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(2013) 12 KAR CK 0430

In the Karnataka High Court

Case No : Criminal Petition No. 6344 of 2013

Mr. Narendra Hittalamakki APPELLANT

Vs

Central Bureau of Investigation RESPONDENT

Date of Decision : 18-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0430

Hon'ble Judges : H.S. Kempanna, J

Bench : Single Bench

Advocate : B.V. Acharya, Sri Sandesh J. Chouta, in Criminal Petition No. 6344 of 2013 and Sri Parameshwar N. Hegde, in Criminal Petition No. 6086 of 2013, for the Appellant; C.H. Jadhav, for the Respondent

Final Decision : Dismissed

Judgement

H.S. Kempanna, J.—The petitioners in these two petitions who are arrayed as A5 and A6 respectively in R.C.17(A)/2012-CBI/ACB/BLR registered for the offences u/ss. 120B, 409, 420 of IPC and u/ss. 7, 12, 13(1)(c)(d) r/w. S. 13(2) of the Prevention of Corruption Act, 1988 are before this Court praying for releasing them on bail. The respondent-CBI in pursuance of the order dated 7.9.2012 passed by the Apex Court on I.A. Nos. 68 and 103 OF 2012 in W.P. (C) No. 562/2009 have registered the above case and have taken up investigation. The order of the Hon''ble Supreme Court is as under:--

We have perused the Supplementary Report dated September 5, 2012 submitted by the CEC in continuance of its earlier report on the same issue dated 27.04.2012.

16.5. We accept the report and in light of the recommendations made in it we direct the CBI to immediately institute FIR (s) and to investigate the case (s) relating to the illegal extraction of about 50.79 lakh MT of iron ore from the forest areas of Karnataka during the period January 1, 2009 to May 31, 2010, the illegal transport of the aforesaid quantity of iron ore from the area (s) of extraction to Belekeri Port and from there its illegal export to other countries.

16.6. It may be noted at this stage that out of the aforesaid quantity of 50.79 lakh MTs which got illegally exported outside the country, over 8 lakhs MTs iron ore, found lying at Belekari Port was actually under orders of seizure by the Forest Department authorities and the Court before it was exported in violation not only of different laws but in teeth of the seizure order. The investigation of the case of illegal export over 8 lakh MT iron ore while it was under order of seizure is recommended at sub paragraph (IV) at page 14.

16.7 As recommended in the report of the CEC the CBI should institute FIR(s) as suggested in sub paragraphs (I) and (IV) at pages 12 and 14 respectively of the report and carry out thorough and intensive investigation including, if so required, custodial interrogation of any accused.

16.8 At the same time, the CBI should also conduct preliminary enquiry as suggested in the report of the CEC in sub paragraphs (II) and (III) at pages 13 and 14 respectively.

16.9. Let copies of the CEC reports dated April 27, 2012 and September 5, 2012 be given to the CBI that may form the basic material for institution of FIR (s). It will be open to the CBI to refer to the other reports of the CEC on the issue submitted earlier.

16.10 Pursuant to the institution of the FIR (s) by the CBI as directed above, further proceedings in case No. 189/2010 investigated by the CB, CID, Karnataka, shall remain stayed. The CID, Karnataka shall hand over all records in regard to that case to the CBI.

16.11 All the Authorities and Agencies of the Government, including the Income Tax Department shall extend full cooperation to the CBI in its investigations.

16.12. It will be open to the CBI to take into account the reports of the Lokayuktha as well.

16.13 A preliminary report of the investigation should be submitted to the Court within six weeks from today.

16.14 If the CBI needs any clarification, it will be open to it to approach to this Court in the matter.

16.15 It is made clear that no authority or Court shall entertain any challenge to the CBI''s investigation of the case (s) as directed by this Court.

As indicated above, the respondent-CBI registered this case on 13.9.2012 and took up investigation. It is submitted by the learned counsels for the petitioners and the learned Special SPP that investigation has been completed and final report has been placed before the learned Special Judge.

2. It is the case of the prosecution on 15.03.2010, A6 - C.N. Naik, RFO, Ankola visited Belekeri Port and found huge quantity of iron ore stacked inside the port.

