

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : May 30, 2011
Decided on : June 08, 2011

+ **BAIL APPLICATION NO. 723/2011**

SHARAD KUMAR

....PETITIONER

Through: Mr. Altaf Ahmed, Sr. Advocate with Mr. R. Shunmughasundaram, Sr. Advocate, Mr. V.G. Pragasam, Advocate, Mr. S.J. Aristotle, Advocate & Mr. Sudershan Rajan, Advocate.

Versus

CENTRAL BUREAU OF INVESTIGATIONRESPONDENT

Through: Mr. U.U. Lalit, Sr. Advocate/Special Public Prosecutor with Ms. Sonia Mathur, Advocate & Mr. Sushil Dubey, Advocate.

WITH

+ **BAIL APPLICATION NO. 724/2011**

KANIMOZHI KARUNANITHI

....PETITIONER

Through: Mr. Altaf Ahmed, Sr. Advocate with Mr. R. Shunmughasundaram, Sr. Advocate, Mr. V.G. Pragasam, Advocate, Mr. S.J. Aristotle, Advocate & Mr. Sudershan Rajan, Advocate.

Versus

CENTRAL BUREAU OF INVESTIGATIONRESPONDENT

Through: Mr. U.U. Lalit, Sr. Advocate/Special Public Prosecutor with Ms. Sonia Mathur, Advocate & Mr. Sushil Dubey, Advocate.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.

1. Accused Ms. Kanimozhi Karunanithi and Sharad Kumar vide above referred applications under Section 439 Cr.P.C. are seeking bail in case FIR No.RC-DAI-2009-A-0045 P.S. ACB, CBI New Delhi.

2. Briefly stated, facts relevant for the above bail applications are that on 21.10.2009, the Central Bureau of Investigation, Anti Corruption Branch, New Delhi registered a case No.RC DAI-2009-A-0045 on the allegations of criminal conspiracy and criminal misconduct against unknown officials of Department of Telecommunications, Govt. of India, unknown private persons/companies and others under Section 120-B IPC, 13(2) read with 13(a)(d) of P.C. Act, in respect of allotment of Letters of Intent, Unified Access Services (UAS) Licences and 2G spectrum by the Department of Telecommunications.

3. First charge sheet was filed on 02.04.2011 in the court of Special Judge, Patiala House, New Delhi against 12 accused persons including M/s. Swan Telecom Pvt. Ltd. and its directors Shahid Balwa and Vinod Goenka for the offences punishable under Section 120-B, 420, 468, 471 of IPC and Section 109 read with 420 IPC, as also under Section 13(2) read with 13(1)(d) of P.C. Act, 1988.

4. A supplementary charge sheet was filed in the above mentioned case on 25.04.2011 against five accused persons including the

petitioners for offences under Section 120B IPC read with Section 7/11 and 12 of P.C. Act, 1988.

5. Briefly put, case of the prosecution is that earlier to accused A.Raja taking over as Minister for Communications and Information Technology, the departmental policy of DOT regarding grant of Unified Access Services Licence (UASL) was first come first serve subject to eligibility and after the issue of Letter of Intent (LOI) to the successful applicant, he was given sufficient time to comply with the conditions of LOI and deposit of the licence fee.

6. In order to achieve the end of conspiracy, accused R.K. Chandolia on 24th September 2007 inquired from the concerned officer of “Access Services Cell” of Department of Telecommunication if the applications of Unitech Group of Companies for grant of UAS Licences were received and instructed that after the receipt of their applications, no further applications be accepted. PW Avdesh Kumar Srivastava, DDG(AS-I) told R.K. Chandolia that it may not be proper/fair to abruptly refuse to receive the applications. A note dated 24th September, 2007 in this regard was initiated by the Department on instructions of R.K. Chandolia. Accused A.Raja approved the note and ordered issue of press note informing public about the cut off date 01.10.2007 for acceptance of the applications for UASL. A Press Release was accordingly published in Newspapers on 25th September, 2007.

Though hundreds of applications were received after 25th September, 2007, those applications were not considered for issue of UAS Licence.

7. Charge sheet also disclose that as per the existing policy, the allottees of Letters of Intent (LOI) were given sufficient time to comply with the conditions of LOI. The licences were issued on the basis of seniority of the date of applications and after the issue of UAS Licences, the licensee could apply for allocation of spectrum.

8. On 2nd November, 2007, Director (AS-I) DOT initiated a note seeking for issue of Letters of Intent as per the existing policy of first come first served. The then Telecom Secretary returned the file with the noting, "action may be initiated after orders of MOC & IT are obtained on the issue. He had expressed his desire to discuss this further." A fresh note was put up by Director (AS-I) of DOT on 7th November, 2007 highlighting the existing policy and pointing out that a policy statement in that regard was made in Rajya Sabha on 23rd August, 2007. A draft Letter of Intent was also put up along with the note for approval of the Minister. Accused A.Raja approved the note, but deliberately replaced Para 3 of the draft LOI with the following: "the date of payment of entry fee would be priority date for signing the licence agreement. If the date of payment of entry fee in more than one case is the same, then the licence will be first signed with the applicant whose application was received earlier."

9. It is alleged that on 23rd November, 2007, the Licensing Finance Branch of DOT objected to change made in LOI by accused A.Raja and suggested that it appears logical to keep the date of applications as date of priority for issue of licence provided the applicant is able to establish that he is eligible on the date of application and is also eligible when the LOI is issued. This note was endorsed by Member(Finance), Telecom Commission and Secretary(Telecom) also suggesting the revision of entry fee for new licences in line with revision of fee for dual technology spectrum as suggested by Ministry of Finance in its letter. Accused A.Raja, however, ignored the advice to keep the date of application as date of priority for issue of licence or to review and enhance the licence fee and this resulted in a loss to the tune of almost of 30000 crores to the State exchequer.

