IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRM-M No.50771 of 2019
Date of Decision:12.02.2020

Vikas Sharma ......Petitioner
Vs
State of Punjab ....Respondent

2. CRM-M No.652 of 2020

Ajit Pal Singh Brar ......Petitioner
Vs
State of Punjab ....Respondent

CORAM: ***HON'BLE MR. JUSTICE RAJ MOHAN SINGH***

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate with
Ms. Mandeep Kaur, Advocate
for the petitioner in CRM-M No.50771 of 2019.

Mr. J.S. Bedi, Sr. Advocate with
Mr. Sonpreet Singh Brar, Advocate
for the petitioner in CRM-M No.652 of 2020.

Mr. J.S. Ghumman, D.A.G., Punjab.

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RAJ MOHAN SINGH, J.

[1]. Vide this common order, CRM-M No.50771 of 2019 and CRM-M No.652 of 2020 are being decided.

[2]. In CRM-M No.50771 of 2019, petitioner-Vikas Sharma seeks grant of regular bail in case bearing FIR No.10 dated 21.06.2019 registered under Sections 409, 420, 465, 467, 468, 471, 120-B IPC and Section 7, 13(1)(A) read with Section 13(2)

of the Prevention of Corruption Act at Police Station Vigilance Bureau, Mohali. In CRM-M No.652 of 2020, petitioner-Ajit Pal Singh Brar seeks grant of anticipatory bail in case being FIR No.10 dated 21.06.2019 registered under Sections 7, 13(1)(a) read with Section 13(2) of the Prevention of Corruption Act and Sections 409, 420, 465, 467, 468, 471, 120-B IPC at Police Station Vigilance Bureau, Mohali.

Since both the petitions have arisen out of same FIR, therefore, common facts are being noticed.

[3]. The allegations contained in the FIR are that on 25.01.2010, a letter of acceptance was awarded to a joint venture formed by three companies i.e. M/s HGCL 52% share, M/s Niraj Cement Structurals Ltd. 24% share through Gulshan Chopra and M/s Supreme Infrastructure India Ltd. 24% share through Vikram Sharma co-accused. Government of Punjab through the Chief Engineer (PWD) floated a tender for 4-Laning of road/stretch of 26.900 kms. from Doraha to Ludhiana-Ferozepur road i.e. Southern byepass Ludhiana along with flyovers, underpass, railway over bridges and canal lining etc. Intended date of completion was 14.02.2012 which was to be revised from time to time. The work agreement was executed between PWD and the joint venture on 17.03.2010. Supreme Infrastructure was represented by Vikram Sharma. Performance

securities were given as per provisions of instructions to bidder and general conditions of contract on 25.03.2010. These were given in the form of bank guarantees upto the extent of Rs.78,19,29,464/- (performance security of Rs.16,40,80,800/- and additional performance security of Rs.53,78,46,664/-). There was no dispute about the additional performance securities which were returned as per clause 34.1 of the ITB read with Clause 52.01 of general conditions of contract.

[4]. As per Clause 34.1, the performance security was valid upto 28 days after the date of expiry of Defects Liability Period in accordance with Clauses. As per joint venture, Gulshan Chopra was the Director of M/s Niraj Cement Structurals Ltd. and Vikram Sharma of M/s Supreme Infrastructure India Ltd. Joint venture was signed by them along with others. Defects liability period was the period for clearing the defects, if any, after the certificate of completion of work. The performance securities were to be given in the form of bank guarantees which were valid for 28 days after the expiry of defect liability period. Clause 52.1 of general conditions prescribed for the performance security including additional security for unbalanced bids. The performance security shall be provided to the Engineer i.e. the Department on behalf of the Employer no later than the date specified in the Letter of Acceptance and

shall be issued in an amount and form and by a bank or surety acceptable to the Employer, and denominated in Indian Rupees. The performance security shall be valid until a date 28 days pursuant to the date of expiry of Defects Lability Period and the additional security for unbalanced bids shall be valid until a date 28 days from the date of issue of certificate of completion. A definite period was provided for completion of the project. Defect liability was to start only after completion of the project. In case of violation of the terms and conditions, the provisions were made for termination of contract, payment upon termination.

