

(2013) 05 AHC CK 0181

Allahabad High Court

Case No: Criminal Miscellaneous Application No. 480 of 2013 with Cr. M.A. Nos. 40718, 41006, 41142, 41187, 41206 of 2012 and 921 of 2013

Prof.N.K.Ganguly

APPELLANT

Vs

Central Bureau of Investiga Tion

RESPONDENT

Date of Decision: May 27, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 482
- Penal Code, 1860 (IPC) - Section 120B
- Prevention of Corruption Act, 1988 - Section 13(1)(d), 13(2)

Hon'ble Judges: Vijay Prakash Pathak, J

Final Decision: Disposed Of

Judgement

Vijay Prakash Pathak, J.

Since all the aforesaid seven connected petitions arise out of the same proceedings and have been filed with almost similar prayer to quash the entire criminal proceedings of Special Case No.18/12 (CBI Vs. N.K.Ganguly & others) in pursuance of the charge sheet dated 31.10.2012 in Case Crime No.RC062 2010 E 0010, under Sections 120B IPC and Section 13(2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988 as well as the summoning order dated 8.11.2012 passed by Special Judge, Anti Corruption CBI, Ghaziabad, these are being decided together.

Heard Sri P.P.Khurana, learned Senior Advocate assisted by Sri Santosh Kesharwani, learned counsel for the petitioner Prof.N.K.Ganguly in Application u/s 482 Cr.P.C.no.480 of 2013, Sri Satyendra Kumar Singh, learned counsel for the petitioner Dr.Bela Shah in Application u/s 482 Cr.P.C. no. 40718 of 2012, Sri Mohd. Khalid holding brief of Sri Imran Ullah, learned counsel for the petitioner Smt. Bhavani Thyagarajan in Application u/s 482 Cr.P.C.No.41006 of 2012, Sri V.P.Srivastava learned Senior Advocate assisted by Sri Nitin Gupta, learned counsel for the petitioner Suresh Chand Pabreja in Application u/s 482 Cr.P.C. No. 41142 of 2012

and for petitioners Mohinder Singh, P.D.Seth, Jatindra Singh, Ashok Kumar Srivastava and Laxman Das Puspa in Application u/s 482 Cr.P.C.No.41187 of 2012, Sri Dilip Kumar, learned counsel for the petitioner Bhudev C.Das in Application u/s 482 Cr.P.C.No. 41206 of 2012, Sri Nasiruzzaman, learned counsel for the petitioner Dr. Sujit Kumar Bhattacharya in Application u/s 482 Cr.P.C. No.921 of 2013 as well as Sri N.I.Jafri, learned counsel for CBI.

Before the facts giving rise to the present case are stated, it would be necessary to state briefly about introduction and activities of the Indian Council of Medical Research (ICMR) and Institute of Cytology & Preventive Oncology (ICPO) whose officials are alleged to be involved in the present case.

ICMR, a society registered under the Societies Registration Act, 1860 is a premier body in India dealing with formulation, coordination and promotion of biomedical research having its headquarters at Ansari Nagar, New Delhi. It is funded by the Govt. of India through the Ministry of Health and Family Welfare and has many Institutes/centres all over the country to manage its research activities in important areas of national public health. Institute of Cytology & Preventive Oncology (ICPO) situated at 17, Sector 39, NOIDA (Uttar Pradesh) is one of these institutes with the main aim of promoting research in the field of cancer. Prof. N.K.Ganguly (applicant) was the then Director General, ICMR, Mohinder Singh (applicant) was the then Sr.DDG (Admn.), ICMR, P.D.Seth (applicant) was the then Financial Advisor, ICMR, B.C.Das (applicant) was the then Director, ICPO and A.K.Srivastava (applicant) was Executive Engineer, ICMR.

A case was got registered on 30.11.2010 under Section 120B IPC, read with 13(2) and 13(1) (d) of the Prevention of Corruption Act, 1988 on the basis of written complaint of the same date received from Sri M.R.Atrey, SubInspector of Police CBI, EOU, VII, New Delhi after completion of preliminary enquiry against (1) Prof. N.K.Ganguly, the then Director General (since retired), (2) Mohinder Singh, the then Sr.Dy. Director General Admn. (since ret'd.), (3) P.D.Seth, the then Financial Advisor (since ret'd.), (4) A.K.Srivastava, Executive Engineer, all from ICMR, New Delhi and (5) B.C.Das the then Director (since ret'd.), ICPO, NOIDA and other unknown persons in the matter of unauthorized and illegal transfer of plot no.119, Sector 35, Noida, measuring 9712.62 sq. meters from ICPO, Noida (an institute of Indian Council of Medical Research, New Delhi) to a private group housing society namely ICPOICMR Cooperative Group Housing Society Ltd. Noida.

A preliminary enquiry was conducted in the matter and during enquiry it was revealed that the aforesaid officials of ICPO/ICMR and other unknown persons, in criminal conspiracy with one another and by abusing their official position as public servants, during the period 2006/07 unauthorisedly and illegally transferred Plot No.119, Sector 35, Noida measuring 9712.62 sq. meters from Institute of Cytology and Preventive Oncology (ICPO) to ICPOICMR Cooperative Group Housing Society Ltd. Noida (a private group housing society) on a consideration of Rs.4,33,90,337/

which was much lower than the market rate/the then prevailing sector rate of Rs.18,000/ per sq.metres of the Noida Authority and thereby caused undue pecuniary advantage to themselves and others being members of the aforesaid society. It was further alleged that membership in the ICPOICMR CGHS Ltd. Was given to such persons who were otherwise not eligible for membership as per the Bye laws of the Society and terms and conditions stipulated and approved by ICMR for membership in the said society. It was also alleged that officers of Noida Authority allowed transfer of Plot No.119, Sector 35, Noida from ICPO to ICPOICMR Cooperative Group Housing Society Limited despite the fact that such transfer was against the provisions/policy and the officer who approved the transfer was not empowered to order such transfer.

