

IN THE COURT OF SH. RAKESH KUMAR-III
SPECIAL JUDGE, CBI (PC ACT)-02, ROUSE AVENUE COURT
COMPLEX, NEW DELHI

Court Case No. 03/2022

RC NO. 24(A)/2020/CBI/ACB/ New Delhi

C B I V/s. Saurav Sharma & Ors.

Dated: 11.10.2023.

ORDER ON CHARGE

1. Vide this order, I shall dispose off the arguments on the point of charge(s) and separate application of A-5 Neeraj Kumar for discharge.

2. Brief facts of the case as reproduced from the charge-sheet are as follows :

1. The instant case was registered on 17.08.2020 u/s 120 B of IPC r/w U/s 7, 7A, 8 and 9 of PC Act 1988 (as amended in 2018) against Sh. Saurav Sharma, Appraiser, Office of Chief Commissioner of Customs, Custom House, 60, Krishna Block, Rajaji Salai, Opp. Dist. Collectorate, Chennai, Tamilnadu, and Sh. Ram Kishan Mishra (private person), Sh. Ravi Sharma of M/s Him Logistics Pvt. Ltd., Sh. Onkar Singh of M/s Uniclear, Sh. Kishore (private person) and other unknown persons on the basis of source information.

2. It is alleged in the FIR that Sh. Ram Krishan Mishra of M/s IMEXCON, 23/5, First Floor, East Patel Nagar, New Delhi R/o D-170,

1st Floor, Shyam Park, Extension, Sahibabad, Ghaziabad, UP, Sh. Onkar Singh of M/s Uniclear R/o H. No. B 437, Gali no. 6 Sai Nagar, Mithapur Extension, Jaitpur, Delhi and Sh. Ravi Sharma of M/s Him Logistics Pvt. Ltd., 2151, 3 D, New Patel Nagar, Shadipur, New Delhi R/o T 510 E9 Hill Marg, Baljit Nagar, Near Gopal Dairy, New Delhi (all Customs House Agents) are involved in corrupt and illegal activities in connivance with officials of Inland Container Depot (ICD), Tuglakabad, Delhi and private persons.

3. It has been learnt from the source that Sh. Ram Kishan Mishra and Sh. Ravi Sharma have been delivering illegal gratification on the regular basis to the officials of ICD Tuglagabad for extending undue favours for inspection and clearance of import consignments.

4. It has been further alleged that Sh. Ram Krishan Mishra is in regular contact with Sh. Saurav Sharma, the then Appraiser, ICD, Tuglagabad, now posted at Office of Chief Commissioner of Customs, Custom House, 60, Krishna Block, Rajaji Salai, Opp. Dist. Collectorate, Chennai, Tamilnadu for getting cleared import consignments of his company and also for the other companies. It has also been alleged that officials of ICD, Tuglagabad, Sh. Ram Kishan Mishra and Sh. Ravi Sharma are using coded language i.e. one star, two star, one pepsi, seven files etc. for the exchange of bribe. It is further alleged that Sh. Ram Kishan Mishra was using his contact to divulge inside information related to pending files to the parties.

5. It is further alleged that Sh. Ram Kishan Mishra in connivance with Sh. Ravi Sharma, Sh. Onkar Singh and others collect illegal gratification/undue advantage on regular basis and deliver to officials of ICD, Tuglakabad for clearing the import consignment.

6. It is further alleged that Sh. Saurav Sharma was transferred to Chennai, Sh. Saurav Sharma joined duty at Customs, Chennai on 09.07.2020, but despite his transfer, he was regularly pursuing private parties for payment of pending undue advantage in lieu of import consignment cleared by him during his tenure at ICD Tuglagabad.

7. It is further alleged that on 08.07.2020 Sh. Saurav Sharma told Sh. Ram Krishan Mishra that one person from M/s Uniclear will deliver him Rs.94,500/- and accordingly Sh. Onkar Singh of M/s Uniclear had delivered Rs.90,000/- to Sh. Ram Kishan Mishra for Sh. Saurav Sharma on 08.07.2020.