10. That while putting up a note dated 7th January, 2008 for processing UASL application received upto 25th September, 2007, Director (AS-I) reiterated the existing policy and noted, "sequence of granting of LOIs/UAS Licence has been maintained till now to the date of respective application for a particular service area." In his note DDG(AS-I) raised the issue of eligibility and clarified that the eligibility on the date of application needs to be considered. When the matter was put up before accused Siddhartha Behura, he attached a draft press release for the approval of the Minister. Accused A.Raja, MOC & IT asked Secretary (Telecom) to show the draft press release to the Solicitor General and seek his legal opinion. Accused Siddhartha

Behura personally took the file to the Solicitor General of India, who advised "I have seen the matter. Issues regarding new LOIs are not before any court. What is proposed is fair and reasonable. The press release makes for transparency. This seems to be in order." However, after obtaining the advice of Solicitor General, accused A.Raja in conspiracy with accused Siddhartha Behura dishonestly deleted the last paragraphs of the approved press release shown to the Solicitor General which recorded, "However, if more than one applicant complies with LOI condition on the same date, the inter-se seniority would be decided by the date of application" and approved the amended draft of press release. This was done to portray as if the amended draft had the approval of the Solicitor General.

11. On 10th January, 2008, the Press Release was put on the website of DOT calling upon the applicants to collect the LOIs from Siddhartha Behura at 3:30 pm. Four counters were created for collection of LOIs. The LOIs were, however, distributed in a disorderly manner and not as per the seniority of applicants. This resulted in shuffling of priority of the applicants as against the seniority of date of application and provided them opportunity to deposit entry fee prior to the applicants who had applied for licence before them. It is alleged that in aforesaid manner, the accused public servants managed to disturb the seniority of applicants as per the date of application and caused undue advantage to the accused Sanjay Chandra as also Shahid Balwa and Vinod Goenka as also their companies, namely, Unitech Group of

Companies (since merged in Unitech Wireless (Tamil Nadu) Ltd. and M/s. Swan Telecom Pvt. Ltd. respectively, who managed to get UAS Licences which they otherwise would not have got, but for dishonest change of policy of first come first serve by the public servants.

12. The first charge sheet reveals that Reliance ADA Group of Companies was interested in obtaining UAS Licences for 13 circles which they were not eligible for in view of Clause 8 of UASL policy guidelines. In order to circumvent the aforesaid ineligibility clause and to cheat the Department, accused Gautam Doshi, Hari Nair and Surendra Pipara in furtherance of the conspiracy created and structured a new company M/s Swan Telecom Pvt. Ltd which applied for UASL Licence on 2nd March, 2007. The above referred accused persons has structured M/s Swan Telecom Pvt. Ltd. in such a manner that its equity holding was shown as 90.1% with M/s Tiger Traders Pvt. Ltd. and 9.9% with M/s Reliance Telecom Ltd. The investigation into holding structures of M/s Tiger Traders Pvt. Ltd. revealed that aforesaid company was actually funded by the Group Companies of M/s Reliance ADA Group. It was revealed that ₹3 crores utilized by M/s Tiger Traders Pvt. Ltd. in January 2007 and ₹95.51 crores used by said company in March, 2007 to subscribe to majority equity shares of M/s Swan Telecom Pvt. Ltd. was arranged through Group Companies of Reliance ADA Group. Besides that, a sum of ₹992 crores which constituted the bulk of networth of M/s Swan Telecom Pvt. Ltd. was also provided by Reliance Telecom Ltd. under the garb of subscribing to preferential

shares to M/s Swan Telecom Pvt. Ltd. Those preferential shares were purchased by Reliance Telecom Ltd. at abnormally high premium of ₹999/- per share of face value ₹1/- although M/s Swan Telecom Pvt. Ltd. had no business history at that time. Aforesaid amount was immediately returned by M/s Swan Telecom Pvt. Ltd to M/s Reliance Communications Ltd. on the pretext of advance against a purchase order. These transactions were carried out on the instruction of Gautam Doshi and Hari Nair.

13. Charge sheet also disclose that in order to achieve the end of conspiracy, above three accused persons created two other companies M/s Zebra Consultancy Services Pvt. Ltd. and M/s Parrot Consultants Pvt. Ltd. The equity holding of aforesaid two companies and M/s Tiger Traders Pvt. Ltd. was structured by Gautam Doshi, Hari Nair and Surendra Pipara insuch a manner that those companies were cross-holding each other in interlocking structure during the period w.e.f. March, 2006 to 4th April, 2007. This interlocking was done in such a manner that 50% equity shares of M/s Zebra Consultancy Services Pvt. Ltd. and M/s Parrot Consultants Pvt. were purchased by M/s Tiger Traders Pvt. Ltd., 50% equity shares of Parrot Consultants Pvt. Ltd. and Tiger Traders Pvt. Ltd. were purchased by M/s Zebra Consultancy Services Pvt. Ltd. and 50% equity shares of Zebra Consultancy Services Pvt. Ltd. and Tiger Traders Pvt. Ltd. was purchased by M/s Parrot Consultants Pvt. Ltd. This arrangement ensured that neither of those three companies was absolute owner of any company and this

practically left the control of all the three companies in the hands of the Directors i.e. the petitioners. In order to achieve the end of conspiracy, Hari Nair in league with Gautam Doshi and Surendra Pipara falsified the records of Board Meetings of Swan Telecom Pvt. Ltd. and Tiger Traders Pvt. Ltd to show that M/s. Tiger Traders Pvt. Ltd. was held by India Telecom Infrastructures Fund of Ashok Wadhwa Group and also to show the appointment of Ashok Wadhwa as Director of those companies and his presence during the meetings.

14. Before the LOI could be granted, M/s Reliance Communications Ltd., a group of Reliance ADA Group got GSM spectrum in those 13 circles pursuant to its applications under dual technology policy. Thus, the application dated 2nd March, 2007 moved through M/s Swan Telecom Pvt. Ltd was of no use to Reliance ADA Group. Accordingly, Reliance ADA Group withdrew its holding from M/s Swan Telecom Pvt. Ltd. and the accused Gautam Doshi, Hari Nair and Surendra Pipara transferred the control of M/s Swan Telecom Pvt. Ltd. to the co-accused Shahid Balwa and Vinod Goenka in order to facilitate them to cheat DOT by getting UAS Licence in the name of M/s Swan Telecom Pvt. Ltd. which company till 18th October, 2007 was ineligible for UAS Licence in view of Clause 8 of policy guideline.

15. The original charge sheet also disclose that accused Shahid Balwa and Vinod Goenka through their company M/s. D.B.

Infrastructures Pvt. Ltd., a company of Dynamic Balwa Group took over majority stake in Swan Telecom Pvt. Ltd. on 18.10.2007.