During the course of investigation, apart from the aforesaid named accused persons in the FIR, criminal involvement of other officials of ICMR, ICPO, Ministry of Health and Family Welfare and Noida Authority viz. (1) L.D.Pushp, the then Administrative Officer, ICPO, (2) Jatinder Singh, the then Sr.Accounts Officer, ICMR, (3) Dr.S.K.Bhattacharya, the then ADG, ICMR, (4) Dr.Bela Shah, Head of NCD, Division, ICMR, (5) Smt.Bhawani Thaigrajan, the then Jt.~Secretary, Ministry of Health & Family Welfare, Government of India, (6) S.C.Pabreja, Manager (Residential Plots), Noida Authority and (7) R.S.Yadav, OSD (Residential Plots), Noida Authority also surfaced and were probed.

The crux of the allegations in the FIR which was followed by investigation leading to the filing of the charge sheet is that accused (1) Prof. N.K.Ganguly, the then Director General (since retd.), ICMR,New Delhi (2) Mohinder Singh, the then Sr.Dy.Director General Admn, (since retd.), ICMR, New Delhi, (3) P.D.Seth, the then Financial Advisor (since retd.), ICMR,New Delhi, (4) B.C.Das, the then Director (since retd.) ICPO, NOIDA, (5) A.K.Srivastava, Executive Engineer, ICMR, New Delhi, (6) Jatinder Singh, the then Sr.Accounts Officer,ICMR,New Delhi, (7) Dr. S.K.Bhattacharya, the then ADG, ICMR,New Delhi, (8) Dr.Bela Shah, the then Sr.DDG & Head of NCD Division, ICMR, New Delhi, (9) Smt.Bhawani Thaigrajan, the then Joint Secretary, Ministry of Health & Family Welfare, Government of India, New Delhi, (10) Lachman Das Pushp, the then Administrative Officer, ICPO,NOIDA, (11)Suresh Chand Pabreja, the then Manager (Residential Plots), NOIDA and (12) R.S.Yadav, then then OSD(Residential Plots), NOIDA. remained instrumental in initiating/processing the proposal and taking decision for transfer of plot in question to ICPOICMR CGHS Ltd. (a private group housing society). Subsequently, the aforesaid accused persons except Nos.11 and 12 obtained residential flats constructed on the said plot being members of the aforesaid society and thereby obtained undue pecuniary advantage for themselves/others to the extent of Rs.13,14,36,823/ by transferring the plot at a consideration of Rs.4,33,90,337/ whereas the value of the plot @ Rs.18,000/ per sq.meter(Noida Authority Sector Rate) was Rs.17,48,27,160/.

It was further revealed that the accused officials of Noida Authority viz. S.C.Pabreja, the then Manager (Residential Plot) and R.S.Yadav, OSD (Residential Plot) in league with the coaccused ICPO/ICPOICMR CGHS officials/office bearers and by abusing their official position as public servants, played a vital role in the crime by allowing the transfer despite the fact that the said plot was not transferable without the prior approval of the CEO/Chairman or an officer authorized by the CEO/Chairman of the Noida Authority in this regard.

In the aforesaid sequence of events, circumstances and evidence collected during investigation and after procuring the sanction orders for prosecuting the accused applicants namely A.K.Srivastava and Dr.Bela Shah issued under Section 19 of the Prevention of Corruption Act, 1988 by the competent authority, charge sheet u/s 173(2) Cr.P.C. was submitted by the CBI against them for the offences punishable under Section 120B IPC read with 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 and for substantive offence punishable under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 except accused R.S.Yadav, OSD, NOIDA against whom the requisite sanction for prosecution under the Act was declined by the competent authority. However as no such sanction order was required for prosecuting the other accused, namely, Prof. N.K.Ganguly, Mohinder Singh, P.D.Seth, B.C.Das, Jatinder Singh, Dr. S.K.Bhattacharya, Smt.Bhavani Thyagarajan, L.D.Pushp and S.C.Pabreja (since retired), they were charge sheeted for the offences punishable under the aforesaid Sections without there being any sanction order. Thereafter the learned Special Judge, Anti Corruption, CBI, Ghaziabad after considering the charge sheet and other material available on record, came to the conclusion that a prima facie case appeared to have been committed by the accused applicants for the offences punishable under Section 120B IPC read with Section 13(2) and 13(1) (d) of the Prevention of Corruption Act, accordingly took cognizance of the same and summoned the accused applicants to face trial for the said offences vide impugned order dated 8.11.2012.

The first submission made by the learned counsel for the petitioners is that the entire transaction made for transfer of plot no.119, Sector 35 Noida from ICPO to ICPOICMR Cooperative Group Housing Society was transparent as it was done looking to the need of the employees concerned as well as for their welfare after taking legal opinions and after obtaining sanction from the NOIDA. It is contended that the charge sheet is vague as the investigation was not conducted fairly, properly and impartially and it was filed only with an intention to harass the petitioners. It is also stated that the report of Comptroller and Auditor General of India has been withheld by the CBI while submitting the charge sheet, whereas on the basis of the said report, the FIR was got lodged.

In support of the said contention, the following three verdicts of the Hon"ble Apex Court have been relied upon by the learned counsel for the petitioners;

1. (2006) 7 SCC 172, State Inspector of Police, Vishakhapatnam Vs Surya Sankaram Karri(para 19);
2. 2006 (12) SCC 421Sasi Thomas Vs. State and others; and
3. 1994 Supp. (2) SCC 73 (para 37) Rampal Pithwa Rahidas & others Vs State of Maharashtra.

