

Before Surya Kant, J.

G. K. GAMBHIR,—*Petitioner*

versus

STATE OF PUNJAB,—*Respondents*

Criminal Misc. No. 32475/M of 2007

1st October, 2007

Code of Criminal Procedure, 1973—S. 438—Allegations regarding causing loss to the Trust/State exchequer due to moulding, tilting and execution of all Trust's decisions to favour M/s Today Homes—Chairman of Trust discarding Government directions and accepting financial bid and issuing LOI in favour of the Company—Petitioner appearing before Vigilance Bureau in terms of ad-interim directions of High Court—Mode of investigation, as directed by High Court, failed to take investigation to its logical end—Director of Company and Chairman of Trust key players in alleged scam—Chairman of Trust absconding and declared a proclaimed offender—Director of Company does not deserve concession of pre-arrest bail and his petition is liable to be dismissed—No specific allegations against 3 other officials of Company and former Media Adviser of the then Chief Minister—Their applications allowed directing them to appear before the I.O. as and when required on any working day.

Held, that though it appears from the records that the petitioners, in terms of the *ad-interim* directions issued by this Court, have been repeatedly appearing before the officers of the Vigilance Bureau, however, the investigation is struck at the same place from where it had started. The records of allotment/sale of properties by M/s Today Homes of their accounts books or income tax returns which are meticulously maintained by professionals would never reveal as to whether or not G.K. Gambhir, one of the petitioners, had gratified those who were at the helm of affairs of the Trust or of the Punjab Government at the relevant time. The mode

of investigation, as directed by this Court through the interim order dated 31st May, 2007 has, thus, failed to take the investigation to its logical conclusion.

(Para 29)

Further held, that from the nature of allegations and material on record, two persons, namely, G. K. Gambhir and P. S. Sibia appear to be the key players in the alleged scam. Admittedly, Sibia is absconding and his whereabouts are unknown. The other suspect—G. K. Gambhir is protected with interim bail against arrest. G.K. Gambhir, petitioner does not deserve the concession of pre-arrest bail and his petition is accordingly dismissed.

(Para 28 & 31)

Further held, that as regard to Vinay Subhiki the petitioner, though he appears to be second-in-command in relation to the affairs of M/s Today Homes, however, there are no specific allegations against him that he bribed the functionaries of the Trust and/or Punjab Government. The allegations against him are of general nature and in the absence of any *prima facie* material to suggest his active participation in the alleged unethical financial deals, the said petitioner deserves the concession of pre-arrest bail.

(Para 32)

Further held, Sunil Sharma, Petitioner, the only allegation against him is that he is an official of M/s Today Homes and was found involved in the sting operation. Even if the allegations are assumed to be correct, it can be inferred safely that the said petitioner acted under the directions or at the behest of his master, namely G. K. Gambhir. There are no allegations against him regarding payment of bribe to any functionary of the Trust and/or of the State Government. Similarly, there are no allegations against Syed Arshad Hussain Naqvi, petitioner also regarding payment of bribe to any functionary of the Trust and/or of the State Government. Consequently, their petitions are allowed to the extent that they are directed to appear before the Investigating Officer as and when required.

(Para 33 & 34)

Further held, that name of Bharat Inder Singh Chahal does not figure anywhere in the context of allegations of adoption of corrupt means by the Chairman/officers of the Trust or the State Government. The said petitioner, however, has been implicated on the basis of a statement of a Property Dealer u/s 161 of the Code wherein it is claimed that he contacted the petitioner through one Chetan Gupta and paid Rs. 1,00,000 for getting a good space allotted in the Ludhiana City Centre. The petitioner, thus, appears to have been implicated merely on the basis of suspicion and there is no material whatsoever except the bald statement to substantiate the allegation against him. Consequently his petition is also allowed to the extent that he is directed to appear before the Investigating Officer as and when required.

(Para 35)

Shanti Bhushan and Sidharth Ludhra, Sr. Advocates with
Vivek Sibal, Deepak Sibal and Gauri Setia, Advocate,
for the petitioner.

Reeta Kohli, Additional A.G, Punjab, *for the respondent.*

JUDGMENT

SURYA KANT, J.

(1) This order shall dispose of Criminal Misc. Nos. 32475-M, 32532-M, 32534-M, 33035-M and 35266-M of 2007 as all these petitions under Section 438 of the Code of Criminal Procedure (in short 'the Code') seeking anticipatory bail have arisen out of FIR No. 5, dated 23rd March, 2007, under Sections 7, 13(1)(c) and (d), 13(2)/14 of the Prevention of Corruption Act, 1988 and Sections 409, 420, 467, 468, 471 and 120-B of the Indian Penal Code, registered at Police Station, Vigilance Bureau, Ludhiana.

(2) While the petitioner in *Criminal Misc. No. 32475-M of 2007* (G.K. Gambhir) is a Director; the petitioner in *Criminal Misc. No. 32532-M of 2007* (Vinay Subhikhi) is the Vice President (Corporate Affairs); the petitioner in *Criminal Misc. No. 32534-M of 2007* (Sunil Sharma) is the General Manager (Human Resources and Personnel) and the petitioner in *Criminal Misc. No. 35266-M of 2007* (Syed Arshad Husain Naqvi) is a

former Manager (Marketing) of M/s Today Homes & Infrastructure Private Limited. The petitioner in *Criminal Misc. No. 33035-M of 2007* (Bharat Inder Singh Chahal) is a former Media Advisor to the then Chief Minister of Punjab.

