

(2019) 08 MAN CK 0010

In the Manipur High Court

Case No : Anticipatory Bail No. 9, 10, 11, 51 Of 2018

Chongtham Gojendro Singh And Others

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 26-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 21
Prevention Of Corruption Act, 1988 — Section 13(1)(D), 13(1)(e), 13(2)
Code Of Criminal Procedure, 1973 — Section 436, 437, 437(3), 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450
Indian Penal Code, 1860 — Section 120B, 406, 409, 420
CPWD Works Manual, 2007 — Section 31.5, 31.6

Citation : (2019) 08 MAN CK 0010

Hon'ble Judges : M.V. Muralidaran, J

Bench : Single Bench

Advocate : S. Biswajit Meitei, S. Lokhendro, Kenajit, N. Ibotombi, A. Rommel, N. Savitri, Boboy Potsangbam, A. Bimol, S. Sasi, H. Prabirkumar, A. Golly, H. Suraj, A. Peter, L. Aarti, R.K. Banna, N. Kumarjit

Final Decision : Allowed

Judgement

M.V. Muralidaran, J

These Anticipatory Bail Applications involves issues of great public importance pertaining to the importance of individual's personal liberty and the society's interest because every criminal offence is the offence against the State. The order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society. The law of bails dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty.

Brief facts which are necessary to dispose of these anticipatory applications are recapitulated from the Status Report filed by the Investigation Officer as follows :

1. A case has been registered on 24.03.2018 at Vigilance and Anti Corruption P.S.Manipur, Imphal against the petitioners/accused persons namely Shri O. Ibobi Singh , the then Chairman LDA, Shri Th. Ibobi Singh, the then Project Director. LDA, Shri CH. Gojendro Singh, the then Project Direct Director, LDA and others based on a complaint report filed by Shri Khuplen Lhouvum, Addl.Supdt. of Police, Vig. & AC Department alleging therein that during the Enquiry case No.2/ SP-V & AC/2018 the following facts are revealed.

2. The Loktak Development Authority (LDA) which includes the then Chairman, LDA Shri O. Ibobi Singh the then Chief Minister of Manipur' the then Vice Chairman LDA, Shri Th. Debendra Singh, the then Minister Forest & Env't. Shri Ch.Gojendro Singh, the then Project Director (Member Secretary, LDA) and others took a decision in a meeting held on 05.09.2008 without any consent of a cabinet or other members of LDA in which M/s Progressive Construction Ltd (PCL) Hyderabad was allowed to execute a work for removal of Phumdi on Loktak Lake without calling any tender on trial basis as Departmental work by the LDA through M/s Progressive Construction Ltd (PCL) against the CPWD norms at the estimated cost of Rs.3,06,10,000/- (rupees three crores six lakhs ten thousand only) which clearly indicates favouring M/s Progressive Construction Ltd (PCL) Hyderabad by abusing their official position.

3. That, Shri Chiranjeevi, the then Project Director M/s PCL submitted his proposal letter dated 05.08.2008 to the Project Director, LDA on the same day in which the meeting was held as mentioned above. It further revealed that M/s PCL submitted the proposal-letter to the LDA without any corresponding letter from LDA. The proposal letter of M/s PCL was accepted by Shri.Gojendro Singh, the then Project Director, LDA.

4. The Loktak Development Authority (LDA) paid a total bill amount of Rs.2,93,96,803/- (rupees two crores ninety three lakhs ninety six thousand eight hundred and three only) for the works mentioned above, whereas a total amount of Rs.1,01,22,215 (rupees one crore one lakh twenty two thousand two hundred and fifteen only) was deducted from the bill amount of Rs.2,93,96,803(rupees two crores ninety three lakhs ninety six thousand eight hundred and three only) mentioned above as hiring charge of machinery and HSD fuel. The LDA also received a sum of Rs.24.10 lakhs which was paid in excess to PCL, Hyderabad for the departmental works mentioned above from the bills of M/s K.Pro Infra Works Pvt. Ltd which is a sister agency of PCL. However there is no completion certificate to be submitted by the PCL for the works executed departmentally by LDA through PCL in the records available in the office of LDA, Secured Building 2nd floor near 2nd MR Gate, Imphal.

5. That, it is further found that the Tender committee of LDA accepted the single tender by negotiating the rates offered by M/s.K.Pro Infra Works Pvt. Ltd, of

Rs.22439.24 lakhs against sanctioned amount of Rs.22373.52 lakhs (in excess of 65 lakhs) in compliance with the cabinet decision taken on 04.07.2009.

6. That the executive body of LDA allowed M/s K.Pro Infra Works Pvt. Ltd. To get 10% of the estimated tender amount as advance for plant and Machinery as interest free against the CPWD norms (i.e. 5% estimated tender amount) by taking decision in the meeting held on 21.10.2009 Chaired by the then Chairman, LDA along with the then Vice Chairman LDA and others. However M/s K.Pro Infra Works Pvt. Ltd. Had procured only 25 numbers of trucks valued of Rs.5.27 crores (rupee five crores twenty seven lakhs) only out of the sanctioned of Rs.21,95,20,000/- (rupees twenty one crores ninety five lakhs twenty thousand only) violating Rule No.32.6 of CPWD Manual. LDA also sanctioned 10% of the tender amount as mobilization advance without interest to M/s K.Pro Infra Works Pvt.Ltd. against CPWD norms which should be done with simple interest as per Rule No.32.5 of CPWD Manual.