[5]. As per clause 59.5 of the general conditions, if the contract is terminated, the contractor shall stop work immediately, make the site safe and secure and leave the site as soon as reasonably possible. As per clause 60.1, if the contract is terminated because of a fundamental breach of contract (defined under the clause of general conditions) by the contractor, the Engineer shall issue a certificate for the value of the work done, less advance payments receipt upto the date of issue of certificate, less other recoveries due in terms of the contract, less taxes due to be deducted at source as per applicable law and less the percentage to apply to the work not completed as indicated in the contract data. Additional

liquidated damages shall not apply. If the total amount due to the Engineer or Employer exceeds any payment due to the Contractor, the difference shall be a debt payable to the Engineer on behalf of the Employer. Engineer denotes Government of Punjab.

[6]. Till date the contract has not been terminated. No demand/claim has been made by the Government as yet. As per running bill till dated 27.01.2019, 98.73% work has been completed. The account was opened under the signature of the petitioner-Vikas Sharma on 21.04.2010. A resolution was passed on 21.05.2010 under the Chairmanship of Vikram Sharma, subsequent to the date of submission of performance guarantee. Vikram Sharma had given power of attorney to Pardeep Kumar on 31.08.2010 to do all acts in respect of the project.

[7]. As per clause 48, retention money of Rs.8 crores was given on 10.10.2013 which was valid upto 12.03.2016. The contract was signed between PWD and joint venture for the total costs of Rs.328.16 crores. As per Article 20 of the joint venture agreement, Gulshan Chopra and Vikram Sharma were appointed as legal attorneys pertaining to the project work on behalf of the joint venture. Punjab Government, Department of PWD appointed the Executive Engineer (Construction)

Divn.No.4 PWD (B&R) Ludhiana as Engineer-in-Chief to supervise the execution of the project work. Supreme Infrastructure and the joint venture of Niraj Cement submitted 26 performance bank guarantees and additional performance bank guarantee of Rs.70 crore approximately to the Executive Engineer including 23 bank guarantees of Rs.55 crores from Axis Bank Ltd. All these bank guarantees were issued with a specific expiry date and these bank guarantees ceased to exist after the said date of expiry.

[8]. The Axis Bank Limited sanctioned loan of Rs.125 crores. On 28.04.2010, an Escrow account was opened in Axis Bank Limited, Powai Branch, Mumbai. Escrow agreement between the joint venture and Axis Bank Limited was executed on 21.05.2011. As per this agreement, all the project receipts were to be routed only through Escrow account. The company can deposit the amount, but cannot withdraw any amount from Escrow account. Second current account was opened on behalf of the Company by Vikram Sharma and petitioner-Vikas Sharma for Supreme Infrastructure i.e. component of joint venture.

[9]. Allegations are that there was violation of Escrow agreement by the company in the month of December 2011 as two payments of Rs.1.70 crores and Rs.1.80 crores were not routed through escrow account, but routed through current

account in violation of escrow agreement dated 21.05.2011. On 15.03.2012, Bank sent an email to the company addressed to the petitioner-Vikas Sharma and others to explain the aforesaid violation and to strictly comply with the terms and conditions of the credit facilities provided by the Bank. The Bank came across transactions of Rs.3.70 crores credited to Supreme portion of current account on 28.06.2012 and Niraj requesting to credit Rs.2 crores in the current account, at which the Bank sent an email to both the Companies. The Bank also wrote to the Chief Engineer with a request to deposit payments only in Escrow account and not in the current accounts of the companies of the joint venture.

[10]. The company filed financial claims of Rs.42.64 crores to the Executive Engineer, but the same were rejected on 12.07.2012. Thereafter, the Company filed a case before the Dispute Review Expert (DRE). The DRE accepted the claim of Rs.22 lacs only against PWD (B&R) on 19.11.2012.