16. It is alleged in the supplementary charge sheet that pursuant to the criminal conspiracy, accused A.Raja, the then MOC&IT and accused petitioners Sharad Kumar and Kanimozhi Karunanithi were stakeholders and/or directors of M/s. Kalaignar T.V. Pvt. Ltd. accepted and received an illegal gratification of ₹200 crores in M/s. Kalaignar T.V. Pvt. Ltd. from the co-accused Shahid Balwa and Vinod Goenka from the account of M/s. D.B. Group Companies in the year 2008-09 as a reward for undue favours shown by accused A.Raja in connivance of other public servants to M/s. Swan Telecom Pvt. Ltd. in the matter of allocation of UAS Licences and valuable scarce spectrum.

17. It is further alleged that M/s. Swan Telecom Pvt. Ltd. received a sum of ₹3228 crores from M/s. Etisalat Mauritius Ltd. and ₹381 crores from M/s. Genex Exim Ventures Pvt. Ltd. on 17.12.2008 as a consideration of offloading the equity shares. Immediately, thereafter with effect from 23.12.2008 till 11.08.2008, accused Shahid Balwa and Vinod Goenka transferred a sum of ₹200 crores to M/s. Kalaignar T.V. Pvt. Ltd. through a circuit route via M/s. Kusegaon Fruits & Vegetables Pvt. Ltd. and M/s. Cineyug Films Pvt. Ltd. This was allegedly done with a view to conceal the transfer of money from D.B. Realty Group to M/s. Kalaignar T.V. Pvt. Ltd. The fund transfer from M/s. Dynamix Realty, a

firm belonging to the D.B. Realty Group, took place in following manner:

M/s Dynamix Realty	23.12.08	10 Crore	M/s. Kusegaon Fruits & Vegetable Pvt. Ltd.	23.12.2008	₹ 10 Crore	M/s. Cineyug Films Pvt. Ltd.	M/s. Kalaighar TV Pvt. Ltd.
	12.01.09	2.5 Crores		16.01.2009	₹ 2 Crore		
	14.01.09	0.25 Crores		28.01.2009	₹ 8 Crore		
	16.01.09	2 Crore		29.01.2009	₹ 1.5 Crore		
	27.01.09	0.25 Crores		12.02.2009	₹ 2 Crore		
	28.01.09	8 Crore		20.03.2009	₹ 5 Crore		
	29.01.09	1.5 Crore		06.04.2009	₹ 25 Crore		
	12.02.09	2 Crore		08.04.2009	₹ 1.5 Crore		
	20.03.09	5 Crore		22.06.2009	₹ 1 Crore		
	06.04.09	1.5 Crore		15.07.2009	₹ 25 Lacs		
	08.04.09	25 Crore					
	22.06.09	1 Crore					
	15.07.09	0.25 Crore					
	16.07.09	100 Crore		15.07.2009	₹ 100 Crore		
	11.08.09	50 Crore		07.08.2009	₹ 50 Crore		

18. During investigation, accused persons took a plea that M/s Cineyug Films Pvt. Ltd. transferred the said funds to M/s Kalaighar TV Pvt. Ltd. in order that M/s Cineyug Films Pvt. Ltd. could acquire the equity shares of M/s Kalaighar TV Pvt. Ltd. to the tune of 32-35% of

total equity. Investigation has revealed this plea to be false, as no valid agreement to this effect was entered into by the said companies. Later, after registration of this criminal case by Central Bureau of Investigation vide FIR No. RC DAI 2009 A 0045, this amount was shown as loan, having an interest @ 10% per annum, on the pretext of clause 2.2 of a Share Subscription and Shareholders' Agreement dated 19.12.2008 claimed by accused persons to have been signed between M/s Cineyug Films Pvt. Ltd., M/s Kalaignar TV Pvt. Ltd. and promoters. Accused Sharad Kumar (A-16) signed the same on behalf of M/s Kalaignar TV Pvt. Ltd. and its promoters. Investigation has also revealed that accused Karim Morani, Asif Balwa and Rajiv B. Agarwal arranged these funds from M/s Dynamix Realty, a partnership firm of DB group companies managed and controlled by Shahid Balwa (A-4) & Vinod Goenka (A-5) and facilitated the transfer of these funds in a dubious manner to M/s Kalaignar TV Pvt. Ltd.

19. Investigation has revealed that for all the aforesaid transactions amounting to ₹200 Crores between M/s Dynamix Realty, M/s Kusegaon Fruits & Vegetables Pvt. Ltd., M/s Cineyug Films Pvt. Ltd., and M/s Kalaignar TV Pvt. Ltd., claimed to be in nature of loan, no valid agreement was signed between any of the parties and no collaterals/ securities were ensured to secure the alleged loan amounts. Later, after registration of the criminal case vide FIR no. RC DAI 2009 A 0045 dated 21.10.2009 by CBI, and on taking various steps in investigation of the case, M/s Cineyug Films Pvt. Ltd offered some securities to M/s

Kusegaon Fruits & Vegetables Pvt. Ltd against the above referred unsecured loan of ₹ 200 crores.

20. Investigation has also revealed that in terms of the Share Subscription and Shareholders' Agreement dated 19.12.2008, claimed by accused persons to have been signed between M/s Cineyug Films Pvt. Ltd., M/s Kalaignar TV Pvt. Ltd. and promoters, it was required that the funds transferred till 31.3.2009 be treated as loan if no agreement could be entered regarding the price of equity of M/s Kalaignar TV Pvt. Ltd. However, investigation has revealed that though no such agreement could admittedly be reached between M/s Cineyug Films Pvt. Ltd. and M/s Kalaignar TV Pvt. Ltd., still the additional amounts of ₹ 175 crores were paid by M/s Cineyug Films Pvt. Ltd. to M/s Kalaignar TV Pvt. Ltd. Sh. Sharad Kumar signed the agreement dated 19.12.2008, as Director of the company and for and behalf of the promoters of the company including present two petitioners.

21. Later, after registration of the criminal case vide FIR no. RC DAI 2009 A 0045 dated 21.10.2009 by CBI, and on taking various steps in investigation of the case, entire equity holding of M/s Kalaignar TV Pvt. Ltd. was pledged, vide an Agreement to Pledge dated 30.12.2009, to M/s Cineyug Films Pvt. Ltd as security for the due payment/repayment of the purported loan amount under the Loan agreement and as security for performance of the obligations of the company set out under Loan agreement. Accused Sharad Kumar (A-16) signed the said

agreement on behalf of the company and for and behalf of the promoters of the company including present two petitioners.