7. That, the following personnel had attended in the meeting held on 21.10.2009 as mentioned above:

- (i) Shri O. Ibobi Singh, the then Chairman, LDA
- (ii) Shri Th. Debendra Singh, the then Vice Chairman, LDA
- (iii) Shri D.S. Ponniah, the then Member, LDA
- (iv) Shri A.N.Jha, the then Member, LDA
- (v) Shri P.K.Singh, the then Secretary to CM, Manipur
- (vi) Shri.Th.Ibobi Singh, the then Project Director, LDA (Member Secy. LDA)
- (vii) Shri L. Bhagaton Singh, the then SE/LDA
- (viii) Shri.Raja Sekhar Paturi, the then Representative of M/s K.Pro. Infra Pvt. Works Ltd, Hyderabad.
- ix) Shri Chiranjeevi, the then Representative of M/s K. Pro Infra Pvt. Works Ltd, Hyderabad.

Out of the above 9 personnel who attended the meeting of 21.10.2009, only 5 (five) members of LDA were present out of total 37 members of LDA. Thus, the decision taken by the above personnel in the meeting held on 21.10.2009 clearly violated Rule No.6(6) of Chapter IV of the Manipur Loktak lake (Protection) Rules 2008 which stated that "The quorum of the meeting shall be one half of the total membership and decision will be taken by single majority of the members present which clearly indicates favouring M/s K.Pro Infra Works Pvt. Ltd, by abusing their official position in the matter of sanction and release of interest free mobilization advance as well as plant and machinery advance against the norms of CPWD as mentioned above thereby causing wrongful loss to the Govt.

8. That it is found that a total amount of Rs.173,58,62,426 (rupees one hundred

seventy three crores fifty eight lakhs sixty two thousand four hundred twenty six) only was paid to the M/s K.Pro Infra Works Pvt. Ltd by LDA for the contract work LDA (SH : Management of Phumdi in Loktak Lake) However M/s K.Pro Infra Works Pvt. Ltd. Could not complete the works within stipulated plus extended period and contract was therefore rescinded on 01.04.2013.

9. Subsequent upon, the rescission of the contract agreement between the M/s K.Pro Infra Works Pvt. Ltd. And LDA, a work order for the balance work was issued to M/s H.V.S. Construction Materials (P) Ltd, by Shri Th. Ibobi Singh, the then Project Director, LDA through e-tender.

10. That, M/s. H.V.S. Construction Material (P) Ltd, executed the balance work at the lowest rate comparatively with the rates offered by M/s PCL, M/s K.Pro Infra Works Pvt. Ltd.

11. That, a total amount of Rs.29,91,20,059.01 (rupees nine crores ninety one lakhs twenty thousand and fifty nine) only was paid in excess to M/s K.Pro. Infra Pvt. Ltd. At an exorbitant rate comparative with the rate negotiated with M/s H.V.S. Construction Materials (P) Ltd by LDA thereby causing wrongful loss to the Govt. to the tune of Rs.29,91,20,059.01 which may raise during investigation and corresponding wrongful gain to NUS K. Pro Infra Works Pvt. Ltd.

12. That, from the above facts and circumstances it has been learnt that a prima facie case for the commission of offences u/s 420/120B IPC & Section 13(2) R/W 13(1)(D) of Prevention of Corruption Act , 1988 on the part of (1) Shri O.Ibobi Singh , the then Chairman, LDA (ii) Shri. Ch. Gojendro Singh, the then Project Director, LD (Member Secy. LDA) and: (iii) Shri Th. Ibobi Singh, THE THEN Project Director, LDA (Member Sec, LDA) who were responsible for taking the resolutions in the meetings held on 05.08.2008 and 21.10.2009 mentioned above with vested interest overlooking all extant norms and without proper consent of other members of LDA at their whim and fancies only to favour M/s. PCL & M/s K.Pro Infra Works Pvt. Ltd was well established. Hence a regular case has been registered against the above personnel and other unknown persons for through investigation.

13. During the course of investigation, the complainant was examined and corroborated with the OE of the case. The relevant files/documents collected by him during the enquiry have been seized on production by him in presence of witnesses. Scrutiny of the documents/tiles revealed that cabinet decision was taken on 04.07.2009 to follow the prescribed norms of CPWD. However all the norms of CPWD as well as the Loktak Protection Act 2006 were violated as mentioned above. There was no role of M/s PCL in execution of the works on trial basis as departmental work since no record for utilization of machinery items with technical experts from PCL was found. All the machines and vehicles used in the works are of LDA. All the labourers are also hired from the local areas. The representative of M/s PCL and M/s K.Pro Infra Works Pvt. Ltd, are of same persons. They are non local firms who comes from Hyderabad and their office is

at Babupara, Imphal by residing in a rented house. The bank accounts details of M/s PCL and M/s K.Pro Infra Works Pvt. Ltd, have been collected from State Bank of India, Imphal Main Branch and it has revealed that the bill amount received from LDA by M/s K. Pro Infra Works Pvt. Ltd, for the execution of the work was transferred to M/s Kavuru which is also a sister agency of M/s K.Pro the employees of PCL are looking after the works of M/s K.Pro Infra Works Pvt. Ltd, as well as M/s Kavuru at the same office located at Imphal. During the course of investigation it also revealed that as per the terms and condition of the tender, the bidder is required to submit the duly filled up tender form to LDA in sealed envelope but no such sealed envelope is found in LDA office. LDA received only one single tender of M/s K. Pro Infra Works Pvt. Ltd. Investigation also revealed that the sanctioned amount of Rs.21,95,20,000 (rupees twenty one crores ninety five lakhs and twenty thousand only) which was given as advance for mobilization and plant and machinery was not utilized properly. A sum of Rs.5.27 crores of sanctioned amount was used by M/s K. Pro in purchasing 25 nos. of trucks and out of the sanctioned amount of 10% of the cost of the work i.e. 24 crore for mobilization, they used only in construction of some kutcha work sheds at the work site for some lakhs.

