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G.K. Gambhir Vs State of Punjab

Criminal Miscellaneous 32475-M of 2007

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 1, 2007

Acts Referred:

Constitution of India, 1950 â€" Article 21#Criminal Procedure Code, 1973 (CrPC) â€" Section

161, 164, 438, 438(2)#Penal Code, 1860 (IPC) â€" Section 120B, 409, 420, 467,

471#Prevention of Corruption Act, 1988 â€" Section 13(1), 13(2), 14, 7

Citation: (2007) 4 RCR(Criminal) 692

Hon'ble Judges: Surya Kant, J

Bench: Single Bench

Advocate: Shanti Bhushan, Mr. Sidharth Luthra, Mr. Vivek Sibal, Deepak Sibal and Gauri

Setia, for the Appellant; Reeta Kohli, Addl. AG, Punjab, for the Respondent

Judgement

Surya Kant, J.

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 u/s 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, 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 ""RFP"").

- 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 here

after and transferring all the facilities (in similar condition as during Commercial Operation Date) to LIT, using either of the two models vis Joint

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

motive 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 year wise

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, 26 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 quenched 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 & 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 & 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 AM and 4.30 PM 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 AM.. 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 PM which apparently prompted the State Government to send a

FAX message on the same day at 6.40 PM 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 & 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 of 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 afore-stated

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 over-all

sale/lease of the LCC properties. The Print Media, namely, Hindustan Times also published a news- 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 1st 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 afore-said 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 3th 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. Gambhir 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 can not be taken away unless the allegations are proved against him. The Apex Court judgment in Joginder

Kumar Vs. State of U.P. and others, 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 Vs. P.L. Dani and Another,

to urge that the arrest can not be effected to subject a suspect to custodial interrogation and to bring him to self-incrimination and that the

investigating agency can not extract a confession by coercion or duress thereby compelling the suspect to inculpate himself. Learned Senior

Counsel also relied upon the Constitution Bench judgment of the Apex Court in the case of Shri Gurbaksh Singh Sibbia and Others Vs. State of

Punjab, 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 like

economic offences involving blatant corruption at the higher rungs of the executive and political power the discretion u/s 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 Petitioner's 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, u/s 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 v.

Anil Sharma, 1997(4) RCR (Cri.) 268 (SC): (1997) 7 SCC 987, 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 bribe

money which is offered and accepted in a clandestine manner, can not 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 Vs. State of West Bengal, (1) Apex Criminal 473 : (2005)4 SCC 303 and (ii) D.K. Ganesh Babu v. P.T. Manokaran and

Ors., 2007 (2) RCR (Cri.) 161: 2007(2) R.A.J. 342 (SC), she argued that the arrest of an accused can not be stayed in exercise of powers u/s

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 u/s 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 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 wealthy 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 u/s 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 tampering 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 u/s 438 of the Code. In a case like

this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations 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 in such a condition would reduce to a mere ritual. The argument

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 aspects 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 conclusions, 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 at 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 u/s 164 of the Code, which talks about payment of heavy bribe by G.K. 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 residences. The statement recorded u/s 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, dacoity, 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 minuscule percentage,

but a few role models of the Society have been found indulging in 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, can not 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 whereabouts 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 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.

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 unethical financial deals, 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 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.

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 against 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 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.

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 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, referred to above, to substantiate the allegations 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. 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.

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.