[11]. The Arbitration Tribunal was constituted and the meeting of Arbitration Tribunal was held for consideration of financial claims of the Company. The allegations were made that the Company deliberately violated the escrow agreement time and again by requesting to the Executive Engineer in writing on number of occasions to make payments directly to the

ventures' sub-contractors and labour contractors instead of routing through the Escrow account. This process started in the year 2012-13. Second last project payment was received in the Escrow account on 29.08.2013.

[12]. On the request of the Company, Bank issued retention money bank guarantee of Rs.8 crores on 04.10.2013 which was valid upto 13.03.2015. On 17.04.2015/25.04.2015, the Bank extended the validity of 22 bank guarantees of Rs.25.85 crores which was expired on 13.12.2014 till 12.06.2015 and 13.06.2015 and also extended the validity of one bank guarantee of Rs.8 crores till 12.03.2016. The last payment of Rs.15 lakhs was received in Escrow account on 21.04.2015. The Bank made recoveries of Rs.2.30 crores from the balance available in escrow account in the month of June/July 2015. The Bank extended the validity of 22 bank guarantees of Rs.25.85 crores on 15.06.2015 which were expired on 13.12.2014, till 12.12.2015 and 13.12.2015. The Bank made the aforesaid extensions in the validity of bank guarantees on the basis of assurances given by PWD and the Company in respect of payments of Rs.17 crores to be released to the Company within a prescribed period. In the month of October 2015, four bank guarantees of Rs.1 crore each were released in favour of the Company.

[13]. Further allegations are that the contractors of the Company knowing fully well that the Axis Bank was not going to extend the validity of bank guarantees any further due to huge outstanding dues of loan amount and willful violation of Escrow agreement and the Contract could also to be cancelled besides blacklisting of the Company, therefore, they bribed the then Engineer-in-Chief Ajitpal Singh Brar and the then Divisional Superintendent Surinder Singh in order to prevent 19 bank guarantees of Rs.29.85 crores expired on 12.12.2015, 13.12.2015 and 12.03.2016 being encashed by the Executive Engineer and to prevent the Company from being blacklisted and the project being taken away from the Company. In view of this background, the Executive Engineer wrote office memo to Vikram Sharma and Gulshan Chopra to extend validity of 18 bank guarantees of Rs.21.85 crores which were to be expired on 12.12.2015 and 13.12.2015 with a copy of the memo to Axis Bank to encash the bank guarantees, in case these are not extended before the expiry of date. Both the letters were sent by ordinary post and were received in the Bank after expiry of the bank guarantees on 15.12.2015 and 21.12.2015 respectively. On 17.12.2015, the Bank sent email to the Company to grant approval to extend the bank guarantees. On 19.12.2015, the Company sent an email to give its consent to extend the bank

guarantees. Bank sent letter to the Executive Engineer to route the payment of the project through the Escrow account of the Company, but no response was received. Bank did not extend the validity of 18 bank guarantees of Rs.21.85 crores due to violation of escrow agreement.

[14]. On 07.01.2016 and 23.02.2016, the Executive Engineer wrote office memos to Vikram Sharma and Gulshan Chopra to extend the validity of bank guarantee of Rs.8 crores which was expiring on 12.03.2016, but intentionally a copy of these letters were not sent to Axis Bank. The first office memo was sent by the Executive Engineer to Axis Bank on 11.03.2016 to encash the bank guarantee of Rs.8 crores, in case the bank guarantee was not extended before the expiry date i.e. 12.03.2016. The memo was sent through ordinary post and the same was received in the bank only after expiry of the bank guarantee. It was rather impossible for the memo to reach the Bank in Mumbai in a day of its sending by ordinary post. The allegations are that the letter was sent just to eyewash and was intended to hoodwink the process. The communications sent to the Bank were deliberately issued either in nick of time or after the expiry of bank guarantees and the same were dispatched by means of ordinary process/post, therefore, the Bank in Mumbai received the same after the expiry of dates of bank guarantees. The then