14. On further investigation, it is further reveals that during the search of the office of the Project Director, LDA, Manipur on 07.04.2018 in presence of the petitioner some incriminating documents/files pertaining to correspondence letter with M/s K. Pro Infra Works Pvt. Ltd, have been seized. Scrutiny of the files/documents has revealed that M/s K. Pro. Infra Works Pvt. Ltd, claimed purchased of 25 tipper trucks amount to Rs.527 crores from the sanctioned amount of mobilization advance by LDA. The vehicles were registered at District Transport Office, Churachandpur as per the records. In this regard DTO/Churachandpur has been communicated to provide copies of the invoices pertaining to purchase of the above vehicles which were submitted by M/s K.Pro at the time of registration. However, DTO/Churachandpur vide Letter dated 18.06.2018 has intimated that the relevant documents pertaining to purchase of the above vehicles but they could not produce the same till date. Several notices have been sent to M/s K.Pro to join the investigation but they did not come forward to join the investigation till date.

15. That investigation also revealed that Bank statement of A/c No. 30877172774 opened in the name of M/s K.Pro Infra Works Pvt. Ltd at State Bank of India, M.G.Avenue Branch and A/c No. 30889158075 opened in the name of M/s K.Pro Infra Works Pvt. Ltd at I.P. State General Branch, M. Block Vikas Bhawan, New Delhi have been collected. Scrutiny of the Bank statement revealed that the amount credited by LDA to Ms. K. Pro Infra Works Pvt. Ltd. has been transferred to M/s Kavuru Upbuilding Pvt. Ltd, a sister agency of M/s K. Pro Infra Works Pvt. Ltd. Then the amounts credited to M/s Kavuru Upbuilding Pvt. Ltd, has been again credited to some sub-contractors. However, in the contract agreement between LDA and W3 K. Pro Infra Works Pvt. Ltd there is no clause for sub-letting the works to other third party.

16. That investigation further revealed that the measurement books maintained by LDA in execution of the works have been collected from the concerned Division of LDA. During scrutiny of Measurement Books, it has revealed that there is no mention of registration nos. of vehicles in the Measurement Books by which the Phumdis were removed from Loktak Lake in respect of the work executed by M/s K. Pro has been asked to produce the vehicles used in execution of the works but they could not produce the vehicles till date.

17. During the investigation a Joint Inspection consisting of officials of LDA, Vigilance Team along with one Superintendent Engineer of PWD, Manipur was carried out at the work sites i.e. Komlakhong, Khokmakhong, Mayang Imphal, Power Channel Toupokpi, ITI Ningthoukhong, Phubala, Thanga, Ithin, Sendra etc. The concerned Engineer has opined that as the "Phumdis" are bio-degradable biomass, it is not possible to measure the actual volume of the Phumdis so cleared and dumped at the different sites such as long time gap (already decomposed & weathered) and to correlate the volume of fresh Phumdis so cleared as entered in the measurement Books and thereby the number of trips of the offloaders (trucks, tippers etc) for transporting it to different dumping sites.

18. During the course of investigation the audit report from the office of the Accountant General, Imphal has been obtained. The following are the details of the audit report.

Undue benefits to contractor:

As per clause 5 of the Additional Terms and conditions of the Agreement signed (November 2009) between Loktak Development Authority, Manipur (LDA) and M/s K. Pro Infra Works Pvt. Ltd New Delhi (Contractor) for execution of the work LDA (Sub Head: Management of Phumdi in Loktak Lake) as interest free advance equal to 10 per cent of tendered value or 90 per cent of the price of new plant and machinery paid by the contractor which ever was lower can be paid to the contractor. The contractor was to provide satisfactory evidence of the price of plant and machinery to the Project Director of LDA, The advance was to be paid against Bank Guarantee (BG) and the machinery hypothecated to LDA. As per section 31.6 read with 31.5 of CPWD works Manual 2007, such advance can be paid against machinery that are required for the works and brought to site by the contractor and should be bearing 10 per cent simple interest. These CPWD provision which were part of the draft agreement were deleted in the final agreement signed with the contractor.

19. Audit of records (November-December 2012) of Project Director LDA showed that based on the contractor's proposed list of machinery (December 2010) valued at Rs.26.79 crore. LDA paid (January 2011) interest free plant and machinery advance of Rs.22.40 crore equal to 10 per cent of the tendered amount against BG of the same amount. However only after six months (June 2011) the contractors procured 25 numbers of trucks valued at Rs.5.27 crore and hypothecated them with LDA. Thereafter no machinery was procured (During

investigation procurement of these 25 trucks by M/s K. Pro Infra Works Pvt. Ltd could not be established as documents pertaining to purchase of the 25 trucks are not found at the registration office at DTO, Churachandpur)

20. It also reveals that due to arbitration case with M/s K. Pro Infra Works Pvt. Ltd., LDA awarded the balance work to M/s 11VS Construction Materials (P) Ltd at a cost of Rs.43.65 crore on 28.02.2014 with time allowance of 12 months. However, it was found that rates given to M/s K. Pro Infra Works Pvt. Ltd in the year 2009 is higher than the rates given to M/s HVS in the year 2014 thereby causing loss to the Govt. The actual amount to the Govt. is under investigation.

19. In this case 21 (twenty one) witnesses have been examined so far. Some of the remaining witnesses are yet to be examined. The investigation of the case will take another 3 (three) months.