(3) A brief reference to the facts which find mention in the subject FIR as also brought on record by way of pleadings/documents and/or during the course of hearing, may be made.

(3.1) On 28th June, 1979 a Scheme regarding construction of “Ludhiana City Centre” (in short “LCC”) in Saheed Bhagat Singh Nagar Development Scheme was sanctioned by the Improvement Trust, Ludhiana (for short “the Trust”). After more than two decades, the Trust,—*vide* its Resolution No. 130 dated 23rd September, 1999 resolved and got the land use changed in respect of 26 acres of land on 10th October, 2001 from the State Government. Even prior thereto, i.e., in November, 1999, the Trust, by way of advertisements, invited designs for the LCC from experienced Architects. The Design by M/s Arkitektural Grid, New Delhi was selected which had provision for Mall, Multiplex, Auditorium, Library, Information Technology Centre, Hotel and Basement Parking etc. in a built-up area of about 30 lac sq. feet. Similarly, M/s Infrastructure Professional Enterprises Private Limited was appointed by the Trust as its Consultant for preparation of “Request for Proposal” (in short “REP”).

(3.2) Some of the salient features of the RFP were as follows:—

“1.3 Scope of work :

Development of the Ludhiana City Centre in totality by its own finances, within a stipulated time frame. This will include all facilities as stated hereafter and transferring all the facilities (in similar condition as during Commercial Operation Date) to LIT, using either of the two models vis Join Venture (JV) or Build, Operate and Transfer (BOT) basis.

2.1 Brief description :—

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*For the assessment of the **highest financial benefit to LIT** the calculation will be done on **Net Present Value (NPV)** basis for total rental/licence fee earning in entire concession period considering 10% discounting rate per annum.*

3. Proposed Project Structuring :-

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The SPV will devise strategy for the most suitable mode of lease/disposal of the developed properties, to maintain both the profit and public good motives of the development. It will look for potential tenants and get the highest bids and will continue as a going-concern throughout the concession period after which the tenure of the SPV may be extended.

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The Project structuring under the two models will be as follows :-

*In case of BOT, the Developer will retain all the revenues generated by the SPV after recurring costs including costs of O&M have been met. The developer will mention the concession period in which they expect to recover their investments. The developer will also mention the yearwise Licence Fee to be given to LIT during the concession period.

* In case of Joint Venture (JV), land will be considered as the investment component from the side of LIT. The bidder would be expected to incur all other development costs. In the JV, the equity share of LIT and the Bidder will be in the ratio of 30:70. SPV will be responsible for distribution of all revenues, after recurring costs including costs O&M have been met, in the ratio of 30:70 amongst LIT and the Bidder respectively. The bidder is expected to state the concession period in which under such an arrangement

they expect to recover their investment costs. After the end of concession period the equity share of LIT will become 100%.”

(3.3) Nothing tangible, however, happened till 14th January, 2005 when the State Government “granted permission” to the Trust to invite “Expression of Interest” which was widely advertised in a number of leading Newspapers and in response thereto, 26th firms/prospective bidders are stated to have purchased the RFP document. A pre-bid meeting was held with the prospective bidders/firms on 2nd April, 2005 wherein certain queries are stated to have been raised which were quenced by way of a written reply by the Architects and Consultants engaged by the Trust.

(3.4) The Trust *vide* its letter No. 2679, dated 8th April, 2005 duly informed the State Government regarding the events and decisions taken in the previous meeting.

(3.5) Meanwhile, the requests from some of the prospective bidders including M/s Today Homes and Infrastructure Private Limited “for changes in the RFP document” were received. The date for submission of the bids was accordingly extended from 10th April, 2005 to 10th May, 2005.

(3.6) On 28th April, 2005 the Chairman of the trust (Paramjit Singh Sivia/Sibia) asked the Consultant to carry out the changes in the RFP document as requested by some of the prospective bidders. The suggested changes were communicated to the applicants by the Chairman himself on 28th April, 2005 itself.

(3.7) On 6th May, 2005, the Estate Officer of the Trust informed the Government regarding the last date of receipt of the bids and also requested the Government to “impart necessary guidelines” for constitution of the Committee to examine the bids.

(3.8) On 9th May, 2005, however, the selection criteria is stated to have been modified and notified also. On the last date of the receipt of the bids, i.e., 10th May, 2005, six firms, namely, (i) M/s Omex Construction Ltd., New Delhi ; (ii) M/s D.L.F. Universal Ltd., Gurgaon ; (iii) M/s IVRCL City Corporation Joint Venture, New

Delhi ; (iv) M/s Bestech India Pvt. Ltd., (v) M/s Today Homes and Infrastructure Private Limited, New Delhi and (vi) M/s MGF Development Limited, New Delhi submitted their respective bids.

(3-9) The Chairman of the Trust decided to open Envelopes “A” and “B” at 11.30 A.M. and 4.30 P.M. respectively on 11th May, 2005; to invite the presentations from the qualified bidders on 17th May, 2005 and thereafter to open the financial bid on 17th May, 2005 followed by “Letter of Intent” (“LOI”) on 18th May, 2005. However, before the Chairman of the Trust could go by the said schedule, the Assistant Estate officer and the Municipal Engineer are stated to have apprised him through a “note” dated 11th May, 2005 that no guidelines were received from the Government regarding the opening of the bids. The Superintending Engineer of the Trust is also alleged to have advised the Chairman that the bids should be opened by a Committee constituted by the State Government and also that the Envelop “C”, i.e., the Financial Bids should be got evaluated from a specialist like Chartered Accountant and the proceedings be got approved from the State Government.