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He prepared a panchanama recording the proceeding and on the basis of the same registered a case in FOC No. 17/2009-10 for the offences u/ss. 2(7)(b)(iv), 62 & 80 of Karnataka Forest Act, 1963 and under Rules 143 & 162 of Karnataka Forest Rules, 1969 against Shri Mahesh Biliye, Port Conservator Belekeri port as he failed to produce the valid permit/passes required for the purposes of transportation of the iron ore stored in Belekeri Port. FIR was also sent to the JMFC, Ankola. Thereafter, on an application filed A6-RFO was permitted to investigate the case on 18.03.2010.

On 20.03.2010, A-6 along with his staff and panchas visited Belekeri port and prepared a panchaname and seizure report showing seizure of iron ore of approximately 5 Lakh MTs.

After the seizure, A-6, the investigating officer in FOC No. 17/2009-10 handed over the seized iron ore on as-is-where-is basis to Shri Mahesh J. Biliye-A-3, Port Conservator, Belekeri Port vide his letter No. 983/2009-10 dated 20-03-2010 for safe custody. During the relevant period A3 was holding charge of the Port Office, Belekeri and he has issued all letters, correspondences, assuming himself as Port Conservator, Belekeri.

Thereafter Shri Narendra G. Hittalamakki A-5, Shri Chandrakanth Govind Naik A-6 along with other forest officials and panchas visited Belekeri port on 26-03-2010 & 29-03-2020 and marked 24 heaps of iron ore, out of about 60 heaps as seized and drew-up the panchanamas showing the quantity of marked heaps as approximately 5 Lakh MTs, leaving out the remaining unmarked heaps as unseized although no documents were checked in respect of these unseized cargoes. Later, the stevedores furnished the total figure of the iron ore available in their lands as on 20.03.2010 as 8,05,991.08 MTs, whereas A6 claimed that the whole quantity of 8,05,991.08 MTs has been seized. During the pendency of FOC No. 17/2009-10 i.e. when it was under investigation, A1 to A6 entered into a criminal conspiracy among themselves and in furtherance of their criminal conspiracy, illegally exported the seized iron ore fines in a quantum of 34555.06 MT belonging to M/s. Greentex Mining Industries Ltd., (A-1). It is further the case M/s. Adani Enterprises Ltd., is holding lease-hold rights on a portion of the land in Belekeri Port to act as port service provider (stevedore) and M/s. Greentex Mining Industries Ltd. signed a Contract with M/s. Adani Enterprises Ltd. (AEL) vide No. CHS/AEL/GT-2009-10/01 dt. 26.10.2010 for allotment of plot to store their iron ore cargo and to avail port services for export of iron ore. A1- M/s. Greentex Mining Industries Ltd. had a stock of 32170.48 MT of iron ore fines in the premises of M/s. Adani Enterprises Ltd. as on 20.03.2010. Between 21.03.2010 and 28.03.2010, they further brought 10592 MT of iron ore to their plot in Belekeri port. On 29.03.2010, the Forest officials marked their heaps as stock No. 18 containing 34555.06 MT as seized. During the whole season, i.e., from the date of signing of the agreement and up to 31.05.2010 the total quantity of the iron ore brought by them was 52313 MT M/s. Greentex Mining Industries Ltd. exported 41500 MT, including the seized iron ore by vessel MV

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Alias vide shipping Bill No. 120/01.04.2010 and had a balance of 11615.97 MTs left in their plot in premises of M/s. Adani Enterprises Ltd. For handling and shipping of the iron ore cargos, M/s. Adam Enterprises Ltd. raised invoice No. 3101001045/1046 dated 09.04.2010 on M/s. Greentex Mining Industries Ltd.

It is further the case A2 Managing Director of A1-M/s. Greentex Mining Industries Ltd. filed Writ Petition No. 10349/2010 (T-TAR) dated 29.03.2010 before the Hon''ble High Court of Karnataka against Customs Officials and Port Conservator, Belekeri seeking release of the seized iron ore at Belekeri port as their ship MV Alias had already arrived when the cargo was seized. The Hon''ble High Court vide its order dated 31.03.2010 directed the respondents to permit the petitioner to export the iron ore regarding which clearance has been obtained from the forest authorities and in respect of which the customs duties has been collected by the authorities. It made clear that in respect of the iron ore which may be stocked in the yard and in respect of the same, if there is no endorsement of the forest authorities as required under 162 of the Karnataka Forest Rules, such stock of iron ore shall not be permitted for export under this interim order. Hence, export may be permitted on verification of documents and subject to the petitioner filing indemnity bond.

