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

Judgment reserved on: 10.01.2022 and 24.08.2022
Date of decision: 31.08.2022

\+ CRL.M.C. 3927/2017

ARVIND KUMAR ..... Petitioner

Through: Mr. Rajesh Anand, Advocate.

Versus

C B I ..... Respondent

Through: Mr. Mridul Jain, SPP, CBI with Ms. Neha Goel, Advocate.

\+ CRL.M.C. 4556/2018

AI DEVELOPERS PVT LTD ..... Petitioner

Through: Mr. Rajesh Anand, Advocate.

Versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent

Through: Mr. Mridul Jain, SPP, CBI with Ms. Neha Goel, Advocate.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J

1. Both the petitions i.e. CRL.M.C. 3927/2017 and CRL.M.C. 4556/2018 are taken up together for consideration in view of the

factum that they arise out of the proceedings in relation to RC No. 4(A)/08/ACU IX/CBI/ND dated 18.12.2008, whereby, the charge sheet was submitted under Sections 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 and Section 109 of the Indian Penal Code, 1860.

CRL.M.C.3927/2017

2. Vide CRL.M.C. 3927/2017, the petitioner thereof Arvind Kumar arrayed as accused no.1 in the said charge sheet has sought the setting aside of the impugned order dated 07.10.2016 of the Court of the learned Special Judge-03, (P.C. Act) (CBI), Patiala House Courts, New Delhi and has also sought directions to defreeze the bank accounts held by him and has also sought the release of the property documents pertaining to Plot No.55, Sector-43, HUDA, Gurgaon without any stipulation with it having also been prayed by the said petitioner that the respondent/ CBI be directed to pay the enhanced price, interest and other charges to HUDA payable pending adjudication of the matter apart from costs of the petition.

3. Vide the impugned order dated 07.10.2016, the application filed by the petitioner- Arvind Kumar (A-1) dated 26.08.2014 seeking defreezing of all his bank accounts which are detailed as under:-

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Sr. No.	**Bank & Branch Sources of Deposits**	**A/c No. & Type**	**Amount (Rs.)**
1.	UCO Bank Tarapur, Munger district, Bihar, Sl. no. (ix) of Statement B of the Charge Sheet at Page 27 (Agriculture Income)	Saving Account no. 7254	33,587.00

2.	State Bank .of India, Wilsan Garden Branch, Bangalore. It was opened at Asarganj near Tarapur in Bihar State and subsequently was transferred to Kolkata and from there to Bangalore. Sl. no. (v) of Statement B of the Charge Sheet at Page 27 (Agriculture Income)	Saving Account no. 1095583954	49,833.00
3.	United Bank of India, Dalhousie Square, Kolkata, Sl. no. (iv) of Statement B of the Charge Sheet at Page 27 (Fixed Deposits from Salary Income while posted at Kolkata)	CDR No. 589100011334	58,834.00
4.	United Bank of India, Dalhousie Square, Kolkata, Sl. no. (xi) of Statement B of the Charge Sheet at Page 27 (Salary Account while posted at Kolkata)	Saving Bank Account 90042	9,174.00
5.	State Bank of India, Kankarbagh, Patna, Sl. no. (xii) of Statement B of the Charge Sheet at Page 27 (Account was transferred from SBI Malda, West Bengal. Salary income while posted at Malda and Patna)	Saving Bank Account 10533937259	79,641.00
6.	State Bank of India, Maligaon, Guwahati, Sl. no. (vi) of Statement B of the Charge Sheet at Page 27 (Salary account while posted at Guwahati)	Saving Account no. 10452044675	2,94,562.00
7.	State Bank of India, Maligaon, Guwahati, Sl. no. (vii) of Statement B of the Charge Sheet at Page 27 (Deposits from salary receipts while posted at Guwahati)	PPF Account No. 10452060200	60,000.00
8.	State Bank of India, Wilson Garden Branch, Bangalore, Sl. no. (iii) of Statement B of the	Account no. 30614955532 TDR No. 30398668754	18,00,000.00

	Charge Sheet at page 26 (Money transferred from Salary account of SBI Maligaon/ Guwahati of 7 years, and income from sale of two plots vide item no. (ii) and (iii) of the charge sheet of Rs.15,04,975)		
9.	Axis Bank Ltd, Main Road, Bangalore, Sl. no. (viii) of Statement B at Page 27 of the Charge Sheet (Salary account while posted at Banglore)	Savings Account 009010101428744	2,30,556.00
		Total	**26,16,187.00**

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and vide which application he also sought the release of the original property papers of Plot No.55, Sector-43 of Haryana Urban Development Authority at Gurgaon without any conditions and restrictions submitting to the effect that the said property was purchased by him from his hard earned income assessed by the Income Tax Department and approved by the Railways where he had been employed,- was declined with it having been observed to the effect:-

> *"....*
>
> *An application was moved by A-1 praying for defreezing the bank accounts. Prosecution has already filed the reply.*
>
> *Arguments on the application of A-1 for defreezing the bank accounts are heard.*
>
> *In this application, A-1 has enumerated 09 bank accounts belonging to him, which were freezed by CBI and total of all the said amount is Rs.26,16,187/-. It is prayed that aforesaid amounts are legal and therefore, all these bank accounts should be defreezed to enable him*

to use his legitimate savings. It is further prayed in this application that Plot No. 55, Sector 43, Gurgaon, was purchased by him after selling another property i.e. Plot No. 278, Sector 27, Gurgaon. It is submitted that his department had approved the transaction vide letter no. Z/SS/Con/M&I/GAZ/1, dated 25.06.2007 (D-157). It is submitted that Haryana Urban Development Authority has increased the price of the plot/ flat and failure to pay the said increased amount attracts interest at the rate of 12% and cancellation of allotment. It is submitted that no installment could be paid to HUDA by A-1 because all his bank accounts have been freezed. Therefore, it is prayed that not only the bank accounts should be de-freezed, but also the original property papers of Plot No. 55, Sector-43, Gurgaon, may be released to A-1.

In reply CBI has submitted that the property and the funds in bank accounts are directly related to the crime in question.

I have considered the submissions and I am of the opinion that if documents of property in question are released and the bank accounts are defreezed, it will be very difficult to confiscate the same in case of conviction.

Accordingly, I dismiss the application."

CRL.M.C. 4556/2018

4. Vide the impugned order dated 02.06.2018 of the Court of the learned Special Judge (PC Act), CBI-03, PHC, New Delhi declined the application of Ms AI Developers Pvt Ltd. dated 26.08.2017, vide which M/s AI Developers Pvt Ltd. through one of its Director i.e. accused no.2 Indu Kumar W/o Sh. Arvind Kumar, accused no.1 (who is the petitioner of CRL.M.C. 3927/2017) had sought the release of original papers of allotted plots allotted by the HUDA by giving bank

guarantee bond of Rs.18,54,787/- for clearing its liability and for resumption of its business.

5. Vide the impugned order dated 02.06.2018, it was observed as under:-

> ***"…***
> ***4. It is submitted on behalf of applicant company that it is not an accused on trial before this Court and that the properties standing in the name of the company are vested in the company and not with the share-holders or Directors. It is claimed that on 19.12.2008 CBI had arbitrarily seized all the property papers of the company and impounded its bank deposits amounting to Rs.35,53,706.92/-. It is further claimed that the documents are with respect to 07 plots alloted to the applicant by HUDA on part payment of 25% of the total cost and that due to seizing of the property papers of these plots, business of applicant company has stopped and interest has accrued in the past 8.5 years on the balance installments to be paid to HUDA/Gurgaon. It is claimed that total dues against the plot has accumulated to Rs. 2,42,85,252/- as on 19.08.2017 and that according to the CBI, amount of investment by the applicant in the plots is Rs. 56,08,858/-. It is prayed that original papers of plots are required by the applicant for sale of the plots to clear its liability and to resume its business. It is submitted that the applicant is ready to give the bank guarantee of Rs.18,54,787/- i.e. the difference between investment of Rs.56,08,858/- by the applicant in the plots minus Rs.37,54,071/-, the accepted income of the applicant by the CBI.***
>
> ***5. The application is opposed by the CBI on the grounds that documents sought to be released are relied upon for the prosecution of the accused persons and are related to the crime. It is claimed that the applicant company was floated by accused Indu***

Kumar (A-2) and her son Abhinav Kumar in the year 2005 and that accused Pramod Kumar Basotia (A-3) channelized Rs. 2.5 crores for accused Indu Kumar (A-2) and her company M/s AI Developers Pvt. Ltd. through his bank account and the bank accounts of his relatives. It is claimed that company has been formed as an eye-wash by accused Arvind Kumar (A-1) & accused Indu Kumar (A-2) to channelize ill-gotten money acquired by accused Arvind Kumar (A-1), by way of business and fake loan/investment in the company, thus disproportionate asset amassed by accused Arvind Kumar (A-1) in the name of his family members.

6. As per the charge-sheet, accused Arvind Kumar (A-1) is a public servant and accused Indu Kumar (A-2) is his wife. Charge has been framed against accused Arvind Kumar (A-1) for disproportionate assets under Section 13(2) r/w Section 13(1)(e) of Prevention of Corruption Act, 1988 (PC Act). Accused Indu Kumar (A-2) has been charged for actively aiding and abetting her husband accused Arvind Kumar (A-1) for acquiring disproportionate assets, thus for committing offences punishable under Section 109 of IPC r/w Section 13(2) r/w Section 13(1)(e) of P.C. Act. The title documents of the 07 plots in the name of M/s AI Developers Pvt. Ltd. are relied upon documents and the plots are the case property i.e. alleged disproportionate assets of accused Arvind Kumar (A-1). The plots and their title documents have been seized by the CBI during investigation under Section 102 Cr.PC. On conclusion of trial, if accused are found guilty, the case property can be confiscated under Section 452 Cr.PC.

7. Applicant has failed to show why EMI installments for the plots were not paid to HUDA. Seizure of the documents of plots does not stop the applicant from paying EMI installments.