(3.10) However, the Chairman over-ruled the afore-stated objections and on 12th May, 2005 all the six bidders were declared to have qualified technically and called by the Chairman for their presentation on 17th May, 2005 at 9.30 A.M. It is alleged that on 17th May, 2005 when the presentation was going on, the Deputy Director, Local Government Department, submitted a hand-written note to the Chairman stating that she had been asked on telephone by the Director, Local Government, Punjab that no action beyond presentation of the firms be taken by the Trust.

(3.11) The Chairman, however, opened the financial bids on 17th May, 2005 at 5 P.M. which apparently prompted the State Government to send a FAX message on the same day at 6.40 P.M. asking the Chairman neither to issue LOI nor hold any further proceedings until the Government framed a policy. However, on 17th May, 2005 itself without the presence of any official/officer of the Trust or State Government the Consultants evaluated the financial bids and declared **M/s Today Homes and Infrastructure Private Limited** as a successful bidder (in short “M/s Today Homes”).

(3.12) On 18th May, 2005, the LOI was issued to M/s Today Homes by the Chairman of the Trust and the State Government was also informed. On 19th May, 2005 the Chairman of the Trust asked his Consultant to prepare an agreement to be entered into with the successful bidder. However, on 20th May, 2005 the State Government took a serious view of the action of the Chairman, as to why did he open the financial bid and issue LOI despite its restraint order.

(3.13) On 23rd May, 2005 the Government softened its stand and in a meeting held in the office of the Principal Secretary, Local Government Department, decided that “the draft agreement” shall be got approved from the Government and that a Senior Advocate and a Chartered Accountant would be consulted for preparing the draft agreement. Despite being present in this meeting, the Chairman of the Trust did not deem it necessary to get “the draft agreement” approved from the State Government and after obtaining opinion of a Chartered Accountant and a Senior Advocate, he executed an “agreement” with M/s Today Homes on 24th May, 2005. On the same day, i.e., 24th May, 2005, the Director, Local Government, statedly passed certain restraint orders but failed to stop the Chairman of the Trust from taking further action in the matter. In sum and substance, the agreement provided that 30% of the receipts by way of sale/lease etc. of the City Centre shall go to the kitty fo the Trust whereas 70% thereof shall go to the Developer, namely, M/s Today Homes.

(3.14) On 27th May, 2005, the Principal Secretary to Government of Punjab, Local Government Department, is stated to have invoked his statutory powers and passed an order thereby “annulling all the proceedings”, briefly noticed above. The Chairman of the Trust is alleged to have sent his explanation on that very day with an unsuccessful request to the Principal Secretary to Government of Punjab to revoke his aforestated order dated 27th May, 2005.

(3.15) This brought the next authority in hierarchy on the scene, namely, the Minister-in-charge who,—*vide* his order dated 18th August, 2005 “withdrew” the order dated 27th May, 2005 of the Principal Secretary

to Government of Punjab. The Chairman of the Trust then executed a General Power of Attorney in favour of M/s Today Homes on 29th August, 2005 whereby the latter was authorized to transact in respect of the LCC properties including sale thereof.

(3.16) On 30th August, 2005, however,—*vide* resolution No. 147, dated 20th August, 2005 the Trust decided that the action of the Chairman regarding execution of the “agreement”, issuance of “LOI” and execution of “Power of Attorney” be got approved from the State Government. The State Government appears to have had reservations regarding some of the clauses in the agreement and wanted certain amendments. However, the proposed amendments were never acted upon despite being communicated to the successful bidder by the Estate Officer of the Trust. Thereafter, the Chairman of the Trust is alleged to have written a letter dated 20th June, 2006 to M/s Today Homes informing that “you may ignore the letter of the EO because the matter is being taken up with the Government”.

(3.17) The Media too came into picture. A TV channel is claimed to have carried out a “sting operation” in which officers of M/s Today Homes were caught accepting black money for the sale/lease of the properties of City Centre and admitting to the extent that only 30% was required to be paid in “white” and rest of the amount from the buyers was acceptable in “cash” thereby duping the Trust in respect of its 30% share in the overall sale/lease of the LCC properties. The Print Media, namely, Hindustan Times also published a new-item on 12th September, 2006 titled as “City Centre : Punjab loosing hundreds of crores”.

(3.18) On 14th September, 2006, the Punjab Government acknowledged the seriousness of the allegations when it dissolved the Trust and appointed Regional Deputy Director, Department of Local Government, as Administrator of the Ludhiana Improvement Trust. Henceforth, Paramjit Singh Sivia/Sibia, the Chairman of the Trust, suffered an eclipse.

(3.19) The “sting operation” and the “media reports” also prompted the State Government to direct an inquiry by the Vigilance Bureau of the State. In addition, on 6th October, 2006 a meeting was also held under

the Chairmanship of the then Principal Secretary, Local Government Department, Punjab which was attended by the Administrator and other officers of the Trust as well as the executive functionaries of M/s Today Homes. The relevant extracts of the decision taken in the aforesaid meeting read as follows :—

“At the very outset it was agreed to form a company (Special Purpose Vehicle) and the names of the Company mutually agreed were :—

- (a) Ludhiana City Centre Private Limited;
- (b) LCC Private Limited;
- (c) LCC Punjab Private Limited;
- (d) Ludhiana City Centre Punjab Private Limited.

The application for availability for the name be applied to the ROC. The constitution of the SPV Company being formed shall be in the ratio of 70-30 between Today Homes and Infrastructure Private Limited and LIT respectively. The SPV company shall be formed in accordance with RFP. Number of Directors of SPV will be decided in the next meeting.