Further, A2 - MD of A1-M/s. Greentex Mining Industries Ltd. submitted copy of the interim order dated 31.03.2010 passed by this Court along with the photocopies of 04 DMG permits, but no forest passes or trip sheets were submitted to the forest authorities without which verification of the documents would be possible. For obtaining forest clearance, A-2 as MD of A1 entered into a criminal conspiracy with A-3, the then Port Conservator, Belekeri Port, A-4 the then Port Officer, Karwar, A-5 the then ACF, Ankola and A-6. RFO, Ankola.

It is further the case A-2 paid a bribe of Rs. 15 lakhs to A-5 as demanded by him and after receiving the money A-5 got the forest clearance issued through A-6 who wrote letter No. Gani/10-11 dated 03.04.2010 to A4, the then Port Officer, Karwar giving clearance for export of 32936 MTs of seized iron ore in stack No. 18 belonging to A1. A-6 issued clearance without verifying the documents in utter disregard of the orders dated 31.03.2010 of the Hon''ble High Court of Karnataka. A4 the then Port Officer, Karwar also received a bribe of Rs. 3.5 lakhs, A-3 received Rs. 50,000/- as bribe from A-2 for giving Port Clearance. Based on the port clearance given by A3, the Final Port Clearance was issued by the Superintendent of Customs, Belekeri on 09.04.2010 for sailing of the vessel MV Alias with the iron ore cargo of A1/M/s. Greentex Mining Industries Ltd.

Thus in furtherance of the criminal conspiracy, M/s. Greentex Mining Industries Ltd.- A1 exported 41500 WMT of iron ore worth US $24,52,935.10 (INR 10,90,21,495/- to M/s. Liberty Commodities Ltd., London, U.K. The whole exported quantity of 41500 WMT which also included the seized iron ore of 34555.06 MT was not verified by the accused-Forest Officials viz. Sri Narendra G. Hittalamakki (A-5) and Shri Chandrakant Govind Naik (A-6), the petitioners herein. The export proceeds were received by M/s. Greentex Mining Industries

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Ltd., on 22.04.2010 in A/c No. CBCA/01/000200 with Corporation Bank, Mission Road Branch, Bangalore.

Thus the aforesaid accused - A1 to A6 have committed the aforementioned offences.

3. The petitioners in their applications inter alia among other things have contended, initially on 12.3.2007 the Government of Karnataka requested the Hon''ble Lokayuktha to probe into the allegations regarding the illegality and irregularity in mining. In pursuance of the same, Lokayuktha submitted its first report on 18.12.2008 with certain observations and recommendations. Thereafter the Hon''ble Lokayuktha constituted special team of experts to conduct raids and seize evidence. Such being the position on 15.3.2010 on receipt of the credible information by the Forest Department to the effect iron ore stored at Belekeri Port had been lifted by committing certain forest offences Case in Crime No. FOC 17/2009-10 came to be registered for the offences u/s. 2(7)(b)(iv), 62 and 80 of Karnataka Forest Act and Rules 143, 162 of the Karnataka Forest Rules, 1969 by A6 and permission of the Jurisdictional Magistrate was also obtained on 18.3.2010 to investigate into the matter. Accordingly, on 20.3.2010 RFO-Ankola raided Belekeri Port and seized iron ore to the tune of about 5 lakh MT and the same was entrusted to the safe custody of Port Conservator Mahesh Biliye-A3. Subsequently on 26.3.2010 and 29.10.2010 out of the seized ore an extent of the quantity of 1.43 Lakh MT and 3.57 Lakh MT were marked as heaps 1 to 7 and 8 to 24 respectively.

Such being the position M/s. Greentex Mining Industries Ltd. filed W.P. No. 10249/2010 and in the said writ petition interim order was passed permitting to load iron ore and export the same other than the one seized on 31.3.2010. In the meantime investigation of FOC 17/2009-10 which was handled by A6 came to be transferred to A5, the petitioner in Criminal Petition No. 6344/2013. On 6.4.2010 after A5 took over the investigation got an information from the Asst. Commissioner of Customs Belekeri Port that quantity of iron ore available in the port was 8,97,755 MT. Accordingly A5 reported the same to JMFC, Ankola on 27.5.2010. On 2.6.2010 local newspapers reported iron ore stored in the port is illegally exported. Immediately on the same day A5 in consultation with DCF decided to file complaint in respect of the same. Accordingly, A5 went to Belekeri port on 2.6.2010. There, after finding missing of the ore stored in the port on 3.6.2010 filed a private complaint before the JMFC, Ankola and the court directed the CPI of Ankola to register the case and investigate into the matter. Accordingly, a case in Crime No. 189/2010 came to be registered in Ankola police station for the offence u/s. 406 of IPC. When such being the position on 24.6.2010 Crl.P.7645/20 was filed before the High Court of Karnataka, Dharwad Circuit Bench. The court stayed further investigation of both FOC 17/2009-10 and Crime No. 189/2010. Thereafter on 30.10.2010 a Special Duty Officer of the Forest Department was deputed and he took over further investigation of FOC 17/2009-10. Thereafter, on 2.1.2010 Criminal Petition 7645/2010 filed before