> ***8. In the above facts and circumstances, I am of the opinion that release of the original documents of the plots with permission to sell, while trial is still pending, will not be in the interest of justice. Therefore, the application of M/s AI Developers Pvt. Ltd. dated 26.08.2017 is dismissed."***

CRL.M.C. 3927/2017 & CRL.M.C. 4556/2018

6. As per the prosecution version of the CBI, the RC No.4(A)/08/ACU-IX/CBI/ND was registered on 18.12.2008 on the basis of reliable source information against Sh. Arvind Kumar (A-1) (the petitioner of CRL.M.C. 3927/2017), Chief Engineer, Bangalore Metro Rail Corporation, Bangalore and his family members and others on the allegations that the said Sh. Arvind Kumar had accumulated huge assets in Delhi, Gurgaon and other places in the name of his wife Smt. Indu Kumar (A-2), Son Sh. Abhinav Kumar and a Private Company namely M/s A I Developers Ltd. (of which Smt. Indu Kumar (A-2), wife of Sh. Arvind Kumar is one of the Directors) during the check period from 01.01.2001 to 19.12.2008 which assets were claimed to be disproportionate to the known sources of income of Arvind Kumar (A-1). Arvind Kumar (A-1) and his family members as per the prosecution version were found in possession of assets to the extent of Rs. 7,38,22,575/- which were disproportionate to the known sources of income of Arvind Kumar (A-1) for which he and his family members could not satisfactorily account.

7. The charges in the instant case have been framed on 14.05.2016 pursuant to the order on charge passed on 06.05.2016 under Sections

13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 and Section 109 of the Indian Penal Code, 1860 against ten (10) accused persons of the eleven (11) persons charge sheeted with the accused no. 11 Mr. Diwakar Khemka having been discharged by the Trial Court.

8. As per the prosecution version, the investigation established that the accused no. 3 Sh. Pramod Kumar Basotia and his relatives transacted Rs. 2.5 crores (approx.) through the bank accounts of their companies in favour of Smt. Indu Kumar (A-2) and her company M/s AI Developers Pvt. Ltd. in the form of fake and fictitious loan/investment under the system commonly known as "Adjustment". The said Pramod Kumar Basotia was allegedly organizing all the monetary transactions made between himself, his relative's companies and Smt. Indu Kumar (A-2).

9. The CBI has further submitted through its reply dated 15.01.2019 to CRL.M.A.35962/2018 in CRL.M.C. 3927/2017 as is also the avowed version of the CBI qua submissions made in both the petitions i.e. CRL.M.C. 3927/2017 and CRL.M.C. 4556/2018 that Pramod Kumar Basotia (A-3) and his relatives did not give any loan to A-2, Smt. Indu Kumar nor did they invest in her company M/s AI Developers Pvt. Ltd and the money which was shown on paper as loan/investment to Indu Kumar and her company actually belonged to Indu Kumar (A-2). Pramod Kumar Basotia (A-3) is alleged to have received commission for channelizing money through his own bank accounts into his relative's companies. Sh. Deepak Kumar (A-7), his brother-in-law and Sh. Ashok Sharma (A-4), his nephew were alleged to have been collecting the cash form Indu Kumar (A-2) and Sh.

Vinod Kila (A-8), CA as and when he directed them to do so, as a consequence of which, Sh. Arvind Kumar (A-1) diverted his ill gotten money through his wife- Indu Kumar (A-2) and her company M/s AI Developers Pvt. Ltd.

10. The CBI has further submitted that it has seized all property documents and frozen the bank accounts according to law legally and all due benefits of income, assets and expenditure has already been given to the accused persons i.e. Indu Kumar (A-2), M/s AI Developers Pvt Ltd. as also to Arvind Kumar (A-1) as per the authenticated records, which the prosecution submits is reflected in statement 'C' of the charge sheet.

11. The CBI has further submitted that the bank accounts and property papers are relied upon documents and that if they are allowed to be released, it would be difficult to confiscate the same in case of conviction with it having been prayed by the CBI that all original records which are relied upon documents/ record be not handed over till completion of trial.

12. The CBI vide its response dated 12.03.2018 in CRL.M.C. 3927/2017 to the petition has *inter alia* submitted that Smt. Indu Kumar (A-2) had stayed with her husband Sh. Arvind Kumar (A-1) during his postings to the various places i.e. Kolkata, etc. which was obvious from the account opening form of Smt. Indu Kumar (A-2) which were opened in the banks at Kolkata and that the four major properties at Delhi and Gurgaon were purchased by Smt. Indu Kumar (A-2) as per the CBI with ill-gotten money taken as fake/bogus loans and that most of the properties were purchased in the presence of Sh.

Arvind Kumar (A-1) or persons associated with Sh. Arvind Kumar (A-1) as reflected vide documents collected by the Investigating Agency.

13. The CBI has further submitted that Indu Kumar (A-2) has been doing business through a company M/s AI Developers Pvt. Ltd. but it was only an eyewash to channelize ill-gotten money acquired with the influence of Sh. Arvind Kumar (A-l) by way of fake/bogus loans and investment in the company taken from different persons and companies which is obvious from the statements of witnesses (PWs 3, 4, 6, 20, 21, 22, 23, 24, 26, 27 & 28) and documents (D no. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 93, 94, 95, 96, 97, 98 to 102, 103 & 104 to 156). The CBI has further submitted that ill-gotten money of Sh. Arvind Kumar (A-l) had been channelized through Indu Kumar (A-2) by way of business and fake loan/investment in M/s AI Developers Pvt. Ltd. and thus, the business income of Indu Kumar (A-2) and assets of M/s AI Developers Pvt. Ltd. were investigated and considered for calculating the disproportionate assets amassed by Sh. Arvind Kumar (A-1) in his name and in the name of his family members.

14. The response submitted by the CBI to CRL.M.C. 4556/2018 vide a reply dated 30.11.2018 is virtually similar to the response submitted in CRL.M.C. 3927/2017.

15. The petitioner of CRL.M.C. 3927/2017 named Arvind Kumar (A-1) submits as also reiterated vide written submissions dated 18.11.2021 that he whilst working with Indian Railways from where he retired as Chief Engineer, had an unblemished career and that

during the course of his employment, as part of his duty and responsibility, he disclosed about his assets, sale and purchase of assets to the concerned authority of his department and that vide letter dated 17.04.2007, he had informed his department about the sale of his property bearing plot No. 278 admeasuring 263.12 sqm at Sector 27, Gurgaon, Haryana to Mr. Shail Anand S/o Lawrence David R/o F-2/5, Model Town Delhi at a cost of Rs. 26,30,000/- and purchase of housing plot no. 55, admeasuring 285 sqm (approx.) at Sector 43, Gurgaon, Haryana from Sh. Ramesh Arora S/o Sh. Lodha Ram and Smt. Shakuntla Devi Arora, W/o Sh. Vashdev at a total cost of Rs.17,84,816/- and that vide letter dated 25.06.2007 (D-157), Sh. Ashish Bhattacharya PPS to GM/CON North East Frontier Railway, Guwahati informed the petitioner that General Manager/NF Railway/Con had taken note of the transactions in immovable properties reported vide its letter dated 17.04.2007.

16. The petitioner further submits that he has paid a sum of Rs. 18.63 lacs against the plot bearing No.55, Sector-43, Gurgaon, Haryana from his salary income and sale of plot no. 278 and the details of the payments made through banking transactions from the State Bank of India Maligaon, with the bank statement being marked as D-157 and that the payment was made to the seller on 03.04.2007 & 05.04.2007 and an instalment was paid to HUDA/Gurgaon on 23.07.2007.

17. The petitioner submits that the charge sheet in the matter was filed on 03.03.2011 and the balance outstanding which was to be paid to HUDA for this plot was Rs.33,96,407/- which was increased to

Rs.87,76,488/- due to accrual of interest as the petitioner spent all his savings to contest the false case filed against him that the petitioner has also sold his 11 bighas of land. The petitioner submits that the plot No. 55, Sector-43, Gurgaon, Haryana was still owned by HUDA.

18. The petitioner further submits that there is no link or evidence to remotely suggest any suspicious transaction for purchase of attached property papers of property bearing Plot No.55, Sector-43, Gurgaon, Haryana and that the deposit of Rs.26,16,187/- is purely from his salary income and the sale of the plot for which approval was taken and during the check period 01.01.2001 to 19.12.2008, the petitioner had opened two salary accounts, one at Guwahati and other at Bangalore and the other two are PF and FD accounts and the balance five (5) accounts are prior to the check period and all deposits 95% were from his salary, few from agriculture income and sale of plots after due approval/intimation to the department and all were reflected in his ITR seized from his C.A. S K Bhartiya (PW-105) and marked as M-1553, which document it is submitted was deliberately not sent to the Sanctioning Authority.

19. The petitioner submits that as per the order on charge at page 57 to 68 of the order on charge (page 145 to 156 of the Paper Book) as per the respondent CBI, the alleged disproportionate asset of the petitioner is 1.82 % more than his accepted income which is inconsequential in view of the pronouncement of the Hon'ble Supreme Court in ***"Krishnanand Agnihotri Vs. State of Madhya Pradesh" (1977) 1 SCC 816*** where it has allowed the disproportion upto 10% of the income with it having been submitted by the petitioner that the

CBI had deliberately added the education fees of Rs. 2,60,000/- paid by Indu Kumar (A-2) for his son in his expenditure and the payment of Rs. 70,000/-, Rs.63,700/- and Rs. 61,900/- which were made from her bank account in D-182 adding to Rs. 1,94,700/-.

20. The petitioner- Arvind Kumar (A-1) submitted that his wife Indu Kumar (A-2) had independent sources of income and as per the charge sheet, her income is Rs.1,22,38,022/- and his agricultural income of the financial year 2005-06 is Rs.1,02,400/- and by adding the said agriculture income and subtracting Rs. 1,94,700/- from his expenditure, his assets workout to Rs. 2,03,781/- less than his known sources of income, which are thus, not disproportionate.

21. The petitioner of CRL.M.C. 3927/2017 named Arvind Kumar (A-1) has submitted that vide the impugned order dated 07.10.2016, the learned Special Judge-03, (P.C. Act) (CBI), Patiala House Courts, New Delhi did not consider material facts and records and failed to take note of the fact that there is no link of the investment of the petitioner in this property with any act or offence alleged in the charge sheet and there is not an iota of evidence in this regard and that the entire investment was from his salary income which was reflected in the financial documents of the petitioner and the CBI had failed to take note of the fact that the amount lying in the bank accounts were from his salary income and income earned on his financial investments from his salary income and reflected in his financial documents.

22. The petitioner has submitted further that the order on charge demonstrated that there was no evidence against the petitioner and the

charges were framed on the presumption that some co-accused may turn approver and disclose to the Court the entire conspiracy and also on the ground that CBI intended to bring on record the fraudulent transaction benefitting A-2, which could be attributed to A-1 and it would require a detailed trial when all the submissions of A-1 would be appreciated. *Inter alia,* the petitioner submits that the observations in the impugned order that the prosecution can bring out the circumstances to show that the income of A-2 i.e. Indu Kumar, the wife of Arvind Kumar (A-1) or her company i.e. AI Developers Pvt. Ltd. was in fact the dirty money for which A-1 would have to answer, are alien to criminal jurisprudence and against the mandate of Section 226 of the Cr.P.C. and further submits that the seizure made in the instant case under Section 102 of the Cr.P.C. is wholly illegal.