22. During investigation accused persons belonging to M/s Kalaighar TV Pvt. Ltd. have claimed that they got their company valued in June, 2009 by a consultant and it was valued at around ₹ 846 crore. Since, by this valuation the proposed stake to be given to M/s Cineyug Films Pvt. Ltd. in lieu of ₹ 200 Crores fell below 20%, M/s Cineyug Films Pvt. Ltd. purportedly decided to call back their investment in M/s Kalaighar TV Pvt. Ltd. It is also claimed by the accused persons and the companies concerned that till such time of repayment, an interest @ 10% per annum was decided to be charged on the amount paid so far. However, investigation has revealed that before this valuation was purportedly done in June, 2009, and any agreement regarding valuation of equity could be reached between the two parties, as claimed, an amount of ₹ 50 Crores had already been transferred to M/s Kalaighar TV Pvt. Ltd. Contrary to the claim of the accused persons that no agreement could be reached about the valuation of equity of M/s Kalaighar TV Pvt. Ltd. to be subscribed by M/s Cineyug Films Pvt. Ltd., additional amount of ₹ 150 Crores was transferred in July-August, 2009, after such purported agreement failed. The aforesaid transactions related to purported investment by M/s Cineyug Films Pvt. Ltd. in M/s Kalaighar TV Pvt. Ltd., without any due diligence, or provision of any collateral, defies common sense and normal business practices.

23. Investigation has also revealed that when accused A Raja (A-1) was contacted by CBI for his examination scheduled on 24.12.2010, M/s Kalaignar TV Pvt. Ltd started refunding the amount of ₹ 200 crores to M/s Dynamix Realty, through M/s Cineyug Films Pvt. Ltd. and M/s Kusegaon Fruits & Vegetables Pvt. Ltd. A substantial part of the amount was refunded by it just before and after 02.02.2011, when accused A Raja (A-1) was arrested by CBI in this case. The details of such transfers by M/s Kalaignar TV Pvt. Ltd. to M/s Cineyug Films Pvt. Ltd. are as under:-

Sl. NO.	Date	Amount
1.	24.12.2010	₹ 10 Crore
2.	27.12.2010	₹ 20 Crore
3.	04.01.2011	₹ 10 Crore
4.	05.01.2011	₹ 10 Crore
5.	11.01.2011	₹ 10 Crore
6.	24.01.2011	₹ 65 Crore
7.	29.01.2011	₹ 25 Crore
8.	03.02.2011	₹ 50 Crore
	Total	₹200 Crore

24. Investigation has also revealed that, in order to conceal the dubious nature of the transaction, M/s Kalaignar TV Pvt. Ltd. transferred amounts shown as interest to M/s Cineyug Films Pvt. Ltd. as per following details:-

Date	Amount (Net after TDS)	Gross Amount
20/12/2010	₹ 14,86,54,109	₹ 15,24,65,753

29/12/2010	₹ 9,61,90,000	₹ 10,00,00,000
03/02/2011	₹5,82,95,576	₹ 6,11,64,384
Total	₹ 30,31,39,685	₹ 31,36,30,137

25. Investigation revealed that M/s Cineyug media & Entertainment Pvt. Ltd, also, in furtherance of the design to facilitate concealing the dubious nature of entire transactions, paid back the amount of ₹ 200 crores to M/s Kusegaon Fruits & Vegetables Pvt. Ltd. as per following details:-

Sl. NO.	Date	Amount
1.	24.12.2010	₹ 10 Crore
2.	27.12.2010	₹ 20 Crore
3.	04.01.2011	₹ 10 Crore
4.	05.01.2011	₹ 10 Crore
5.	11.01.2011	₹ 10 Crore
6.	24.01.2011	₹ 65 Crore
7.	29.01.2011	₹ 25 Crore
8.	03.02.2011	₹ 50 Crore
	Total	₹200 Crore

26. Investigation has also revealed that, in order to cover up the dubious nature of the transaction of money transfer, M/s Cineyug Films Pvt. Ltd. transferred amounts described as interest to M/s Kusegaon Realty Pvt. Ltd. as per following details:-

Date	Amount (Net after TDS)	Gross Amount
20/12/2010	₹ 12,00,89,041	₹12,19,17,808
29/12/2010	₹ 7,96,00,000	₹ 8,00,00,000
03/02/2011	₹ 4,86,86,849	₹4,89,31,507
Total	₹ 24,83,75,890	₹ 25,08,49,315

27. Investigation has revealed that M/s Kusegaon Fruits & Vegetables Pvt. Ltd, in turn, paid back ₹ 200 crores, with interest @ 7.5% per annum to M/s Dynamix Realty. The details are as under:-

Sl. NO.	Date	Amount
1.	23.12.2010	₹ 12 Crores
2.	29.12.2010	₹ 10 Crores
3.	30.12.2010	₹ 20 Crores
4.	31.12.2010	₹ 7.95 Crores
5.	10.01.2011	₹ 7.95 Crores
6.	01.01.2011	₹12.06 Crores
7.	17.01.2011	₹ 10 Crores
8.	24.01.2011	₹ 65 Crores
9.	01.02.2011	₹25 Crores
10.	04.02.2011	₹50 Crores
11.	12.02.2011	₹1.35 Crores
12.	28.02.2011	₹2.24 Crores
	Total	₹223.55 Crores

28. Investigation has revealed that in June 2007, accused Sharad Kumar (A-16), along with other promoters, incorporated M/s Kalaingar TV Pvt. Ltd. after they left Sun TV network. Accused Sharad Kumar (A-16) was a promoter & director of M/s Kalaingar TV Pvt. Ltd. and is a stakeholder of the company to the tune of 20%. He is a director and CEO of the company. He has attended/ chaired all the board meetings of the company wherein the decisions regarding the aforesaid transactions were taken by the company. He has also signed all the agreements purportedly signed with M/s Cineyug Films Pvt. Ltd., and other relevant documents in this regard, not only on behalf of the

company but also on behalf of himself and other directors/ shareholders of the company. He had also been visiting accused A Raja (A-1) in connection with pursuing various pending works relating to M/s Kalaighar TV Pvt. Ltd.