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High Court of Karnataka, Dharwad Circuit Bench was dismissed. Subsequently on 28.11.2011 the State Government directed CID to investigate both FOC 17/2009-10 and Crime No. 189/2010. The State CID on completion of the investigation of the said Crime Numbers filed final report before the JMFC - Ankola on 11.6.2010 for the offence u/s. 379 of IPC. It is thereafter on 7.9.2010 the Supreme Court passed an order directing the CBI to register the case and investigate in respect of Crime No. 189/2010 and also investigation done by CID. In pursuance of the same present case has been registered on 13.9.2012 and the petitioners were arrested on 19.8.2013 and since then they are in custody. The above sequence of events disclose initially cases were registered by these two petitioners. No iron ore is exported in contravention of the order of the Hon''ble High Court. The conduct of the petitioners do no disclose that they have committed any offence much less the one alleged against them. Hence, they be released on bail.

4. The respondent-CBI have opposed the applications filed by filing detailed objections. In their objections inter alia among other things it is stated they have taken up investigation of the case in pursuance of the order dated 7.9.2010 passed by the Apex Court. It is contended the present petitioners have been included as an accused vide order dated 20.8.2013 of the learned Trial Judge for his role in the illegal removal/export of iron ore seized from Belekeri Port. On 19.8.2013 the petitioners were arrested and they had been given to police custody till 3.9.2013. However, he was produced well before that time on 31.8.2013 and since then they are in judicial custody. It is submitted Accused No. 5 was working as ACF Ankola Sub Division on 30.10.2008 and he worked there till 30.10.2010 As ACF he was to look after three ranges vis. Ankola, Mastikatti and Ramangudi ranges. On his direction FOC No. 17/2010 was registered on 15.3.2010 by Sri. G.N. Naik, Section Forester Ankola and thereafter it was investigated by A6-RFO, Ankola. It is further contended this Hon''ble Court in its order/dated 31.3.2010 passed in W.P. No. 10349/2010 filed by M/s. Greentex Mining Industries Ltd. directed the iron ore belonging to M/s. Greentex Mining Industries Ltd. be permitted for export subject to verification of the documents by port and forest authorities and no iron ore shall be permitted for export without endorsement of the forest authorities as required under Rule 162 of the Karnataka Forest Rules 1969 and the exporter has to file an indemnity bond. In the present case Sri. C.G. Naik (A6) the then RFO gave clearance on the instruction of Accused No. 5 in violation of the order of this Court. They have further contended there is material to establish Accused No. 5 had received Rs. 15 Lakh as bribe from the owner M/s. Greentex Mining Industries and instructed M/s. Govind Naik (A6) to release the iron ore belonging to M/s. Green Tex Mining Industries Ltd. The materials collected by the respondent would clearly establish the role of both the petitioners. The statements of the witnesses by name Sri. R.N. Naik, Mayura Naik, Govindraju R, Gokul, Mohan Shanker and Vidyasagar clearly establishes accused No. 5 who was working as ACF in conspiracy and connivance of the other accused has ordered for release of iron ore after

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obtaining illegal gratification of Rs. 15 lakh from the principal accused Sri. Ajay Kharbande of M/s. Greentex Mining Industries Ltd. It is further contended that the witness Sri. Mayur Naik has filed a complaint before the respondent alleging that he was threatened by the wife and relatives of accused No. 5 when he had gone to the office of the respondent/office of CBI to give his statement. Accused No. 5 and his family members have indulged in the process of interfering and threatening the witnesses which does not entitle him to be released on bail. It is further contended by referring to 120(b) of the Karnataka Forest Code 1976 that accused No. 5 as ACF was entrusted with the duty of supervising the functions discharged by the RFO''s coming within his Sub-Division and also to inspect timber depots, Check posts and Licencing Stations, apart from looking into the accounts, registration and books maintained at the said places. He has also the power to compound and to deal with the Forest offences booked by RFO''s coming within his jurisdiction by virtue of the powers delegated to him as per the Rules contained in Karnataka Forest Rules, 1969. The claim of accused No. 5 that he had taken up investigation of the forest cases from A6 only on 6.4.2010 and he has no role in the case prior to that is contrary to the material on record wherein it discloses he is involved in the matter relating to FOC 17/2009-10 right from its registration till the filing of the complaint before the JMFC, Ankola on 7.8.2010.