23. The petitioner submits that the outstanding qua the plot has risen up to Rs. 87,76,488/- and the petitioner is apprehensive of resumption of the plot by HUDA as notices were issued to all defaulters and each passing day is adding up to the pressure on the petitioner and is detrimental to his rights, title and interest in the property and that there is nothing on the record to even remotely suggest that the property in question is linked to any commission of any alleged offence. The petitioner has further submitted that the questions of law which arise for consideration are to the effect:-

> ***"a). Whether, during the course of investigation while pressing into service the provision of section 102 Cr.P.C. a police official can seize such property documents or can freeze such bank accounts of an***

individual or company which has no direct link with the commission of alleged offence?
b). Whether under section 102 Cr.P.C. an attachment/seizure of property papers and freezing of bank accounts can be done as a first instance and then subsequently investigation can be done to find out as to whether the seized property or freezed bank account has any connection with the commission of the alleged offence?

c). Whether, on mere suspicion such attachment/seizure/freezing of property papers/bank accounts can be given effect to under section 102 Cr.P.C.?"

24. The petitioner has placed reliance on the verdict of the Hon'ble Supreme Court in ***"State of Maharashtra vs. Tapas D Neogy" (1999) 7 SCC 865*** with specific reference to observations in paragraph 12 thereof, which reads to the effect:-

> ***"12. We are, therefore, persuaded to take the view that the bank account of the accused or any of his relation is `property' within the meaning of Section 102 of the Criminal Procedure Code and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into."***

25. Reliance is also placed on behalf of the petitioner on the verdict of this Court in ***"Sunil Bhargava Vs. CBI" (2018) 249 DLT 702*** dated 13.03.2018 in W.P.(Crl.) 1304/2017 with specific reference to observations in paragraph 6 thereof, which reads to the effect:-

> ***"6. Decision of the Supreme Court clearly notes that under Section 102 Cr.P.C. bank account of the accused or any of his relations can be seized or frozen as***

property within the meaning of Section 102 Cr.P.C. if such assets have direct links with the commission of offence for which the police office is investigating into. Thus, the investigating agency is required to show prima facie material that the accounts/assets attached have a direct link with the commission of the offence."

26. Reliance is also placed on behalf of the petitioner on the verdict of the Hon'ble High Court of Orissa in ***"Nabapravat Trust (Crl Rev No. 718) & others vs State of Orissa" (2002) 94 CLT 41*** with specific observations in paragraphs 11 & 15 thereof, which read to the effect:-

"11. In the light of the decision of the Apex Court and the submission made by the learned counsel appearing for both parties, I proceed to examine the documents on which reliance is placed by the Vigilance Department, to establish a direct link between the bank accounts operated by the three organisations as well as cash seized from one of the organisations with that of disproportionate income of the accused public servant.

…

15. …. In absence of any link as observed by the apex Court the Vigilance Department had absolutely no authority to cause seizure of accounts operated by the Trust. Mere deposit of money in cash is not enough to presume that such amount must have been advanced by the accused-public servant……. I am, therefore, of the view that the seizure of the accounts operated by the Trust is illegal and in absence of any link between the disproportionate assets acquired by the accused-public servant and the amounts in deposit in the accounts operated by the Trust, the seizure is liable to be lifted."

27. Reliance is also placed on behalf of the petitioner on the verdict of the Hon'ble High Court of Kerala in ***"Mohammad Enamul Haque vs CBI"*** in Crl. M.C No. 7372 of 2018, a verdict dated 05.12.2018

with specific observations in paragraphs 3 & 5 thereof, which read to the effect:-

> ***"3. ……It is also settled that in exceptional circumstances where, the court finds illegalities in the process of investigation, or illegal arbitrariness in the discharge of functions as part of investigation, the courts cannot be a mute onlooker, and the courts will have to interfere under Article 226 of the Constitution of India, or under Section 482 Cr.P.C. Regarding this settled position also, nobody can have any doubt or dispute.***
>
> ***…..***
>
> ***5…. Even an accused in a criminal case has rights under the law, including legal rights and fundamental rights. Just because a person is an accused, such rights cannot be denied or defeated by high-handed arbitrariness in investigation, or by investigative excess. When such instances are brought to the notice of the court, the court will have to interfere appropriately. Here, is an instance where, all the bank accounts of a person are frozen by the CBI. He is not just an individual. He is a business man too. Whether his business is illegal, or whether he has committed any economic offence is not the concern at this stage. This is a crime involving the offence under Sections 7 and 13(2) read with Section 13(1)(a) and 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act'). If the petitioner has committed any economic offence, or if he is suspected to have committed any offence in connection with his business or smuggling activities, it is for the appropriate authority to interfere, and take necessary action. As part of investigation in this crime registered under the PC Act, the CBI cannot help the other agencies, or create evidence for the other agencies. The concern of the CBI in this crime must be to collect evidence to prove the offence alleged in this crime as to whether the 1st accused had accepted any***

> ***illegal gratification or undue advantage from anybody, including the petitioner herein at any time…"***

,- with reliance having been placed on behalf of the petitioner on the aforementioned verdicts in support of the contentions that in the absence of any direct link between the assets sought to be seized by the Investigating Agency to the commission of the offence, the said accounts and assets cannot be seized.

28. Reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble High Court of Bombay in ***"Shashikant D Karnik vs State of Maharashtra"*** in Crl Writ Pet No. 2509 of 2006, a verdict date 17.04.2017 with specific observations in paragraph 18 thereof, which reads to the effect:-

> ***"18. So far as requirement under Section 102(1) is concerned, it is obligatory upon the police to show that the property which they want to attach or attaching is under circumstances which create suspicion of the commission of any offence. From paragraph 5 of the affidavit of Mr. Pardeshi, ACP attached to ACB, quoted above, and from the oral submissions made by Mr. Mhaispurkar, it is clear that till this date the authority who attached the accounts of the petitioner have not been able to come to any conclusion, even primafacie case that the amount in the accounts has any connection with the offence of disproportionate income of the petitioner. In these circumstances, there is no option but to hold that any action taken in giving oral instructions of stopping the operation of the account or in issuing written directions of stopping the operation of account, is illegal perse. Section 102 of the Cr.P.C. does not permit any police officer to seize the property, viz. to attach the account in the first instance and then to decide whether the property has any connection with the commission of any offence. The attachment orders oral or written in this***

> ***case are issued in 2002, we are in 2007, but till this date investigating agency has not been able to come to a conclusion, as stated in paragraph 5 of the affidavit reproduced above, that the amount lying in the bank accounts, is out of the disproportionate income of the petitioner. In these circumstances, the entire attachment under oral or written directions has to be struck down as has been illegal.",***

to contend to the effect that Section 102 of the Cr.P.C. does not permit any police officer to seize the property, viz., to attach the account in the first instance and then to decide whether the property has any connection with the commission of any offence.

29. Reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***"Nevada Properties Pvt. Ltd. Through its Director Vs The State of Maharashtra"*** a verdict dated 24th September, 2019 in Crl. Appeal 1481/2019 with specific observations in paragraphs 13 & 20 thereof, which read to the effect:-

> ***"13. Before we proceed further, we would like to refer to the Criminal Law Amendment Ordinance, 1944 (No. XXXVIII of 1944) which was promulgated in exercise of powers conferred under Section Criminal Appeal arising out of the Ninth Schedule of the Government of India Act, 1935 to prevent disposal or concealment of property procured by means of offences specified in its Schedule, which include offences punishable under Sections 406, 408, 409, 411 and 414 of the IPC in respect of Government property, property of local authority or a Corporation established by or under a Central, Provincial or State Act, etc., and an offence punishable under the Prevention of Corruption Act, 1988, an insertion made by the Prevention of Corruption Act, 1988. It sets out the procedure when the Central/ State Government has a reason to believe that a***

person has committed any scheduled offence, whether or not the Court has taken cognisance of the said offence, by attachment of money or other property which the Central/State Government believes that the person has procured by means of the scheduled offence, and if such money or property cannot for any reason be attached, any other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or property. This enactment mandates application of provisions of Order XXVII of the Code of Civil Procedure, 1908 with a provision for filing an application before the District Judge who is entitled to pass an ad interim attachment order after following the prescribed procedure including examination and investigation of objections to Criminal Appeal arising out of attachment of the property. The District Judge can pass an order either making the interim attachment absolute or varying it by releasing the property or portion thereof or withdrawing the order on satisfaction of certain conditions. Other sections contained in the Ordinance provide for attachment of property of mala fide transferees, execution of orders of attachment, security in lieu of attachment, administration of attached property, duration of attachment, appeals, power of Criminal Court to evaluate property procured by scheduled offences and disposal of attached property upon termination of criminal proceedings.

…..

20. Section 102 postulates seizure of the property. Immovable property cannot, in its strict sense, be seized, though documents of title, etc. relating to immovable property can be seized, taken into custody and produced. Immovable property can be attached and also locked/sealed. It could be argued that the word 'seize' would include such action of attachment and sealing…. Language of Section 102 of the Code does not support the interpretation that the police officer has the power to dispossess a person in occupation and take possession of

> ***an immovable property in order to seize it…. Equally important, for the purpose of Criminal Appeal arising out of interpretation is the scope and object of Section 102 of the Code, which is to help and assist investigation and to enable the police officer to collect and collate evidence to be produced to prove the charge complained of and set up in the charge sheet. …***
>
> ***The expression 'circumstances which create suspicion of the commission of any offence' in Section 102 does not refer to a firm opinion or an adjudication/finding by a police officer to ascertain whether or not 'any property' is required to be seized. The word 'suspicion' is a weaker and a broader expression than 'reasonable belief' or 'satisfaction'. The police officer is an investigator and not an adjudicator or a decision maker. This is the reason why the Ordinance was enacted to deal with attachment of money and immovable properties in cases of scheduled offences. Criminal Appeal arising out of In case and if we allow the police officer to 'seize' immovable property on a mere 'suspicion of the commission of any offence', it would mean and imply giving a drastic and extreme power to dispossess etc. to the police officer on a mere conjecture and surmise, that is, on suspicion, which has hitherto not been exercised.",***

to submit to the effect that a police officer cannot be permitted to *'seize'* immovable property on a mere *'suspicion of the commission of any offence'*, or that would imply giving a drastic and extreme power to dispossess etc. to the police officer on a mere conjecture and surmise, that is, on suspicion, which has hitherto not been exercised.

30. Reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***"Krishnanand Agnihotri Vs State of Madhya Pradesh" (1977) 1 SCC 816*** with specific observations in paragraphs 26 & 33 thereof, which read to the effect:-

"26……..It is well settled that the burden of showing that a particular transaction is benami and the appellant owner is not the real owner always rests on the person asserting it to be so and this burben has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of benami Is the intention of the parties and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of the serious onus that rests on Mm, nor justify the acceptance of mere conjectures or surmises as a substitute for proof. (Vide Jayadayal Poddar v. Mst. Bibi Hazra . It is not enough merely to show circumstances which might create suspicion, because the court cannot decide on the basis of suspicion. It has to act on legal grounds established by evidence. Here, in the present case, no evidence at all was led on the side of the prosecution to show that the monies lying in fixed deposit in Shanti Devi's name were provided by the appellant and howsoever strong may be the suspicion of the court in this connection, it cannot take the place of proof.

…

33. It will, therefore, be seen that as against an aggregate surplus income of Rupees 44,383.59 which was available to the appellant during the period in question, the appellant possessed total assets worth Rupees 55,732.25. The assets possessed by the appellant were thus in excess of the surplus income available to him. but since the excess is comparatively small - it is less than ten per cent of the total income of Rs. 1,27,715.43 - we do not think it would be right to hold that the assets found in the possession of the appellant were disproportionate to his known sources of income so as to justify the raising of the presumption under

> ***Sub-section (3) of Section 5. We are of the view that, on the facts of the present case the High Court as well as the Special Judge were in error in raising the presumption contained in Sub-section (3) of Section 5 and convicting the appellant on the basis of such presumption.",***

to submit to the effect that where the assets were alleged to be disproportionate less than 10% of the total income and the excess is extremely small, it would not be justifiable to hold that the assets were disproportionate to the known sources of income.

31. The CBI vide its written submissions dated 02.12.2021 has submitted that it is a settled legal situation that in case the accused is **convicted** for an offence of possessing Disproportionate Assets, the said assets which relate to the crime, can be confiscated with reliance having been placed on behalf of the CBI on the verdict of the Hon'ble Supreme Court in ***"Mirza Iqbal Hussain through Askari Begum Vs. State of Uttar Pradesh" AIR 1983 SC 60.***

32. The CBI further submits that the petitioner/Arvind Kumar (A1) vide CRL.M.C. 3927/2017 is trying to raise questions/disputed questions of fact which are outside the purview of the proceedings under Section 482 of the Cr.P.C., 1973. The CBI further submits that charges have already been framed against the petitioner/Arvind Kumar (A1) and the other accused in the matter and that the present petitioner and the other accused have filed petitions as under:-

	CASE TITLE	**CASE NUMBER**
1.	**INDU KUMAR VS CBI**	**Crl.M.C-3450/2016**
2.	**SHASHI KUMAR SHARMA VS CBI**	**Crl.M.C-4334/2016**

3.	**PRAMOD KUMAR BASOTIA & ANR. VS CBI**	**Crl.M.C-4367/2016**
4.	**ARVIND KUMAR VS CBI**	**Crl.M.C-4792/2016**
5.	**VINOD KUMAR KILA VS CBI**	**Crl.M.C-2942/2016**
6.	**INDU KUMAR VS CBI**	**Crl.M.C-4879/2017**
7.	**GOVIND SAINI VS CBI**	**Crl.M.C-636/2018**
8.	**OM PRAKASH KEDIA VS CBI**	**Crl.M.C-1174/2018**

which are pending and that the petitioner herein is trying to take benefit of his own wrong.

33. The CBI has further submitted that though the learned Trial Court had given an option for day-to-day trial, the same was not availed of by the accused persons.

34. The CBI has further submitted that though the petitioner is praying for de-freezing of the bank accounts and release of the property documents but the prayer clause shows that in reality the petitioner is trying to dispose of the property, which is not permissible in terms of Chapter XXXIV of the Cr.P.C., 1973, which deals with "Disposal of Property" during the pendency of trial as the said property is not subject to speedy and natural delay. The CBI has further submitted that the amounts lying in the bank accounts and the immovable property of the applicant are proceeds of the offence with which the applicant/accused has been charged, and their release at this stage would defeat the purpose of law.

35. The CBI further submits that the learned Trial Court vide the impugned order dated 07.10.2016 as impugned by the

petitioner/Arvind Kumar (A1) vide CRL.M.C. 3927/2017 has rightly observed to the effect that if the documents of the property in question were released and the bank accounts de-freezed, it would be very difficult to confiscate the same in case of conviction.

36. The CBI has further submitted that if the petitioner/Arvind Kumar (A1) succeeds in disposing of the property that will create a third party interest which would unnecessarily complicate the situation.

37. The CBI has further submitted that the contention of the petitioner that the percentage of DA as claimed by CBI is only 1.82% overlooks the factum that the table in the impugned order is only reproduction of calculation filed by the defense, which is not correct, and this has been clearly mentioned by the Ld. Trial Court in the impugned order, **and as per the chargesheet filed by the CBI, during the check period the petitioner/Arvind Kumar (A1) had acquired assets to the tune of Rs. 7,38,22,575/- i.e., 360% which were disproportionate to his known sources of income.**

38. The CBI has thus prayed that CRL.M.C. 3927/2017 be dismissed.

CRL.M.C. 4556/2018

39. This petition is filed by AI Developers Private Limited through Mr. Praveen Mehta, who is one of the Directors of AI Developers Private Limited.

40. The petitioner through its written submissions dated 25.03.2021 has submitted that AI Developers Private Limited is not an accused in this case; that Mr. Praveen Mehta, Director of the petitioner company,

who has signed the petition is also not an accused; that the application is for release of its original plot papers seized by CBI from the Haryana Urban Development Agency (HUDA)/Gurgaon on 28.01.2009 vide seizure memo D-294 and from the petitioner on 19.12.2008; that the plots are still the property of HUDA and the petitioner has paid only 25% of its price; that the application seeks permission to sell adequate number of plots for clearing huge dues of (HUDA)/ Gurgaon towards balance cost of plots which has increased because of accrual of interest to Rs.3,98,45,693/- from Rs.1,28,69,588/- as on 30.04.2013 and for starting business activities of the company, and that the application also seeks release of Rs.35,53,706/- impounded in its current account earning no interest; and that these properties have been seized for more than eleven years.

41. It has been further submitted by the petitioner that its total investment in the plots as per the charge sheet at Serial Nos. (xxix) to (xxxiii), (xxxv) and (xxxvi) at page 56-58 of the application is Rs.56,08,858/-, Rs.3,98,45,693/- to be paid to HUDA, and that the allotment letters of HUDA stipulate that in case of non-payment of the balance amount, resumption proceedings shall be initiated in accordance with the Haryana Urban Development Authority Act, 1977.

42. The petitioner submits that its application dated 26.08.2017 for release of its plots was dismissed vide the impugned order dated 02.06.2018 by the learned Special Judge observing that the plots and their title documents have been seized by the CBI during investigation under Section 102 of the Cr.P.C., 1973 and on conclusion of the trial if

the accused were found guilty the properties being case property can be confiscated under Section 452 of the Cr.P.C., 1973.

43. The petitioner M/s AI Developers Private Limited submits that in terms of the verdict of the Hon'ble Supreme Court in ***Nevada Properties Pvt Ltd vs State of Maharashtra*** Crl. Appeal 1481/2019, it has been categorically laid down that "**any property**" in Section 102 of the Cr.P.C., 1973 only covers moveable property and not immovable property, and thus seizure of the plots by the CBI under Section 102 of the Cr.P.C., 1973 is illegal. Reliance has thus been placed by the petitioner on the observations of the Hon'ble Supreme Court therein to the effect:-

> *"20. ..... The expression 'circumstances which create suspicion of the commission of any offence' in Section 102 does not refer to* ***a firm opinion or an adjudication/finding*** *by a police officer to ascertain whether or not 'any property' is required to be seized. The word 'suspicion' is a weaker and a broader expression than 'reasonable belief or 'satisfaction'.* ***The police officer is an Investigator and not an adjudicator or a decision maker. This is the reason why the Ordinance was enacted to deal with attachment of money and immovable properties in cases of scheduled offences****. In case and if we allow the police officer to 'seize' Immovable property on a mere 'suspicion of the commission of any offence',* ***it would mean and imply giving a drastic and extreme power to dispossess etc. to the police officer on a mere conjecture and surmise****, that is, on suspicion, which has hitherto not been exercised.*
>
> *.....*
>
> *21. in view of the aforesaid discussion, the reference is answered by holding that the power of a police officer under* ***Section 102 of the Code to seize any property,***

> ***which may be found under circumstances that create suspicion of the commission of any offence, would not include the power to attach, seize and seal an Immovable property****."*

44. *Inter alia*, the petitioner has submitted that the attachment of money and property can be done only under the 'Criminal Law (Amendment) Ordinance, 1944', and submits that the said relevant portion of the said Ordinance is reproduced in para 13 of the verdict ***Nevada Properties Pvt Ltd (Supra)*** to the effect:-

> *"13. Before we proceed further, we would like to refer to the Criminal Law Amendment Ordinance, 1944 (No. XXXVIII of 1944) which was promulgated in exercise of powers conferred under Section Criminal Appeal arising out of 72 of the Ninth Schedule of the Government of India Act, 1935* ***to prevent disposal or concealment of property procured by means of offences specified in its Schedule****, which include offences…….punishable under the* ***Prevention of Corruption Act, 1988.*** *It sets out the procedure when the Central/State Government has a reason to believe that a person has committed any scheduled offence, whether or not the Court has taken cognizance of the said offence, by attachment of money or other property which the* ***Central/State Government believes that the person has procured by means of the scheduled offence****, and if such money or property cannot for any reason be attached, any other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or property. This enactment mandates* ***application of provisions of Order XXVII of the Code of Civil Procedure, 1908 with a provision for filing an application before the District Judge*** *who is entitled to pass an ad Interim attachment order after* ***following the prescribed procedure including examination and investigation of objections*** *to Criminal Appeal arising out of attachment of the property. The*

District Judge can pass an order either making the interim attachment absolute or varying it by releasing the property or portion thereof or withdrawing the order on satisfaction of certain conditions."

