2022 LiveLaw (Ker) 64

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT : THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 7TH DAY OF FEBRUARY 2022

AGAINST THE ORDER IN CRMP 2478/2021 IN SC 118/2018 OF SPECIAL C SPE/CBI-I&3 ADDITIONAL DISTRICT COURT / I ADDITIONAL MOTOR ACCIDENT CLAIMS TRIBUNAL, EKM (Crime No.6/2022 of Crime Branch Police Station, Ernakulam)

P .GOPALAKRISHNAN ALIAS DILEEP VERSUS STATE OF KERALA

PETITIONERS/ACCUSED Nos.1 TO 3: BY ADVS. SUJESH MENON V.B. PHILIP T.VARGHESE THOMAS T.VARGHESE ACHU SUBHA ABRAHAM V.T.LITHA K.R.MONISHA NITYA R. B.RAMAN PILLAI (SR.)

RESPONDENTS/STATE AND COMPLAINANT: BY ADVS. DIRECTOR GENERAL OF PROSECUTION SHRI.T.A. SHAJI, SHRI.SAJJU.S., SENIOR G.P. SHRI.P.NARAYANAN, ADDL.PUBLIC PROSECUTOR

O R D E R

The petitioners in these cases are arrayed as accused Nos.1 to 5 in Crime No.6/2022 of Crime Branch Police Station, Ernakulam (hereinafter referred to as Crime No.6/2022) alleging commission of offences under Sections 116, 118, 120-B and 506 of the Indian Penal Code read with Section 34 of that Code. Petitioners in Bail Application No. 248 of 2022 namely, Gopalakrishnan @ Dileep is A1, P.Sivakumar @ Anoop is A2, and T.N Suraj is A3. The petitioner in Bail Application No. 300 of 2022 namely Krishnaprasad.R is Accused No.4, though he is referred to in the F.I.R as 'Appu'. The Petitioner in Bail Application No. 288 of 2022 namely Byju B.R (Baiju Chengamanadu) is the 5th accused. There is one other accused who is yet to be identified. After filing of these bail applications a report has been filed before the Judicial First Class Magistrate-I, by the Investigating Officer in the aforesaid crime stating that the offence under Section 120B (1) of the Code has been changed to 120B (1) of Section 302 of the IPC. The parties are hereinafter referred to by their rank in the list of accused persons unless indicated otherwise. The Annexures referred to in this order are referred to in the manner that they are marked in B.A No. 248 of 2022, unless indicated otherwise.

2. The 1st accused is also the 8th accused in Crime No.297/2017 of Nedumbassery Police Station (hereinafter referred to as Crime No. 297/2017) which is now pending trial as S.C. No.118/2018 on the file of the Additional Sessions Judge (CBI Court-III), Ernakulam. The circumstance which led to the registration of Crime

No.6/2022 is the information given by one Balachandra Kumar that the 1st accused together with the other accused in the case (including the yet to be identified 6th accused) conspired to do away with the investigating officer and other officers who are connected with the investigation etc of Crime No.297/2017. The aforesaid Balachandra Kumar filed Annexure-G complaint before the Station House Officer, Nedumbassery Police Station on 22-11-2021 and thereafter gave 2 statements namely Annexures H & I giving the details of the alleged conspiracy between the accused in this case. He also provided certain voice clips and videos and other materials which allegedly prove the existence of the conspiracy. The Station House Officer, Nedumbassery Police Station forwarded the same to the investigating officer in Crime No.297/2017 (One Baiju Paulose, Dy.S.P, Crime Branch, Alappuzha) following which Annexures H & I statements were recorded from Balachandra Kumar by the aforesaid Baiju Paulose and thereafter he submitted Annexure-J complaint 09-01-2022 before the Additional Director-General of Police (Crimes). The said officer directed the S.H.O, Crime Branch Police Station to register a case and also directed its investigation by the Superintendent of Police, Crime Branch, Ernakulam. Accordingly, Annexure-F, First Information Report came to be registered as Crime No.6/2022 of Crime Branch Police Station. Apprehending arrest in the aforesaid crime, the petitioners have approached this court by filing the above bail applications.

3. I have heard Sri. B. Raman Pillai, learned Senior Advocate instructed by Mr. Philip T. Varghese, appearing for the petitioners in these bail applications and Sri. T.A. Shaji, learned Senior Advocate and Director General of Prosecutions duly instructed by Sri. P. Narayanan, Additional Public Prosecutor for the State.

4. The learned Senior counsel appearing for the petitioners would contend *inter alia* that the registration of Crime No.6 of 2022 is nothing but a malicious attempt to somehow arrest the 1st accused and to create and fabricate evidence in S.C 118 of 2018. It is submitted there is a marked difference between Annexure-G complaint filed by the aforesaid Balachandra Kumar and Annexure- H statement given by him on one hand and Annexure-I statement on the other. It is submitted that Annexure-I has been suitably dressed up with certain additions and improvements to make it appear that a conspiracy had been hatched by the accused in this case. It is submitted that going by the contents of Annexure-I the instrument on which the voice clips of the accused were allegedly recorded by the

aforesaid Balachandra Kumar was not available with him. It is pointed out that going by Annexure-I Balachandra Kumar had transferred the voice clips from the instrument on which it was recorded to a laptop and what was handed over ultimately to the Investigating officers was a pen drive which allegedly contains the statements made by the petitioners indicating the existence of a conspiracy. It is submitted that from Annexure-I statement it is clear that the alleged voice clips recorded by Balachandra Kumar could have been subjected to editing and manipulations which cannot be traced out on account of the fact that the original instrument on which it is allegedly recorded is no longer available. It is submitted that if the information given by the aforesaid Balachandra Kumar is correct he was was also guilty of commission of offences punishable under Section 118 and 202 of the Indian Penal Code as he has concealed the information received by him as early as in the year 2017, from the police. Reference is also made to the provisions of Section 39 (1) (v) of the Code of Criminal Procedure in this regard. It is submitted with reference to certain conversations allegedly made between Balachandra Kumar and the 1st accused that Balachandra Kumar was clearly attempting to blackmail the 1st accused. It is submitted with reference to paragraph 27 of Annexure-G that the falsity of the allegations raised by Balachandra Kumar can be seen from the fact that in paragraph 27 of Annexure- G he has referred to a discussion he had with a person referred to as 'Dasettan' who is stated to be a Manager of accused No.1. It is submitted that the person named Dasettan had left the service of the 1st accused in 2020 and the allegation of Balachandra Kumar is that the aforesaid Dasettan had informed him that sometime in the year 2021 plans being were being hatched by the accused in this case to do away with one other accused in Crime No.297/2017 and further that a lot of discussions are going on regarding Balachandra Kumar himself and it is better that he does not attempt to do anything against the accused herein.