The dairy entry dated 15.03.2010 of Accused No. 5 shows that after seeing the media reports and receiving complaints from the public regarding illegal extraction and transportation of iron ore from Sandur, Hospet, Bellary and Chitradurga Forest areas without any valid passes and permits to Beleken Port for export, he instructed the Range Forest Officer (A6) Ankola to register a case for storage of illegally transported iron ore in violation of Rule 162 of Karnataka Forest Rules, 1969. The Log Book of Vehicles used by the petitioner herein corroborates his visit to the Belekeri Port on 15.03.2010 and instructions issued to the Section Forester to enquire about illegal storage and export of iron ore through the port. Further it reveals:

(i) On 16.03.2010 and 17.03.2010 they were silent and only on 18.03.2010, the Range Forest Officer, Sri. C.G. Naik, Ankola visited the J.M.F.C. Court, Ankola and sought permission of the Court.

(ii) The diary entry dated 20.03.2010 shows he has issued instructions to Shri C.G. Naik, Range Forest Officer, Ankola and Sri. G.N. Naik, Section Forester, Ankola about details of the steps to be taken for seizure of the iron ore in Belekeri Port. Apart from the above entries the statements of the following witnesses reveal accused No. 5 was present at the time of seizure of the iron ore at Belekeri Port on 20.03.2010. i.e.

1. Sri Mohan Suku Naik, Beat Guard

2. Sri. Prakash Soma Naik

3. Sri. Ramachandra Hammanna Naik.

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(1) Accused No. 5 herein, the then Asst. Conservator of Forests, Ankola got the iron ore seized by his subordinate officers Sri. C.G. Naik, Range Forest Officer (A6) and Sri. G.N. Naik, Section Forester, Ankola. A panchanama dated 20.03.2010 was drawn and seizure report dated 20.03.2010 prepared mentioning seizure of approximately 5 lakhs MT of iron ore valuing approximately Rs. 150 Crores. It has also been mentioned that the seized iron ore has been handed over to Port Conservator, Belekeri on as is where is basis for safe custody. It is important to mention that the Port Conservator, Belekeri is an accused in the very case, under which they have seized the iron ore in Belekeri Port.

(2) Although accused No. 5 herein had personally supervised the seizure operation at Belekeri Port on 20.03.2010, the petitioner did not ensure proper identification of the seized iron ore. Neither, accused No. 5 gave details of the seized items to the Port Conservator, Belekeri to whom the iron ore was given for safe custody.

(3) This accused i.e. A5 finally got the iron ore heaps marked on 26.03.2010 and 29.03.2010. After the Port Officer, Karwar and the Asst. Commissioner of Customs wrote to him asking for the details of the iron ore seized, the Section Forester, Ankola marked 7 heaps on 26.03.2010 and 17 heaps on 29.03.2010 (totally 24 heaps), out of about 60 heaps available in Belekeri Port.

(4) Accused No. 5 herein was physically present at the time of marking of the heaps on 26.03.2010 and 29.03.2010, but he did not get all the heaps marked, which resulted in sale and export of the iron ore which were left unmarked. The petitioners presence in Belekeri Port is confirmed by the following witnesses.

1. Sri. Prakash Soma Naik

2. Sri. Ramachandra Hammanna Naik

3. Sri. R.G. Naik, the then Range Forest Officer, Masthikatte

4. Sri. M.V. Angadi, the then Rangel Forest Officer, Ramanagulli

The involvement of the petitioner herein, in the faulty seizure operation, is therefore established from the above facts and evidence.

In respect of receipt of bribe from exporter of the seized iron ore accused No. 5 herein received bribe of Rs. 15 lakh from Shri. Ajay Kharabanda, Managing Director of M/s. Greentex Mining industries Ltd., and instructed Sri. C.G. Naik, (A6) Range Forest Officer, Ankola to give clearance for export of the seized iron ore belonging to the said firm. Sri. C.G. Naik, (A6) Range Forest Officer gave the clearance on 03.04.2010. Statements of the following witnesses will prove this fact.