20. The learned Counsels for the Petitioners vehemently relied the documents pertaining to the issue. The arguments are summed up as follows;

21. The project Short Term Action Plan for Conservation and Management of Loktak Lake and Associated Wetlands Integrating Manipur River Basin was an urgent response to the deteriorating condition of the lake. The project was formulated through Wetlands International-South Asia (in short, " WISA") New Delhi at the behest of Planning Commission to address the pressing problems particularly the menace of phumdi proliferation of the lake within a limited time frame in a mission mode. WISA predicted that the central sector of the lake would be choked with phumdi by 2011 resulting to an ecological disaster if no timely interventions are made. To ensure transparency in implementing the project and to monitor the results of the project, the Water Institute, Karunya University, Coimbatore (TN) and TARA (a unit of Development Alternatives) New Delhi were engaged by the LDA in conformity with the terms and conditions laid down by the Planning Commission. The Third Party Monitors have evaluated the Project on a Project Monitoring Framework formulated by the WISA, New Delhi. In addition to the normal third party monitoring, members empanelled by the MOEF and endorsed by the Planning Commission also carried out a specific Outcome Assessment and submitted report in December 2011, The project was funded by the Planning Commission for a stipulated period to time frame ending March, 2011 and the work to be taken up was a unique one. A high level meeting was held on 05.08.2008 and decisions were taken in presence of the then Chairman of LDA, Shri O. Ibobi Singh, the then Chief Minister of Manipur, the then Vice -Chairman, LDA, Shri Th. Debendra Singh (the then Minister, Forest & Environment) Shri Rakesh, Chief Secretary, Government of Manipur (Chairman of the Steering Committee, LDA) Shri. A.N. Jha, Principal Secretary, Government of Manipur (Member, Steering Committee, LDA) Shri Ch. Gojendro Singh, the then Project Director (Convenor, LDA) It is further stated that there is no requirement for taking the consent of cabinet or other members of LDA for finalizing works to be taken up and facilitate timely release of the fund, etc. Thus, the high level decisions were taken to execute work for removal of Phumdi on Loktak Lake

without calling any tender on trial basis as Departmental work by the LDA. The Petitioner herein was appointed as Project Director, LDA on regular basis only on 04.10.2016 and he was never a part of the above said high level meeting held on 05.08.2008. It is also stated that there is no concrete byelaws which governs the field of allocating contract work for LDA, however, the spirit of the CPWD Manual is taken as a guiding factor but it is not followed in its strict letters and words.

22. The Office of the LDA issued a Tender Notice No.1 vide order dated 04.06.2009 and it was published in the local dailies, namely The Sangai Express (Manipuri) The Matamgi Yakairol, The Thoudok Wathok, the Aja and the Punshi; and the national paper namely The Indian Express (New Delhi), The Hindustan Times (New Delhi) and The Telegraph (Calcutta) In spite of such wide advertisement throughout the country, LDA received a single tender and there is no bar in accepting a single tender. In providing of certain percentage of amount as advance and as interest free for executing the aforesaid work is not against any norm. It is pertinent to mention that this practice is followed in contract work of the National Highways Authority of India. Any decision taken/formulation of policy particularly relating to financial matters for smooth functioning of the LDA and management of the lake and finalization for works to be taken up does not require for any quorum. It is pertinent to mention that "quorum of the meeting" will arise only in the General Body meeting. There cannot be comparison of "rates and time taken" in executing a work at different period of time. There are many factors which will influence the "rates and time taken" of the said work at that particular point of time, e.g. the ground work for making a base to start the work; making of ways for entering deep inside the work place; work experience of the local labourers, availability of machines, etc. It is also pertinent to mention that the said tender was floated throughout the country and LDA received a single tender. Thus, it is highly questionable as to how the complainant had come up with such allegation by making comparison of "rates and time taken" of the work which were executed at different period of time and on different conditions in the said complaint.

OBJECTIONS PLACED ON THE SIDE OF THE RESPONDENT

23. The Loktak Development Authority (LDA) which includes the then Chairman, LDA Shri O. Ibobi Singh the then Chief Minister of Manipur, the then Vice Chairman LDA, Shri Th. Debendra Singh, the then Minister Forest & Env't. Shri Ch. Gojendro Singh, the then Project Director (Member Secretary, LDA) and others took a decision in a meeting held on 05.09.2008 without any consent of a cabinet or other members of LDA in which M/s Progressive Construction Ltd (PCL) Hyderabad was allowed to execute a work for removal of Phumdi on Loktak Lake without calling any tender on trial basis as Departmental work by the LDA through M/s Progressive Construction Ltd (PCL) against the CPWD norms at the estimated cost of Rs.3,06,10,000/(rupees three crores six lakhs ten thousand only) which clearly indicates favouring M/s Progressive Construction Ltd (PCL) Hyderabad by abusing their official position.

24. Shri Chiranjeevi, the then Project Director M/s PCL submitted his proposal letter dated 05.08.2008 to the Project Director, LDA on the same day in which the meeting was held as mentioned above. It further revealed that M/s PCL submitted the proposal letter to the LDA without any corresponding letter from LDA. The proposal letter of M/s PCL was accepted by Shri.Gojendro Singh, the then Project Director, LDA.