5. It is submitted that even if the entire allegations in Annexure-G, H & I (which form the basis of Annexure-J complaint leading to registration of Crime No.6/2022) are taken into account, none of the offences alleged against the petitioners can be stated to have been committed. Several Judgments have been cited to show what is essential to constitute the offence of criminal conspiracy. ***Sushila Aggarwal and others v. State (NCT of Delhi) and another***, *(2020) 5 SCC 1* is cited to point out that the grant of anticipatory bail does not in any manner

interfere with the investigation of a crime. It is submitted with reference to the very same judgment that even if anticipatory bail is granted the prosecution is not powerless to seek relief under Section 439 (2) of the Cr.P.C in the event that the accused acts in violation of any term under which the bail is granted. It is submitted that one of the objectives of anticipatory bail is to prevent the misuse of police power. It is pointed out that no fair and impartial investigation can be expected in crime No.6/2022 as the complainant, the superior officer who ordered registration of an F.I.R and the Investigating officer are all part of the very same organisation, namely the Crime Branch. It is submitted that having thoroughly failed to prove any case in Crime No.297/2017 (the previous case now pending as S.C. No.118/2018 on the file of the Additional Sessions Judge (CBI Court-III), Ernakulam), the attempt is to somehow put the 1st accused behind bars in the present case. It is submitted that it would be a travesty of justice if the petitioners are denied bail in the present case as no material whatsoever has been collected by the prosecution to prove any of the offences alleged against the petitioners.

6. The learned Director General of Prosecutions would contend that this court must keep in mind the nature and gravity of the accusations while considering the application for anticipatory bail. It is submitted that the 1st accused had obtained the video clippings of the assault on the actress which is the subject matter of Crime No.297/2017, to use it as a perceptual source of blackmail. It is submitted that the plan to assault and humiliate the actress in question was conceived in the year 2013 and executed after 4 years. It is submitted that going by the nature and gravity of the allegations, the petitioners are not entitled to any discretionary relief. It is submitted that the contention of the learned Senior Counsel appearing for the petitioners that the new case has been registered only with the intention of making or creating evidence for the earlier case against Accused No.1, the trial of which is progressing, and the submission that the prosecution had miserably failed to produce any evidence linking the 1st accused with the assault on the actress in question is audacious. It is submitted that the Investigating officer in Crime No.297/2017 has no connection whatsoever with the aforesaid Balachandra Kumar. It is submitted that the Station House Officer, Nedumbassery Police Station before whom the aforesaid Balachandra Kumar had filed his complaint had forwarded the same to the Investigating officer in Crime No.297/2017 since the

complaint appeared to be linked with that crime and it was only then that the investigating officer in that crime came to know of the complaint. It is submitted that thereafter the investigating officer in Crime No.297/2017 had taken a statement from the Balachandra Kumar on 01-01-2022 and a further statement on 03-01-2022. It is submitted that Balachandra Kumar had given further material in the form of audio clips and video clips together with the statement on 03-01-2022. It is submitted that thereafter the Investigating officer filed Annexure-J complaint before the Additional DGP (Crimes) who directed registration of an F.I.R. It is submitted that the Station House Officer of the Crime Branch Police Station is competent to register an F.I.R as the same is a police station with Statewide jurisdiction. It is submitted that on the orders of the Additional DGP (Crimes) the Superintendent of Police, Crime Branch, Ernakulam has been made the Investigating officer in Crime No.6/2022 and that the Investigating officer in Crime No.297/2017 has no role in the matter.

7. It is submitted that the statements of Balachandra Kumar are sufficient proof of the conspiracy. It is submitted that the audio files and video files submitted by him only support the case of conspiracy and should not be taken as the sole evidence of conspiracy. It is submitted that the statement of Balachandra Kumar is to be seen as the statement of an eye witness to the conspiracy. It is submitted that Balachandra Kumar seems to be a credible witness as there were no apparent contradictions in the complaint given by him and the statements later recorded from him except in respect of certain minor matters. It is submitted with reference to the judgment of the Supreme Court in ***Kamal Kapoor v. Sachin Kartarsingh***, (2001) SCC OnLine 142 that minor contradictions between two statements recorded cannot be a subject matter of comparison for the purpose of determining whether the accused is entitled to an order for anticipatory bail. The learned Director General of Prosecutions would refer to Annexure-G complaint filed by Balachandra Kumar before the Station House Officer, Nedumbassery Police Station and particularly to the following content in paragraphs 16 & 17 of that complaint.

അന്വേഷണ ഉദ്യോഗസ്ഥർക്ക് പണി കൊടുക്കണമെന്ന് അവർ മൊത്തത്തിൽ തീരുമാനമെടുക്കുകയുണ്ടായി അന്വേഷണ ഉദ്യോഗസ്ഥരിൽ സോജൻ സുദർശൻ എന്നീ 2 പേർക്കും നല്ല ശിക്ഷയായിരിക്കും കൊടുക്കുന്നതെന്ന് ദിലീപ് പറയുന്നതും ഞാൻ കേട്ടു.

He refers to Annexure-H, the statement recorded on 01-01-2022 from the Balachandra Kumar and refers to the following portion of that statement.

'ദിലീപിനെ അറസ്റ്റ് ചെയ്ത പഴയ വിഷ്വൽസ് യൂട്യൂബിൽ കാണുന്നതിനിടയിൽ S.P. എ.വി. ജോർജിന്റെ വിഡിയോ കണ്ട് "അഞ്ച് ഉദ്യോഗസ്ഥൻമാർ- നിങ്ങൾ അനുഭവിക്കും" എന്ന് ദിലിപ് പറഞ്ഞു. ഇതിനിടയിൽ ദിലീപ് ഇടയ്ക്കിടെ ആകത്തുപോയി മദ്യപിക്കുന്നുണ്ടായിരുന്നു

'അന്വേഷണ ഉദ്യോഗസ്ഥർക്ക് പണി കൊടുക്കണമെന്ന് അവർ മൊത്തത്തിൽ തീരുമാനമെടുത്തു അന്വേഷണ ഉദ്യാഗസ്ഥരിൽ സോജൻ, സുദർശൻ എന്നീ 2 പേർക്കും നല്ല ശിക്ഷയായിരിക്കും കൊടുക്കുന്നതെന്ന് ദിലീപ് പറയുന്നതും ഞാൻ കേട്ടു.