In reply to the aforesaid submission, learned counsel for the CBI has submitted that the plot in question was allotted by the NOIDA to ICPO one of the Institute of ICMR, for the purposes of staff quarters through a lease deed dated 13.1.1992. According to paragraph (I) of the said lease deed, it was provided that the lessee will not assign, relinquish, mortgage, sublet, transfer or part with the demised premises or its part before or after erection of the building without prior approval of CEO/Chairman or any officer duly authorized by him. It is submitted that the petitioners with a malafide intention and under criminal conspiracy got transferred the said plot to the ICPOICMR Cooperative Group Housing Society at a lower rate, which was a private Housing Society and they being members of said society got one flat each allotted in their favour and as such they caused loss to ICPO/ICMR and benefited themselves and others. It is submitted that legal opinions were obtained by suppressing the correct facts as the said opinions were subsequently clarified by the persons who had given their earlier opinions. It is also submitted that the said plot was got transferred to private cooperative housing society, namely ICPOICMR Group Cooperative Housing Society Ltd. with an ulterior object to obtain undue pecuniary advantage for themselves and others. The said plot was transferred on a monetary consideration of Rs.4,33,90,337/ which comes to Rs.4667/ per square meter only despite knowing the fact that at the time of transfer, the prevailing sector rate of NOIDA was Rs.18,000/ per square meter which was in the knowledge of the petitioners and as such they being public servants dishonestly obtained pecuniary advantage which caused loss to ICPOICMR, a fully Government funded body. It is further submitted that the sanction of the said transfer was obtained by Sri R.S.Yadav, OSD(Residential Plots), NOIDA on the transfer memorandum prepared by Sri S.C. Pabreja, Manager (Residential Plots), NOIDA who had no power or authority to sanction such transfer. It is submitted that the CBI has properly, fairly and impartially investigated the matter and there is no slackness in the investigation and after a thorough and detailed investigation, charge sheet has been submitted against the petitioners for the offence punishable under Section 120B IPC read with 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988. I have considered the said arguments as well as perused the verdicts cited on behalf of the petitioners.

In the verdict State Inspector of Police, Vishakhapatnam Vs Surya Sankaram Karri (supra), the Hon''ble Apex Court in paragraph 19 has held that a fair investigation is expected from the prosecution and the investigation will be carried out not only

from the stand of the prosecution but also the defence particularly in view of the fact that the onus of proof may shift to the accused at a later stage.

In the other verdict *Sasi Thomas Vs. State and others* (supra), the Hon"ble Apex Court has held that proper and fair investigation on the part of the Investigating Officer is the backbone of rule of law. The job of the Investigating Officer is to make investigation in right direction. The investigation must be in consonance with the ingredients of the offence. It cannot be haphazard or unmethodical.

In the third verdict *Rampal Pithwa Rahidas & others Vs State of Maharashtra*(supra) the Hon"ble Apex Court has held that the duty of the Investigating agency is to act honestly and fairly and not resort to fabricating false evidence only with a view to secure conviction

In the present matter the FIR was registered by the CBI after preliminary enquiry conducted in the matter and thereafter a thorough and detailed investigation has been conducted and charge sheet has been submitted.

I have perused the entire charge sheet which shows that the entire matter has been thoroughly considered and investigated in the light of the prosecution case as well as the documents in support of the defence.

In my considered opinion, there are sufficient material on record to establish that the CBI has properly,fairly and impartially investigated the matter and if the said report of CAG is required, the same may be produced before the trial court during trial. There appears nothing at this stage, which may show that the investigation was not conducted fairly or impartially. Rather a detailed and thorough investigation has been conducted scanning the entire material available on record and only then the charge sheet has been submitted against the petitioners.

Accordingly the first submission made by learned counsel for the petitioners does not appeal to the Court.

The next argument has been raised by the learned counsel for the petitioner Prof. N.K.Ganguly that in view of Section 6A of Delhi Special Police Establishment Act, 1946, the CBI shall not conduct any enquiry or investigation into an offence alleged to have been committed under the Prevention of Corruption Act except with the previous approval of the Central Government as the petitioner was appointed by the Central Government in an institution which was registered under the Societies Registration Act and hence the entire investigation was without any authority and is liable to be quashed. It is also submitted that after retirement on 10.11.2007 from the post of Director General of ICMR, the petitioner was nominated as President of Jawaharlal Institute of Post Graduate Medical Education and Research Puducherry vide Notification dated 12.12.2008 issued by the Central Government and at present also he is working on the said post. In view of this also, the investigation made by the CBI was without any authority of law.

The aforesaid argument in respect of Section 6A Delhi Special Police Establishment Act, 1946 has also been adopted by learned counsel for other petitioners.

In support of his contention, he has cited the verdict given by Delhi High Court in Dr. R.R.Kishore Vs. CBI reported in 2006 (3) JCC 1758.

On the other hand, learned counsel for the CBI in reply to the said argument has submitted that as the petitioner was retired from the post of Director General of ICMR, New Delhi in the year 2007 and was not holding any post of public servant, hence Section 6A of the Delhi Special Police Establishment Act, 1946 is not applicable in the case. It is also submitted by learned counsel for the CBI that the nomination of the petitioner Prof.N.K.Ganguly as President of Jawaharlal Institute of PostGraduate Medical Education and Research, Puducherry is only an engagement after postretirement which cannot be treated as regular appointment, hence the provisions of Section 6A of the aforesaid Act shall not be applicable. It is further contended that regarding other petitioners, most of them have already retired and two persons namely A.K.Srivastava and Dr.Bela Shah were in service, hence against them charge sheet was submitted by the CBI after procuring requisite sanction for prosecution from the competent authority. It is submitted that Section 6A of the aforesaid Act shall not be attracted in the facts and circumstances of the present case.

I have considered the said arguments and perused the verdict of Delhi High Court given in Dr.R.R.Kishore Vs. CBI (supra).

In the said verdict the Delhi High Court has observed that the validity of Section 6A of the Special Police Establishment Act, 1946 is under challenge and the issue is pending before a larger Bench of the Supreme Court. Section 6A is very much in existence and is in operation. A plain reading of Section 6A reveals that there is a complete bar of initiating any enquiry(which obviously includes a preliminary enquiry) or investigation into such alleged offence without the previous approval of the Central Government.