29. Investigation has revealed that in June 2007, accused Ms. Kanimozhi Karunanithi (A-17), along with other promoters, incorporated M/s Kalaighar TV Pvt. Ltd. after they left Sun TV Network. She had also been in regular touch with accused A Raja (A-1) regarding launching of Kalaighar TV channels and other pending works of M/s Kalaighar TV Pvt. Ltd. Accused Ms. Kanimozhi Karunanithi (A-17) was also an initial director of the company and resigned only for the reason that her clearance from MHA was pending and could take time and delay the matter of launching the Kalaighar TV channels. Accused A. Raja (A-1) was further pursuing the cause of M/s Kalaighar TV Pvt. Ltd. not only for getting registration of the company from Ministry of Information & Broadcasting but also for getting it in the Tata Sky bouquet. Investigation has also revealed that accused Ms. Kanimozhi Karunanithi (A-17) was a stakeholder of M/s Kalaighar TV Pvt. Ltd. to the tune of 20% equity and was an active brain behind its operations. She was also widely covered by the Kalaighar Seithigal (News) channel. She also actively pursued with the intermediaries and DMK Hqrs. The matter regarding reappointment of accused A Raja (A-1) as Minister of Communications & Information Technology in 2009. PW-103, Sh. Ashirvadam Achary has stated the above facts showing association of

accused Sharad Kumar and Kanizmozhi with accused A. Raja regarding the issues of Kalaighar TV.

30. Learned Shri Altaf Ahmed, Sr. Advocate appearing for the petitioners submitted that the petitioners were not arrested during investigation and they appeared in the court of Special Judge pursuant to the summons issued under Section 204 Cr.P.C. Thus, they were not in custody. Learned Sr. counsel further submitted that the liberty of a person is sacrosanct and no court has inherent power to remand an accused to custody, as such, the power has to be exercised in accordance with law. It is submitted that relevant provisions in the Code of Criminal Procedure dealing with remand of accused are Section 167 and 309 Cr.P.C. Section 167 of the Code of Criminal Procedure deals with the situation during investigation and once the charge sheet has been filed, only provision under which an accused can be remanded to custody is Section 309(2) Cr.P.C. Learned counsel submitted that a plain reading of Section 309 Cr.P.C. would show that while adjourning a case under Section 309 Cr.P.C., the court can remand an accused to custody only if he is already in custody. In the instant case, since the petitioners were not in custody, the trial court has committed an error by rejecting their applications and remanding them to judicial custody.

31. I do not find any merit in this contention. The question as to when a person in custody within the meaning of Section 439 Cr.P.C.

came up before Supreme Court in **Niranjan Singh and Anr. Vs. Prabhakar Rajaram Kharote and Ors.**, AIR 1980 SC 785: 1980 CrL.L.J. 426, wherein the Supreme Court answered the question as under:

“7. When is a person in custody, within the meaning of Section 439 Cr. P.C. ? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.

8. Custody, in the context of Section 439, (we are not, be it noted, dealing with anticipatory bail under Section 438) is physical control or an least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.

9. He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can, be stated to be in judicial custody when he surrenders before the court and submits to its directions. In the present case, the police officers applied for bail before a Magistrate who refused bail and still the accused, without surrendering before the Magistrate, obtained an order for stay to move the Sessions Court. This direction of the Magistrate was wholly irregular and

maybe, enabled the accused persons to circumvent the principle of Section 439 Cr.P.C. We might have taken a serious view of such a course, indifferent to mandatory provisions by the subordinate magistracy but for the fact that in the present case the accused made up for it by surrender before the Sessions Court. Thus, the Sessions Court acquired jurisdiction to consider the bail application. It could have refused bail and remanded the accused to custody, but, in the circumstances and for the reasons mentioned by it, exercised its jurisdiction in favour of grant of bail. The High Court added to the conditions subject to which bail was to be granted and mentioned that the accused had submitted to the custody of the court. We therefore, do not proceed to upset the order on this ground. Had the circumstances been different we would have demolished the order for bail. We may frankly state that had we been left to ourselves we might not have granted bail but sitting under Art. 136 do not feel that we should interfere with a discretion exercised by the two courts below”.

32. In similar vein, the Supreme Court in **Nirmal Jeet Kaur Vs. State of M.P.**, (2004)7 SCC 558 observed thus:

“16. The crucial question is when a person is in custody, within the meaning of Section 439 Criminal Procedure Code? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold to an officer with coercive power is in custody for the purpose of Section 439. The word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other

like terminological dubieties are unfair evasions of the straightforwardness of the law.

17. Since the expression "custody" though used in various provisions of the Code, including Section 439, has not been defined in the Code, it has to be understood in setting in which it is used and the provisions contained in Section 437 which relates to jurisdiction of the Magistrate to release an accused on bail under certain circumstances which can be characterized as "in custody" in a generic sense. The expression "custody" as used in Section 439, must be taken to be a compendious expression referring to the events on the happening of which Magistrate can entertain a bail petition of an accused. Section 437 envisages, inter alia, that the Magistrate may release an accused on bail, if such accused appears before the Magistrate. There cannot be any doubt that such appearance before the Magistrate must be physical appearance and the consequential surrender to the jurisdiction of the Court of the Magistrate.

18. In Black's Law Dictionary by Henry Campbell Black, M.A. (Sixth Edn.), the expression "custody" has been explained in the following manner:

".....The term is very elastic and may mean actual imprisonment or physical detention....within statute requiring that petitioner be 'in custody' to be entitled to federal habeas corpus relief does not necessarily mean actual physical detention in jail or prison but rather is synonymous with restraint of liberty....Accordingly, persons on probation or parole or released on bail or on own recognizance have been held to be 'in custody' for purposes of habeas corpus proceeding."