From Annexure-I statement of Balachandra Kumar recorded on 03-01-2022 the following is referred to

15-11-2017 തീയതി മേൽ സംഭാഷണങ്ങൾ record ചെയ്യുന്നതിനിടയിൽ ദിലീപും മറ്റുള്ളവരും ഈ കേസുമായി ബന്ധപ്പെട്ട വാർത്തകൾ അവിടെയുണ്ടായിരുന്ന TV യിൽ കാണുന്നുണ്ടായിരുന്നു S.P. A.V ജോർജ് സർ ഈ കേസിനെപ്പറ്റി മാധ്യമങ്ങളോട് സംസാരിക്കുന്ന വീഡിയോ UTube ൽ കണ്ടത് pause ചെയ്ത് വെച്ച് ദൃശ്യങ്ങളിൽ കണ്ട ജോർജ് സാറിന് നേരെ കൈ ചൂണ്ടി "നിങ്ങൾ അഞ്ച് ഉദ്യോഗസ്ഥൻ അനുഭവിക്കാൻ പോവുകയാണ് ..... സോജൻ സുദർശൻ സന്ധ്യ, ബൈജു പൗലോസ്, പിന്നെ നീ പിന്നെ നീ, പിന്നെ എന്റെ ദേഹത്ത് കൈ വച്ച സുദർശന്റെ കൈ വെട്ടണം" എന്ന് ദിലീപ് പറഞ്ഞിരുന്നു. ഈ പറഞ്ഞ സമയങ്ങളിലൊക്ക 11 ഇടയ്ക്കിടയ്ക്ക് അന്വേഷണ ഉദ്യോഗസ്ഥരെ അപായപ്പെടുത്തുന്നതിനെപ്പറ്റി അവർ സംസാരിക്കുന്നത് ഞാൻ കേൾക്കുകയും കാണുകയും ചെയ്തിരുന്ന അതിൽ ചിലത് ഞാൻ record ചെയ്യുകയും ചെയ്തു.

ഈ സമയങ്ങളിലൊക്കെ ദിലീപ് ദിലീപിന്റെ സഹോദരൻ അനൂപ്, അനൂപിന്റെ ഭാര്യാസഹോദരൻ അപ്പു ദിലീപിന്റെ സുഹൃത്തായ ചാങ്ങമനാട്ടുള്ള ബൈജു എനിക്ക് കണ്ടാലറിയാവുന്ന ദിലീപിന്റെ മേല്പറഞ്ഞ സുഹൃത്ത് എന്നിവർ അവിടെ ഉണ്ടായിരുന്നു'

'എനിക്ക് ജീവന് ഭീഷണിയുള്ള കാര്യവും അന്വേഷണ ഉദ്യോഗസ്ഥര അപായപ്പെടുത്തുവാൻ ഗൂഢാലോചന നടത്തിയ കാര്യവും ഞാൻ എന്റെ ഭാര്യയോട് പറഞ്ഞിട്ടുണ്ട് ഇക്കാര്യങ്ങൾ പോലീസിനോട് തുറന്ന് പറയാമെന്ന് ഞാൻ ഭാര്യയോട് പറഞ്ഞപ്പോൾ ഭാര്യക്ക് ആകെ വിഷമമായി. നമുക്ക് കുടുംബം കുട്ടികളും ഉള്ളതല്ല. ദിലീപ് നമ്മളെ കൊന്നുകളയുമെന്ന് അവൾ പറഞ്ഞു. 2018 - ൽ എറണാകുളം shipyard -ന് സമീപത്തുള്ള ദിലീപിന്റെ ഫ്ലാറ്റിൽ വച്ച് നടന്ന pickpocket എന്ന സിനിമയുടെ ചർച്ചകൾക്കിടയിലും ഞാൻ ദിലീപും ഒന്നിച്ച് കാറിൽ യാത്ര ചെയ്യുമ്പോഴും പ്രാത്യകിച്ച് ആലുവ പോലീസ് ക്ലബ്ബിന്റെ മുന്നിൽ കൂടി പോകുമ്പോഴും ഒക്കെ അന്വേഷണ ഉദ്യോഗസ്ഥരെ അപായപ്പെടുത്തുന്നതിനെക്കുറിച്ച് ദിലീപ് പറഞ്ഞിട്ടുണ്ട്. സുദർശൻ സാറിനെയും ബൈജു പൗലോസ് സാറിനെയും അപായപ്പെടുത്തുന്നതിനെക്കുറിച്ച് പ്രത്യേകിച്ച് പേരെടുത്ത് പലവട്ടം പറഞ്ഞിട്ടുണ്ട്.

It is submitted that among the voice clips submitted by Balachandra Kumar there is one where Dileep states:

'ഒരാളെ തട്ടാന് തീരുമാനിക്കുമ്പോള് അതെപ്പോഴും ഒരു ഗ്രൂപ്പില് ഇട്ടു തട്ടിയേക്കണം

It is submitted that Anoop (brother of Dileep has stated in one voice clip:

'ഒരു വർഷം ഒരു ലിസ്റ്റും ഉണ്ടാക്കരുത്. ഒരു റെക്കോർഡും ഉണ്ടാക്കരുത് ഫോണ് use ചെയ്യരുത്.

It is submitted that in the month of December 2017 when the aforesaid Balachandra Kumar gathered with the 1st accused at a flat on M.G. Road along with some among the other accused, they conspired to do away with the Investigating officer in Crime No.297/2017. It is submitted that during the month

of May 2018 when the 1st accused while passing the Police Club, Aluva in his car with Balachandra Kumar he stated:

ഇവന്മാരെ മൊത്തം കത്തിക്കണം

It is submitted that during the course of investigation in Crime No.6/2022 the Crime Branch had recorded the statement of one Salim of Aluva who is an NRI business man residing at Doha. It is submitted that going by that statement, owing to an issue between the aforesaid Salim and one Sarath G. Nair (stated to be a very close friend of Accused No.1) the aforesaid Salim had filed a complaint against the said Sarath G. Nair. It is submitted that accused No.1 had called Salim and requested him to change his version against Sarath G. Nair. The following statements were allegedly made by accused No.1 to the aforesaid Salim:

'നീ അങ്ങനെ പറഞ്ഞത് ശരിയായില്ല. നീ വിളിച്ചിട്ടാണ് ശരത് പോലീസ് സ്റ്റേഷനിൽ വന്നത് എന്ന് പറയാൻ പറഞ്ഞു

It is alleged that when Salim refused to do so accused No.1 threatened him by saying:

'നീ വലിയ കളിയൊന്നും കളിക്കേണ്ട, വലിയ ആളാകാനൊന്നും നോക്കേണ്ട എന്നെ കേസിൽ കുടുക്കിയ എ. വി. ജോർജ്, സന്ധ്യ മാഡം എന്നിവർക്ക് വേണ്ടി ഞാൻ രണ്ടു പ്ലോട്ടുകൾ മാറ്റിവെച്ചിട്ടുണ്ട്

It is submitted that though Salim did not understand the actual intention behind such statement by accused No.1, he had come to realize after the recent revelation by Balachandra Kumar that the 1st accused had meant that he had planned to do away with the officers whose names were mentioned by accused No.1. It is submitted that on the 31st January, 2018 when the trial of SC No.118/2018 was progressing before the Sessions Court, Ernakulam, the Investigating officer in that case namely Baiju Paulose was present in that court and while passing him accused No.1 made the following comment with a threatening tone:

'സാറ് കുടുംബമായി സ്വസ്ഥമായി ജീവിക്കുകയാണ് അല്ലേ

This, according to the prosecution, was an indication the same will not be possible. It is submitted that the conduct of the accused in changing the mobile phones that they were using, immediately after the allegations of Balachandra Kumar became public, shows that they have something to hide. It is submitted that the petitioners or some among them had admittedly sent their phones to a forensic expert (whose identity is not revealed) for the purpose of destroying any evidence that may be retrieved from them. It is submitted that even after the

order of this court on 29-10-2022 directing the petitioners to surrender the mobile phones before the Registrar General of this court, one among the phones which were directed to be produced had not been produced on the premise that the 1st accused is not aware as to where that particular phone is. It is submitted that as per the information available with the prosecution that particular phone was used for 221 days barely 5 months ago and 2075 calls were made by the 1st accused from the same. This, according to the prosecution, shows that there is clear non-compliance with the direction of this court, clear non-co-operation with the investigation and also indicates that the 1st accused is trying to hide something. It is pointed out that despite undertaking given before this court that the codes for unlocking all the phones will be given to the Judicial First Class Magistrate-I, Aluva, there was delay and non-co-operation on the part of the petitioners which again indicates that they were not co-operating with the investigation. It is submitted that there are contradictions in the statement given by the accused in as much as while accused No.3 had confessed regarding some amount paid to a person by the 1st accused for securing bail in the earlier case, the 1st accused had stated that the amount was given towards some other purpose and when confronted with the aforesaid statement of accused No.3 he shouted at the police officers and said that he is not going to co-operate with this investigation. It is submitted that failure to get custody of the accused in this case will affect any recovery that is to be made. It is submitted that some mobile phones are yet to be recovered. It is submitted that the statement recorded from one Dasan who was a former employee of the 1st accused shows that the petitioners are actively involved in influencing or intimidating the witnesses in this case. Reference is made to Section 8 of the Evidence Act to suggest that the conduct of the accused is a relevant fact if it shows a motive or preparation for the commission of offence. Reference is also made to illustration 'C' under Section 8 of the Evidence Act. It is submitted that despite prosecution filing an application before the Judicial First Class Magistrate-I, Aluva on 03-02-2022 for a direction to the 1st accused to provide their voice samples neither the counsel nor the accused were available even to serve a copy of the notice issued by the court on that petition. It is submitted that this also shows clear non-co-operation. The learned Director General of Prosecutions has also placed certain decisions dealing with the nature of the offence under Section 120B of the Indian Penal Code.

8. The learned Director General of Prosecutions has referred to the judgment of the Supreme Court in ***Lachhman Dass v. Resham Chand Kaler and another***, *(2018) 3 SCC 187* to contend that investigation of an offence of criminal conspiracy demands a custodial interrogation. The judgment of the Supreme Court in ***State represented by CBI v. Anil Sharma,*** *(1997) 7 SCC 187* is cited to contend that custodial interrogation is a qualitatively better procedure to elicit information and evidence and effective interrogation will be possible only with custodial interrogation. The judgment of this court in ***Dr.P.A Dasthakir v. Dy.S.P (CB-CID)***, *2012 SCC Online Kerala 8968* and ***Karayi Rajan & anr v. C.B.I***., *2012 SCC Online Kerala 12215* are referred to contend that in cases of serious offences custodial interrogation is necessary and when a conspiracy is alleged it cannot be said that there are no materials with the prosecution at the initial stage. The judgment in ***P. Chidambaram v. Directorate of Enforcement,*** *(2019) 9 SCC 24* is relied on to contend that the court should generally keep out of areas of investigation and if an arrest is required as part of the investigation, the grant of anticipatory bail may hamper the investigation. The judgment of the Supreme Court in ***Vipin Kumar Dhir v. State of Punjab and another***, *2021 (3) SCC Online 854* is referred to contend that while considering the question of anticipatory bail, this court is required to consider the gravity of the offence and the conduct of the accused and the societal impact of an undue indulgence by the court when the investigation is at the preliminary stage. The judgment of the Supreme Court in ***Sudha Singh v. State of Uttar Pradesh and another***, (*2021) 4 SCC 781* is referred to contend that the court must be aware of the potential threat to the life and liberty of the victims/witnesses while considering the grant of anticipatory bail. The judgment of the Supreme Court in ***Sudhir v. State of Maharashtra and another***, *(2016) 1 SCC 146* is referred to show the circumstances under which the Supreme Court set aside an order of grant of anticipatory bail considering the gravity of the offence, the circumstances of the case and the conduct of the accused. The judgment of the Supreme Court in ***Muraleedharan v. State of Kerala***, *(2001) 4 SCC 638* is referred to indicate that the court should not, on the ground that no material has been collected by the prosecution, grant anticipatory bail. The judgment of the Supreme Court in ***Adri Dharan Das v. State of West Bengal,*** *(2005) 4 SCC 303* is referred to show that arrest is part of the investigative process and it may be necessary to curtail freedom in order to enable the investigation to proceed without hindrance and to protect the witnesses and persons connected

with the victim of the crime and to maintain law and order in the society. The judgment of the Supreme Court in ***Supreme Bhiwandi Wada Manor Infrastructure Pvt. Ltd. v. State of Maharashtra and another***, *(2021) 8 SCC 753* is cited to establish that the considerations set out in paragraphs 92.3 and 92.4 of ***Sushila Agarwal (supra)*** should weigh with this Court, in this matter.