1. Sri. Mayur Naik

2. Sri. R.N. Naik

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Therefore, it is contended since the material on record discloses the petitioners having committed the offences alleged against them they are not entitled to be released on bail. Accordingly, the petitions be dismissed.

5. Sri. B.V. Acharya learned Senior Counsel appearing for petitioner in Crl.P.6344/2013 - A5 contended the material now on record does not indicate that the iron ore stored in Belekeri Port had been illegally exported in connivance of this petitioner since he himself had filed a complaint before the Jurisdictional Magistrate reporting missing of the iron ore stored in the port which had been marked by A6 along with his staff on 26.3.2010 and 29.3.2010 vide his complaint dated 3.6.210. He further submitted the heaps that had been seized and marked had not been done by him, but on noticing the missing of the ore collected in the heaps marked prior to his taking over investigation from A6 steps have been taken to file complaint. Therefore it cannot be imputed to him that he has connived in illegal export of the iron ore from the port. He further contended the present petitioner has been implicated on the basis of the statements of the witnesses which have been recorded on 25.6.2013, 26.6.2013 and 16.9.2013 after the respondent have taken over investigation on 13.9.2012. In this connection he contended the statements of the said witnesses reveal that on the oral instructions of this petitioner, A6 had granted permission for issuance of ports clearance. A6 had filed application u/s. 439 of Cr.P.C. before the Special Judge praying for releasing him on bail. Respondents had filed their statement of objections. In the said objections they have not whispered a word about A5 giving instructions orally to A6 in pursuance of which A6 has acted. This is only an after thought to falsely implicate A5. He specifically contended A5 had never given any oral instructions to A6 as contended by respondent-CBI for illegal removal of the ore from the port. He further contended the allegation that on the oral instruction of this petitioner A6 has acted is falsified by the letter dated 3.4.2010 addressed by the DCF to A6. That would indicate A6 has acted upon the instructions given by the DCF and not on his instructions. It was also further contended insofar as the allegation that this petitioner had received an illegal gratification of 1.5 lakh from A2 as spoken to by the witnesses by name - Mayura Naik and R.N. Nayak is also an after thought having regard to the delay in the said witnesses coming out with the said version that this petitioner had demanded 15 lakh from A2 and had accepted the same from him for giving forest clearance. In the course of his submission he also contended the alleged threat given to the witnesses at the CBI office by the wife of the petitioner is too far fetched in the facts of the case as it was an outburst made by her seeing the witnesses in the office saying on account of their statement her husband is legged-in in this case which may not amount to either tampering of the witnesses or threatening of the witnesses. He contended A5 has put in unblemished service in the department. He has also been awarded twice as reflected in the service particulars.

The petitioner is in custody since 19.8.2013. As the investigation is completed and as he is no more required, in the facts and circumstances he be released on

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bail taking into account that the other accused in this very case viz. A2 and A3 have been granted Antitipatory Bail.

The learned Senior counsel in support of his submission relied upon the decision in the case of Sanjay Chandra Vs. CBI, .

The learned counsel appearing for A6 reiterating the submission made by the learned Senior Counsel contended that A6 being only an officer at the lower rank has carried out the instructions of his higher officer. In fact he has registered the case in FOC 17/2009-10 initially on receipt of the credible information on 15.3.2010 and after obtaining permission viz. on 18.3.2010, he has visited the port along with his staff, seized the iron ore, drawn up the proceedings by way of panchanama and has reported the same to the Jurisdictional Magistrate and after obtaining permission has taken up investigation immediately There is no material to indicate that he has violated any orders of the courts as alleged against him. In fact he has complied with the orders of the courts and the relevant provisions of the Forest Act and the Rules. He is also in custody since 19.8.2013, the date of which he is arrested. He is no more required for the purpose of investigation as final report has been filed. Hence, he be released on bail.