Divisional Superintendent Surinder Singh was responsible as he was dealing with all confidential work of the Divisional Office and was the custodian of bank guarantees. He intentionally did not raise any objection regarding non-extension of bank guarantees, nor sent any report to his superiors. On 16.05.2016, Surinder Singh wrote comments "*extended upto 18.06.2017, hence may file*" on the office copy of memo dated 16.05.2016 which was addressed to Axis Bank to encash bank guarantee of Rs.8 crores, which expired on 12.03.2016. There was no such foundation to make these remarks on the forged documents of bank guarantee by the Company in the month of June 2016.

[15]. Out of 19 bank guarantees of Rs.29.85 crores, the Company forged documents of 14 bank guarantees amounting to Rs.21 crores thereby extending the bank guarantees from back dates i.e. 12.12.2015, 13.12.2015 and 12.03.2016 to 18.06.2017 in connivance with two officials of the Department i.e. Surinder Singh, the then Divisional Superintendent and Ajit Pal Singh Brar, Engineer-in-Chief. These forged documents were shown to have been issued by the Axis Bank on 21.06.2016. These bank guarantees were not verified by Ajit Pal Singh Brar from the Bank. The allegations are that he being privy to the aforesaid forgery did not get these documents verified from the Bank intentionally. Regarding remaining five

bank guarantees, the officials neither got these bank guarantees renewed from the Bank, nor got the same encashed from the Bank and they placed the same on office record.

[16]. Further allegations are that the Company got wrongful gain of Rs.29.85 crores and also prevented the project being taken away from them and also saved the Company from black-listed by the Government. Further allegations are that the petitioner-Vikas Sharma alleged to have submitted his false resignation. According to letter obtained from Ministry of Corporate Affairs, Government of India, the petitioner is still Director of the Company and he is holding 2500 shares out of 10,000 equity shares of the Company. The accounts of the Company has been declared as NPA on 29.08.2016 as per RBI guidelines, due to non-payment of dues/debt. The Bank sent notice for recall of credit facilities sanctioned to the Company and the same was addressed to its registered office calling upon the Directors of the Company to pay the outstanding amount of Rs.35.64 crores as on 30.11.2016. The Bank also initiated securitization proceedings by issuing notice to the Company under Section 13(2) of the SARFAESI Act, 2002 on 10.05.2017. Those proceedings are still pending. Bank also filed a complaint on 19.07.2017 against the Company and PWD in Debt Recovery Tribunal at Delhi for recovery of Rs.37.82 crores.

Those proceedings are also pending.

[17]. In the month of October, 2017 petitioner-Ajit Pal Singh Brar was recommended for deputation to National Highway and Infrastructure Development Corporation Limited, Ministry of Road Transport and Highway, Government of India, New Delhi. He was relieved on 02.11.2017. It is alleged that petitioner-Ajit Pal Singh Brar in order to escape scrutiny of being exposed for the forgery in the documents and in the bank guarantees, on 10.11.2017, in connivance with the Directors of the Company submitted another set of forged documents of 14 bank guarantees of Rs.21 crores showing extension from back dates for the period from 18.06.2017 to 18.06.2018. In order to seek verification of these amendments to the bank guarantees, the Executive Engineer sent memo dated 10.11.2017 i.e. on the same day to the Bank. On 27.11.2017, the Executive Engineer received letter dated 18.11.2017 on a forged letter head of the Axis Bank showing confirmation of issuance of bank guarantees on behalf of the Company valid upto 18.06.2018. Due to the aforesaid forgery in bank guarantees and forged confirmation letter of the Axis Bank, the Executive Engineer continued to remain in dark about the forged documents of bank guarantees till June 2018.