- (2) A perusal of RFP revealed that the sale of City Centre Property was permissible.
- (3) The booking already made till date for sale and lease of built up area representing approximately 22% of the proposed super built up (salable area) shall be adjusted in the 70% share of Today Homes and Infrastructure Private Limited. In other words, all bookings made by the Company till date towards sale at the LCC will go to the account of Today Homes and will be honoured by it without any objection LIT/Government.
- (4) 30% out of the total area, which is the share of the LIT in the project will be taken out of the remaining 78% salable area on each floor in every building and the demarcation of the same will be done jointly by the representatives of LIT and Today Homes Infrastructure Private Limited.
- (5) The Today Home Infrastructure Private Limited has already deposited bank guarantee for a sum of Rs. 3.72 crores

and will give an additional Bank guarantee of Rs. 8.66 crores to the LIT within one month of the Ist Board meeting of the Company being formed (SPV).

- (6) The Administrator Improvement Trust, Ludhiana intimated that the power of Attorney executed on 29th August, 2005 in favour of M/s Today Homes and Infrastructure Private Limited by the then Chairman, Improvement Trust, Ludhiana in respect of the Ludhiana City Centre has been revoked with immediate effect on 5th October, 2006. Since it has been agreed that the sale/lease of Ludhiana City Centre Properties made to far which approximately 22% of the total salable area, will go to the share of Today Homes & Infrastructure Private Limited, therefore, the said sales are legal and valid. A new power of Attorney for the remaining salable area of the share of Today Homes & Infrastructure Private Limited will be given separately by the Board of SPV.
- (7) The aforesaid decisions shall be adopted at the first board meeting of the SPV Company.
- (8) A detailed supplementary agreement shall be executed so as to incorporate all the mutually agreed decisions.

The meeting was adjourned to 10th October, 2006 at 11.30 AM”.

[3.20]. Mr. C.S.R. Reddy, an IPS Officer was entrusted with the vigilance inquiry, who,—vide his report dated 19th December, 2006 recommended “deeper probe” into the allegations. The report (photo copy of which was handed-over during the course of hearing) unmasked the losses to the tune of hundreds of crores allegedly suffered by the Trust/State Government due to moulding, tilting and execution of all the Trust’s decisions to favour M/s Today Homes.

[3.21]. The Chief Secretary to Government of Punjab, agreed to the aforesaid report and forwarded the same to the then Chief Minister, Punjab. In the changed scenario, it is alleged by the respondents that the then Chief Minister did not take any action and simply sat over the aforesaid inquiry report till he demitted the office on 3rd March, 2007.

(4) On 23rd March, 2007 the subject FIR was registered. To be precise and brief, the allegations as contained in the FIR are that :—

- (i) the Chairman of the Trust (Paramjit Singh Sivia/Sibia) acted in extreme haste to implement one sided directions to give undue favours to M/s Today Homes purely for extraneous considerations and in process thereof; ignored and violated the Government decisions/instructions/directions issued to him from time to time; (ii) all the major decisions were taken by the Chairman himself and not by the Trust; (iii) as per the RFP and/or the original decision taken by the Trust, the development of the entire project was to be entrusted on BOT basis which could not authorize the successful bidder beyond leasing out the developed property for a specified period, however, having been bribed heavily, the Chairman of the Trust, contrary to the previous decisions, executed the General Power of Attorney in favour of M/s Today Homes, thereby authorizing them even to “sell” the properties of the City Centre ; (iv) M/s Today Homes on the other hand, sold off the City Centre properties in black and retained 70% of the sale consideration received in cash with them thereby reducing the actual share of the Trust in the City Centre properties from 30% to 9%. In other words, M/s Today Homes was allowed to have its share to the extent of 91% contrary to the formal agreement; (v) as per the RFP and the subsequent correspondence, the entire property of the City Centre was to revert back to the Trust after the expiry of the specified period, therefore, question of authorizing M/s Today Homes “to sell” those properties could not have arisen; (vi) the aforementioned entire fraudulent exercise has caused a loss to the tune of 1500 to 3000 crores of rupees to the Trust; (vii) the manner in which the Minister-in-Charge suspended/set aside the order of the Principal Secretary thereby paving the way for the Chairman of the Trust to execute the General Power of Attorney in favour of M/s Today Homes is a clincher that his decision was actuated with *mala-fide* and dishonest considerations; (viii) the allegations to the aforesaid effect stood substantiated with the material collected by the National TV

Channel in its sting operation as also the Print Media including Hindustan Times; (ix) the allegations of hanky-panky were duly proved in the preliminary inquiry conducted by the State Vigilance Bureau; (x) 'Source report' suggests that bribe of over Rs. 100 crores was paid to the then Chief Minister, Punjab and other Government/Trust functionaries suspected to be involved in the scam.

(5) It may be noticed here that the first four suspects involved in the projected scam are Captain Amarinder Singh, the then Chief Minister, Punjab, Ch. Jagjit Singh, Minister-in-Charge, Paramjit Singh Sivia/Sibia, former Chairman of the Trust and H.S. Hanspal, Former President of Punjab Congress Committee respectively. The stake holders of M/s Today Homes as also certain functionaries of the Trust too are included amongst the list of 15 suspected persons.

(6) There, however, appears to be no dispute that the then Chairman of the Improvement Trust, Ludhiana - Paramjit Singh Sivia/Sibia is absconding and his whereabouts are unknown till date. He appears to have been declared a proclaimed offender.