45. The petitioner has further placed reliance on the observations in para 65 of the verdict of the Hon'ble Bombay High Court in ***Sudhir Vasant Karnataki vs State of Maharashtra,*** Crl.W.P. 3198/2009:-

"65. If it is taken for a while that Section 102 of the Code provided for seizure of immovable property for the purpose of ensuring that offenders do not derive benefits from the property which they got as a result of crime as well, then it would have been unnecessary for the Legislature to provide for attachment and, eventually, forfeiture of such property under the Criminal Law (Amendment) Ordinance, as also the provisions of Section 105-A to 105-L of the Code and Sections 68-C to F of the Narcotic Drugs and Psychotropic Substances Act. It became necessary for the Legislature to provide for attachment and forfeiture of such property which the offenders had got as a result of crime, because Section 102 did not and could not have provided for attachment of such property.",

submitting that this has also been followed by the Hon'ble High Court of Madras in ***V Sundaram vs DSP***, WP No. 11221/2015 dated 27.07.2015.

46. The petitioner has further submitted that the observations of the Hon'ble Supreme Court in ***'Commissioner, Income Tax, Chandigarh v Pearl Mechanical Engineering & Foundary Works Pvt Ltd***, ***2004 (4) SCC 597*** reiterated the dictum of the Privy Council in ***'Nazir Ahmad v King Emperor***, AIR 1936 PC 253' *that where a statute requires a thing to be done in a particular manner, it must be done in*

that manner or not at all. Therefore, the misconception of law, irregularity of procedure, neglect of proper precaution leading to apparent harshness has caused grave miscarriage of justice to the petitioner company, with reliance having also been placed on the observations in ***Janata Dal v HS Chowdhary***, AIR 1993 SC 892 and ***Dhaman Joy Sharma v State of Haryana*** AIR 1995 SC 1795.

47. Inter alia, the petitioner submits that Mr. Praveen Mehta, one of the Directors of AI Developers Private Limited through whom the petition has been filed and Indu Kumar (A-2) are directors of the petitioner Company, and they are both brother and sister and their father inherited about 179 acres of fertile land and that the father-in-law of Indu Kumar inherited 70 bighas of land, and that they were doing banana cultivation, have brick kilns, running two hostels one at Patna and another at Tarapur in Bihar, running a guest house at Delhi and sale and purchase of flats at Gurgaon wherein everybody made a fortune, and they had sold their 18.15 acres of very fertile agricultural properties in Bihar, 1400 sq yards of plot in Kalyani market on NH, plot nos. 867 and 1070 in sector 43 at Gurgaon, measuring about 263 sq yards and 163 sq yards and invested in AI Developers Pvt. Ltd. the petitioner submits that the company was doing sale, purchase and development of properties at Gurgaon, contract works and erection and maintenance of hoardings etc., and that the CBI seized the copy of cheques received by the petitioner from Neha Leasing & Holdings Ltd. of Rs.8,81,460/- for land levelling near Jaipur and Rs.12,67,487/-, Rs.10,00,000/- and Rs.5,38,670/- from Bharat Marketing for erection and maintenance of hoarding., and that these cheques were marked as

M-1431, and that AI Developers Pvt Ltd also paid service tax of Rs.3,06,000/- under the payment vouchers were seized by CBI during search and marked as M 1479, and seeing the satisfactory performance of the petitioner, the Bank of Baroda had also sanctioned the loan of Rs. 60 lakhs to AI Developers Pvt Ltd.

48. The petitioner has further submitted that the CBI has cited 330 numbers of documents and 120 numbers of witnesses in support of the allegations in the charge sheet but none of the witnesses or the documents suggest any misconduct, corrupt practices or any ill gotten earning on part of Arvind Kumar (A-1), the only public servant in this case, to thus contend that the allegations of the CBI are without any basis, and that the order dated 06.05.2016 of the learned Special Judge whilst directing framing of charges and its concluding paragraphs observes to the effect:-

> *"Prosecution can bring out the circumstances to show that the Income of A-2 or her company i.e. AI Developers Pvt Ltd was in fact the dirty money for which A-1 will have to answer."*

49. The petitioner submits that the Hon'ble Supreme Court in ***Suresh Budharmal Kalani vs State of Maharashtra (1998) 7 SCC 337*** dated 15.09.1998 has observed in para 6 of its judgment that this approach is perverse observing to the effect that at the stage of framing of the charge ,the Court is required to confine its attention to only those materials collected during investigation which can be legally translated into evidence and not upon further evidence (*de hors* those materials) that the prosecution may adduce in the trial which

would commence only after the charges are framed and the accused denies the charges.

50. The petitioner further submits that Shri Pawan Kumar, lO/CBI, who investigated the case and signed the charge sheet was produced as a prosecution witness in the departmental enquiry held against Arvind Kumar (A-1) on 30.07.2018 and 31.07.2018, wherein he made statements contrary to allegations in the Charge Sheet (Annexure P-22). It is further submitted by the petitioner that on being asked (vide Q.3) to specify the properties purchased by Arvind Kumar (A-1), he named only two properties: (i) Plot No.55, Sector 43, HUDA, Gurgaon; (ii) Property No. A- 36, South Extension, Part II, New Delhi. The petitioner submits that the first property was in fact acquired by A-1. As per the petitioner in support of the allegation for purchase of the second property, the IO made a false statement that the property A-36 although stands in the name of Indu Kumar (A-2), but the sale deed of the said property contained the signature of A-1, and that when the IO was confronted with the copy of the sale deed of A-36 in D-158, the IO/CBI admitted that there is no signature of A-1 thereon. The petitioner submits that the IO stated that he would consult the original document lying in the Court which he would bring on the next day, i.e. on 31.07.2018 in the inquiry, but on 31.07.2018 he stated (in answer to Q.32) that he could not obtain the copy as the learned Special Judge was on leave which the petitioner submits was a false statement. The petitioner submits that the IO/CBI who has investigated the case and signed the charge sheet has not named any property of AI Developers Pvt Ltd being acquired by Arvind Kumar

(A-1) and that the IO has made a false statement and thus a contempt petition by Indu Kumar (A-2) and a petition under Section 340 of the Cr.P.C., 1973 by Arvind Kumar (A-1) is pending against him in the Trial Court (Annexure P-19, P-20 & P-21). The petitioner has further submitted that the SP/ CBI has investigated the case on a false FIR and taken sanction of prosecution on incomplete investigation which the petitioner submits is evident from his letter to Director Vigilance/Railway Board wherein accused A-3 to A-7, A-9 and A-10 are shown as prosecution witnesses (Annexure P-16). The petitioner submits that a petition under Section 340 of the Cr.P.C., 1973 is also pending against him for suppressing incomes and also against valuers who are alleged to have maliciously overvalued the properties by Rs.4 Cr. and a false charge sheet has been filed causing grave miscarriage of justice to the Petitioner Company. The petitioner places reliance on the verdict of the Hon'ble Supreme Court in ***Mohan Lal vs State of Punjab*** Crl. Appeal No. 1880 of 2011 wherein it is observed as under:-

> *"……. a fair Investigation, which is but the very foundation of fair trial, necessarily postulates that the Informant and Investigator must not be the same person. ……. The prosecution is held to be vitiated because of the infraction of the constitutional guarantee of a fair investigation."*

51. *Inter alia*, the petitioner submits that there is overwhelming evidence for the genuineness of the loan to the petitioner detailed in para V of the application at pages 15 to 18 which had not been rebutted by the respondent CBI, and that the loans have been provided

through cheque, interests were paid and verified by CBI and taken as expenditure in the charge sheet, and the loans given to the petitioner are shown in the audited balance sheet of the creditor companies approved by the Income Tax Department available on the website of ROC/Delhi in Annexure P-11, and that TDS certificates on interests were issued to the creditors which were seized by the Respondent CBI during search, and that there are 94 numbers of confirmation letters of loan, and that the loans were confirmed by the Income Tax Officers even before search held on 19.12.2008, and that the creditors have filed a recovery suit against the petitioner.

52. Reliance was placed on behalf of the petitioner on the verdict of this Court in ***'Om Prakash Sharma vs CBI'*** Crl. MC No. 1876/2011 submitting to the effect that assets not disproportionate to the known sources of income as known to the prosecution cannot be included as the same is not an offence. Reliance has also been placed on behalf of the petitioner on the verdict of this Court in ***'Sunil Bhargava vs CBI'*** dated 13th March 2018 submitting to the effect that the investigating agency is required to show that the assets/accounts have direct link with the commission of offence. The petitioner thus submits that the seizure of bank accounts and immovable properties of the petitioner is wholly illegal.

53. The petitioner further submits that the fund for acquisition of properties by the petitioner is indicated in its ITRs of the financial year 2006-07 and 2007-08 which have been obtained by the respondent CBI from the Income Tax department and are it's relied upon documents D-191, and that as per ITR of the financial year 2006-07,

the share capital was Rs.96,51,042/- and loan was Rs.52,48,820/- totalling to Rs.1,48,99,862/-, and that Rs.74,84,106/- was invested in the fixed asset and Rs.41,32,607 was invested in HUDA plots.

54. *Inter alia*, the petitioner submits that the IO/CBI did not give even photocopies of documents of AI Developers Pvt Ltd seized by it during search on 19.12.2008 to the Income Tax Officer, he assessed the balance sheet of AI Developers Pvt Ltd for financial year 2006-07 and levied tax of Rs.78,26,496/- vide its order dated 21.12.2009, and that Sec 14.34 of the CBI Manual permits for inspection of documents by Income Tax, so non supply of the document has caused miscarriage of justice to the Petitioner Company, and that the Company went in appeal before the CIT (Appeal) after collecting the documents from its shareholders, creditors and from others, and that the CIT (A) vide its order dated 23.02.2011 held the total amount of share capital of Rs.92,95,000/- and total loan of Rs.52,48,820/- till the financial year 2006-07 and also investment of Rs.74,84,106/- in SCO 6 and 7 and instalment payment of Rs.12,23,707/- in plots as genuine, and that against this order, the Income Tax went in appeal before the Income Tax Tribunal, and that the Tribunal upheld the order of CIT (Appeal) vide its order dated 27.01.2016, and then the Income Tax Department went in appeal before the High Court of Delhi against the order of the Tribunal, and the Division Bench of the High Court of Delhi recorded in its order that the factual findings of CIT (Appeal) has been concurred with by the ITAT in a very detailed order discussing the material available on record, and further, it recorded that the Court was not persuaded by the learned counsel for the Revenue to view the

above concurrent findings to be suffering from any perversity requiring any substantial question of law to be framed, as urged by the Revenue and it dismissed the appeal of the Income Tax Department vide its order dated 29.07.2016, and finally, the Income Tax Department filed an SLP against the order in the High Court of Delhi on 25.01.2017. The Hon'ble Supreme Court dismissed the SLP on 21.01.2020 as the income tax department withdrew its appeal on the ground of low tax. The petitioner submits that the order of the High Court of Delhi upholding the genuineness of all the share capital amounting to Rs.92,95,000/- and loan of Rs.52,48,820/- and investment in OJC 6 and 7 of Rs.74,84,106/- till the financial year 2006-07 and payment of yearly instalment against plot of Rs.12,23,707/- as final.