Learned counsel for the petitioners has submitted that the plain language of Section 6A which was introduced into the DSPE Act in 2003 is to protect senior level officers involved in decision making and there is nothing in the Section which may suggest that it is applicable to only serving officers. If the allegation relate to officers of a particular description, their being in service or not is of no consequence.

I have considered the aforesaid argument as well as the decision of the Delhi High Court and the provisions of Section 6A of DSPE Act, 1946. A plain reading of the Section 6A (1) (b) reveals that the Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act except with the prior approval of the Central Government where such officers are appointed by the Central Government in Corporations established by or under any Central Act, Government

companies, societies and local authorities owned and controlled by that Government. It does not reveal that the said provision shall be applicable to the retired employees also.

In my considered opinion, the said provisions are not attracted to a retired employee.

The petitioner Prof. N.K. Ganguly was already retired from service from the post of Director General of ICMR on 10.11.2007 and thereafter his nomination vide Notification dated 12.12.2008 issued by the Central Government as President of Jawaharlal Institute of PostGraduate Medical Education and Research, Puducherry shall not be treated to be a regular appointment or continuation of his regular service.

In so far as other petitioners are concerned, most of them have retired and against two persons i.e. A.K.Srivastava and Dr.Bela Shah charge sheet was submitted after obtaining requisite sanction for prosecution from the competent authority hence the protection of Section 6A of the aforesaid Act shall not be available in the present matter.

The next contention on behalf of the petitioners is that no offence under Section 13(1) (d) of the Prevention of Corruption Act is made out as there is no evidence that the petitioners acted by corrupt or illegal means or with malafide intention in respect of transfer of the alleged plot. Reliance has been placed upon a verdict of Rajasthan High Court given in State of Rajasthan Vs. Govind Ram Bagdiya & others reported in 2003 CrI.L.J 1169.

I have considered the said argument and perused the said verdict State of Rajasthan Vs. Govind Bagdiya & others (supra). The Rajasthan High Court has observed that evidence on record showed that the allotment was as per law. Nothing gain was obtained by accused persons or there was any wrongful loss to the Municipal Board and no conspiracy between the accused persons proved hence acquittal of the accused persons was proper.

In this connection, the relevant provisions of Section 13(1)(d) of the Prevention of Corruption Act has to be considered, which reads as follows:

"13. Criminal Misconduct By a Public Servant:(1) A public servant is said to commit the offence of criminal misconduct

.....

(d) if he

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest."

The allegations in the present matter are that the petitioners being public servants under conspiracy with each other committed the offence of criminal misconduct by abusing their official position in getting the plot in question allotted to ICPOICMR Cooperative Group Housing Society Ltd. by the then Director of ICPO on its behalf and subsequently the said ICPOICMR Cooperative Group Housing Society Ltd. constructed 102 flats on the said plot and the same were allotted to its members, including the petitioners Prof.N.K.Ganguly, the then Director General, ICMR, Mohinder Singh, the then Sr.Dy.DG (Admn.), ICMR, P.D.Seth, the then Financial Advisor, ICMR, B.C.Das, the then Director, ICPO, A.K.Srivastava, Executive Engineer, ICMR, Jatinder Singh, the then Sr.Accounts Officer, ICMR, Dr. S.K.Bhattacharya, the then Addl.Director General, ICMR, Dr.Bela Shah, Scientist "G" & Head of NCD Division, ICMR, Smt.Bhavani Thyagarajan, the then Financial Advisor, ICMR and L.D.Pushp, Administrative Officer, ICPO, NOIDA.

Learned counsel for the CBI has vehemently argued that the applicants being public servants have committed misconduct in getting the said transfer of the plot in question in favour of ICPOICMR Cooperative Group Housing Society Ltd., which was a private society and subsequently got allotted the flats in their favour constructed on the said plot. It is submitted that the said transfer was against the policy and at a very lower rate and without legal approval of the authorised officer of Noida.

In my opinion in the facts of the present case, the verdict of Rajasthan High Court given in State of Rajasthan Vs. Govind Ram Bagdiya & other(supra) is not attracted as the facts of this matter are quite different from that case.

Learned counsel for the petitioners have further submitted that according to the terms of lease given by NOIDA in favour of ICPO, the construction of staff quarters was to be completed with three years from the date of allotment which was later enhanced to 7 years and further extension of 5 years was permissible on payment of charge of 4% of the original allotment rate per year. Retaining the said plot at high penalty was becoming prohibitive cost wise and was proving imprudent. It was stated that in a similar situation a plot situated in Sector 16 A which was also leased out in the same manner and was ultimately cancelled on the ground mentioned in the lease deed i.e. non construction of the building within stipulated period as agreed, hence better option was chosen to transfer the said plot to ICPOICMR Cooperative Group Housing Society of the employees as the Institution was apprehending that allotment of plot in Sector 35 is also likely to be cancelled by the NOIDA Authority as plot no.16A was cancelled. It is also submitted that the staff of ICPO taking cue from Krishak Bharti Cooperative Ltd. (KRIBHCO) employees

proposed to constitute a house building cooperative society on the same pattern and the proposal was put up by the said employees to the authorities of ICPO and then Director of ICPO Dr.B.C.Das forwarded the proposal to the Headquarters in ICMR. ICMR while processing the proposal of the employees of ICPO asked if there was any such precedent in NOIDA for any Govt. Institute transferring the land allotted to it for the staff quarters to Cooperative Housing Society of its employees and it was found that KRIBHCO had similarly transferred lease hold rights in a plot of land allotted to it to the Cooperative Group Housing Society of its employees. It is further submitted that with a view to tide over the exigencies of the situation that the allotment of the alleged plot to be cancelled, the following suggestions were received from ICPOICMR officials and employees:

(i). To form a society of the employees of ICPOICMR for construction of residential premises for the staff to be financed by the Staff themselves and the payment already made by ICPOICMR to NOIDA to the extent of Rs.4,33,90,337/ would be reimbursed to the ICPOICMR.