[18]. In arbitration proceedings, the Company revised its

claim to Rs.74.77 crores. The Arbitration Tribunal granted Rs.6.10 crores including principal and interest vide interim order dated 30.12.2017 to the Company. The proceedings are still pending in which the Executive Engineer has also filed counter claims. The forged bank guarantees were exposed in the month of June 2018 and the scam came to the light, when new Executive Engineer did not receive any of the documents regarding extension of Bank guarantees from the Company despite repeated reminders. He submitted these documents of the bank guarantees for encashment to the Bank unaware of the same being forged and that these were never issued/renewed by the Bank after the due dates of 12.12.2015, 13.12.2015 and 12.03.2016. The scam came to fore. The company continued to execute the project work at a snail's pace beyond December 2015, only by submitting forged documents of bank guarantees and thereby committing fraud with the Department. By doing so, the Company has earned huge profits to the tune of crores of rupees.

[19]. Further allegations against the petitioner-Vikas Sharma are that vigilance inquiry was initiated in July, 2018. Vigilance report was submitted to the Chief Director, Vigilance Bureau, Punjab in April 2019. During the inquiry proceedings, the petitioner did not join inquiry from August 2018 to April 2019

despite repeated notices issued to him. Resultantly, the FIR came to be registered against the Directors of the Company namely Gulshan Chopra, Vikram Sharma, Vikas Sharma, Pankaj Sharma and against two officials of the PWD (B&R) Ludhiana namely Ajit Pal Singh Brar, the then Executive Engineer and Surinder Singh, the then Divisional Superintendent.

[20]. On 24.07.2019, the competent authority granted prior sanction under Section 17-A of the Prevention of Corruption Act for conducting investigation of the case. New Bank guarantees of foreign banks were submitted by the Company and these have been rejected by the Department on the ground that account of the Company is NPA, therefore, the Company can neither get credit facilities, nor get any bank guarantees in any Bank in India. The Company submitted Rs.5 crores on 08.07.2019 and two bank guarantees of Rs.8 crores each i.e. worth Rs.21 crores of a foreign bank namely Axios Credit Bank Limited, Singapore Branch and received in Bank of India through the Bank named as Zambia National Commercial, Lusaka, Zambia valid upto 25.06.2020. The advisory Bank i.e. the Bank of India, Mumbai clearly stated in the letter that these bank guarantees were being advised without any risk and responsibility on their part and the Bank is not responsible for

any claim. Owing to the aforesaid anomalies in the bank guarantees, the bank guarantees have been rejected by the Department/PWD on 18.12.2019.

[21]. The prosecution has further alleged that the submission of these new bank guarantees does not absolve the accused from culpability of committing fraud with the Government by submitting forged documents of bank guarantees and fake letters on forged letter heads of Axis bank in connivance with officials of the Government. The prosecution further alleged that the petitioner-Vikas Sharma was intercepted and detained at Mumbai International Airport after issuance of look out circular against him in this regard. The petitioner was trying to flee from the country after committing the aforesaid corporate fraud of Rs.3,000 crores approx. Petitioner was brought to Punjab on transit police remand from the competent Court in Mumbai and is in judicial custody in Central Jail, Patiala.

[22]. Learned Senior counsel appearing on behalf of petitioner-Vikas Sharma submitted that there is no financial loss to the Government till date. The project has not been terminated so far, nor the petitioner's Company has been blacklisted till date. Whether the performance guarantees can be revoked before completion of the project would be debatable issue. The Department owns Rs.6.12 crores to the Company as per the

interim award dated 30.12.2017 along with interest. The retention money given in the form of guarantee is the money of the Company out of the amount retained by the Department. The performance guarantee cannot be invoked in the absence of any defect detected during defects liability period.

[23]. Learned Senior counsel by referring to the nomenclature/terminology attached to different clauses, instructions to bidder, general conditions of contract and provisions relating to agreement of joint venture submitted that contingency looms large over the entitlement of the Department in staking claim with regard to wrongful gain obtained by the petitioner and loss suffered by the Department. There was no fundamental breach of the contract as the project has reached the stage of completion as 98.73% work has been completed according to last running bill dated 27.01.2019. This fact has been admitted by the Department before the Arbitral Tribunal, when Executive Engineer gave the statement after registration of the FIR in question.