6. Per contra, the learned Special Public Prosecutor contended the respondent after registering the case have collected incriminating material both oral and documentary to show that these petitioners along with four other accused have committed the offences alleged against them. Reiterating the contentions taken in the objection statement he contended the statement of the witnesses referred to in the objection statement coupled with the documents that they have been placed before the Court would clearly indicate that these two petitioners in conspiracy with the other accused have committed offences alleged against them. The Dairy maintained by A5 would falsify his contentions as submitted by the learned counsel for the petitioner wherein it clearly discloses he was in the know how of FOC 17/2009-10 right from the date of his registration on 15-03-2010, his involvement in the case the direction which he has issued for issuance of port clearance. He further submitted A5 though was present physically at the time of marking of heaps on 20.3.2010 and 29.3.2010 he has not got all the heaps marked which were found in the port which has resulted in the sale and export of iron ore which have been left unmarked. The statements of Sri. Mayur Naik and R.N. Naik would amply establish the demand made by A5 for Rs. 15 Lakh and acceptance of the same from A2 on behalf of A1.

He further contended this petitioner was arrested on 19.8.2013. He was produced before the learned Special Judge along with the remand application wherein it is clearly mentioned that A6. has acted on the instructions of this petitioner. That would negative the argument of the learned senior counsel to show that the statements of the witnesses speaking to that effect is an after thought. He further contended in terms of the order passed by this Court in the writ petition this court has permitted for exporting of iron ore stored in Belekeri port by following Rules contemplated under the Karnataka Forest Rules, more

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particularly Rule 162. In this connection he contended in terms of R.162, the persons who are required to export ore required to produce forest passes, trip sheets, transport sheets which on verification by the forest officials would pave way for exporting iron ore stored in Belekeri port. Further the export of iron ore could be done upon issuance of DMG permit issued by the Mines and Geology Department. A6 without verifying these documents has permitted for exporting iron ore on the instructions of A5 in gross violation of the Rules which were in force and the order of this Hon''ble Court. Therefore, he contended having regard to the quantity of the iron ore that has been illegally exported from the port without any authority of law in connivance with the other accused and having regard to the magnitude of the offence committed by them, the petitioners are not entitled to be released on bail. In support of his submission he relied upon the decision in the case of Nimmagadda Prasad Vs. Central Bureau of Investigation, .

7. In the light of the afore mentioned facts, material placed on record and the rival contentions, the point that arises for my consideration is:--

Whether the petitioners are entitled to be released on bail?

8. It is the case of the prosecution for the period between 1.1.2009 to 31.5.2010, the accused in the case have illegally exported the iron ore that had been stored at Belekeri Port in violation of the order passed by this Court in W.P. No. 10249/2010 on 31.3.2010 and relevant Karnataka Forest Rules particularly Rule 162. According to the prosecution the total quantity that was brought by A1 to the port was 52,313 MT of iron ore. Out of the same they have illegally exported 41,500 MT of iron ore. The balance that is remaining at the port is 11,615.97 MT. It is also the case of the prosecution A5 and A6 when they had visited the port on 15.3.2010 had not properly physically verified the entire iron ore that had been stocked in Belekeri Port. Though there were 60 heaps of iron ore, A5 and A6 marked only 24 heaps leaving out the other heaps which were found in the port. They have allowed huge quantity of iron ore that had been stored to be exported illegally. Thus they have committed the offences alleged against them.

8A. A perusal of the material now on record reveals at the relevant point of time these two petitioners were working as ACF Ankola Sub Division and RFO of Ankola. Belekeri port situated in Karwar comes within their jurisdiction. It is the case of the petitioners that only 5 lakh MT of iron ore had been seized and entrusted to the Port Conservator A3 and not the quantity of iron ore as alleged by the Prosecution. But the learned Public Prosecutor during the course of argument has placed before me a letter dated 21.6.2010 addressed by the Superintendent of Customs, Custom House, Belekeri Ankola to ACF, Ankola Sub division, Ankola indicating therein as on 20.3.2010 there were about 60 heaps of iron ore at the port and out them only 2.4 heaps have been marked and shown as seized. The quantity seized and shown approximately as 5 lakh MT is as against 285050.21 MT. This letter had been addressed to A5 on 21.6.2010. That

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would indicate that it is not only 5 lakh MT of iron ore that was stored in Belekeri Port as per the version of these petitioners which was seized and handed over to A3 ? the port official for safe custody. Apart from the same as per this letter there were 36 more heaps. According to these petitioners they visited the port on 26.3.201.0, 29.3.2010, 2.6.2010 and 3.6.2010 on which dates they have not seized and marked the entire quantity of the iron ore that was stored in Belekeri Port. The presence of this A5 at the Port on 15.3.2010, 20.3.2010, 26.3.2010, 29.3.2010 is fortified from the statements of the witnesses viz. CW8, CW9, CW56, CW54. Apart from the same the statements of CW59 & CW60 would clearly reveal that A5 has received an amount of Rs. 15 lakh from A2, and on receipt of the same he has instructed A6 to give clearance. The value of iron ore that has been illegally exported in connivance of all these accused as per the prosecution in Indian Rupees is Rs. 10,90,21,495/-.