25. Loktak Development Authority (LDA) paid a total bill amount of Rs.2,93,96,803/- (rupees two crores ninety three lakhs ninety six thousand eight hundred and three only) for the works mentioned above, whereas a total amount of Rs.1,01,22,21 5 (rupees one crore one lakh twenty two thousand two hundred and fifteen only) was deducted from the bill amount of Rs.2,93,96,803(rupees two crores ninety three lakhs ninety six thousand eight hundred and three only) mentioned above as hiring charge of machinery and HSD fuel. The LDA also received a sum of Rs.24.10 lakhs which was paid in excess to PCL, Hyderabad for the departmental works mentioned above from the bills of M/s K.Pro Infra Works Pvt. Ltd which is a sister agency of PCL. However there is no completion certificate to be submitted by the PCL for the works executed departmentally by LDA through PCL in the records available in the office of LDA, Secured Building 2"d floor near 2"d MR Gate, Imphal.

26. It is further found that the Tender committee of LDA accepted the single tender by negotiating the rates offered by M/s.K.Pro Infra Works Pvt. Ltd, of Rs.22439.24 lakhs against sanctioned amount of Rs.22373.52 lakhs (in excess of 65 lakhs) in compliance with the cabinet decision taken on 04.07.2009.

27. The executive body of LDA allowed M/s K.Pro Infra Works Pvt. Ltd. To get 10% of the estimated tender amount as advance for plant and Machinery as interest free against the CPWD norms (i.e. 5% estimated tender amount) by taking decision in the meeting held on 21.10.2009 Chaired by the then Chairman, LDA along with the then Vice Chairman LDA and others. However M/s K.Pro Infra Works Pvt. Ltd. Had procured only 25 numbers of trucks valued of Rs.5.27 crores (rupee live crores twenty seven lakhs) only out of the sanctioned of Rs.21,95,20,000(rupees twenty one crores ninety five lakhs twenty thousand only) violating Rule No.32.6 of CPWD Manual. LDA also sanctioned 10% of the tender amount as mobilization advance without interest to M/s K.Pro Infra Works Pvt.Ltd. against CPWD norms which should be done with simple interest as per Rule No.32.5 of CPWD Manual. Out of the above 9 personnel who attended the meeting of 21.10.2009, only 5 (five) members of LDA were present out of total 37 members of LDA. Thus, the decision taken by the above personnel in the meeting held on 21.10.2009 clearly violated Rule No.6(6) of Chapter IV of the Manipur Loktak lake (Protection) Rules 2008 which stated that "The quorum of the meeting shall be one half of the total membership and decision will be taken by single majority of the members present which clearly indicates favouring M/s K.Pro Infra Works Pvt. Ltd, by abusing their official position in the matter of sanction and release of interest free mobilization advance as well as plant and

machinery advance against the norms of CPWD as mentioned above thereby causing wrongful loss to the Government. It is also found that a total amount of Rs.173,58,62,426 (Rupees one hundred seventy three crores fifty eight lakhs sixty two thousand four hundred twenty six) only was paid to the M/s K.Pro Infra Works Pvt. Ltd by LDA for the contract work LDA (Management of Phumdi in Loktak Lake) However M/s K.Pro Infra Works Pvt. Ltd. Could not complete the works within the stipulated plus extended period and contract was therefore rescinded on 01.04.2013. Subsequently upon, the rescission of the contract agreement between the M/s K.Pro Infra Works Pvt. Ltd. And LDA, a work order for the balance work was issued to M/s H.V.S. Construction Materials (P) Ltd, by Shri Th. Ibobi Singh, the then Project Director, LDA through e-tender. M/s. H.V.S. Construction Material (P) Ltd, executed the balance work at the lowest rate comparatively with the rates offered by M/s K.Pro Infra Works Pvt. Ltd.

28. M/s K.Pro Infra Works Pvt.Ltd, as well as M/s Kavuru at the same office located at Imphal. During the course of investigation, it also revealed that as per the terms and conditions of the tender, the bidder is required to submit the duly filled up tender form to LDA in sealed envelope but no such sealed envelope is found in LDA Office LDA received only one single tender of M/s K. Pro Infra Works Pvt. Ltd. Investigation also revealed that the sanctioned amount of Rs.21,95,20,000 (rupees twenty one crores ninety five lakhs and twenty thousand only) which was given as advance for mobilization and plant and machinery was not utilized properly. A sum of Rs.5.27 crores of sanctioned amount was used by M/s K. Pro in purchasing 25 nos of trucks and out of the sanctioned amount of 10% of the cost of the work Le. 24 crore for mobilization, they used only in construction of some kutchra work sheds at the work site for some lakhs.

29. On further investigation, it is further reveals that during the search of the office of the Project Director, LDA, Manipur on 07.04.2018 in the presence of the petitioners some incriminating documents/files pertaining to correspondence letter with M/s K.Pro Infra Works Pvt. Ltd, have been seized. Scrutiny of the files/ documents has revealed that M/s K. Pro. Infra Works Pvt. Ltd, claimed purchased of 25 tipper trucks amount to Rs.5.27 crore from the sanctioned amount of mobilization advance by LDA. The vehicles were registered at District Transport Office, Churachandpur as per the records. In this regard DTO/Churachandpur has been communicated to provide copies of the invoices pertaining to purchase of the above vehicles which were submitted by M/s K.Pro at the time of registration. However, DTO/Churachandpur vide Letter dated 18.06.2018 has intimated that the relevant documents pertaining to purchase of the above vehicles are not found at their office record.' The officials of the M/s K. Pro have been asked to produce the relevant documents pertaining to purchase of the above vehicles but they could not produce the same till date. Several notices have been sent to M/s K.Pro to join the investigation but they did not come forward to join the investigation till date.