[24]. Learned Senior counsel further submitted that in terms of the payment upon termination, the dues could have been compounded after calculating the claim in view of award in favour of the petitioner in view of allegations against the petitioner in terms of clause 60.1 of the general conditions of

Contract. In case of termination of contract due to fundamental breach of contract by the Contractor, the Government shall issue a certificate for the value of the work done less advance payments received upto date of issue of certificate, less other recoveries due in terms of the contract, less taxes due to be deducted at source as per applicable law and loss of percentage to apply to the work not completed as indicated in the contract date. The additional liquidated damages shall not apply. If the total amount due to the employer or exceeds any payment due to the contractor, the difference shall be a debt payable to the Government on behalf of the employer/contractor.

[25]. Perusal of the aforesaid clause would show that the same is couched in a compounding overtone. The loss is still to be established. Arbitral proceedings are pending. The proceedings under the SARFAESI Act are also pending. In view of this status on record, learned Senior counsel submitted that the petitioner deserves enlargement on regular bail.

[26]. In case of co-accused Ajit Pal Singh Brar, learned Senior counsel submitted that in view of letters dated 07.01.2016, 23.02.2016 and 11.03.2016 issued by the petitioner to Vikram Sharma and Gulshan Chopra in the context of revalidating the bank guarantees, the allegations as alleged

against the petitioner does not survive. The aforesaid letters are in the context of retention guarantee of Rs.8 crores. The letter dated 11.03.2016 was issued in continuation of letter dated 07.01.2016 and 23.02.2016. The letter was signed on 03.03.2016, but the same was despatched on 11.03.2016 in routine. The signing of the letter dated 11.03.2016 on 03.03.2016 is established from the letter itself, wherein endorsement Nos.1790 and 1791 would make it abundantly clear that the same was signed on 03.03.2016, but despatched on 11.03.2016 in routine. Similarly, letter dated 11.03.2016 was also issued to the Branch Manager, Axis Bank Limited, Corporate Banking Branch, Mumbai and was also signed on 03.03.2016, but was despatched on 11.03.2016 by the office in routine. Letter dated 08.04.2016 was issued after the expiry of the performance guarantee. Reference of letters dated 07.01.2016, 23.02.2016 and 11.03.2016 was duly made in this letter as well.

[27]. Learned Senior counsel further submitted that the second allegation against the petitioner-Ajit Pal Singh Brar is that for extension of total 18 performance guarantees including 13 bank guarantees of Rs.1 crore each for one more year till 13.12.2016, whose validity was getting expired on 12.12.2015 and 13.12.2015, the petitioner wrote letter dated 27.11.2015

which was delivered to the Bank on 15.12.2015 after expiry of validity period of 18 bank guarantees on 12.12.2015 and 13.12.2015. In this context, learned Senior counsel for the petitioner referred to letter dated 27.11.2015, wherein the details of the Bank guarantees which were expired on 12.12.2015 were given. Request was made to extend the validity of the bank guarantees upto 13.12.2016. While signing the aforesaid letter, it was recited that as per clause 52 of the condition of contract, the performance security included additional security for unbalanced bids was to be provided to the Government on behalf of the Contractor not later, than the date specified in the letter of acceptance and shall be issued in an amount or form and by a bank or surety acceptable to the Employer and denominated in Indian Rupees. The performance security shall be valid until a date 28 days pursuant to the date of expiry of defect liability period and additional security for unbalanced bids shall be valid until a date 28 day from the date of issue of certificate of completion. With this background request was made to revalidate the performance securities unbalanced bid, bank guarantee upto 13.12.2016. Otherwise the office would have no alternative to encash bank guarantees. In favour of the Government.