(ii). To commence construction by ICPOICMR itself and

(iii). To surrender the land to the NOIDA.

The alternative No.(ii) was not possible as no fund was available and alternative no.(iii) would have resulted into serious financial loss to the ICPOICMR. Accordingly only alternative no.(i) was feasible in the peculiar circumstances of the case.

Learned counsel for the petitioners have also submitted that the matter was also referred to the Solicitor General of India Mr.G.E.Vahanvati whereby his opinion was sought as to whether the employees of ICPO may be permitted to form a society themselves which would take up the construction of residential premises for the staff to be financed by the staff themselves and the payment already made by the ICPO to the Noida Authority would be reimbursed by the proposed Group Housing Society. The Solicitor General gave his opinion to the effect that in his opinion though General Financial Rule 278 will not apply to the present case (since the land does not belong to the Government), the provisions of the lease are clear. It is also opined that the querist will require prior approval of the CEO/Chairman or any other officer of the Noida Authority duly authorized by the CEO/Chairman and there is no reason why this permission should not be granted, particularly since the querist is an organization functioning under the Ministry of Health & Family Welfare, Government of India and the plot would be used for a public purpose namely, provision of housing for the employees of ICPO.

It is further submitted on behalf of the petitioners that the plot in question was transferred after taking requisite sanction of the Noida Authorities which was given by Sri R.S.Yadav, OSD (Residential Plots), Noida, who was an authorised person about giving the approval for transfer of the said plot. It is also submitted that the executive committee accorded sanction and subsequently governing body has also

approved the same.

It is submitted that the entire transaction was transparent and the said transfer of plot in question was made in accordance with law and rules but the CBI has not conducted the investigation fairly, properly and impartially and illegally submitted the charge sheet on which the learned Special Judge, Anti Corruption, CBI has taken cognizance without applying his mind.

Per contra, learned counsel for CBI has submitted that the plot in question was originally allotted to ICPO/ICMR by Noida Authorities on 19.7.1991 for construction of staff quarters and a lease deed was executed by Noida Authority on 16.3.1992. The said plot was dishonestly and fraudulently transferred to ICPO/ICMR Cooperative Group Housing Society Ltd. (a private Cooperative Housing Society) on 9.3.2007 with an ulterior object to obtain undue pecuniary advantage for themselves/others for the total consideration of Rs.4,33,90,337/ which comes to Rs.4467/ per square meter despite knowing the fact that at the time of transfer the prevailing sector rate of Noida Authority was Rs.18,000/ per square meter, upon which the total value of plot was Rs.17,48,27,160/ and thereby the petitioners being public servants dishonestly obtained a pecuniary advantage to the extent of Rs.13,14,36,823/ for themselves and others which otherwise was a loss to ICMR, a fully Govt. funded body. The petitioners remained instrumental in initiating/processing the approval and taking decision for transfer of plot in question to ICPOICMR Cooperative Group Housing Society(a private Cooperative Society) and subsequently the aforesaid applicants/accused persons obtained residential flats constructed on the said plot being members of the aforesaid Society.

It is further submitted on behalf of the CBI that the applicants/accused Suresh Chand Pabreja, the then Manager (Residential Plots) and R.S.Yadav, OSD(Residential Plots) NOIDA Authority in league with the co accused ICPOICMR Cooperative Group Housing Society officials had played a vital role in allowing the transfer despite the fact that the said plot was not transferable without the prior approval of the CEO/Chairman or by an Officer authorised by CEO/Chairman of Noida. It is submitted that R.S.Yadav was not competent to order such transfer on the recommendation of S.C.Pabreja (applicant) in view of the then prevalent delegation of powers, particularly when there was no policy for transfer of a Group Housing plot. The amended delegation of power dated 16.12.2003 stipulates in clear terms that special attention be given while implementing the new delegation of power that wherever there is legal compulsion or policy related matter involved, such matter be put to the Chief Executive Officer for taking decision. It is further submitted that the said plot was illegally transferred to the said Cooperative Group Housing Society Ltd. on 9.3.2007 as a result of well thought criminal conspiracy hatched by accused officials of ICMR, ICPO, NOIDA and Ministry of Health and Family Welfare, Govt. of India, New Delhi.

It is also submitted on behalf of CBI that the said society was formed on 28.7.2006 with 25 promoters members belonging to ICPO/ICMR and was got registered on 19.8.2006 on the approval of Prof. N.K.Ganguly (applicant), the then Director General of ICMR, who himself was one of the promoter members of the society. The promoter members include the accused applicants B.C.Das, the then Director, ICPO as its Chief Promoter, Prof. N.K.Ganguly, the then DG, ICMR, Mohinder Singh, the then Sr.DDG (Admn.) ICMR, P.D.Seth, the then Financial Advisor, ICMR, A.K.Srivastava, Executive Engineer, ICMR, Jatinder Singh, the then Sr. Accounts Officer, ICMR, Dr.Bela Shah the then Sr.DDG and Head of NCD Division, ICMR and L.D.Pushp, Administrative Officer, ICPO. The said society was later on joined by Smt. Bhavani Thyagarajan, the then Joint Secretary, Ministry of Health and Family Welfare, Govt. of India and Dr. S.K.Bhattacharya, the then ADG, ICMR (applicants). It is also submitted that all the aforesaid officials of ICPO, ICMR and Ministry of Health & Family Welfare, Govt. of India were part of the processing or/and decision making process relating to the transfer of the said plot to ICPOICMR, CGHS Ltd.