(7) As regards to the present petitioners, Uma Nath Singh, J. passed a common interim order on 31st May, 2007 whereby in the event of their arrest, interim bail was granted to G.K Gambir, Sunil Sharma, Syed Arshad Husain Naqvi and Vinay Subhikhi subject to certain conditions including that "the petitioners shall surrender their passports to the Registrar (General) of this Court and shall participate in the investigation between 11 AM to 4 PM from Monday to Wednesday (three working days in a week) till the next date of hearing".

(8) The aforementioned interim orders have been made to continue from time to time.

(9) Sarv Shri Shanti Bhushan, Sidharth Luthra, R.S. Ghai, Rajiv Atma Ram, learned Senior Advocates have been heard at length on behalf of the petitioners whereas Ms. Reeta Kohli, learned Additional Advocate General, Punjab has assisted on behalf of the Vigilance Bureau. Various additional documents have also been referred to by both the parties during the course of hearing which have also been perused.

(10) Mr. Shanti Bhushan vehemently contended that for obvious reasons the State apparatus is indulging in witch-hunting by riding high on exaggerated and imaginary figures of the so-called losses caused to the Trust. It was argued that except the alleged “sting operation” by a TV Channel, there is no other adverse material collected by the Vigilance Bureau even to remotely suggest the existence of any extraneous considerations behind acceptance of bid or allotment of work to M/s Today Homes. Relying upon the “proceedings of the meeting” held on 6th October, 2006, under the Chairmanship of Mr. B.R. Bajaj, IAS, Principal Secretary, Local Government Department, Punjab, reproduced earlier, it is pointedly contended that once both the parties agreed to form a Special Purpose Vehicle (SPV) in accordance with RFP by moving an application before the Registrar of Companies, Jalandhar and further agreed to earmark 30% of the constructed area separately for the Trust which was to be disposed of by the Trust in the manner it liked, the so-called irregularities exposed by the “sting operation” also stood rectified. These proceedings also suggest that as per the RFP “sale” of City Centre properties was permissible. Vide para 6 of the proceedings the Power of Attorney executed on 29th August, 2005 by the then Chairman of the Trust in favour of M/s Today Homes was also revoked. The proceedings concluded with the observations that “the aforesaid decision shall be adopted at the first Board meeting of the SPV Company and a detailed supplementary agreement shall be executed so as to incorporate all the mutually agreed decisions”.

(11) It was then argued that pursuant to the *ad-interim* directions, the petitioners have been continuously appearing before the officers of the Vigilance Bureau for three days in a week and have already supplied all the informations. Reference was also made to the additional affidavit filed by G.K. Ghambir to the effect that the documents running into thousands of pages which included the complete description of the persons to whom the properties of City Centre have been sold by M/s Today Homes, its account books, Bank Accounts records and Income Tax records etc. have been supplied to the Bureau.

(12) Canvassing on the legal intricacies, Mr. Shanti Bhushan very elaborately highlighted the sacrosance of Article 21 of our Constitution and laid emphasis that liberty of a person cannot be taken away unless the

allegations are proved against him. The Apex Court judgment in **Joginder Kumar versus State of U.P. & Ors.**(1) has been relied upon to contend that as per the Third Report of the National Police Commission, an arrest during investigation of a cognizable case can be justified only in any one of the following circumstances :—

- “(i) the case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims;
- (ii) the accused is likely to abscond and evade the processes of law ;
- (iii) the accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint;
- (iv) the accused is a habitual offender and unless kept in custody he is likely to commit similar offences again”.

(13) It was contended that since the case in hand does not fall in any one of the above noted exceptions, the petitioners deserve the concession of anticipatory bail.

(14) Mr. Shanti Bhushan also relied upon the judgment of the Hon’ble Supreme Court in the case of **Nandini Satpathy versus P.L. Dani & Anr.** (2) to urge that the arrest cannot be effected to subject a suspect to custodial interrogation and to bring him to self-incrimination and that the investigating agency cannot extract a confession by coercion or duress thereby compelling the suspect to inculcate himself. Learned Senior Counsel also relied upon the Constitution Bench judgment of the Apex Court in the case of **Shri Gurbaksh Singh Sibbia & Ors. versus State of Punjab** (3) to buttress his contention that Section 438 of the Code deserves an expansive meaning so as to advance the cause of fundamental right guaranteed under Article 21 of the Constitution. It was observed by their Lordships that *“it is also not proper to hold that in serious cases*

(1) (1994) 4 S.C.C. 260
(2) (1978) 2 S.C.C. 424
(3) (1980) 2 S.C.C. 565

like economic offences involving blatant corruption at the higher rungs of the executive and political power the discretion under Section 438 of the Code should not be exercised. It is not possible for the Court to assess the blatantness of corruption at the stage of anticipatory bail". In addition, learned Counsel also referred to and relied upon the order dated 30th July, 2007 passed by a Coordinate Bench in **Captain Amarinder Singh's case**, thereby granting pre-arrest bail in this very case to the then Chief Minister, Punjab and his wife.