30. That investigation also revealed that Bank statement of No. 30877172774 opened in the name of M/s K.Pro Infra Works Pvt. Ltd at State Bank of India, M.G.Avenue Branch and No. 30889158075 opened in the name of M/s K.Pro Infra Works Pvt. Ltd at I.P. State General Branch, M. Block Vikas Bhawan, New Delhi have been collected. Scrutiny of the Bank statement revealed that the amount credited by LDA to M/s. K. Pro Infra Works Pvt. Ltd. has been transferred to M/s Kavuru Upbuilding Pvt. Ltd, a sister agency of M/s K. Pro Infra Works Pvt. Ltd. Then the amounts credited to M/s Kavuru Upbuilding Pvt. Ltd, has been again credited to some sub-contractors. However, in the contract agreement between LDA and Ms K. Pro Infra Works Pvt. Ltd there is no clause for sub-letting the works to other third party.

31. That investigation further revealed that the measurement books maintained by LDA in execution of the works have been collected from the concerned Division of LDA, During scrutiny of Measurement Books, it has revealed that there is no mentioned of registration nos. of vehicles in the Measurement Books by which the Phumdi were removed from Loktak lake in respect of the work executed by M/s K. Pro. Whereas there is entry of registration nos. of vehicles in the Measurement Books in respect of the balance work executed by M/s HVS. The official of Ms K. Pro has been asked to produce the vehicles used in execution of the works but they could not produce the Vehicles till date.

32. During preliminary examination of accused L. Bhagaton Singh, the then SE, LDA, presently Project Director, LDA, he is not co-operating with the Police Investigation and concealing the facts by stating that all the irregularities were committed by the then Chairman, Project Directors and Commissioners/Chief Secretaries/Finance Secretary etc. as he only put his signature being SE of LDA. The investigation of the case is going on in full Swing. However, number of vital documents and crucial witnesses are yet to be examined. A prima facie evidence is well established against the accused person for the offences committed by him. If the accused person is granted bail at this stage of investigation there is every apprehension of tampering the evidence and may also threatened the witnesses which will eventually hamper the proper investigation. Hence the accused person is highly required for custodial interrogation to find out factual position in the interest of investigation of the instant case.

33. I have given anxious consideration to the rival submissions and with their able assistance gone through the material available on record. Since the present application is filed for seeking anticipatory bail, it may not be in interest of either side to comment on the merits of the matter since investigation is in progress. Therefore, I proceed to decide this application, mentioning above stated relevant facts confined to prayer in this application.

34. At this juncture, it would be relevant to refer to the observations of the Hon'ble Apex Court while dealing with the applications for anticipatory bail and scope of section 438 of Cr.P.C. Section 438 of Cr.P.C makes special provision for granting "anticipatory bail" which was introduced in the present Code of 1973.

35. The law relating to bail is contained in sections 436 to 450 of chapter XXXIII of the Code of Criminal Procedure; 1973. Section 436 deals with situation, in what kind of cases bail should be granted. Section 436 deals with the situation when bail may be granted in case of a bailable offence. Section 439 deals with the special powers of the High Court or the Court of Sessions regarding grant of bail. Under sections 437 and 439 bail is granted when the accused or the detenu is in jail or under detention.

36. The provision of anticipatory bail was introduced for the first time in the Code of Criminal Procedure in 1973. Section 438 of the Code of Criminal Procedure, 1973 reads as under:

"438. Direction for grant of bail to person apprehending arrest.(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) the possibility of the applicant to flee from justice; and
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application.

(1-A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1-B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

(2) When the High Court or the Court of Session makes a direction under subsection (1), it may include such conditions in such directions in the light of

the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1)."

37. It is clear from the Statement of Objects and Reasons that the purpose of incorporating Section 438 in the Cr.P.C was to recognize the importance of personal liberty and freedom in a free and democratic country. When we carefully analyze this section, the wisdom of the legislature becomes quite evident and clear that the legislature was keen to ensure respect for the personal liberty and also pressed in service the age-old principle that an individual is presumed to be innocent till he is found guilty by the court.

38. As observed in the reported Judgment of Balchand Jain Vs. State of M.P., (1976) 4 S.C.C. 572, the Hon'ble Supreme Court held that "anticipatory bail" means a bail in anticipation of arrest. The expression "anticipatory bail" is misnomer inasmuch as it is not as if bail presently granted in anticipation of arrest. Where a competent Court grants "anticipatory bail", it makes an order that in the event of arrest, a person shall be released on bail. There is no question of release on bail unless a person is arrested and, therefore, it is only on arrest that the order granting anticipatory bail becomes operative.

39. It is also observed in the said judgment that the power of granting "anticipatory bail" is extraordinary in character and only in exceptional cases where it appears that a person is falsely implicated or a frivolous case is launched against him or "there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail" that such power may be exercised. Thus, the power is "unusual in nature" and is entrusted only to the higher echelons of judicial service i.e. a Court of Sessions and a High Court.

40. The Supreme Court in the case of Narinderjit Singh Sahni and another V. Union of India and others, reported in AIR. 2001 Supreme Court 3810 has observed that if accused facing a charge under sections 406, 409, 420 and 120-B is ordinarily not entitled to invoke the provisions of section 438 of the Criminal Procedure Code unless it is that such criminal accusation is not a bona fide one.

41. In the case of Ram Narain Poply Vs. Central Bureau of Investigation with Pramod Kumar Monocha Vs. Central Bureau of Investigation with Vinayak Narayan Deosthali, reported in A.I.R. 2003 Supreme Court 2748 in para 382, the Hon'ble Supreme Court has observed thus :

The cause of the community deserves better treatment at the hands of the Court in the discharge of its judicial functions. The Community or the State is not a persona non grata whose cause may be treated with disdain. The entire community is aggrieved if economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offences is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in an ig in the system to administer justice even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national Economy and National Interest, as was aptly stated in State of Gujrat V. Mahanlal Jitmalji Porwal and another, (A.I.R. 1987 1321).