[28]. Learned Senior counsel further submitted that since

there was no demand, nor there was any acceptance, therefore, in the event of arrest of the petitioner it will be a case covered under Section 25 of the Evidence Act only. The offence in terms of the Prevention of Corruption Act would be debatable.

[29]. Learned Senior counsel further submitted that in pursuance of letter dated 27.11.2015, the Bank acknowledged the information wherein it was mentioned that out of 22 bank guarantees, four bank guarantees were released in favour of the Contractor in the context of unbalanced bids as defined in agreement. In this email, the table detailed in letter dated 27.11.2015, was also mentioned showing that the bank had received invocation-cum-extension letter from the beneficiary office of the Executive Engineer Construction Division. In case bank guarantees are not renewed before the expiry date, the bank guarantees will be invoked. The Bank also sent email to the Contractor.

[30]. Learned Senior counsel also highlighted the letter dated 11.12.2015 in the context of letter dated 27.11.2015. There is some ambiguity in the date, but the fact remains that the petitioner and the Company requested for extension of validity in terms of clause 52 of the general conditions of contract. Again letter dated 11.12.2015 was issued in the context of extension of bank guarantee and for encashment of

all the bank guarantees given in the tabulated form.

[31]. Vide letter dated 11.01.2016, petitioner issued the letter to the Bank for encashment of the Bank guarantee given in the tabulation form. The reference was made to letter dated 27.11.2015, 11.12.2015 and 07.01.2016. Similar letter was also issued by the petitioner to the Bank on 08.04.2016 with the same request. In view of aforesaid documents, learned Senior counsel submitted that at the most the allegation of dereliction in duty can be alleged against the petitioner, but the petitioner is not privy to any such wrongful gain or forgery of the bank guarantees.

[32]. Having considered the submissions on behalf of the petitioner in both the petitions and on behalf of the prosecution, at this stage it can be seen that on 25.01.2010, a consortium namely M/s HGCL-Niraj Cement and Supreme Infrastructure was awarded a tender of 4-Laning of stretch from Doraha to Ludhiana-Ferozpur road i.e. Southern byepass Ludhiana along with flyovers, underpasses, railway overbridges, canal lining etc. by the Punjab Infrastructure Development Board. To guarantee the completion of work, a performance security of Rs.16,40,80,800/- and additional performance security of Rs.53,78,48,664/- were deposited by the Contractor. In the year 2013, retention money of Rs.8 crores was released in favour of

the Contractor on deposit of bank guarantee of equivalent amount. The Contractor deposited bank guarantee of Axis Bank with validity upto 13.03.2015 in the office of XEN, Ludhiana. The validity period of said bank guarantee was extended later on upto 12.03.2016. Before expiry of the period of its validity, the bank guarantee was to be further extended upto 13.03.2017.

[33]. Petitioner-Ajit Pal Singh Brar wrote two letters dated 07.01.2016 and 23.02.2016 to the Contractors to extend the bank guarantee. Copies of these letters were not sent to the Bank. Had these letters been sent to the Axis Bank with a request to renew the bank guarantee before the date of expiry of its validity i.e. 12.03.2016, the bank guarantees could have been encashed by the Bank. It was only on 11.03.2016, i.e. one day prior to the expiry of validity period, petitioner Ajit Pal Singh Brar wrote letter to the Axis Bank to encash the bank guarantee knowing fully well that the letter would not reach Mumbai in a day. Petitioner Ajit Pal Singh Brar further wrote letters dated 08.04.2016 and 16.05.2016 to the Bank for encashment of bank guarantee after expiration of validity of bank guarantee. Surinder Singh by making endorsement "*extended upto 18.06.2017, hence may file*" also *prima facie* colluded with the petitioner-Ajit Pal Singh Brar.