(15) Ms. Reeta Kohli, learned Additional Advocate General, Punjab on the other hand and with equal vehemence, argued that the present case unearths a unique scam where M/s Today Homes has been granted undue favours, one after the other, at the cost of losses to the tune of a few thousand crores to the Trust/State exchequer. She pointed out that the Estate Officer of the Trust (Dayal Chand Garg) was arrested and a sum of Rs. 40 lacs in cash was recovered from him. Similarly, another Trust official was arrested and a huge cash amount was recovered from him as well. She vehemently refuted the petitioners' allegation that but for the alleged "sting operation" carried out by a TV channel, there is nothing else to substantiate the allegations. She referred to the statement of R.D. Awasthy, Assistant Trust Engineer, under Section 164 of the Code to the effect that G.K. Gambhir—one of the petitioners gave Rs. 20 lacs to Kamal Verma, and Rs. One crore to Ch. Jagjit Singh, the then Minister-in-charge in his presence in Room No. 517, Hotel Park Plaza where the said R.D. Awasthy was summoned by the Minister through Man Mohan Singh, Superintending Engineer of the Trust who too was heavily bribed. R.D. Awasthy have further deposed that G. K. Gambhir tried to bribe him also by offering Rs. 5 lacs which he refused to accept. Reliance is also placed on the recovery of a pen drive which allegedly contains some incriminating e. mails. It was also argued that *quid-pro-quo* led to permit M/s Today Homes to "sell" the LCC properties contrary to RFP and also to the drastic alteration of the design so as to benefit the successful bidder.

(16) Ms Reeta Kohli, learned Additional AG Punjab further contended that in the cases pertaining to economic offences, where the high and mighty are involved, it is next to impossible to unearth the sources of their black money and how and where it changed hands unless the investigating agency is given a free hand to interrogate them. Relying upon a judgment of the

Apex Court in the case of **State rep. By the CBI versus Anil Sharma**, (4) she urged that interrogation of an accused, who has been provided the cushion of anticipatory bail, does not yield as much effective results as compared to the custodial interrogation. According to her, the source of brief money which is offered and accepted in a clandestine manner, cannot be traced out from the list of the allottees to whom the properties of the City Centre have been sold by M/s Today Homes or their Bank Accounts or income Tax returns as each conspirator is beneficiary of the illegitimate hidden transactions, therefore, the disclosure statements alone can unveil the truth. Relying upon the later judgments of the Apex Court in the cases of (i) **Adri Dharan Das versus State of West Bengal** (5) and (ii) **D.K. Ganesh Babu versus P.T. Manokaran & Ors.** (6) she argued that the arrest of an accused cannot be stayed in exercise of powers under Section 438 of the Code which needs to be invoked sparingly and for a limited period only. she urged that the petitioners were granted the *ad-interim* protection way back on 31st May, 2007. However, till date no material information has been divulged by them despite their joining the investigation for several days. She has also handed-over a chart in ‘tabulated form’ highlighting non-cooperation by the petitioners during the course of investigation.

(17) Refuting the allegations of political vendetta, learned Additional AG argued that the scam was detected during the period when the first suspect-Captain Amarinder Singh was the Chief Minister of Punjab who only ordered inquiry by the State Vigilance Bureau, which recommended deeper probe,—*vide* its report dated 19th December, 2006. She contended that the present State Government merely acted upon the said inquiry report and after obtaining legal opinion has got the case registered formally.

(18) The only question which requires determination by this Court is as to whether the petitioners have made out a case for the grant of anticipatory bail within the parameters laid down under Section 438 of the Code. Undoubtedly, while considering such a prayer, the Court would keep in view the nature and gravity of the accusation; antecedents of the applicant, possibility of his fleeing from justice and the fact as to whether the accusation

(4) (1997) 7 S.C.C. 187

(5) (2005) 4 S.C.C. 303

(6) (2007) 2 R.C.R. (Cri.) 161

has been made with an intent to injuring or humiliating the accused. The Court's endeavour would be to maintain balance between the valuable right of liberty of an individual on one hand and the interest of the society at large on the other hand.

(19) The petitioner—G.K. Gambhir is statedly an entrepreneur of high prominence. Several mega structural projects including that of LCC are claimed to have been executed by the Company he owns. He appears to be fabulously wealth who can wield wide influence. If there was a grain of truth in the allegations, many officers/functionaries of the Trust were heavily bribed by him. A small level officer like—R.D. Awasthy, Assistant Trust Engineer has mustered courage to depose under Section 164 of the Code alleging that G.K. Gambhir bribed several and attempted to lure him as well. His antecedents, therefore, suggest that he is capable of tempering with and/or influencing the on-going investigation.

(20) In some-what similar circumstances, their Lordships of the Supreme Court in **Anil Sharma's case (supra)** held that “custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation a such a condition would reduce to a mere ritual. The arugment that the custodial interrogation is fraught with the danger of the person being subjected to third-decree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases”.

(21) Concededly, the news-items and/or ‘sting operation’ by a TV channel were the events which took place in August/September, 2006 when Captain Amarinder Singh was Chief Minister of Punjab. The vigilance inquiry was also ordered by the previous regime. The Vigilance Bureau appears to have elaborately examined different aspect,—*vide* its preliminary report dated 19th December, 2006 before it concluded that the Management of M/s Today Homes and P.S. Sibia, the then Chairman of the Trust and his Consultant (Kamal Verma) had conspired to mis-appropriate/embezzle

public/Trust funds causing actual financial loss of about 200 crores merely on account of accepting the bid of M/s Today Homes as compared to that of M/s Bestech. The Vigilance Bureau took further notice of the report of M/s Arkitektural Grid which has alleged a loss of Rs. 3775 crores to the Trust due to “sale” of properties. It also took notice of the stand taken on behalf of M/s Today Homes that 30% share of the Trust was kept intact and thereafter only it recommended that “a deeper probe to ascertain the actual losses and liability of the concerned persons and that of the officials/officers in the public/government service” is required.