It is further submitted on behalf of the CBI that some of the promotee members were even not eligible for membership as they were already having flats/houses in Noida and were not having necessary permission in this regard from the authorities concerned on the date of taking membership. It is also submitted that certain persons were even given membership in the society despite the fact that they were not fulfilling the membership criteria. It is further submitted that B.C.Dass (applicant) quoted the example of KRIBHCO which had transferred its plot for construction of houses allotted by the Noida Authority to the Group Housing Society formed amongst its own employees but he intentionally did not report the fact that KRIBHCO is a non funded autonomous body, which is selfreliant and does not take any funding from the Central Government, whereas the ICMR is 100% funded by Govt. of India. KRIBHCO had acquired the land out of its own income, whereas the ICMR had acquired the plot in question out of the grants received from Govt. of India.

It is further submitted that the opinion given by M/s Sikri & Co. was subsequently modified by Sri V.K.Rao, Advocate of M/s Sikri & Co. vide letter dated 22.2.2007 wherein he highlighted Rule 34 of ICMR Rules which mentions that any decision with respect of the disposal of ICMR property had to be taken by the Governing body. The said modified legal opinion of Sri V.K.Rao, Advocate was given prior to transfer of the plot in question but the accused applicants continued with their efforts with NOIDA authority to get the land transferred to ICPOICMR Cooperative Group Housing Society without taking approval of the Governing body. It is also submitted that the decision of the executive committee meeting dated 15.9.2006 regarding the transfer of the said plot was got ratified by Governing body in its meeting dated 24.10.2007, i.e. much after transfer of land in question to the society on 9.3.2007.

It is further submitted that the opinion of the then Solicitor General of India Sri G.E.Vahanvati dated 2.2.2007 was subsequently clarified by him as Attorney General of India vide opinion dated 30.8.2011 that the earlier opinion was given by him on the basis that the land would be used for public purposes and that the matter referred to him earlier did not mention that the society to which the land was proposed to be transferred, was a private cooperative society. It is submitted that the subsequent opinion dated 30.8.2011 proves that his earlier opinion dated 2.2.2007 given as Solicitor General of India was obtained by the applicants/accused ICPOICMR authorities by suppressing the true facts.

Learned counsel for the petitioners have also submitted that at the time of framing of charges or taking cognizance by the trial court, the defence evidence which are unimpeachable may be considered. He placed reliance upon a decision of the Supreme Court given in Rukmini Narvekar Vs.Vijaya Satardekar & others reported in (2008)14 SCC page 1.

In the said verdict the Hon"ble Apex Court has been pleased to hold that while it is true that ordinarily the defence material cannot be looked into by the Court while framing the charges in view of Debendra Nath Padhi case (2005) 1 SCC 568, there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the court at the time of framing of charges or taking cognizance. It cannot be said as an absolute proposition that under no circumstances can the court look into the material produced by the defence at the time of framing of the charges though this should be done in very rare cases i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted.

Reliance has also been placed upon a decision of the Supreme Court given in Harshendra Kumar D Vs. Rebatilata Koley & others reported in (2011) 3 SCC 351.

In the said verdict, the Hon"ble Apex Court has been pleased to hold that consideration of defence at prima facie stage by the High Court under revisionary power or under inherent power is not absolutely barred. In order to prevent any injustice or abuse of process or to promote justice, the High Court may look into materials which have significant bearing on the matter at prima facie stage. High Court can quash complaint if materials relied upon by accused are beyond suspicion or doubt or which are in the nature of public documents and are uncontroverted.

Per contra learned counsel for the CBI has submitted that there is no such material produced by the defence which are unimpeachable and can demolish the prosecution version. It is stated that there are sufficient material on the record which may prima facie prove that the accused petitioners were involved in committing the crime of misconduct being public servants with the intention to

benefit themselves and others by getting the plot in question illegally transferred and individual flats constructed on it and allotted to them also. He submitted that the High Court under inherent power given under Section 482 Cr.P.C. can exercise its power sparingly and in very rare cases where the prosecution version is absolutely found to be prima facie false.

He placed reliance on a verdict given by Hon"ble Apex Court in State of Punjab & others Vs. Indra Mohan Chopra & others reported in 2009(2) SCCrR, 1369. In the said verdict the Hon"ble Apex Court has been pleased to hold that exercise of power under Section 482 of the Code is an exception and not the rule. This Section does not confer any new power on the High Court and it only saves the inherent power which the court possesses before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The Hon"ble Apex Court has also held that inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist.

The Hon"ble Apex Court in the said verdict has also considered its earlier verdict given in R.P.Kapur Vs. State of Punjab AIR 1960 SC866. In the said verdict the Hon"ble Apex Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings.

- (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;
- (ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged; and
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge.

In the verdict given by the Hon'ble Apex Court in State of Haryana V. Bhajan Lal (1992 Supp(1) SCC 335) the following illustrative categories were indicated by the Hon'ble Apex Court in which the inherent powers may be exercised:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other material, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a Police Officer without an order of a Magistrate as contemplated under S.155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

The next verdict cited on behalf of the CBI is Central Bureau of Investigation Vs. Ravi Shankar Srivastava IAS and another reported in (2006) 3 SCC (Cri.)233.

In the said verdict, the Hon'ble Apex Court has been pleased to hold that proceedings instituted on a complaint can be quashed in exercise of inherent power by the High Court only where complaint does not disclose any offence or is frivolous, vexatious or oppressive. Power should not be exercised to stifle a legitimate prosecution. Power should be exercised with circumspection, ex debito justitiae to do real and substantial justice and to prevent abuse of process of court.

In the next verdict State of Madhya Pradesh Vs. Surendra Kori reported in [2012(79) ACC 692], the Hon"ble Apex Court has been pleased to hold that the inherent jurisdiction of the High Court under Section 482 Cr.P.C. is though wide but to be used sparingly, carefully and with caution. In exercise of such jurisdiction, the High Court should normally refrain from giving a prima facie decision in a case where the facts are hazy and evidence has not been collected.

In another verdict given by the Hon"ble apex court in Satya Narain Sharma Vs. State of Rajasthan reported in 2001Laws (SC)946, the Hon"ble Apex Court has been pleased to hold that High Court cannot grant stay of proceedings under Prevention of Corruption Act in exercise of inherent powers under Section 482 Cr.P.C. as Section 19(3) (C) of Prevention of Corruption Act creates absolute bar for stay of further proceedings of the case which provides that no court should stay the proceedings under the Act on any grounds.