55. The petitioner also submits that the respondent CBI has admitted the income of Arvind Kumar (A-1), Indu Kumar (A-2) and the petitioner company in its charge sheet to the extent of Rs.2,04,93,281/- in Statement C vide Serial Nos. (i) to (xvi) at page 60 to 63 of the petition, and that the break up of income are of (A-1)=Rs.45,01,188, (A-2)=Rs.1,22,38,022/- and AI Developer Pvt Ltd (not accused)=Rs.37,54,071/-, and in addition to the above, as per respondent CBI, the assets prior to the check period i.e. prior to 01.01.2001 of A-1 as Rs.15,97,858/- and of A-2 as Rs.11,12,040/- (page 49 to 51 of the application), and that the total asset admitted by CBI is Rs.2,32,03,179 against it the petition is for the release of plots where investment of only Rs.56,08,858/- has been made as per the estimate of the respondent CBI and almost eleven years have passed.

56. The petitioner submits further that the respondent CBI has admitted the genuineness of the fund of the petitioner company to the extent of Rs.37,54,071/- vide serial Nos. (xiii), (xiv), (xv), (xvi) of Statement C of the charge sheet, and that as a good gesture, the petitioner company offered to submit a bank guarantee of the difference of the investment in the plots and accepted income by the respondent CBI which works out to Rs.18,54,787/- (Rs.56,08,858/- - Rs.37,54,071/-) for the release of its plots. The estimated loss of petitioner as on 31.08.2018 was Rs.6,55,10,325/- as estimated in para W of the application which was stated to be further increasing.

57. The CBI vide its written submissions dated 03.12.2021 has reiterated the contention that it is a settled preposition of law that in case the accused is convicted for an offence of possession of Disproportionate Assets, the assets qua which the offence is alleged can be confiscated with reliance placed on ***Mirza Iqbal Hussain through Askari Begum Vs. State of Uttar Pradesh*** AIR 1983 SC 60.

58. The respondent CBI further reiterates that the property documents are relied upon documents, and the property and amount lying in the bank account is case property and cannot be released prior to conclusion of trial.

59. The CBI has further submitted that qua the contention of the petitioner company which is not named as an accused and the property standing in its name cannot be confiscated. The CBI contends that the said company is only an eye wash created just to channelize the ill-gotten money, and that the framing of charges against the petitioner is an indication of prima facie guilt of the accused persons.

60. The CBI further submits that the petitioner company cannot deny its relations with the accused persons, and admittedly, the accused No.2 Indu Kumar is one of the promoters of the company, and at first instance, it was the accused No.2 who had moved an application for release of the property papers.

61. The respondent CBI has further submitted that qua the contention that the petitioner company is not an accused in the matter, it was open to the learned Trial Court under Section 319 of the Cr.P.C., 1973 to array the company as an accused if the evidence so warranted.

62. The CBI further submitted that the accused No.2 is one of the Director's of the petitioner company and she is the wife of A-1, and the CBI further states that the other stake holders in the company are related to other accused persons and it is misleading on the part of the petitioner to say that the business of the company was stopped due to the seizure made by the CBI, and that this suggests about the source of funds used for functioning of the company as A-2 Indu Kumar has been doing the business through the petitioner company only as an eye wash to channelize the ill-gotten money acquired by accused No.1 by way of fake/bogus loans and investment in the company taken from different persons and companies.

63. *Inter alia*, the CBI submits that it is a settled proposition of the law that the property in the name of an income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee and mere declaration of property in the ITR does not *ipso facto bring forth* that the same had been acquired from the lawful source of

income. As regards reliance on orders of ITAT etc. by the petitioner it was submitted by the CBI that the import of these decisions is that, in the tax regime, the legality or illegality of the transactions generating profit or loss is inconsequential qua the issue whether the income is from a lawful source or not, and that the scrutiny in an assessment proceeding is directed only to quantify the taxable income and the orders passed therein do not certify or authenticate that the source(s) thereof to be lawful, and that the prosecution has given every benefit to the accused persons while calculating the disproportionate assets in this case. The CBI submits that it is evident from the record that the properties of the applicant here are very much related to the offence and that accused No.2, the wife of A-1, is one of the Directors of the company.

64. The CBI further submits that there is no ground for modification or setting aside the impugned order as there is no infirmity in the same as the petitioner has sought the release of properties which are related to the offence. The CBI has further submitted that the learned Trial Court had itself directed the de-freezing of the account with a reasonable condition to maintain the balance in the account as on 09.12.2009.

65. It is essential to observe that the petitioner herein (Crl.M.C. No. 3927/2017) has sought the setting aside of the impugned order dated 7.10.2016 and has sought directions to defreeze the bank accounts held by the petitioner and also directions to release the property documents pertaining to plot No.55, Sector-27, HUDA, Gurgaon *without any stipulation* apart from another prayer seeking the

directions to the respondent CBI to pay the enhanced price, interest and other charges to HUDA payable pending adjudication in the matter.

ANALYSIS

66. It is essential to observe that on a perusal of the record it has been brought forth that there is not a whisper of an averment in the petition filed by the petitioner Arvind Kumar apprising the Court of the proceedings dated 11.7.2019 before the learned Trial Court of which mention has been made by the petitioner herein, the accused A-1, in the list of dates in Crl.M.C. No. 4556/2018 to read to the effect:

> *" The Ld.CBI Court partially allowed the application for defreezing of the bank account of the Petitioner but order to maintain the balance therein as on 09.12.2009. Thus, neither the Petitioner could withdraw money nor could deposit.",-*

nor is there any mention in the proceedings in Crl.M.C. No. 3927/2017 of proceedings dated 25.7.2009 whereby the application of the petitioner herein for modification of the order dated 11.7.2009 was dismissed.

67. Significantly, the order dated 11.7.2009 in Case RC No. ACU-IX/CBI/2008/04 of the learned Special Judge, CBI, Patiala House Courts, New Delhi reads to the effect:

> " *Heard. The applicant has moved the instant application for defreezing the following bank accounts:*
> *(1) ING Vyasa bank limited, Vasant Vihar, 2, Poorvi Marg, (next to DDA shopping Complex)*

New Delhi-57; Account No. 590011000518, Customer No. 2611489, Current Account: Orange.
(2) Bank of Baroda, Gurgaon Branch, 42, Old Judicial Complex, Jharsa Road, Gurgaon-122001; Account No. 01070200000590, Current Account.
(3) Indian Overseas Bank, 5 Netaji Suhhash Marg. darya Ganj. New Delhi-2; Account No. 5531, Current.
(4) Bank of Baroda, Smalka Branch, Old Delhi Gurgaon Road, Smalka, New Delhi-37; Account No. 21260400006216 (Overdraft against property).
(5) ING Vyasa Bank Ltd., Vasant Vihar, 2, Poorvi Marg (Next to DDA Shopping Complex), New Delhi-57; Account No. 590010004900, Customer No. 2645507, Orange Savings Account.
(6) HDFC Bank Ltd., D-9, South Extension Part II, New Delhi-49;Account No. 0e3192000004330, Customer lD 9232267 .
It is submitted by Sh R. D. Upadhyay Advocate that the aforesaid bank accounts have been freezed by the CBI in connection with the investigation of the instant case. It is prayed that aforesaid six accounts may be defreezed.

Ld. PP submits that CBI has no objection to the prayer of the applicant, if the balance, as on 19.12.08, is maintained in the aforesaid accounts. Sh Upadhaya has no objection to it and submits that the balance, which was available in the aforesaid accounts on 19.12.08, shall be maintained.

In view of the this, prayer is allowed. The aforesaid six accounts are ordered to be defreezed and are allowed to be operated by the applicant subject to the condition that the last balance available in the accounts, as on 19.12.08, shall be maintained.

Application stands disposed off."

68. The CBI had submitted that during the course of the said proceedings if the balance as on 19.12.2008 was maintained in the said accounts, the CBI had no objection to the prayer made by the petitioner for release of the amounts in the said accounts and on behalf of the petitioner herein a submission was made on 11.7.2009 that the petitioner had no objection to that contention and that it was submitted that the balance which was available in the said accounts on 19.12.2008 would be maintained, in view thereof, the learned Special Judge, CBI, Patala House Courts, had allowed the defreezing of the six accounts of the petitioner herein subject to the condition that the last balance available in the accounts as on 19.12.2008 was maintained.

69. As observed hereinabove, the said application vide which the modification of the said order was sought by the petitioner who claims that he has no connection with the other accused in the matter, significantly was filed by this applicant and the application of the petitioner for modification of the proceedings dated 11.7.2009 was dismissed vide order dated 25.7.2009 and despite the same the petitioner has not availed of seeking the release of the amounts in the six bank accounts as detailed in order dated 11.7.2009, though in the impugned order dated 7.10.2016 impugned in Crl.M.C. No. 3927/2017, the prayer made by the applicant/petitioner related to nine bank accounts.

70. It is essential to observe that vide the impugned order dated 7.10.2016, the learned Special Judge, CBI, Patiala House Courts, New

Delhi, had taken into account the contention of the CBI that the property Plot No. 55, Sector-43, Gurgaon, and the funds in the bank accounts were directly related to the crime in question and thus the Special Judge, CBI, Patiala House Courts vide the impugned order had observed that if the documents of the property in question were released and the bank accounts were defreezed, it would be more difficult to confiscate the same in case of conviction and thus the application was dismissed.

71. Qua Crl.M.C. No. 4556/2018 in relation to the prayer made by the petitioner thereof M/s AI Developers Pvt. Ltd. which petition was filed through its Director Praveen Mehta, the prayer made was seeking release of original papers of plots allotted by HUDA and an amount of Rs.35,53,706/- plus interest thereon till date lying in the bank account of the petitioner and in the written submissions filed by the CBI dated 3.12.2021 reference had been made categorically to the aspect that the Trial Court had defreezed the accounts with a reasonable condition to maintain the balance in the accounts as on 19.12.2008 and it is essential to observe that vide order dated 11.7.2009 it had been directed by the learned Special Judge as under:

> *" …….In view of the this, prayer is allowed. The aforesaid six accounts are ordered to be defreezed and are allowed to be operated by the applicant subject to the condition that the last balance available in the accounts, as on 19.12.08, shall be maintained.*
>
> *Application stands disposed off."*

qua which order, modification was sought which prayer was declined vide order dated 25.7.2009 as per the list of dates of Crl.M.C. No.