[34]. As per FIR, 18 bank guarantees of about

Rs.21,85,63,762/- were expiring on 12.12.2015 or 13.12.2015. Petitioner-Ajit Pal Singh Brar initially sent the letters for extending the Bank guarantee for one year upto 13.12.2016 to the Contractors through ordinary posts with a copy to the Bank that in case bank guarantees are not extended, then the same be encashed. The letter was received by the Bank on 15.12.2015 i.e. after the expiry of period of validity of these 18 bank guarantees. Thereafter sending of reminders on 07.01.2016, 11.01.2016 and 18.04.2016 to the Axis Bank to encash the expired bank guarantees was nothing, but a futile exercise as the issue did not survive thereafter. As per procedure, if the bank guarantees were not extended for one year before the expiry date, the same had to be forfeited. Petitioner Ajit Pal Singh Brar in collusion with Surinder Singh and the Company did not do the needful.

[35]. In CRM-M No.46787 of 2019 filed by Surinder Singh for grant of anticipatory bail, the Co-ordinate Bench of this Court has recorded incriminating facts on record and *prima facie* found that the allegations in respect of bank guarantees amounting to Rs.29 crores were allowed to lapse without being encashed. Fake guarantees were furnished from time to time. The prayer for grant of anticipatory bail in favour of Surinder Singh was dismissed vide order dated 09.12.2019. Primary

allegations are against the petitioner-Ajit Pal Singh Brar, who had failed to encash the bank guarantees of the Contractor, who by presenting fake bank guarantees has *prima facie* committed the offence in question.

[36]. Escrow agreement was executed on 21.05.2011 between SCGL, Niraj Cement and Supreme Infrastructure Private Limited and the Axis Bank Limited. According to this bilateral agreement all the payments were required to be routed through escrow account. The allegations are that more than Rs.55 crores were not routed through this escrow account. On account of this violation committed by the petitioner Company and Ajit Pal Singh Brar, the Bank refused to renew the limits. Since the Company started recovering the payments directly from the Government and petitioner-Ajit Pal Singh Brar never complied with the bilateral obligation arising out of the escrow agreement, therefore, more than Rs.55 crores were directly encashed by the Contractor from the Government. Thereafter the Bank refused to renew the CC Limit.

[37]. The completion of work to the tune of 98.73% can be seen upto a particular juncture and thereafter it has been going at a snail's pace. The prosecution has not completed investigation in view of fact that the accused Ajit Pal Singh Brar is still at large. Petitioner-Vikas Sharma is the Director of

Supreme Infrastructure. Since the allegations are of connivance between the petitioner(s) Vikas Sharma and Ajit Pal Singh Brar, the then Chief Engineer, therefore, in the event of non-joining of Ajit Pal Singh Brar in the investigation and in the absence of his custodial interrogation, the incriminating facts for judging the complicity of the accused petitioner-Ajit Pal Singh Brar cannot be determined, even for the grant of regular bail to the petitioner-Vikas Sharma.

[38]. Keeping in view the offences alleged against the petitioner(s), the gravity of the offence is to be determined from the severity of the prescribed punishment. The prescribed punishment for the offences in terms of Sections 409, 420, 465, 467, 468, 471, 120-B IPC and offence under the Prevention of Corruption Act would determine the severity of punishment in accordance with law. Therefore, case law(s) in ***P.C. Chidabmbram vs. Directorate of Enforcement, CRA No.1831 of 2019*** decided on 04.12.2019 and ***Sanjay Chandra and Vinod Goenka vs. Central Bureau of Investigation, 2011(4) R.C.R. (Criminal) 898*** are not applicable to the facts of the present case at this stage. Therefore, grant of regular bail in favour of Vikas Sharma cannot be considered at this stage.

[39]. At this stage, the prayer for anticipatory bail on behalf of petitioner-Ajit Pal Singh is also rejected as the documents

relied upon by the petitioner would be subject to scrutiny of the Court. Custodial interrogation of the petitioner is required in order to unearth the allegations of conspiracy in submitting forged performance securities.

[40]. For the reasons recorded hereinabove, both the petitions are hereby dismissed.

[41]. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case. The aforesaid facts have been noted only for the sake of appreciating the controversy on *prima facie* view of the matter.

February 12, 2020 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No