC Act, Section 120-B of IPC Section 135 of Customs Act by CBI, VACB and Customs respectively are Scheduled Offences under Part – A of the Schedule to the PMLA, 2002 and the money laundering angle of the same is being investigated. The accused persons have come in possession of proceeds of crime by committing

scheduled offences under PMLA and the proceeds of crime laundered by the suspects and other persons to be identified by acquisition of movable and/ or immovable assets. So prima facie case for an offence of money laundering specified under Section 3 r/w 4 of PMLA appears to have been made out against the accused persons and registered this case as ECIR/KCZO/09/2021.

3. The case of the petitioner in the petition is that he is totally innocent of the offence alleged against him. He is prepared to execute bond with sufficient sureties and he is ready to abide any condition imposed by this Court. During argument, the learned counsel for the petitioner submitted that he was not arrayed as an accused in the FIR registered by CBI; he was not arrested during investigation; he was available during investigation and has extended full co-operation with the investigating agencies; there is no possibility of tampering of evidence or influencing witnesses or fleeing from justice since all evidences in this case are documentary in nature which cannot be tinkered by the accused/petitioner and passport is already surrendered before NIA Court. It is further submitted that in compliance of the summons issued by this Court, he appeared and he is ready to furnish sufficient sureties to release him on bail. It is also submitted

that all other accused except A1 are already released on bail. A1 is also granted interim bail by Hon'ble Apex Court. He is ready to cooperate with the further investigation if any and also to appear in this Court as and when directed. For these grounds, the petitioner prayed to release him on bail.

4. On the other hand, the learned Special Prosecutor appearing for the complainant/respondent would oppose the said application by filing a detailed objection and submitting that a significant amount of Rs. 59,00,000/- which represented a 6% commission of total project cost was transferred from the Bank account of M/s. Unitac Builders and Developers and M/s. Sane Ventures LLP. This money was spend for individuals including Sandeep Nair, Sarith.P.S, Yadhu Surendran and Smt. Swapnaprabha Suresh. Investigations revealed that 4th accused played a pivotal role in the case, receiving kick backs for influancing the construction contract under the Life Mission Project of the Kerala Government. Travel records also indicated internationa movements by these accused. The statements of the petitioner recorded u/S 50 of PMLA 2002 explained how the funds changed hands from Santhosh Eapen to UAE Consulate officials. It is further submitted that the present petitioner does not qualify the twin

condition of Sec. 45 of Prevention of Money Laundering Act, 2002 (for brevity 'PML Act'). It is further submitted that since there are serious allegations against the petitioner and the matter is pending for trial, he cannot be released on bail and prayed to dismiss the petition at this stage.

5. Heard both sides.

6. I have gone through the records and heard elaborately. There are indeed serious allegations against the petitioner. However, in this case, this Court took cognizance on the complaint submitted by the complainant/respondent, and the matter is pending for trial. The petitioner was not implicated in the FIR registered by CBI, and he was implicated in the present complaint filed by the complainant and arrayed as accused No. 3. The investigating officer did not arrest the petitioner during investigation. The complainant does not have a case against him, that the petitioner neither participated in nor co-operated with the investigation. The investigating officer even after filing the complaint, did not apply for the custody of the petitioner. The statement of the applicant u/s. 50 of PML Act were recorded at several times. The learned counsel for the petitioner submitted that as such the applicant is not required to pass the test of Sec. 45 of PML

Act at this stage and it is only applicable in a case where the petitioner filed a petition either u/s. 439 of the Code after arrest during investigation or u/s.438 of Code apprehending his arrest during investigation. It is an admitted case of the complainant that the applicant was not arrested during investigation. This application is made while the petitioner appeared before Court on summons. The judgment of the Hon'ble High Court of Delhi in Rana Kapoor Vs. Directorate of Enforcement dated 25.11.2022 in Bail Application.559/2022 is produced on behalf of the petitioner.

7. In Rana Kapoor's case (supra), the Hon'ble High Court of Delhi considered similar facts, Sec. 170 of Cr.P.C and sec. 45 of PML Act as well as the judgment of the Hon'ble Supreme Court in Satinder Kumar Antil's case and granted bail to the petitioners of that case. It is pertinent to note in the case on hand that no attempt was made by the complainant to arrest the petitioner during the investigation stage and no petition is filed in this Court seeking custody of him. Further more, in this case the Hon'ble High Court of Kerala granted bail to A5 after considering the arguments of the complainant and to add that all other accused persons except A1 are on bail. First accused was granted interim bail by Hon'ble Supreme Court. Bearing in mind the

principles laid down in Satinder Kumar Antil's case and Rana Kapoor's case (Supra), I am of the view that the restrictions in Sec. 45 of PML Act is not a ground to reject the bail application filed by the petitioner at this stage. The learned Prosecutor argued that investigation into the embezzled amount by 4th accused is still ongoing and presence of accused is indispensable for the purpose of interrogation and confrontation and there is chance of tampering the evidence. The apprehension of the prosecution can be alleviated by imposing conditions for which petitioner is willing, ready and amenable. Therefore, the petition is allowed and petitioner is released on bail with following conditions:-

1. Petitioner shall execute bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties each for the like amount.
2. Petitioner shall not leave the country without prior permission of the Court.
3. He shall produce his original passport. If he is not in possession of a passport, file an affidavit to that effect.
4. He shall co-operate with the investigating agency.
5. He shall appear before the Investigating Officer as and when required till completion of the investigation into the embezzled amount by 4th accused.

6. He shall not influence, intimidate any of the witnesses and shall not interfere with the trial of this case.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open Court on this the 20th day of September, 2023.

Sd/-
Shibu Thomas
Special Judge, (SPE/CBI) – III
Ernakulam

APPENDIX : Nil

Id/-
Special Judge, (SPE/CBI) – III

Typed by:-Apb/-
Compd by:-