4556/2018 and the CBI had categorically submitted that the properties of the applicant M/s AI Developers Private Limited were very much related to the offences allegedly committed and that the accused No.2 i.e. Indu Kumar, the wife of the accused No.1 Arvind Kumar (petitioner of Crl.M.C. No. 3927/2017) was one of the directors of the said company and that the company M/s AI Developers Pvt. Ltd. and that the company M/s AI Developers Pvt. Ltd. is only an eye wash created just to channelize the ill-gotten money of the accused No.1 Arvind Kumar (petitioner of Crl.M.C. No. 3927/2017) through A-2 Indu Kumar (wife of A-1) one of the promoters of the company and that it was A-2 Indu Kumar (wife of A-1) who had earlier moved the application for release of the property papers.

72. Inter alia, the CBI has submitted that in case the accused is convicted for the offence of possessing disproportionate assets, the assets qua which crime is alleged can be confiscated and reliance in relation thereto was placed on behalf of the CBI on the verdict of the Hon'ble Supreme Court in ***Mirza Iqbal Hussain Through Askari Begum V. State of Uttar Pradesh (supra)***.

73. The order impugned dated 2.6.2018 in Crl.M.C. No. 4556/2018 indicates that it was alleged by the CBI that the documents sought to be released were relied upon for the prosecution of the accused persons and were related to the crime and that the applicant company, i.e., M/s AI Developers Pvt. Ltd. was floated by A-2 Indu Kumar (wife of A-1) and her son Abhinav Kumar in the year 2005 and that the accused Pramod Kumar Basotia (A-3) channelized Rs.2.5 crores of A-2 Indu Kumar (wife of A-1) and her company M/s AI Developers

Pvt. Ltd. through his bank account and the bank accounts of his relatives and that the company has been formed as an eye wash by the accused A-1 Arvind Kumar (petitioner of Crl.M.C. No. 3927/2017) and A-2 Indu Kumar (wife of A-1) to channelize ill-gotten money acquired by the accused No.1 Arvind Kumar (petitioner of Crl.M.C. No. 3927/2017) by way of fake/bogus loans and investments in the company and thus disproportionate assets were amassed by the accused No.1 Arvind Kumar (petitioner of Crl.M.C. No. 3927/2017) in the name of his family members. The impugned order indicates that it was observed by the learned Special Judge to the effect that the charges had been framed against accused No.1 Arvind Kumar (petitioner of Crl.M.C. No. 3927/2017) for disproportionate assets under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988, A-2 Indu Kumar (wife of A-1) was charged for abetting her husband accused No.1 Arvind Kumar (petitioner of Crl.M.C. No. 3927/2017) for acquiring disproportionate assets and thus committing offences punishable under Section 109 of the Indian Penal Code, 1860 read with Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 with it having thus been observed by the learned Special Judge, CBI, that the title documents of 7 plots in the name of M/s AI Developers Pvt. Ltd. were relied upon documents and the plots are the case property, i.e., alleged disproportionate assets, of accused No.1 Arvind Kumar (petitioner of Crl.M.C. No. 3927/2017) and that the plots and title documents of plots had been seized by the CBI during investigation under Section 102 of the Cr.P.C., 1973, and that on conclusion of trial if the accused

were found guilty, the case property can be confiscated under Section 452 of the Cr.P.C., 1973.

74. The learned Special Judge also observed to the effect that the applicant M/s AI Developers Pvt. Ltd. had failed to show why EMI instalments of the plots were not paid to HUDA and that seizure of the documents of the plots does not stop the applicant from paying EMI instalments and it was thus observed that the release of the original documents of the plots with permission to sell whilst the trial is pending would not be in the interest of justice and the application of the M/s AI Developers Pvt. Ltd. dated 26.8.2017 was dismissed. It is essential to observe that the learned Special Judge, CBI, vide the impugned order in paragraph 1 thereof had observed to the effect:

> *"Vide this order 1 shall dispose of an application dated 26.08.2017 of* ***M/s AI Developers Pvt. Ltd. filed through its Director accused Indu Kumar (A-2)*** *for release of the original papers of the plots for clearing its liability by selling these plots by giving bank guarantee of Rs. 18,54,787/-.",*

however, the petition is filed by M/s AI Developers Pvt. Ltd. through its Director named Praveen Mehta and not through Mrs. Indu Kumar (A-2) W/o Arvind Kumr (A-1).

75. As regards the aspect of the freezing of the bank accounts of both accused No.1 Arvind Kumar (petitioner of Crl.M.C. No. 3927/2017) and A-2 Indu Kumar (wife of A-1) and M/s AI Developers Pvt. Ltd. taking into account the nature of allegations levelled against the petitioners of both the petitions i.e., accused No.1 Arvind Kumar (petitioner of Crl.M.C. No. 3927/2017) and A-2 Indu

Kumar (wife of A-1) (Petitioner of Crl.M.C. No. 4556/2018) even though M/s AI Developers Pvt. Ltd. is not an accused in RC No. ACl/2008/A0004/ACU-IX/New Delhi, with the contentions of the CBI to the effect that Arvind Kumar, IRSC, accused No.1 (petitioner of Crl.M.C. No. 3927/2017) whilst functioning as Chief Engineer in the Indian Railways, Government of India, during the period 1.1.2001 to 19.12.2008 acquired assets in the name of his wife Indu Kumar, accused No.2 (director of the petitioner of Crl.M.C. No. 4556/2018) and his son Avinav Kumar and a private company named M/s AI Developers Pvt. Ltd. and he and his family members were in possession of assets to the extent of Rs.7,38,22,575/- which were disproportionate to the known sources of income of Arvind Kumar and his family members for which Arvind Kumar and his family members could not satisfactorily account for, with the charges having been framed against the petitioner accused No.1 Arvind Kumar (petitioner of Crl.M.C. No. 3927/2017) and other accused persons of whom A-2 Indu Kumar (wife of A-1) is one of its directors and the nature of allegations levelled against the petitioner accused No.1 Arvind Kumar (petitioner of Crl.M.C. No. 3927/2017) in complicity with other accused including his wife Indu Kumar (petitioner of Crl.M.C. No. 4556/2018) Director of M/s AI Developers Pvt. Ltd. which is stated to be an eye wash company, the aspect of the details of the offence to bring home the guilt of the accused would apparently have to be essentially proved during the trial of the case by adducing acceptable and admissible evidence.

76. In view of the verdict of the Hon'ble Supreme Court in ***State of Maharashtra V. Tapas D. Neogy***; 1999 (7) SCC 685 bank accounts of accused persons seized under Section 102 of the Cr.P.C., 1973 are clearly property falling within the ambit of Section 102 (1) of the Cr.P.C., 1973 which provides to the effect:

> *"**Section 102 in The Code Of Criminal Procedure, 1973***
>
> *102. Power of police officer to seize certain property.*
>
> *(1) Any police officer, may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence."*

and thus as observed by the Hon'ble Supreme Court in the said verdict wherein it has been held by the Hon'ble Supreme Court in paragraph 12 thereof to the effect:

> *"**12.** Having considered the divergent views taken by different High Courts with regard to the power of seizure under Section 102 of the Code of Criminal Procedure, and whether the bank account can be held to be "property" within the meaning of the said Section 102(1), we see no justification to give any narrow interpretation to the provisions of the Criminal Procedure Code. It is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Criminal Procedure Code and the underlying object engrafted therein, inasmuch as if there can*

be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. ***We are, therefore, persuaded to take the view that the bank account of the accused or any of his relations is "property" within the meaning of Section 102 of the Criminal Procedure Code and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into.***

(emphasis supplied)

The contrary view expressed by the Karnataka, Gauhati and Allahabad High Courts, does not represent the correct law. ***It may also be seen that under the Prevention of Corruption Act, 1988, in the matter of imposition of fine under sub-section (2) of Section 13, the legislatures have provided that the courts in fixing the amount of fine shall take into consideration the amount or the value of the property which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of Section 13, the pecuniary resources or property for which the accused person is unable to account satisfactorily. The interpretation given by us in respect of the power of seizure under Section 102 of the Criminal Procedure Code is in accordance with the intention of the legislature engrafted in Section 16 of the***

> ***Prevention of Corruption Act referred to above. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court of Bombay committed error in holding that the police officer could not have seized the bank account or could not have issued any direction to the bank officer, prohibiting the account of the accused from being operated upon.*** *Though we have laid down the law, but so far as the present case is concerned, the order impugned has already been given effect to and the accused has been operating his account, and so, we do not interfere with the same."*
>
> ***(emphasis supplied)***

77. The observations in the impugned orders dated 7.10.2016 and 2.06.2018 assailed in Crl.M.C. No. 3927/2017 and Crl.M.C. No. 4556/2018 respectively declining the prayer made by the petitioners thereof for defreezing of the accounts seized cannot be faulted with in as much as the said bank accounts have been frozen and seized as observed vide order dated 2.6.2018 assailed in Crl.M.C. 4556/2018 filed by M/s AI Developers Pvt. Ltd. as having been seized under Section 102 of the Cr.P.C., 1973, and as laid down by the Hon'ble Supreme Court in ***Virender Singh & Ors. V. Central Bureau of Investigation*** **2011(1) JCC 623, decided on 22.11.2010** relied upon on behalf of the CBI, **the details of the offence are required to be proved during the course of trial by adducing of acceptable and admissible evidence and presently, the prayer made by the petitioner for defreezing of their accounts cannot be granted and is thus declined.**

78. As regards the prayer made in Crl.M.C. No. 3297/2017 by accused No.1 Arvind Kumar (petitioner of Crl.M.C. No. 3927/2017) seeking the release of property documents pertaining to plot No.55 Sector-27, HUDA without any stipulation as well as by the petitioner of Crl.M.C. No. 4556/2018 M/s AI Developers Pvt. Ltd. seeking release of the original papers of the plot allotted by Haryana Urban Development Agency, it is essential to observe that in view of the verdict of the Hon'ble Supreme Court in ***Nevada Properties Pvt. Ltd. Through its Directors V. State of Maharashtra & Anr.;*** 2019 (20) SCC 119, Section 102 of the Cr.P.C., 1973, does not include power to attach, seize and seal immovable properties and expression "any property" appearing in Section 102 of the Cr.P.C. 1973 does not include immovable property and Section 102 of the Cr.P.C., 1973 does not empower a police Officer to seize the immovable property, land, plots, residential houses, streets of similar properties **though** the police officer is not barred or prohibited from seizing the documents/papers or titles relating to immovable property as the same is distinct and different from seizure of immovable property, as observed vide paragraph 32 and 33 of the said verdict which reads to the effect:

> *"**32.** In case and if we allow the police officer to "seize" immovable property on a mere "suspicion of the commission of any offence", it would mean and imply giving a drastic and extreme power to dispossess, etc. to the police officer on a mere conjecture and surmise, that is, on suspicion, which has hitherto not been exercised. We have hardly come across any case*

where immovable property was seized vide an attachment order that was treated as a seizure order by police officer under Section 102 of the Code. The reason is obvious. Disputes relating to title, possession, etc., of immovable property are civil disputes which have to be decided and adjudicated in civil courts. We must discourage and stall any attempt to convert civil disputes into criminal cases to put pressure on the other side (see Binod Kumar v. State of Bihar [Binod Kumar v. State of Bihar, (2014) 10 SCC 663 : (2015) 1 SCC (Cri) 203]). Thus, it will not be proper to hold that Section 102 of the Code empowers a police officer to seize immovable property, land, plots, residential houses, streets or similar properties. Given the nature of criminal litigation, such seizure of an immovable property by the police officer in the form of an attachment and dispossession would not facilitate investigation to collect evidence/material to be produced during inquiry and trial.