(22) Apparently, the State Vigilance Bureau while arriving at the afore-quoted conclusion, had also taken into consideration the proceedings of the meeting held on 6th October, 2006 (Annexure P- 13) which are being heavily relied upon by the petitioners. It, however, further appears that no Special Purpose Vehicle (SPV) as resolved in the said meeting, was ever set up, therefore, the occasion to constitute its Board of Directors also did not arise and as a consequence thereof, the aforementioned decision remained on papers only.

(23) Why did the State Government keep sitting tight over the report of the Vigilance Bureau dated 19th December, 2006 or not constitute the SPV in terms of the decision dated 6th October, 2006 (Annexure P-13) and not take any steps to protect the best interests of the Trust/the State Exchequer, are a few intriguing questions which need to be answered, therefore, mere registration of the case on the report of the Vigilance Bureau which *prima facie* discloses commission of a cognizable offence, *per-se* does not reflect any political vendetta as this premature stage.

(24) Adverting to the allegations of actuated or extraneous considerations behind a chain of decisions, it appears from the material on record that the then Chairman of the Trust (P.S. Sibia) went ahead with a supersonic speed to finalize the contract with M/s Today Homes, discarding the government directions knowingly and brazenly. The manner in which the then Chairman of the Trust overruled the verbal/written government instructions, opened and accepted the financial bid and even issued LOI in favour of M/s Today Homes so as to create a legal right in their favour, *prima facie*, gives rise to something more than a strong suspicion on his *bona-fide*. The over-anxiety behind entering into the agreement and going

to the extent of executing even a General Power of Attorney in favour of M/s Today Homes apparently stinks of extraneous considerations. Unfortunately, the face saving steps initiated by the State Government,— *vide* decision dated 6th October, 2006 also remained confined to the Proceedings-Book only.

(25) Assuming that the allegations regarding causing loss to the Trust/State Exchequer to the tune of thousands of crores are highly exaggerated, yet, having regard to the mammoth size of the project, use of even a minimal percentage of corrupt means would turn into crores of rupees.

(26) The allegation that the bribe money was pouring like torrential rains does not solely rest upon the news-items or the alleged 'sting operation' but there is essentially something deeper than that meets the eye. A 'pen drive' is alleged to have been recovered which contains the record of E-mails suggesting some unholy financial transactions. The investigating agency is also armed with the statement of R.D. Awasthy, Assistant Trust Engineer, recorded under Section 164 of the Code, which talks about payment of heavy bribe by GK. Gambhir to various functionaries including Superintending Engineer, the then Chairman of the Trust, their Consultant (Kamal Verma) as well as the Minister-in-Charge. Similarly, after the arrest of some of the accused like Dayal Chand Garg, the then Estate Officer and Man Mohan Singh, Superintending Engineer of the Trust, the investigating agency is alleged to have recovered huge cash from their respective houses. In normal circumstances, these officers could not have had such a big cash amount lying at their residence. The statement recorded under Section 164 of the Code has been, thus, *prima facie* corroborated.

(27) The contention of Mr. Shanti Bhushan, learned Senior Counsel that in view of the recommendations of the Third Report of the National Police Commission which were approved by the Apex Court in **Joginder Kumar's case** (*supra*), arrest of an accused is warranted only in the cases like that of murder, dacoit, robbery, rape etc., does not appear to be convincing. The ratio-decendie of that case can not be construed to mean that arrest of an accused involved in a case other than murder, dacoity, robbery, rape etc. can not be affected. The Courts can not be oblivious of the fact that "corruption" is a fatal malady and has unparalleled

devastating effects on any developing nation like India. May be a miniscule percentage, but a few role models of the Society have been found indulging amassing wealth through illicit means. The Champions of probity in public life claim that due to its demoralizing impact on society, corruption is as heinous as the other offences mentioned above. The magnitude and adverse consequences of corruption, therefore cannot be over-looked or under-estimated.

(28) From the nature of allegations and material on record, two persons, namely, G.K. Gambhir and P.S. Sibia appear to be the key players in the alleged scam. Admittedly; Sibia is absconding and his where-abouts are unknown. The other suspect G.K. Gambhir is protected with interim bail against arrest.

(29) In the case in hand, though it appears from the records that the petitioners, in terms of the *ad-interim* directions issued by this Court, have been repeatedly appearing before the officers of the Vigilance Bureau, however, the investigation is stuck at the same place from where it had started. The records of allotment/sale of properties by M/s Today Homes or their accounts books or income tax returns which are meticulously maintained by professional would never reveal as to whether or not G.K. Gambhir, one of the petitioners, had gratified those who were at the helm of affairs of the Trust or of the Punjab Government at the relevant time. The mode of investigation, as directed by this Court through the interim order dated 31st May, 2007 has, thus, failed to take the investigation to its logical conclusion.

(30) So far as the order dated 30th July, 2007 passed by Ranjit Singh, J. in **Captain Amarinder Singh's case** (*supra*) is concerned, this Court *prima facie* took notice of political vendetta against the petitioner(s) and, therefore, rightly invoked the principles laid down by the Constitution Bench of the Apex Court in **Gurbaksh Singh Sibia's case** (*supra*) and granted protection against arrest. In the present cases, except one of the petitioner (BIS Chahal) none has alleged any political rivalry or any past history of enmity against the present regime.

(31) In the light of the discussions made above, I am of the considered view that G.K. Gambhir petitioner in Criminal Misc. No. 32475-M

of 2007, does not deserve the concession of pre-arrest bail and his petition is accordingly dismissed.