42. While considering the scope of anticipatory bail under section 438 of Criminal Procedure Code in case of Adri Dharan Das V. State of West Bengal reported in 2005 A.I.R. S.C.W. 1013, relying on the earlier Constitutional Bench judgment in case of Balachand Jain V. State of Madhya Pradesh reported in(26) A.I.R. 1977 S.C. 366, the Hon'ble Supreme Court in para 7 has observed thus :

The power exercisable under Section 438 is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty then power The is power to be exercised under Section being of important nature it is entrusted only to the higher echelons of judicial forums i.e. the Court of Session or the High Court. It is the power exercisable in case of an anticipated accusation of non-bailable offence. The object which is sought to be achieved by Section 438 of the Code is that the moment a person is arrested if he has already obtained an order from the Court of Session or High Court, he shall be released immediately on bail without being sent to jail.

43. At the outset on appreciating the issue, it is not disputed that a high level meeting was held on 05.08.2008 and decisions were taken in presence of the then Chairman of LDA, Shri O.Ibobi Singh (Petitioner), the then Chief Minister of

Manipur), the then Vice-Chairman, LDA, Shri Th. Debendra Singh (the then Minister Forest & Environment) Shri Rakesh, Chief Secretary, Government of Manipur (Chairman of the Steering Committee, LDA) Shri A.N.Jha, Principal Secretary, Government of Manipur (member of the Steering Committee, LDA) Shri Ch. Gojendro Singh, the then Project Director (Convenor, LDA). The act of criminal misconduct as brought out in Section 13(1)(e) of the Act is not one such offence as enumerated in the Act itself for the commission of which an abettor could be made responsible. In other words, when the 1988 Act contains specific provision for prosecuting private individuals also under the Act in respect of only certain offences and when there is no such provision in respect of an offence enumerated under Section 13(1)(e) of the Act, the respective accused, other than the first accused in the Calendar Cases, cannot at all be prosecuted under the Act for having abetted the said offence falling under Section 13(1)(e) of the 1988 Act. Therefore the submission of the learned senior counsel for the petitioners is that the prosecution of the rest of the accused in the Calendar Cases other than the respective first accused therein is misconceived and without authority of law. In this context, the learned senior counsel stated that the 1988 Act being penal in nature, its provisions have to be necessarily strictly construed. In the absence, of any provision to prosecute private individuals as in this case for an offence of abetting an offence under Section 13(1)(e) read with Section 13(2) of the Act, the Court should act very cautiously in receiving the allegations projected by the Investigation Agency against the private individuals. This being an order passed in the administrative jurisdiction of Chief Minister, in the absence of any evidence to indicate that such exercise of power was for the extraneous consideration or was for pecuniary advantages, it cannot be said that the petitioner is guilty of any of the offences alleged. From the materials on record it is clear that, the fact of allotment of tender and execution of agreements have not been suppressed and the petitioner appears to have been proceeded by the officials concerned, therefore, no mala tide can be attributed to the petitioner in passing the order and there are no reasonable grounds to believe that the order came to be passed as a consideration for any pecuniary advantage, therefore, at this stage, there are no reasonable grounds to believe that petitioner is guilty of any of ' the offences punishable under P.C. Act or Code. Further on analyzing the materials on record, the other petitioners have taken the decision as per the procedure and I don't find any prima facie material in support of the status report filed by the Respondent Police at this stage.

44. It is also not disputed that there is no requirement for taking the consent of cabinet or other members of LDA for finalizing works to be taken up and facilitate timely release of the fund, etc. Thus, the high level decisions were taken to execute work for removal of Phumdi on Loktak Lake without calling any tender on trail basis as Departmental work by the LDA.

45. It is also not disputed that there is no concrete bye-laws which governs the field of allocating contract for LDA, however, the spirit of the CPWD manual is taken as a guiding factor but it is not followed in its strict letters and words. The

issuing of bills and submission of completion certificate is not concern of the petitioners. Any decision taken/formulation of policy particularly relating to financial matters for smooth functioning of the LDA and management of the lake and finalization for works to be taken up does not require for any quorum and "quorum of the meeting" will arise only in the General Body meeting. There cannot be comparison of "rates and time taken" in executing a work at different period of time. There are many factors which will influence the "rates and time taken" of the said work at that particular point of time, e.g. the ground work for making a base to start the work; making of ways for entering deep inside the work place; work experience of the local labourers, availability of machines, etc. At this stage, I am of the considered opinion that, the materials on record does not prima facie indicate any conspiracy as alleged in the Complaint and the order of tender has been passed pursuant to such conspiracy. The materials on record at this stage also do not prima facie indicate that the LDA was not acted for extraneous consideration nor the materials prima facie indicate that the petitioners had obtained any pecuniary advantage.

46. It is pertinent to mention that the tender was floated throughout the country. Thus, it is highly questionable as to how the complainant had come up with such allegation by making comparison of "rates and time taken" of the work which were executed at different period of time and on different conditions against the petitioners. It cannot be ruled out at this stage that the complainant had made a false and fabricated case against the petitioners to gain political mileage of the present Government. In the light of the principles and parameters stated by the Hon'ble Supreme Court in the above mentioned judgments, I have considered the petitioners request for anticipatory bail. Prima facie, it cannot be held that the proposed accusation against the petitioners appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the petitioners by having them arrested.