Learned counsel for the petitioners have vehemently argued that the said transfer of plot in question was made by ICPO to ICPOICMR Cooperative Group Housing Society after approval given by the Officer of the Noida authority for the purpose. He submitted that Sri R.S.Yadav OSD Noida was authorised person to give approval for transfer vide office order dated 16.12.2003 and that is why the sanction for prosecution to prosecute Sri R.S.Yadav has been refused by CEO, Noida vide letter dated 24.5.2012. In the said letter it has been mentioned that as per office order of Noida dated 16.12.2003 regarding delegation of power, Sri R.S.Yadav was authorised to accord permission to issue transfer memorandum. It is also contended that as the sanction to prosecute Sri. R.S.Yadav has been refused by the CEO, Noida, hence it shall be deemed that permission to transfer the plot in question was accorded by the CEO, Noida himself.

Per contra learned counsel for the CBI has submitted that R.S.Yadav was not authorised person in view of the office order dated 16.12.2003 as in the said office order, it has been categorically mentioned in clear terms that special attention to be given while implementing the new delegation of power that wherever there is legal compulsion or policy related matters are involved, file of such matters be put up to the Chief Executive Officer for taking decision. It is submitted on behalf of the CBI that at the time of according sanction for the said transfer by R.S.Yadav, there was no policy to transfer such public utility land to a private housing society.

In this connection, learned counsel for the CBI has also given reference to the statement of three witnesses, namely Sri Chandra Bhushan Singh, Dy.Chief Executive Officer, Noida Authority, Sri Mahesh Chandra Bhardwaj working as Law Officer, Law Deptt, Noida Authority and Sri Shailendra Cairae, Asstt. General Manager (Group Housing), Noida Authority.

The witness Sri Chandra Bhushan Singh Dy.Chief Executive Officer, Noida Authoirity has stated as follows:

" There was no policy in the Noida Authority with regard to transfer of Group Housing Plots allotted to a Government/Semi Government Institute to a Cooperative Group Housing Society in the year 2007. I finally concluded that transfer of the aforesaid plot which was allotted to ICPO/ICMR for their staff housing to a cooperative society was irregular considering the prevalent policy. Besides, Sri R.S.Yadav, OSD (Residential Plots), Noida Authority, who took decision for transfer of the aforesaid plot was not competent to take decision considering the prevalent Delegation of Power. As there was no policy for transfer of a group housing plot, the matter was required to be put up to the CEO/Chairman, Noida Authority for taking decision as mentioned in the Delegation of Power."

The next witness Sri Mahesh Chandra Bhardwaj, Law Officer, Law Department, Noida Authority has stated that lessee i.e. ICPO was not allowed to transfer plot no.119, Sector 35, Noida without the prior approval of CEO/Chairman or any other officer duly authorised by him. He has also stated that condition/clause relating to transfer of plot is mentioned at para "T" under the heading " Transfer of Plots" at page 11 of the Scheme Code of the brochure. The aforesaid clause states " The transfer of allotted group housing plot, as a whole will not be allowed under any circumstances. However, individual flat will be transferable with prior approval of the Authority as per the conditions". He has also stated that after perusing the said condition it may be said that during 2007 transfer of Group Housing Plot as a whole was not allowed. Even the Amended Delegation of Power of Noida Authority dated 16.12.2003 mentions at page 14 that wherever there is legal compulsion or some policy related matters are involved, such matters may be sent to CEO for decision.

The next witness Sri Shailendra Cairae has stated in his statement that during the years 2006/07, a Group Housing plot was used to be allotted on the basis of two bid system at the reserved/sector price or tender price whichever is more for which the concerned society was required to apply for the plot whenever any such scheme for allotment group housing plot was offered by Noida Authority. He has further stated that the transfer of allotted group housing plot as a whole will not be allowed under any circumstances. However, individual flat will be transferable with prior approval of the Authority. He has also stated that as per decision taken in the 133rd Board meeting dated 20.3.2006, the applicable reserved price was Rs.18,000/ w.e.f. 1.4.2006 for plots in Sector 35. He has also stated that in absence of any clear cut policy for transfer of such plot, the matter was required to be referred to the competent authority i.e. Chairman/CEO of Noida Authority but that was not done as per the available records.

Learned counsel for the CBI has submitted that the aforesaid three witnesses who are officials/officers of the Noida Authority have clearly stated that there was no such policy for transfer of the said plot allotted to ICPO by the Noida in the year 1992 to a group housing society i.e. a private society. It is also submitted that the CEO while refusing sanction to prosecute Sri R.S.Yadav has not considered the

delegation of powers and the policy prevailed about the transfer at the time of alleged illegal transfer and summarily rejected the sanction which was not proper.

Learned counsel for the petitioner Dr.Bela Shah has submitted that the only role assigned to the applicant Dr.Bela Shah is to sign the letter sent to the Solicitor General of India for opinion.

Learned counsel for the petitioner S.C.Pabreja stated that he was the Manager (Residential Plots) Noida working under Sri R.S.Yadav, Addl. General Manager, Noida/OSD and he has signed only memorandum for transfer while working under him, whose sanction to prosecute has been refused by the competent authority.

Against the said arguments, learned counsel for the CBI has submitted that Dr.Bela Shah had a specific role in sending the letter for opinion to the then Solicitor General of India by suppressing the true facts as the land allotted to be used for public purposes for staff quarters of the employees of the ICPO was to be transferred to a private housing society. But this fact was not mentioned in the said letter and as such she played a vital role in criminal conspiracy and for committing misconduct.

It is also submitted that the accused S.C.Pabreja had prepared the transfer memorandum knowing fully well that there was no such policy for transfer of the said plot to Cooperative Group Housing Society (a private society).