9. The learned Senior Counsel appearing for the petitioners, in his reply would contend that there was no element of non-co-operation by the petitioners with the investigation. It is submitted that all the passwords relating to the phones were provided to the court of the learned Magistrate. It is submitted that the accused had cooperated with the interrogation in every manner. It is submitted that the only non-co-operation alleged is the failure of the accused to give confessional statements which are not required even in terms of the provisions of Section 161 Cr.P.C. It is submitted that the contradictions in Annexures G & H on one hand and Annexure-I on the other are not minor. It is submitted that the improvement or additional information contained in Annexure-I statement recorded from Balachandra Kumar is for the purpose of establishing the commission of the offence. It is settled law, it is submitted, that mere thought or even words that would indicate in the mind of the accused is not sufficient to attract criminal conspiracy. It is submitted that even if the entire material which, according to the prosecution, constitutes the criminal conspiracy is taken into account, there is nothing to suggest that any of the other accused had responded to the statements made by accused No.1. It is reiterated that the worry of the petitioners is that their custody especially that of the 1st accused is being sought only to plant evidence in relation to the case which is now pending as SC No.118/2018. It is submitted that it is only one mobile phone that could not be surrendered. It is submitted that the said phone was changed as there was some technical problem with it. It is submitted that even according to the prosecution (as is clear from the argument note now submitted in Court) the said phone was used for 221 days nearly 5 months ago which was much before any allegation had been made by Balachandra Kumar and much after the period to which the allegations relate. It is submitted that the failure of the accused to produce that phone cannot be treated as non-co-operation as there is no law that requires a person to keep for perpetuity every mobile phone used by him previously. It is submitted that one major allegation by the prosecution that can be readily shown

to be false is the statement by Baiju Paulose that on the 31-01- 2018, the 1st accused had stated to him in the threatening tone ''സാറ് കുടുംബമായി സ്വസ്ഥമായി ജീവിക്കുകയാണ് അല്ലേ' in the corridors of the Sessions Court, Ernakulam. It is submitted that the said statement is clearly false as on 31-01- 2018, the case was not pending before the Sessions Court and was still at committal stage before the Judicial First Class Magistrate, Angamaly. It is submitted that the case was committed to the Sessions Court only on 07-02- 2018. It is submitted that thereafter by order of this court in OP (Crl) No.344/2018, on 25-02-2019, the case was transferred to a Sessions Court presided over by a woman Judge. It is submitted that this clearly false statement by the aforesaid Baiju Paulose (who is alleged to be the main target of the 1st accused) is sufficient to substantiate that the entire allegations against the accused are false. It is submitted that it would be a travesty of justice to deny anticipatory bail to the petitioners when none of the materials collected by the prosecution thus far including the statements of Balachandra Kumar indicate the commission of any of the offences alleged.

10. I have considered the contentions raised. It is settled law that this Court should not, at this stage, to evaluate each and every material for the purpose of determining whether the accused has committed the offence or not. However, to determine the question as to whether a *prima facie* case has been made out, the Court can look at the materials available and allegations raised with reference to the offences alleged to have been committed. In ***State of Orissa v. Mahimananda Mishra*****,** *(2018) 10 SCC 516* it was held :-

"It is by now well settled that at the time of considering an application for bail, the Court must take into account certain factors such as the existence of a prima facie case against the accused, the gravity of the allegations, position and status of the accused, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of tampering with the witnesses and obstructing the courts as well as the criminal antecedents of the accused. It is also well settled that the Court must not go deep into merits of the matter while considering an application for bail. All that needs to be established from the record is the existence of a prima facie case against the accused."

Keeping in mind the law laid down by the Supreme Court, I do not intend to make any detailed analysis of the materials collected by the prosecution. I have referred

to them only for the purpose of noticing and appreciating the contentions raised by both sides.

11. Crime No.6/2022 of Crime Branch Police Station has been registered, as already indicated, alleging the commission of offences under Sections 116, 118, 120B (of 302) and 506 of the Indian Penal Code r/w. Section 34 of that Code. Section 116 of the Code deals with the punishment for abetment of an offence and Section 118 deals with the punishment for concealing design to commit an offence punishable with death or imprisonment for life. Section 120B deals with the punishment for entering into a criminal conspiracy and Section 506 provides the punishment for criminal intimidation.

12. Abetment is defined in Section 107 of the Code. We are concerned here with abetment (secondly) in Section 107 (*abetment by conspiracy)*. Criminal conspiracy was introduced into the Code as a distinct offence by the Criminal Law Amendment Act, 1913 (8 of 1913). Criminal conspiracy is defined in Section 120A of the Code. Now, it cannot be disputed that, in law, criminal conspiracy by itself is an offence. It may appear, at first blush, that there is some overlap between *'abetment by conspiracy'* and '*criminal conspiracy'.* However, there is none. When does a criminal conspiracy become abetment? This question can be answered by referring to the judgment of the Patna High Court in ***State of Bihar v. Srilal Kejriwal*****,** *AIR 1960 Pat 459*

55. All the respondents were charged in the court below with criminal conspiracy under section 120B of the Penal Code, 1860. An important question arises as to whether having regard to the fact that an offence under section 436 of the Penal Code, 1860 was actually committed the charge of criminal conspiracy to commit the sane offence is relevant. Ratanlal in his Commentary on the Law of Crimes (19th edition at page 265) observes as follows:—

"Where the matter has gone beyond the stage of mere conspiracy and offences are alleged to** have **been actually committed in pursuance thereof, section 120A and this section (120B) are wholly irrelevant".

In the case before us the offence of arson which is alleged to have been the object of the conspiracy was in fact committed and hence the conspiracy amounted to abetment. In these circumstances, the charge under section 120B was entirely uncalled for. The matter was considered by a Division Bench of this Court in

Jugeshwar Singh v. Emperor, ILR 15 Pat 26 : (AIR 1936 Pat 346) *and the learned Judges made the following observation:*

"Where a criminal conspiracy amounts to an abetment under section 107 it is unnecessary to invoke the provisions of sections 120A and 120B because the Code has made specific provision for the punishment of such a conspiracy. In the case before us, the offences which are alleged to have been the object of the conspiracy were in fact committed so the conspiracy amounted to abetment. The Court should not, therefore, have framed additional charges under section 120B. Appellants having been convicted on the substantive charges framed were not liable to be convicted also of conspiracy".