8B. Learned Senior Counsel appearing for A5 contended, according to the Prosecution A6 acting on the oral instructions of A5 has issued forest clearance. A5 has not given any oral instructions as alleged and that is an after thought now made against this accused to falsely involve him in the case. There is no merit in this contention. The respondent/CBI have taken over investigation in pursuance of the order passed by the AC. The AC in its order has given full liberty to the respondent/CBI to conduct investigation including custodial interrogation. The CBI during the course of their investigation have recorded the statements of the aforementioned witnesses. That material reveals A6 being subordinate to A5 has acted on his instructions. The submission of Learned Senior Counsel cannot also be accepted because as submitted by the learned Special Public Prosecutor in the remand application filed by the respondent/CBI after the arrest of the petitioner, they have specifically stated therein that on the oral instruction of accused No. 5, A6 has issued forest clearance. That is further fortified from the material now on record. Insofar as the other contentions that A6 has acted directly in pursuance of the letter addressed to him by DCF as ACF who is lower in rank to a DCF and higher in rank that of RFO, it cannot be said that he has no role at all in the issuance of ports clearance by A6 by virtue of the powers entrusted to him under the Forest Code 1976. The materials as pointed out earlier would clearly indicate involvement of the petitioners in the case. Further, Respondent has registered the case on 13/09/2013 in pursuance of the order dated 07/09/2013 of the Hon''ble Supreme Court. Having regard to the magnitude and the intricacies of the case involved it cannot be said the involvement of these petitioners/accused in the case is an after thought as projected through the witnesses.

Therefore, the documentary and oral evidence which is placed on record now is sufficient to hold the involvement of these two petitioners in committing the offences alleged against them in connivance with the other accused. The Apex Court in the case of Nimmagadda Prasad v. CBI has observed "economic offences constitute a class apart and need to be visited with a different approach in a matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered

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as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

It is also observed the court while granting bail has to keep in mind the nature of accusations, evidence in support thereof, the severity of the punishment which conviction will entail the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the accused at the trial, reasonable apprehension of the witnesses being tampered with, larger interests of the public/State and other similar conditions.

It is also to be kept in mind that for the purpose of granting bail, the Legislature has use the words "reasonable grounds for believing" instead of "the offence" which means the court dealing with the grant of bail can only satisfy itself as to whether there is genuine case against the accused and the prosecution will be able to produce prima facie evidence in support. of the charge. It is not expected at this stage to have the evidence establishing the guilt of the accused beyond reasonable doubt.

9. Having regard to the aforesaid principle enunciated by the Apex Court in the aforesaid decision in view of the facts and the material now available on record adverted to above against these petitioners in this case, in my view, it is not a fit case to exercise the discretion vested in this court u/s. 439 of Cr.P.C. in favour of the petitioners

10. Insofar as the bail granted to A2, A3 is concerned it is at the stage when the case was registered for the offence u/s. 406 IPC and later after investigation by State (CID) for the offence u/s. 379 IPC. It is submitted by Learned Spl. P.P. Respondent has taken steps to seek cancellation of bail granted to the said accused before this Court in Criminal Petitions 6574/2013, 6576/2013, 6631/2013, 6544/2013, 6546/2013 and 6545/2013. Therefore A2 & A3 having been granted bail does not come to the aid of the petitioners.

Insofar as the decision relied upon by the learned Senior counsel the offences alleged in that case is u/s. 406 of IPC which is punishable with imprisonment upto 7 years. Taking that into account the Apex Court having regard to the facts appearing in the said case has proceeded to grant bail. In this particular case one of the offence alleged is one u/s. 409 of IPC which is punishable with imprisonment for life which is higher than the one in the case relied upon by the learned Senior Counsel for the petitioner. Therefore, the decision cited by the learned Senior counsel in the facts and circumstances do not come to the aid of the petitioners particularly in the light of the decision of the Apex Court in Nimmagadda Prasad case adverted to above relied on by the Learned Special Public Prosecutor.

11. Therefore, taking all the facts and circumstances into consideration I am of the clear view this is not a fit case to enlarge the petitioners on bail at this stage. Accordingly, I proceed pass the following:--

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ORDER

Both the Petitions are dismissed.

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