33. It is apparent from the above that the Supreme Court has ascribed a wide meaning to the word "custody" and it has to be understood in the context of the setting in which it is used and the provisions contained in Section 437 Cr.P.C. which relates to the

jurisdiction of the Magistrate to admit an accused on bail under certain circumstances which can be characterised as “in custody” in generic sense. Anybody within the control of the court is said to be in custody. What is relevant is whether the accused is in control of the court and not whether he is physically in custody of the court. Section 437 (1) Cr.P.C. provides when any person accused of the commission of a non-bailable offence is arrested or detained without warrants by an officer in-charge of a Police Station or appears or is brought before a court other than the High Court or Court of Sessions, he may be released on bail subject to the restrictions detailed in Section 437(1)(i) and (ii) Cr.P.C. The word “or appears” used in Section 437(1) Cr.P.C. signifies that on appearance of a person accused of non-bailable, the Magistrate is required to consider whether to grant or refuse bail to him/her. In case the bail is refused to such person, then the natural corollary is that he has to be taken into physical custody. Therefore, it is obvious that the moment a person accused of non-bailable offence appears in the court pursuant to the summons, he is within the control of the court till his bail application is decided, as such he is in custody of the court. In the instant case, learned Special Judge after hearing the parties dismissed the request of the petitioners to be released on furnishing personal bond with or without sureties. The moment their request was rejected, their physical custody automatically vested with the court. As such, the order of learned Special Judge remanding the petitioners to

judicial custody while adjourning the matter under Section 309 Cr.P.C. cannot be faulted.

34. Learned Shri Altaf Ahmed, Sr. Advocate further submitted that the petitioners appeared before the Special Judge pursuant to the summons issued under Section 204 Cr.P.C. Therefore, in view of Section 87 and 88 of the Code of Criminal Procedure, they are entitled to be set free on furnishing bond for appearance with or without sureties to the satisfaction of the court.

35. The interpretation sought to be given by the petitioner to Section 87 and 88 of the Code of Criminal Procedure is misconceived and based on incorrect reading of the said provisions of law which are reproduced thus:

“87. Issue of warrant in lieu of, or in addition to, summons.

A court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest-

(a) If either before the issue of summons, or after the issue of the same but before time fixed for his appearance, the court sees reason to believe that he has absconded or will not obey the summons; or

(b) If, at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure”

.....
.....

“88. Power to take bond for appearance.---When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such court, such officer may require such person to execute a bond, with or without sureties, for his appearance

in such court, or any other court to which the case may be transferred for trial”

36. Section 87 and 88 Cr.P.C. are incorporated in Chapter VI of the Code of Criminal Procedure meant to deal with the processes to compel appearance and are given in Part D of the Chapter under the Sub-Head “Other Rules Regarding Processes”.

37. Bare reading of Section 87 and 88 makes it clear that these provisions set out the parameters and scope of powers of a court to issue the processes for appearance. Section 87 provides that in cases in which the court is empowered to issue summons only for appearance of any person, the court may in exceptional circumstances detailed in Section 87(a) and (b) after recording its reasons in writing issue warrants for arrest of such person. This has nothing to do with the judicial function of a Magistrate or a court to deal with the issue of grant or refusal of bail to a person accused of non-bailable offence.

38. Similarly, on reading of Section 88 Cr.P.C. it is obvious that Section 88 Cr.P.C. empowers the court to seek bond for appearance from any person present in the court in exercise of its judicial discretion. The Section also provides that aforesaid power is not unrestricted and it can be exercised only against such persons for whose appearance or arrest the court is empowered to issue summons or warrants. The words used in the Section are “may require such person to execute a bond” and any person present in the court. The

user of word “may” signifies that Section 88 Cr.P.C. is not mandatory and it is a matter of judicial discretion of the court. The word “any person” signifies that the power of the court defined under Section 88 Cr.P.C. is not accused specific only, but it can be exercised against other category of persons such as the witness whose presence the court may deem necessary for the purpose of inquiry or trial. Careful reading of Section 88 Cr.P.C. makes it evident that it is a general provision defining the power of the court, but it does not provide how and in what manner this discretionary power is to be exercised. Petitioners are accused of having committed non-bailable offences. Therefore, their case falls within Section 437 of the Code of Criminal Procedure which is the specific provision dealing with grant of bail to an accused in cases of non-bailable offences. Thus, in my considered view, Section 87 and 88 Cr.P.C. only defines the parameters of power of the court in certain situation and those provisions have no bearing on the right of a person accused of non-bailable offence to bail. For that purpose, the relevant provision is Section 437 Cr.P.C. and the plea of the accused for his release on bail is required to be considered by the Court on the basis of well established principles i.e. the nature of the accusation; the nature of the evidence collected in support of accusation; possibility of the accused interfering with the process of justice and the possibility of the accused fleeing away from justice.

39. Next contention on behalf of the petitioners is that the Special Judge after taking cognizance of the case in exercise of the power to issue process under section 204 CrPC preferred to issue summons for appearance to the petitioners instead of warrants. This imply that the Ld. Special Judge on consideration of the charge sheet found it to be case in which the detention of the petitioners was not necessary. Thus it is contended that the refusal of bail to the petitioners after their appearance in the court amounts to review of the earlier position taken by the Ld. Special Judge, which is not permissible in law as the subordinate court has no power to review its order. Referring to the Judgment of Kerala High Court in **Sreekumar Vs. State of Kerala**, (2008) 3 KLT 748, Ld. Counsel submitted that if warrant for appearance were issued against the petitioners, they certainly would have been entitled to move Superior court for Anticipatory bail. Ld. Special Judge by exercising the discretion under section 204 CrPC to issue summons to the petitioners have led the petitioners to believe that they can safely appear in the court without any fear of detention as such rejection of the bail to the petitioners is unfair.

40. I am not convinced with the above submission. Perusal of Section 204(1)(b) would show that it confers discretion upon the court taking cognizance of a warrant trial case to either issue warrants or summons for appearance of the accused. The use of this discretion is only to procure the presence of the accused for trial. It has nothing to do with

the grant or refusal of bail to the accused. For that purpose, only relevant Section is 437 Cr.P.C. in accordance with which the court is supposed to exercise its judicial discretion to grant or refuse the bail. Just because the court taking cognizance of a warrant trial case has opted to issue summons for appearance instead of warrants, it cannot be assumed that he had applied its mind to the facts of the case from the point of view of grant or refusal of bail to the accused. In **Sreekumar Vs. State of Kerala**,(supra), it was observed thus:

“When a court issues summons and not a warrant under S 204 CrPC in a non-bailable warrant offence, I must assume that the learned Magistrate must have advisedly exercised the discretion under S. 204 Cr.PC to issue a summons and not a warrant. If a warrant were issued against him, the petitioner would certainly have been entitled, in the light of the dictum in Bharat Chaudhary & Another V. State of Bihar (2003 (3) KLT 956 (SC) = AIR 2003 SC 4662), to move the superior courts for anticipatory bail. Having chosen to exercise the discretion under S. 204 CrPC in favour of the petitioner and having issued only a summons to the accused, it appears to me to be heartless, insensitive and harsh for any court to remand an accused person who has come to court on the invitation extended to him by the court by issuing a summons. That procedure is shockingly unreasonable and should not be pursued by any court. Having exercised the discretion under S. 204 CrPC to issue only a summons and having led the accused by such conduct to believe that he can safely appear before court on invitation, it would be impermissible for any court thereafter to turn turtle and remand the accused to custody. Issue of summons by exercise of the discretion under S. 204 CrPC does firmly and eloquently convey that the accused person on appearance shall not be detained unnecessarily if he is willing and prepared to offer bail. The courts will have to be careful at the state of exercising the discretion under S. 204 CrPC and cannot take parties by surprise when they appear before court in response to an innocuous summons issued by the court. This must be so whether the offence is triable by a Magistrate or not and whether the offence is bailable or not”.

41. I find myself unable to agree with the view taken in the aforesaid judgment. Issue of process under Section 204 Cr.P.C. is meant for ensuring the presence of the accused in the court. Issuing summons under Section 204 Cr.P.C., by no means, is an assurance that the accused on appearance in the court shall be granted bail nor it amounts to misleading the accused and preventing him from seeking his legal remedy by moving an application for anticipatory bail in the superior court. Otherwise also, now the petitioners are present before High Court under Section 439 Cr.P.C. seeking bail and their applications are required to be dealt with in accordance with law on consideration of well settled principles for deciding a bail application.

42. Before adverting to the submissions of the petitioners on merits, it would be appropriate to have a look on the law of bail.

43. In **Gudikanti Narasimhulu Vs. Public Prosecutor, (1978) 1 SCC 240**, Supreme Court has highlighted the importance of personal liberty of an accused. In the said judgment, the Supreme Court has emphasized on creating a balance between the right and liberty guaranteed under Article 21 of the Constitution of India and the interest of justice as well as the society which is sought to be protected by Section 437 Cr.P.C., wherein it is, inter alia, observed thus:

10. The significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Article 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates

intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bi-focal interests of justice--to the individual involved and society affected."

44. In **State Vs. Jaspal Singh Gill**, AIR 1984 SC 1503, the Supreme Court expressed the view that the court before granting bail in cases involving non-bailable offences, particularly where the trial has not yet commenced should take into consideration various factors such as the nature and seriousness of the offence, character of the evidence, circumstances peculiar to the accused, a reasonable possibility of the accused not presenting himself during trial and reasonable apprehension of witnesses being tampered with and the larger interest of the society or the State.

45. In **CBI, Hyderabad Vs. B. Ramaraju**, 2011 Cr.L. J. 301, Supreme Court cancelled the bail of accused Ramaraju purely on the basis of the enormity and gravity of the offence observing thus:

"4. According to the allegations of the appellant, the respondents-accused are involved in one of the greatest corporate scams of the commercial world. It has caused a financial storm throughout the country and the world over. Lakhs of shareholders and others have been duped and the corporate credibility of the nation has received a serious setback. We are deliberately refraining from making a detailed observation regarding the conduct of the respondents-accused because the trial is still pending and we do not want the trial to be prejudiced in any manner.

5. Ordinarily this Court would be slow in cancelling the bail already granted by the High Court but in the extraordinary facts and circumstances of these cases, we are of the considered view that the impugned orders passed by the High Court granting bail to the respondents, cannot be sustained in law and the same are accordingly set aside.

.....

7. We are informed that charges have been framed on 25th October, 2010 and trial is scheduled to commence with effect from 2nd November, 2010. In these circumstances, we deem it appropriate to direct the Trial Court to take up the case on day-to-day basis and conclude the trial of this case as expeditiously as possible, in any event, on or before 31st July, 2011."

46. In a recent judgment in the matter of **Prasanta Kumar Sarkar Vs. Ashis Chatterjee & Anr.**, 2010(11) Scale 408, Supreme Court observed thus:

"11. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are: (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail".

47. The legal position which emerges from the aforesaid judgments is that the important factors for consideration while deciding the applications for grant of bail, the court must take into account various factors, namely, nature and gravity of accusation; nature of evidence against the accused; severity of punishment in the event of conviction; danger of accused fleeing from justice; the danger of accused trying to

influence the witnesses or thwarting the course of justice and the character and antecedents of the accused etc. And the court will decide on refusal or grant of bail on cumulative consideration of the existence or non-existence of aforesaid factors.

48. On merits, it is contended that the petitioners are innocent and they have nothing to do with the alleged conspiracy between public servants and the private persons/companies in the matter of allotment of UAS Licence/Spectrum to M/s. Swan Telecom Private Limited. It is further submitted that purely innocuous inter-corporate financial transactions are being projected in the charge sheet as transfer of the bribe money to the petitioners and their co-accused A.Raja through dubious money transfer transactions. Learned senior counsel further contended that even if for the sake of argument, allegations of prosecution are taken to be correct, then also, the role of the petitioners is distinct from the other co-accused persons, who are directly involved in the alleged conspiracy, particularly when, the petitioners are not the beneficiaries of conspiracy as neither the petitioners nor any of the company with which they are associated have received UAS Licence/Spectrum. It is further contended on behalf of the petitioners that they were neither arrested during investigation nor there is any allegation against them that they have interfered with the process of investigation. They have appeared pursuant to the summons. Therefore, there is no possibility of the petitioners interfering with the investigation process or influencing the

witnesses or absconding from law. Thus, learned counsel for the petitioners has strongly urged for admitting them on bail.