The same view was expressed by the Madras High Court in ***In re Venkataramiah****, AIR 1938 Mad 130. Their Lordships in that case expressed the following view:*

"In my judgment sections 120A and 120B have been quite wrongly applied to this case and have no bearing at all. When the matter has gone beyond the stage of mere conspiracy and offences are alleged to have been actually committed in pursuance thereof, these two sections are wholly irrelevant. Conspiracy, it should be borne in mind, is one form of abetment (see section 107, Penal Code) and where an offence is alleged to have been committed by more than two persons, such of them as actually took part in the Commission should be charged with the substantive offence, while those who are alleged to have abetted it by conspiracy should be charged with the offence of abetment under section 109, Penal Code. The explanation to section 109 makes this quite clear. An offence is said to be committed in consequence of abetment, when it is committed in pursuance of the conspiracy, and the abettor by conspiracy is made punishable (under section 109) with the punishment provided for the actual offence".

The offences of abetment by conspiracy and criminal conspiracy have been elaborately considered by the Supreme Court in ***Pramatha Nath Talukdar v. Saroj Ranjan Sarkar*****,** *AIR 1962 SC 876*_The following findings in that judgment are relevant and are extracted below:-

"Section 120-A which defines the offence of criminal conspiracy and Section 120-B which punishes the offence are in Chapter V-A of the Indian Penal Code. This Chapter introduced into the criminal law of India a new offence, namely, the offence of criminal conspiracy. It was introduced by the Criminal Law Amendment

Act, 1913 (8 of 1913). Before that, the sections of the Indian Penal Code which directly dealt with the subject of conspiracy were those contained in Chapter V and Section 121-A (Chapter VI) of the Code. The present case is not concerned with the kind of conspiracy referred to in Section 121A. The point before us is the distinction between the offence of abetment as defined in Section 107 (Chapter V) and the offence of criminal conspiracy as defined in Section 120-A (Chapter V-A). Under Section 107, second clause, a person abets the doing of a thing, who engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing. ***Therefore, in order to constitute the offence of abetment by conspiracy, there must first be a combining together of two or more persons in the conspiracy; secondly, an act or illegal omission must take place in pursuance of that conspiracy and in order to the doing of that thing****. It is not necessary that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.* ***It is worthy of note that a mere conspiracy or a combination of persons for the doing of a thing does not amount to an abetment. Something more is necessary, namely, an act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing for which the conspiracy was made****. Before the introduction of Chapter V-A conspiracy, except in cases provided by Sections 121-A, 311, 400, 401 and 402 of the Indian Penal Code, was a mere species of abetment where an act or an illegal omission took place in pursuance of that conspiracy, and amounted fee a distinct offence.* ***Chapter V-A, however, introduced a new offence defined by Section 120-A. That offence is called the offence of criminal conspiracy and consists in a mere agreement by two or more persons to do or cause to be done an illegal act or an act which is not illegal by illegal means; there is a proviso to the section which says that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof****. The position, therefore, comes to this. The gist of the offence of criminal conspiracy is in the agreement to do an illegal act or an act which is not illegal by illegal means. When the agreement is to commit an offence, the agreement itself becomes the offence of criminal conspiracy. Where, however, the agreement is to do an illegal act which is not an offence or an act which is not illegal by illegal means, some act*

besides the agreement is necessary. ***Therefore, the distinction between the offence of abetment by conspiracy and the offence of criminal conspiracy, so far as the agreement to commit an offence is concerned, lies in this. For abetment by conspiracy mere agreement is not enough. An act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing conspired for. But in the offence of criminal conspiracy the very agreement or plot is an act in itself and is the gist of the offence.*** *Willes, J. observed in Mulcahy v. Queen [(1868) LR 3 HL 306 at 317] :*

"When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful, punishable if for a criminal object or for the use of criminal means."

Put very briefly, the distinction between the offence of abetment under the second clause of Section 107 and that of criminal conspiracy under Section 120-A is this. In the former offence a mere combination of persons or agreement between them is not enough. An act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing conspired for; in the latter offence the mere agreement is enough, if the agreement is to commit an offence."

It is clear from the law laid down in the aforesaid judgment that, for abetment by conspiracy, a mere agreement is not enough. Some act or illegal omission must take place in pursuance of the conspiracy and in order to the doing of the thing conspired. Distinct from the offence of abetment, the offence of criminal conspiracy does not require the doing of an act or an illegal omission. Criminal conspiracy is an offence by itself.

13. Coming to the facts of this case, there is nothing to suggest, at present, that the accused had done something or some act in respect of which an offence of abetment can be alleged. For an offence of abetment, something must be done. There is no material to suggest that an act or illegal omission had occurred for the accused in this case to be charged with an offence of abetment of that act or omission. Therefore, *prima facie* and for the purposes of these Bail Applications, it can be presumed that Section 116 of the Code is not attracted.

14. Section 118 of the Code which, is another of the offences alleged to have been committed will be attracted only if there is some material to suggest that there

was a design to commit an offence punishable with death or imprisonment for life. If there is material to suggest that there was a criminal conspiracy, as is suggested by the prosecution, the offence under Section 118 of the code will also be attracted.

15. The focus of the argument of the Learned Director General of Prosecutions, and rightly so, has been to establish that there was a criminal conspiracy to commit murder of the investigating officers in Crime No.297/2017. As already stated above, several decisions were placed before me by both sides to indicate as to what constitutes the offence of criminal conspiracy and also the difficulty in getting clear evidence regarding a conspiracy as conspiracies are hatched normally behind closed doors. However, I do not intend to burden this order by extracting or referring to passages from each of them. The offence of criminal conspiracy has been dealt with in detail In ***Kehar Singh v. State (Delhi Admn.),*** *(1988) 3 SCC 609;* **Jagannatha Shetty.J,** concurring with ***G.L Oza*** & ***B.C Ray (JJ***.) explains the very essence of the offence in the following words:-

"271. *Before considering the other matters against Balbir Singh, it will be useful to consider the concept of criminal conspiracy under Sections 120-A and 120-B of IPC. These provisions have brought the Law of Conspiracy in India in line with the English law by making the overt act unessential when the conspiracy is to commit any punishable offence. The English law on this matter is well settled. The following passage from Russell on Crime (12th Edn., Vol. I, p. 202) may be usefully noted:*

"The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough."

272. *Glanville Williams in the Criminal Law (2nd Edn., p. 382) explains the proposition with an illustration:*

"The question arose in an Iowa case, but it was discussed in terms of conspiracy rather than of accessoryship. D, who had a grievance against P, told E that if he would whip P someone would pay his fine. E replied that he did not want anyone to pay his fine, that he had a grievance of his own against P and that he would

whip him at the first opportunity. E whipped P. D was acquitted of conspiracy because there was no agreement for 'concert of action', no agreement to 'co-operate'."