47. It is to be noted that an order of anticipatory bail does not in any way, directly or indirectly take away from the police their power and right to fully investigate into / charges made against the applicants. When the case is under investigation, the usual anxiety of the investigating agency is to ensure that the alleged accused should fully cooperate with them and should be available as and when they require him in the instant case, when the applicants has already joined the investigation and is fully cooperating with the investigating agency then it is difficult to comprehend why the respondent is insistent for custodial interrogation. According to the General Clauses Act, 1897 the court which grants the bail also has the power to cancel it. The grant of bail is an interim order. The court can always review its decision according to the subsequent facts, circumstances and new material and the exercise of grant, refusal and cancellation of bail can be undertaken by the court either at the instance of the accused or a public prosecutor or a complainant on finding fresh material and new circumstances at any point of time. Even the applicant's reluctance in not fully cooperating with the investigation could be a ground for cancellation of bail.

48. A plain reading of the section 438 Cr.P.C clearly reveals that the legislature has not placed any fetters on the court. In other words, the legislature has not circumscribed court's discretion in any manner while granting anticipatory bail, therefore, the court should not limit the order only for a specified period till the charge-sheet is filed and thereafter compel the accused to surrender and ask for regular bail under section 439 Cr.P.C, meaning thereby the legislature has not envisaged that the life of the anticipatory bail would only last till the charge-sheet is filed. When no embargo has been placed by the legislature then this court in some of its orders was not justified in placing this embargo. Further the discretion which has been granted by the legislature cannot and should not be curtailed by interpreting the provisions contrary to the legislative intention. The courts' discretion in grant or refusal of the anticipatory bail cannot be diluted by interpreting the provisions against the legislative intention. The life is never static and every situation has to be assessed and evaluated in the context of emerging concerns as and when it arises. It is difficult to visualize or anticipate all kinds of problems and situations which may arise in future.

49. The framers of the Indian Constitution followed the American model in adopting and incorporating the Fundamental Rights for the people of India. American Constitution provides that no person shall be deprived of his life, liberty, or property without due process of law. The due process clause not only protects the property but also life and liberty, similarly Article 21 of the Indian Constitution asserts the importance of life and liberty. The said Article reads as under:

"No Person shall be deprived for his life or personal liberty except according to procedure established by law"

50. Life and personal liberty are the most prized possessions of an individual. The inner urge for freedom is a natural phenomenon of every human being. Respect for life, liberty and property is not merely a norm or a policy of the State but an essential requirement of any civilized society.

51. The complaint filed against the applicants/accused needs to be thoroughly examined including the aspect whether the complainant has filed false or frivolous complaint. The court should also examine the fact whether there is any political dispute between the accused and the complainant and the complainant must be clearly told that if the complaint is found to be false or frivolous, then strict action will be taken against him in accordance with law. If the connivance between the complainant and the investigating officer is established then action be taken against the investigating officer in accordance with law.

52. A great ignominy, humiliation and disgrace are attached to the arrest. Arrest leads to many serious consequences not only for the petitioners/accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage. Whether the powers under section 438 Cr.P.C are subject to limitation of

section 437 Cr.P.C?

53. The question which arises for consideration is whether the powers under section 438 Cr.P.C are unguided or uncanalised or are subject to all the limitations of section 437 Cr.P.C? The Constitution Bench of the Hon'ble Apex Court in Sibbia's case has clearly observed that there is no justification for reading into section 438 Cr.P.C. and the limitations mentioned in section 437 Cr.P.C. The Hon'ble Apex Court further observed that the plenitude of the section must be given its full play. The Constitution Bench has also observed that the High Court is not right in observing that the accused must make out a "special case" for the exercise of the power to grant anticipatory bail. This virtually, reduces the salutary 'power conferred by section 438 Cr.P.C to a dead letter. The Court observed that "We do not see why the provisions of Section 438 of Cr.P.C should be suspected as containing something volatile or incendiary, which needs to be handled with the greatest care and caution imaginable." As aptly observed in Sibbia's case that a wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. Every kind of judicial discretion, whatever may be the nature of the matter in regard to which it is required to be exercised, has to be used with due care and caution. In fact, awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable consequences of its use is the hallmark of a prudent exercise of judicial discretion. One ought not to make a bugbear of the power to grant anticipatory bail. The Constitution Bench in the same judgment also observed that a person seeking anticipatory bail is still a free man entitled to the presumption of innocence.

54. In this case, the Petitioners/Accused were willing to submit to restraints and conditions on their freedom, by the acceptance of conditions which the court may deem fit to impose, in consideration of the assurance that if arrested, shall enlarged on bail. Further there are voluminous documents revolving the issue as alleged in the Status Report and by the Respondent which could be a question of fact and the same can be proved only at the time of trial. The entire evidence against the petitioners was based on documents which have been seized and produced before the jurisdictional Court. Therefore, there is no chance of tampering with evidences. In the light of the above discussion, I am of the considered opinion that the interim protection granted to the petitioners deserves to be made absolute. It is necessary to note here that the Hon'ble Apex Court has settled in many judgments and held that the order of anticipatory bail if granted should ordinarily be in force till the conclusion of the trial unless it is recalled for justifiable reasons.

55. Having regard to the facts and circumstances of the case, I deem it fit and proper to admit the petitioners to the privilege of anticipatory bail but subject to certain conditions mentioned below.

56. Accordingly,

- a) All the Anticipatory Bail Applications are allowed.
- b) All the Petitioners are directed to be released on Anticipatory Bail on condition that each Petitioner should execute two sureties of the like sum of Rs.1,00,000/- each to the satisfaction of learned Special Judge, Imphal.
- c) The Petitioners are directed to appear before the Respondent Police as and when required for Investigation.
- d) The Petitioners are directed not to leave the Country without prior permission from this Hon'ble Court.