49. Bail applications are vehemently opposed by learned Special Prosecutor. He has referred to the charge sheet and the supporting evidence and submitted that there is sufficient prima facie evidence on record to show the complicity of the petitioners in the conspiracy to confer undue advantage upon M/s. Swan Telecom Pvt. Ltd. by the public servants including accused A.Raja in the matter of grant of UAS Licence/spectrum to the said company for which the company was not eligible as per the policy guidelines. Learned Special PP further submitted that there is sufficient prima facie evidence on record to show that the petitioners are the recipients of the illegal gratification of ₹200 crores for the aforesaid undue favour shown to M/s. Swan Telecom Pvt. Ltd. which amount was transferred by M/s. Dynamix Realty, a partnership firm belonging to DB Realty Group Company to the account of M/s. Kalaignar T.V. Pvt. Ltd. owned by the petitioners and the step mother of petitioner Kanimozhi Karunanithi. Factual submissions of learned Special PP are not reproduced in detail for the sake of brevity. Learned Special PP contended that merely because the petitioners were not arrested during investigation and they appeared in the court pursuant to the summons, they do not become entitle to bail because the gravity of the accusation and the nature of evidence collected during investigation is also one important component to be considered for grant or refusal of bail. Learned

Special PP submitted submitted that allegation against the petitioners are grave and the investigation is not yet complete as such it would not be appropriate to release the petitioners on bail at this stage as they are likely to interfere in investigation and tamper with the witnesses.

50. I have considered the rival submissions and perused the record. It is well settled that at the stage of consideration of bail application, the court is required to take prima facie view of the evidence collected during investigation and it is not supposed to undertake an intricate exercise of scrutinising the evidence with a view to find out its truthfulness or otherwise.

51. On care perusal of the charge sheet, following factors have come to the fore: (a) that M/s. Kalaignar T.V. Pvt. Ltd. is a closely owned company in which there three shareholders. 20% stake each is held by the petitioners and balance 60% stake in the company is held by Ms. Dayalu Ammal, step-mother of the petitioner Kanimozhi Karunanithi; (b) that petitioner Kanimozhi Karunanithi and the co-accused A.Raja are important functionaries of same political party; (c) that co-accused A.Raja took over charge as Minister for Communications and Information Technology in May, 2007 and the petitioners parted ways with M/s. Sun T.V. Network in June, 2007 and promoted their own company M/s. Kalaignar T.V. Pvt. Ltd.; (d) that accused A.Raja had close associations with the petitioners and he helped their company to get registration with Information and Technology Department and also

to get included in the Bouquet of Sky T.V.; (e) that M/s. Swan Telecom Pvt. Ltd. which is owned by DB Realty Group of Companies offloaded its equity to M/s. ETISALAT Mauritius Ltd. and M/s. Genex Exim Ventures Pvt. Ltd. and in consideration received ₹3228 crores and 380 crores respectively on 17.12.2010; (f) that the transfer of the money from DB Realty Group through its group companies Dynamix Realty, M/s. Eversmile Construction Company Pvt. Ltd. and M/s. Conwood Construction Developers Pvt. Ltd. started with effect from 23.12.2008 and it continued till August, 2009; (g) that the bribe money was transferred to M/s. Kalaignar T.V. Pvt. Ltd. in instalments through a circuitous route i.e. via M/s. Kusegaon Fruits & Vegetables Pvt. Ltd. and M/s. Cineyug Films Pvt. Ltd.; (h) that ₹200 crores was transferred from accounts of above referred DB Realty Group Companies to the account of M/s. Kalaignar T.V. Pvt. Ltd. through a circuitous route i.e. from D.B. Realty Group Companies money was first transferred to the account of M/s. Kusegaon Fruits & Vegetables Pvt. Ltd. which company in turn transferred the amount to M/s. Cineyug Films Pvt. Ltd. and from that company the money reached in the account of M/s. Kalaignar T.V. Pvt. Ltd.; (i) that aforesaid money transfers from one company to the other and the other was done either on the same dates or in close proximity of dates as disclosed in the money transfer chart noted in Para 17 of this order; (j) that once the scam came to the light and FIR was registered, the reverse trail of money started via same route of companies; (k) that the reverse money trail started only after co-

accused A.Raja was contacted by the CBI for his examination scheduled on 24.12.2010. Even in this reverse money trail, the dates of transfer of money from one company to other and to the other are either the same or in very close proximity; (I) that the investigation revealed that no contemporaneous documents pertaining to the transfer of money was prepared at the time of transfer of money from DB Realty Group Companies to M/s. Kusegaon Fruits & Vegetables Pvt. Ltd. and from M/s. Kusegaon Fruits & Vegetables Pvt. Ltd. to M/s. Cineyug Films Pvt. Ltd. and from M/s. Cineyug Films Pvt. Ltd. to M/s. Kalaignar T.V. Pvt. Ltd. It is submitted by learned Special PP that during investigation photocopies of shares subscription and shareholders agreement and agreement to pledge between M/s. Cineyug Films Pvt. Ltd. and M/s. Kalaignar T.V. Pvt. Ltd. were produced by the accused persons but they have deliberately not produced the original agreements because the date of purchase of stamp papers used would have revealed that these agreements have been subsequently prepared to create evidence in defence.

52. Above facts and circumstances, prima facie show the complicity of the petitioners in the conspiracy and their having received illegal gratification of ₹200 crores in the account of the company controlled by them, namely M/s. Kalaignar T.V. Pvt. Ltd. The proximity of dates on which the money got transferred via circuitous route involving DB Realty Group Companies, M/s. Kusegaon Fruits & Vegetables Pvt. Ltd. and M/s. Cineyug Films Pvt. Ltd. as also the reverse trail of money,

prima facie, cannot be a coincidence and this gives rise to a prima facie involvement that aforesaid methodology was adopted by the petitioners and their co-accused persons with a view to conceal the trail of money from DB Realty Group which owns M/s. Swan Telecom Pvt. Ltd. and M/s. Unitech Group of Companies in the matter of grant of UAS Licences and spectrum have caused a loss of about ₹30,000 crores to the State exchequer. The petitioners are in control of M/s. Kalaingar T.V. Pvt. Ltd., as such they are in position of power to influence the witnesses, particularly the employees of their company. They have got strong political connections. Petitioner Kanimozhi Karunanithi belongs to the same political party to which accused A.Raja belongs and the said party is sharing power in the Central Government. Thus, considering the financial and political clout of the petitioners, a possibility cannot be ruled out that if the petitioners are freed at this stage, they would interfere with the investigation or try to influence the witnesses. Thus, at this stage, I do not deem it appropriate to admit the petitioners on bail.

53. Bail applications are dismissed accordingly.

54. Nothing contained in this order shall be treated as a finding on the merits of the case.

(AJIT BHARIHOKE)
JUDGE

JUNE 08, 2011
pst