273. *Coleridge, J., while summing up the case to jury in Regina v. Murphy [173 ER 508] (173 Eng. Reports 508) pertinently states:*

"I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design and to pursue it by common means, and so to carry it into execution. This is not necessary, because in many cases of the most clearly established conspiracies there are no means of proving any such thing, and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, 'Had they this common design, and did they pursue it by these common means — the design being unlawful?' "

274. *It will be thus seen that the most important ingredient of the offence of conspiracy is the agreement between two or more persons to do an illegal act. The illegal act may or may not be done in pursuance of agreement, but the very agreement is an offence and is punishable. Reference to Sections 120-A and 120-B IPC would make these aspects clear beyond doubt. Entering into an agreement by two or more persons to do an illegal act or legal act by illegal means is the very quintessence of the offence of conspiracy.*

275. *Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the court must enquire whether the two persons are independently pursuing the same end or they have come together in the pursuit of the unlawful object. The former does not render them conspirators, but the latter*

does. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Gerald Orchard of University of Canterbury, New Zealand explains the limited nature of this proposition: [1974 Criminal Law Review 297, 299]

"Although it is not in doubt that the offence requires some physical manifestation of agreement, it is important to note the limited nature of this proposition. The law does not require that the act of agreement take any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been said that it is unnecessary to prove that the parties 'actually came together and agreed in terms' to pursue the unlawful object; there need never have been an express verbal agreement, it being sufficient that there was 'a tacit understanding between conspirators as to what should be done'."

276. *I share this opinion, but hasten to add that the relative acts or conduct of the parties must be conscientious and clear to mark their concurrence as to what should be done.* ***The concurrence cannot be inferred by a group of irrelevant facts artfully arranged so as to give an appearance of coherence. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict****. We must thus be strictly on our guard." (EMPHASIS IS SUPPLIED)*

In ***R. Venkatkrishnan v. Central Bureau of Investigation***18**,** it was held:-

"72. Criminal conspiracy in terms of Section 120-B of the Code is an independent offence. It is punishable separately. Prosecution, therefore, must prove the same by applying the legal principles which are applicable for the purpose of proving a criminal misconduct on the part of an accused. ***A criminal conspiracy must be put to action and so long a crime is merely generated in the mind of the criminal, it does not become punishable. Thoughts, even criminal in character, often involuntary, are not crimes but when they take concrete shape of an agreement to do or cause to be done an illegal act or an act which is not illegal but by illegal means then even if nothing further is done, the agreement would give rise to a criminal conspiracy****."* **[**EMPHASIS IS SUPPLIED]

As already indicated, the offence of criminal conspiracy as defined in Section 120A and punishable under Section 120B is no doubt an offence by itself. The 18*(2009) 11 SCC 737* offence will lie even if an illegal act was either done or not done pursuant to the conspiracy. The very agreement or concurrence between the conspirators is an offence and is punishable. However, as the judgment in ***Kehar Singh (supra)*** indicates "***The concurrence cannot be inferred by a group of irrelevant facts artfully arranged so as to give an appearance of coherence. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict***." Having considered the materials placed and having gone through Annexures-G, H and I along with the other materials which, according to the prosecution, indicate that a *criminal conspiracy* has been established, I am of the opinion, *prima facie,* that at present, there is no material to suggest that the accused had committed the offence of criminal conspiracy.

16. The other offence alleged is that of criminal intimidation. Criminal intimidation punishable under Section 506 of the Code is essentially a threat. There is no case for the prosecution that any of the officers had been directly threatened or intimidated by the accused in this case. The incident that the 1st accused having spoken to the Baiju Poulose on 31.1.2018 at the Sessions Court, Ernakulam has to be discounted for two reasons. First thing that,on the date in question, the case was pending at committal stage before the Judicial First Class Magistrate Court, Angamaly. Secondly, the statement by itself or words allegedly spoken by the 1st accused cannot be termed as '*threat or intimidation*' for the purposes of Section 506 of the Indian Penal Code.

17. Though certain materials were referred to by the learned counsel for the petitioners to demonstrate that the petitioners are the subject of blackmail by Balachandra Kumar, i do not intend to examine that question in these proceedings.

IS ANTICIPATORY BAIL TO BE DENIED ON ACCOUNT OF NON-COOPERATION OR ON ACCOUNT OF THE PROPENSITY TO INFLUENCE OR INTIMIDATE POSSIBLE WITNESSES ?

18. The learned Director General of Prosecutions was very vehement in his submission that the accused is clearly not cooperating with this investigation and this is a ground to deny bail. It was pointed out that despite the order dated

22-01-2022 through which this court had directed the accused to make themselves available for interrogation and despite the direction in that order that the accused shall fully cooperate with the investigation, the accused did not cooperate with the investigation at all and that accused No.3 and accused No.1 had given contradictory answers. It was also pointed out that when the accused were asked to produce their mobile phones they stated that the mobile phones were entrusted with their lawyers. The fact that one among the mobile phones directed to be produced before this court through the order dated 29-01-2022 has not been produced is, stated to be a clear instance of non-cooperation. It was also pointed out that the case diary shows that one Das, a former employee of the 1st accused had been influenced/intimidated when it was known that he had been questioned by the police. It is suggested that cumulatively, these factors must compel this court to reject these bail applications. Though it is solely for the purpose of considering the entitlement of the petitioners for bail, *prima facie* I have already found that the offences alleged are not attracted. Regarding the non-cooperation with the investigation, I am of the opinion that even if bail is granted to the accused it is always open to the prosecution to move this court for cancellation of bail or for arrest of the accused as held by the Constitution Bench in ***Sushila Aggarwal (supra)***. The non-production of one phone which is now stated to be non-traceable by itself does not compel me to hold that the same amounts to non-cooperation with the investigation. Even according to the prosecution the said phone was used for 221 days about 5 months ago. The apprehension that if the accused are released on bail they will influence and intimidate the witnesses is, of course, a real apprehension. However, that can be dealt with by imposing appropriate conditions. If there is material to suggest that the accused are influencing or intimidating any witnesses despite conditions imposed by this court, that can be a ground to approach this court for cancellation of bail or for the arrest of the accused. I am also of the view that the investigation can be properly conducted without the custody of the accused making it clear that even while on anticipatory bail the 'deemed custody' or 'limited custody' will be with the prosecution for the purposes of any recovery etc. In this connection, the following conclusions of the 5 Judge Bench of the Supreme Court in ***Sushila Aggarwal (supra)*** are pertinent:-