33. *As far as possession of the immovable property is concerned, specific provisions in the form of Sections 145 and 146 of the Code can be invoked as per and in accordance with law. Section 102 of the Code is not a general provision which enables and authorises the police officer to seize immovable property for being able to be produced in the criminal court during trial. This, however, would not bar or prohibit the police officer from seizing documents/papers of title relating to immovable property, as it is distinct and different from seizure of immovable property. Disputes and matters relating to the physical and legal possession and title of the property must be adjudicated upon by a civil court."*

79. Thus as rightly contended by the CBI that the prayer made by the petitioners of both the petitions in fact implicitly seek the release of the documents of the properties in question to the petitioner of Crl.M.C. No. 3927/2017 accused No.1 Arvind Kumar (petitioner of Crl.M.C. No. 3927/2017) and to the petitioner of Crl.M.C. 4556/2018 for sale of the properties in question.

80. To the extent that the title documents of the properties in question have been seized by the CBI during investigation under Section 102 of the Cr.P.C., 1973, in terms of the verdict of the Hon'ble Supreme Court in **Nevada Properties P. Ltd.** (Supra) as observed in paragraphs 32, 33 & 34 of the said verdict though Section 102 of the Cr.P.C., 1973, is not a general provision which enables and authorizes the Police Officer to seize the immovable property for being able to be produced in a Criminal Court during trial, this however does bar or prohibit the police officer from seizing documents/papers of title relating to immovable property, as it is distinct and different from seizure of immovable property. Thus the prayers for release of the documents of the properties by the petitioners in Crl.M.C. No. 3927/2017 and Crl.M.C. No. 4556/2018 are declined.

81. The Seizure Memo dated 28.01.2009 in the instant case, i.e., RC No. 4(A)/08/ACU IX/CBI/ND submitted by the petitioners in terms of order dated 24.08.2022 states as under: -

"SEIZURE MEMO

1. Case No. and Sections of Law : RC 4(A)/2008/ACU-IX/NewDelhi

			U/s 109 IPC, Sec. 13 (2) r/w 13 (1) (e) of PC Act 1988.
2.	*Date and Place of Seizure*	*:*	*28.01.2009 at CBI/ACU-IX. Block-IV/CGO Complex/ND.*
3.	*From whom received*	*:*	*Sh. Raj. Kishor, Assistant O/o Estate Officer, HUDA, Sec-56 Gurgaon.*
4.	*By whom Received*	*:*	*R. Singh/ASP/CBI/ACU-IX/ND.*

PARTICULARS OF DOCUMENTS/MATERIALS

1. *Estate Officer, HUDA Gurgaon office file pertaining to allotment of Plot No. 3546-P, Sec-57, Gurgaon containing page 1 to 87.*
2. *Estate Officer, HUDA Gurgaon office file pertaining to allotment of Plot No. 3571, Sec-57, Gurgaon containing page 1 to 58.*
3. *Estate Officer, HUDA Gurgaon office file pertaining to allotment of Plot No. 486-P, Sec-43, Gurgaon containing page 1 to 119.*
4. *Estate Officer, HUDA Gurgaon office file pertaining to allotment of Plot No. 2887-P, Sec-57, Gurgaon containing page 1 to 70.*
5. *Estate Officer, HUDA Gurgaon office file pertaining to allotment of Plot No. 2911, Sec-57, Gurgaon containing page 1 to 42.*

6. *Estate Officer, HUDA Gurgaon office file pertaining to allotment of Plot No. 1825-P, Sec-57, Gurgaon containing page 1 to 70.*
7. *Estate Officer, HUDA Gurgaon office file pertaining to allotment of Plot No. 2688-P, Sec-57, Gurgaon containing page 1 to 123.*
8. *Estate Officer, HUDA Gurgaon office file pertaining to allotment of Plot No. 1128, Sec-57, Gurgaon containing page 1 to 44.*
9. *Estate Officer, HUDA Gurgaon office file pertaining to allotment of Plot No. 2910, Sec-57, Gurgaon containing page 1 to 48.*
10. *Estate Officer, HUDA Gurgaon office file pertaining to allotment of Plot No. 1111-P, Sec-57, Gurgaon containing page 1 to 62.*
11. *Estate Officer, HUDA Gurgaon office file pertaining to allotment of Plot No. 3125, Sec-57, Gurgaon containing page 1 to 80.*
12. *Estate Officer, HUDA Gurgaon office file pertaining to allotment of Plot No. 3061, Sec-57, Gurgaon containing page 1 to 64.*
13. *Estate Officer, HUDA Gurgaon office file pertaining to allotment of Plot No. 527-P, Sec-27, Gurgaon containing page 1 to 128.*
14. *Estate Officer, HUDA Gurgaon office file pertaining to allotment of Plot No. 278, Sec-27, Gurgaon containing page 1 to 119.*
15. *Estate Officer, HUDA Gurgaon office file pertaining to allotment of Plot No. 55, Sec-43, Gurgaon containing page 1 to 131.*
16. *Estate Officer, HUDA Gurgaon office file pertaining to allotment of Plot No.3032, Sec-57, Gurgaon containing page 1 to 60."*

82. The impugned order in Crl.M.C. No. 4556/2018 dated 2.6.2018 however states in para 6 to the effect:

> *"6. …….The title documents of the 07 plots in the name of M/s AI Developers Pvt. Ltd. are relied upon*

documents and the plots are the case property i.e. alleged disproportionate assets of accused Arvind Kumar (A-1). The plots and their title documents have been seized by the CBI during investigation under Section 102 Cr.PC. On conclusion of trial, if accused are found guilty, the case property can be confiscated under Section 452 Cr.PC."

83. Thus though immovable property cannot be seized under Section 102 of the Cr.P.C., 1973, as laid down in **Nevada Properties P. Ltd.** (Supra), the ambit of Section 451 and 452 of the Cr.P.C. 173 is different as observed by the Hon'ble Supreme Court in para 24 and 26 of **Nevada Properties Pvt. Ltd.** (Supra) which read to the effect.

"24. *What is important and relevant for our discussion is that Sections 451 and 452 are broad and wide conferring specific and clear powers upon the criminal court, and the language indicates that they could equally apply to immovable property. These sections do not make reference to Section 102 of the Code relating to the seizure of property by the police officer. This is equally true of Section 456 which specifically empowers the criminal court to restore possession of immovable property when a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation and it appears to the court that by such force or show of force or intimidation any person has been dispossessed of the property. This order can be made without prejudice to the right or interest to or in such immovable property which any person may be able to establish in a civil suit.*

...

26. *We have referred to the said provisions under Chapter XXXIV — "Disposal of Property", as this would be of significance and, addresses the argument and concern expressed by the appellant Nevada Properties Pvt. Ltd. and some of the State Governments. These provisions, specifically enable the Court to pass orders relating to the*

properties, both movable and immovable. We have referred to Section 451, which does not specifically refer to any seizure order under Section 102 of the Code but vide Explanation includes such property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence. Similarly, Section 452 refers to property regarding which an offence appears to have been committed as has been originally in possession or under control of any party and also such property into or for which the same may have been converted or exchanged. Again Section 452 per se, does not make any reference to Section 102 of the Code. This is also true for Section 456 of the Code which relates to restoration of possession of immovable property in certain circumstances. These provisions, therefore, do not directly define the contours and scope of Section 102 of the Code. On the other hand, it would show that Section 102 is not the primary or the core provision which would make the provisions of Section 451, 452 or 456 of the Code applicable. The parameters for application of these sections are those as are enumerated in the specific provisions. Sections 451 and 452 specifically define the expression "property" for the purpose of an order of custody and disposal by the court. Section 456 applies to the category or type of offences concerning immovable property regardless of whether the immovable property is in custody of the court or has been attached. Power of the criminal court under these sections, except Section 457 of the Code, is not restricted to property seized by the police officer under Section 102 of the Code. Section 457, as noticed, applies to properties which have been seized by the police officer under the Code but not produced during inquiry or trial"

84. However, Section 452 (1) and 452 (5) of the Cr.P.C., 1973 read to the effect:

*"**452. Order for disposal of property at conclusion of trial**.—*

> *(1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.*
>
> *(2)…*
>
> *(3)…*
>
> *(4)…*
>
> *(5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise."*

85. Furthermore, as observed in Paragraph 11 of the supplementing verdict, Hon'ble Mr. Justice Deepak Gupta in the said verdict in **Nevada Properties Pvt. Ltd. (supra)** has observed to the effect:-

> *"11. As far as the meaning of property in Section 452 of the Cr.P.C. is concerned, that is not a question referred to the larger Bench and therefore, I would refrain from saying anything about that.",*

and thus, it becomes apparent that the aspect of the meaning of "property" under Section 452 of the Cr.P.C.,1973 was not referred to the larger bench before the Hon'ble Supreme Court in **Nevada Properties Pvt. Ltd. (Supra).**

86. It has been held in ***Narsingha Rou vs. Sricharan Panda & Ors.*** AIR 1967 Ori 182 that Section 517 of the Old Criminal Procedure Code of 1898, which corresponds to Section 452 of the Cr.P.C., 1973 applies to immovable property.

87. Thus, apparently, powers under Section 452 of the Cr.P.C., 1973 can be invoked qua immovable property in terms of Section 452 (5) of the Cr.P.C., 1973. The petitions are thus dismissed.

ANU MALHOTRA, J.

AUGUST 31, 2022
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