(32) As regard to Vinay Subhiki the petitioner in **Criminal Misc. No. 32532-M of 2007**, though he appears to be second-in-command in relation to the affairs of M/s Today Homes, however, there are no specific allegations against him that he bribed the functionaries of the Trust and/or Punjab Government. The allegations against him are of general nature and in the absence of any *prima facie* material to suggest his active participation in the alleged untechnical financial does, I am of the considered view that the said petitioner deserves the concession of pre-arrest bail. Consequently, his petition is allowed to the extent that he is directed to appear before the Investigating Officer as and when required. However, instead of three consecutive days in a week, as directed earlier, the Investigating Officer shall be at liberty to direct the said petitioner to join the investigation on any working day from 10 AM to 6 PM and during the said period, the said petitioner shall not have assistance of any lawyer or other person. However in the event of arreest, he shall be released on pre-arrest bail subject to his furnishing bail bonds to the satisfaction of the Investigating Officer. he will also comply with the condition laid down in Section 438(2) of the Code. It is further directed that the aforesaid order of pre-arreest bail shall continue to operate till the date of presentation of challan, if any and in the event of presentation of challan, the above named petitioner shall surrender before the learned trial Court and may seek regular bail.

(33) Similarly, the petitioner (Sunil Sharma) in **Criminal Misc. No. 32534-M of 2007**, the only allegation against him is that he is an official of M/s Today Homes and was found involved in the sting operation. Even if the allegations are assumed to be correct, it can be inferred safely that the said petitioner acted under the directions or at the behest of his master, namely, G.K. Gambhir. There are no allegations agaisnt him regarding payment of bribe to any functionary of the Trust and/or of the State Government. The alleged incriminating material, i.e. CD etc. of the 'sting operation' is already in possession of the investigating agency. Consequently, his petition is allowed to the extent that he is directed to appear before the Investigating Officer as and when required. However, instead of three

consecutive days in a week, as directed earlier, the Investigating Officer shall be at liberty to direct the said petitioner to join the investigation on any working day from 10 AM to 6 PM and during the said period, the said petitioner shall not have assistance of any lawyer or other person. However in the event of arrest, he shall be released on pre-arrest bail subject to his furnishing bail bonds to the satisfaction of the Investigating Officer. He will also comply with the conditions laid down in Section 438(2) of the Code. It is further directed that the aforesaid order of pre-arrest bail shall continue to operate till the date of presentation of challan, if any and in the event of presentation of challan, the above named petitioner shall surrender before the learned trial Court and may seek regular bail.

(34) Likewise, the petitioner-Syed Arshad Hussain Naqvi in Criminal Misc. No. 35266-M of 2007 was appointed as Manager (Marketing) with M/s Today Homes on 18th April, 2006, he resigned after a few months and his resignation was accepted by M/s Today Homes and Infrastructure Private Limited on 19th September, 2006 (Annexure P-3). He has also been implicated on the allegation that he too figures in the 'sting operation'. Even if the allegations are assumed to be correct, it can be safely inferred that the said petitioner acted under the directions or at the behest of his master, namely, G.K. Gambhir. There are no allegations against him also regarding payment of bribe to any functionary of the Trust and/or of the State Government. The alleged incriminating material, i.e., CD etc. of the 'sting operation' is already in possession of the investigating agency. Consequently, his petition is allowed to the extent that he is directed to appear before the Investigating Officer as and when required. However, instead of three consecutive days in a week, as directed earlier, the Investigating Officer shall be at liberty to direct the said petitioner to join the investigation on any working day from 10 AM to 6 PM and during the said period, the said petitioner shall not have assistance of any lawyer or other person. However in the event of arrest, he shall be released on pre-arrest bail subject to his furnishing bail bonds to the satisfaction of the Investigating Officer. He will also comply with the condition laid down in Section 438(2) of the Code. It is further directed that the aforesaid order of pre-arrest bail shall continue to operate till the date of presentation of challan, if any and

in the event of presentation of challan, the above named petitioner shall surrender before the learned Trial Court and may seek regular bail.

(35) So far as the petitioner (Bharat Inder Singh Chahal) in **Criminal Misc. No. 33035-M of 2007** is concerned, he is a former Media Adviser to the then Chief Minister, Punjab. His name does not figure any where in the context of allegations of adoption of corrupt means by the Chairman/officers of the Trust or the State Government. The said petitioner, however, has been implicated on the basis of a statement of a Property Dealer under Section 161 of the Code. Wherein it is claimed that he contacted the petitioner through one Chetan Gupta and paid Rs. 1,00,000 for getting a good space allotted in the Ludhiana City Centre. The petitioner, thus, appears to have been implicated merely on the basis of suspicion and there is no material whatsoever except the bald statement, referred to above, to substantiate the allegation against him. Consequently, his petition is allowed to the extent that he is directed to appear before the Investigating Officer as and when required. However, instead of three consecutive days in a week, as directed earlier, the Investigating Officer shall be at liberty to direct the said petitioner to join the investigation on any working day from 10 AM to 6 PM and during the said period, the said petitioner shall not have assistance of any lawyer or other person. However in the event of arrest, he shall be released on pre-arrest bail subject to his furnishing bail bonds to the satisfaction of the Investigating Officer. He will also comply with the condition laid down in Section 438(2) of the Code. It is further directed that the aforesaid order of pre-arrest bail shall continue to operate till the date of presentation of challan, if any and in the event of presentation of challan, the above named petitioner shall surrender before the learned Trial Court and may seek regular bail.

(36) It is made clear that the observations made here-in-above shall not be construed as an expression of opinion on merits of the case and the same have been made for the purposes of disposal of the instant petitions only.

(37) Disposed of accordingly.

R.N.R.