*"**92.3.** Nothing in Section 438 CrPC, compels or obliges courts to impose conditions limiting relief in terms of time, or upon filing of FIR, or recording of statement of any witness, by the police, during investigation or inquiry, etc. While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. The courts would be justified — and ought to impose conditions spelt out in Section 437(3) CrPC [by virtue of Section 438(2)]. The need to impose other restrictive conditions, would have to be judged on a case-by-case basis, and depending upon the materials produced by the State or the investigating agency. Such special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner, in all cases. Likewise, conditions which limit the grant of anticipatory bail may be granted, if they are required in the facts of any case or cases; however, such limiting conditions may not be invariably imposed.*

***92.4.** Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.*

***92.5.** Anticipatory bail granted can, depending on the conduct and behaviour of the accused, continue after filing of the charge-sheet till end of trial.*

***92.6.** An order of anticipatory bail should not be "blanket" in the sense that it should not enable the accused to commit further offences and claim relief of indefinite protection from arrest. It should be confined to the offence or incident, for which apprehension of arrest is sought, in relation to a specific incident. It cannot operate in respect of a future incident that involves commission of an offence.*

***92.7.** An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail.*

92.8. *The observations in Sibbia [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] regarding "limited custody" or "deemed custody" to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e. deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. Sibbia [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] had observed that : (SCC p. 584, para 19)*

"19. … if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in State of U.P. v. Deoman Upadhyaya [State of U.P. v. Deoman Upadhyaya, AIR 1960 SC 1125 : (1961) 1 SCR 14 : 1960 Cri LJ 1504] ."

92.9. *It is open to the police or the investigating agency to move the court concerned, which grants anticipatory bail, for a direction under Section 439(2) to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc."*

19. The philosophy that should guide this Court while considering applications for bail have been the subject matter of a large number of decisions. The following words of Krishna Iyer.J in ***Gopinathan Pillai v. State of Kerala***19**,** are illuminating 19 *1969 KLT 841*

*"**6.** ……. Pre-trial detention has a purpose and policy and, therefore, the issue of bail or jail must be decided on relevant criteria and not on emotionally appealing but legally impertinent circumstances. While deprivation of liberty is a sequel to conviction, antecedent incarceration amounts to punishment without trial, unless justified on some civilized principles bearing on the administration of justice. The infliction of humiliation, the cruelty of jail life and the prejudice suffered by a party in the conduct of his defence do irreparable damage to a man and it is poor comfort to be told that he would be acquitted ultimately if he were really innocent. That is why Courts have to take conscientious care not to be*

deflected by sentiment or scared by ghastliness but to be guided by the high principle that public justice shall not be thwarted and the course of the trial defeated or delayed by the accused person, be he high or low. This being the perspective, purpose and policy regarding bail, I must agree with counsel for the petitioners that the high death roll, very regrettable though, cannot stampede a Court into refusal of bail and the longer casualty list on the other side cannot weigh against the accused."

[***Also see State of Rajasthan v. Balchand*****,** *(1977) 4 SCC 308* where Justice Krishna Iyer famously said that the basic rule is "*bail, not jail".*]

20. '*Supreme but not Infallible*' ['*Supreme but not Infallible*' - Essays in Honour of the Supreme Court - Oxford India Paperbacks, 2000 Edn.] is the name of the book published on the occasion of 50th anniversary of the establishment of the Supreme Court [Essays in honour of the Supreme Court of India]. Justice B.N. Kirpal penning the preface of that book said:

"The title of the volume 'Supreme but not Infallible' – is taken from an oft quoted self -reflection of an American judge: "We are not final because we are infallible, we are infallible only because we are final." We would like to believe that the Supreme Court has gone about its task less conscious of its supremacy and more warily with the intuition that the Court, though final, is fallible. These essays are a reminder of what the Court is and does.

These words intend to convey the message that even the highest court in the country has no claim that it is infallible. This case has generated a lot of media attention. Mainstream television media and social media have commented upon the way this court went upon its business in handling this case. Observations made in Court during the course of hearing have been dissected and made subject matter of intense discussion. The existence of a vibrant, independent and free press is no doubt essential to democracy. The constitutional Courts in this country have been zealous to protect the freedom of speech and expression but this cannot be a license for persons armed with half baked facts with little or no knowledge of how the judiciary functions and little or no knowledge of the fundamental legal principles that govern it, abuse the justice delivery system. ***Lord Mansfield*** said at the trial of the radical John Wilkes (in 1770): -

"I will not do that which my conscience tells me is wrong, upon this occasion, to gain the huzzas of thousands, or the daily praise of all the papers which come from the press: I will not avoid doing what I think is right; though it should draw on me the whole artillery of libels; all that falsehood and malice can invent, or the credulity of a deluded populace can swallow."

Centuries later, in 1998 Judge ***Hiller B. Zobel*** at the trial of the Nanny Louise Woodward said:-

"Elected officials may consider popular urging and sway to public opinion polls, Judges must follow their oaths and do their duty, heedless of editorials, letters, telegrams, picketers, threats, petitions, panellists and talk shows. In this country, we do not administer justice by plebiscite."

Both the above quotations extracted from the book ***'Literature of the Law'*** [by Brian Harris QC] echo, in no uncertain terms, the sentiments of this Court. I leave it at that.

For the reasons stated above, these bail applications are allowed and it is directed that the petitioners in these cases shall be released on bail, in the event of arrest in Crime No.6/2022 Crime Branch Police Station subject to the following conditions:-

(i) Each of the Petitioners shall execute separate bonds for sums of Rs.1,00,000/- (Rupees one lakh only) each with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court;

(ii) Petitioners shall appear before the investigating officer in Crime No.6/2022 Crime Branch Police Station as and when summoned to do so;

(iii) Petitioners shall co-operate with the investigation and make themselves available for interrogation whenever required;

(iv) Petitioners shall not tamper with any evidence;

(v) Petitioners shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade them from disclosing such facts to the court or to any police officer;

(vi) Petitioners shall surrender their passports before the jurisdictional Court. If the petitioners or any of them do not have passports, they shall execute an

affidavit to that effect and file the same before the jurisdictional Court. If the 1st petitioner has already surrendered his passport in the earlier proceedings against him, this condition will not apply to him;

(vii) Petitioners shall not involve in any other crime while on bail.

If any of the aforesaid conditions are violated, the Investigating officer in Crime No.6/2022 of Crime Branch Police Station may file an application before this Court for cancellation of bail.

No observation in this order shall be construed as a finding by this Court on any issue. The observations are only for the purpose of considering the entitlement or otherwise of the petitioners for bail.