After considering the aforesaid arguments as raised on behalf of the petitioners as well as on behalf of the CBI and the entire material available on record along with the impugned order taking cognizance, at this stage it cannot be said that no offence under Section 120B IPC read with Section 13(2) and 13(1) (d) of the Prevention of Corruption Act is made out against the petitioners. There are sufficient materials available on record which may prima facie establish the involvement of the petitioners accused in commission of the aforesaid offence by getting the plot in question transferred for the purposes of constructing flats to ICPO/ICMR Cooperative Group Housing Society, (a private housing society) in which they were also the members and ultimately after construction of the flats they also obtained individual flats after getting pecuniary benefit for themselves and others and caused loss to the ICPO/ICMR (a fully Govt. funded body). Due to the said transfer of plots allotted to ICPO for staff quarters, the officials of the ICPO have been permanently deprived of getting official quarters in future.

The Hon"ble Apex Court in catena of decisions has held that inherent jurisdiction under Section 482 Cr.P.C. is although wide but has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist.

The Hon"ble Apex Court in its verdict *State of Punjab & others Vs. Indra Mohan Chopra & others* (supra) while considering and discussing its earlier verdict given in *R.P.Kapur Vs. State of Punjab* AIR 1960, SC 866 has observed that in dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge.

In the present matter, the aforesaid arguments raised on behalf of the petitioners are relating to disputed questions of facts, which can only be considered at the stage of trial by the trial court after evidence. The disputed questions of facts can not be adjudicated upon by this Court while exercising its inherent power under Section 482 Cr.P.C. as the same are subject matter of evidence which shall be considered during trial. At this stage only prima facie case is to be seen and considered.

From perusal of the entire material available on record, there appears no such unimpeachable evidence on behalf of the defence which may demolish or falsify the prosecution case. Rather there are sufficient material available on record which may prima facie establish the involvement of the petitioners accused in commission of the aforesaid offence. The disputed defence of the petitioners cannot be adjudicated upon at this stage by this Court under its extra ordinary jurisdiction under Section 482 Cr.P.C.. This power cannot be exercised to stifle a legitimate prosecution. Power should be exercised with circumspection, *ex debito justitiae* to do real and substantial justice and to prevent abuse of process of court. In exercise of its jurisdiction this Court should normally refrain from giving a prima facie decision in a case where the facts are hazy and evidence has not been collected.

In this case, the role of each petitioners in processing, approving and ultimately getting the plot in question transferred to ICPOICMR Cooperative Group Housing Society (a private housing society) has been categorically assigned by the prosecution and after conducting thorough and detailed investigation in the matter, the charge sheet has been submitted against them, on which the learned Special Judge, Anti Corruption, CBI, Ghaziabad has taken cognizance. In my considered opinion, there appears no infirmity, illegality, irregularity or jurisdictional error in submitting the charge sheet by the CBI and taking cognizance thereon by the learned Special Judge, Anti Corruption, CBI, Ghaziabad.

Learned counsel for the petitioners Prof. N.K.Ganguly, B.C.Dass and S.C.Pabreja have submitted that in spite of the order dated 8.1.2013 passed by this court regarding the guidelines for granting or refusing bail, the bail application of other 8

coaccused persons have been refused by the trial court vide order dated 14.2.2013. It is submitted that this court vide aforesaid order observed that for granting or refusing bail the following principles are set out by the Apex Court, which are as under:

(a) that accused will not tamper with the prosecution evidence or intimidate the witnesses, (b) that they will not jump bail thereby impeding the course of trial; (c) seriousness of the allegation and (d) there is no legal impediment in granting bail under Section 437 Cr.P.C. for the offences where sentence provided for is life or death.

This Court has also observed that it is only after satisfying these principles the trial court can refuse or grant bail. Surrendering of the accused after process under Section 204 Cr.P.C. has been issued by itself is not a ground for sending a person to the judicial custody. The prosecution has to make out a case for their judicial custody more particularly in these cases where the accused have not been arrested during course of investigation. The order for sending the accused to the judicial custody has not to be passed mechanically without following the principles aforesaid, more particularly, when the accused are charged of the offences which does not carry punishment of life or death.

Learned counsel for the petitioners have also placed reliance on the decision of the Hon"ble Apex Court given in Sanjay Chandra Vs. Central Bureau of Investigation (2012) 1 SCC, 40 in which certain guidelines have been provided by the Hon"ble Apex Court regarding grant of bail.

He has also placed reliance on the decision of the Delhi High Court given in On its Own Motion Vs. CBI reported in 109 (2003) Delhi Law Times 494 in which also the principles for granting or refusing bail are discussed elaborately.

Learned counsel for the petitioners have submitted that after rejecting the bail of the other coaccused persons by the trial court, petitioners have apprehension in their mind that they shall also be sent to Jail by the trial court.

On the other hand, learned counsel for the CBI has submitted that the consideration of bail initially lies before the trial court who has to pass orders on bail prayer in accordance with law and hence there is no need for any direction by this Court regarding bail prayer. It is also submitted that after rejection of the bail of other coaccused persons, they have approached this Court and this Court vide order dated 9.5.2013 has granted bail to them subject to production of Bank Draft of Rs.12 lakhs by each applicants(to be prepared in favour of the concerned court) in the Court of Special Judge, Anti Corruption, CBI, Ghaziabad as the applicants have undertaken to pay the sum of Rs.12 lakhs before their release from Jail.

Considering the entire facts and circumstances of the case, the submissions of respective parties" counsel regarding bail as aforesaid, it is provided that if the

applicants Prof. N.K.Ganguly, B.C.Dass and S.C.Pubreja appear before the court of CBI, Anti Corruption, Ghaziabad and apply for bail, their prayer for bail shall be considered in accordance with law taking into consideration the guidelines set out by the Hon"ble Apex Court and by the High Court as applicable to the facts of the present case.

In view of the aforesaid considerations and discussions, these petitions lacks merits and are accordingly dismissed.