8. It is further alleged that on 17.08.2020 Sh. Saurav Sharma asked Sh. Ram Kishan Mishra that he will depute a person to collect payment of undue advantage (illegal gratification) on his behalf. It has been further alleged that Sh. Ram Krishan Sharma has delivered the payment of Rs.7 lakh as undue advantage (illegal gratification) to Sh. Kishore on the behalf of Sh. Saurav Sharma on 17.08.2020 at ICD Tuglagabad.

Result of Investigation and Charges

17.1 Investigation has revealed that this case was registered in CBI, ACB, New Delhi on the basis of source information on 17.08.2020 U/s

120-B of IPC r/w u/s 7, 7-A, 8 & 9 of PC Act, 1988 (as amended in 2018) against Shri Saurav Sharma, Appraiser, Office of Chief Commissioner of Customs, Custom House, 60, Krishna Block, Rajaji Salai, Opp. Dist. Collectorate, Chennai, Tamilnadu, Shri Ram Krishan Mishra of M/s Imexcon, Shri Ravi Sharma of M/s. Him Logistics Pvt. Ltd., Shri Onkar Singh of M/s Uniclear, Shri Kishore (private persons) and other unknown persons.

17.2 It was alleged in the FIR that on 17.08.2020 Shri Saurav Sharma asked Shri Ram Krishan Mishra that he will depute a person to collect payment of undue advantage (illegal gratification) on his behalf. It has been further alleged that Shri Ram Krishan Sharma has delivered the payment of Rs. 7 lakh as undue advantage (illegal gratification) to one Shri Kishore and who has accepted the said amount on behalf of Shri Saurav Sharma on 17.08.2020 at ICD Tuglakabad.

17.3 Investigation has further revealed that a team comprising of officers/officials of CBI, ACB, New Delhi i.e. S/sh. N. C. Nawal, Inspector / 10 of the case, Shyam Rai, Inspector, S. K. Pandey, Inspector, Rajesh Kumar Chauhan, Inspector, Vikrant Tomar, SI, Nitin Kumar, SI and two independent witnesses namely Sh. Shuaib Tausif, Sr. Assistant, Delhi Jal Board, ZRO, Mandawali, Delhi-92. Sh.Surendra Kumar, UDC, Food, Supplies & Consumer Affairs, Vikas Bhawan, IP Estate, N. Delhi-02 was constituted.

17.4 Investigation has further revealed that the aforesaid team proceeded at about 2.20 PM from CBI, ACB, New Delhi in an official vehicle (Tavera) and reached Inland Container Depot (ICD), Tuglakabad, Delhi at about 3.00 PM as the present location of Ram Krishan Mishra was informed by the source inside the ICD, Tuglakabad, Delhi. After reaching at ICD, Tuglakabad, the above said team as well as the source kept their position in discreet manner and kept watching coming out of Ram Krishan Mishra.

17.5 Investigation has further revealed that at about 7.30 PM, source has informed that Sh. Ram Krishan Mishra left ICD depot in Maruti Dzire car having registration no. DL-9CX 4642. Sajid Ali was driving the car and accused Ram Krishan Mishra was sitting on back seat. The car was followed by the CBI team in Govt. vehicle and Motorcycles. The above said car was intercepted by the CBI team just after the car turned on the Maa Anandmayi Marg. Shri Ram Krishan Mishra was found sitting in the car, Sh. Ram Krishan Mishra was interrogated he stated that at about 01:00 PM he has delivered an illegal gratification of Rs.7 Lakh in a brown envelope to Sh. Kishore Kumar, accused for delivering the same to Saurav Sharma, Appraiser (now posted at Chennai earlier posted at ICD, TKD, Delhi) as per the instructions of Saurav Sharma, Appraiser. On further interrogation Sh. Ram Krishan Mishra revealed that this amount of Rs.7 Lakh was being delivered to Saurav Sharma as reward for clearing files related to different firms/parties in past and all these firms/parties had given their share of illegal gratification totaling to Rs. 07 Lakh. Further Ram

Krishan Mishra has informed that he does not have contact number of Shri Kishore Kumar, however, he can arrange the same from a person namely Kakkar G, known to Sh. Kishore Kumar. Accordingly, contact No. of Sh. Kishore Kumar was provided by Kakkar G via text message. The source ascertained the residential address of Sh. Kishore Kumar and provided the same. Thereafter, the CBI team alongwith Shri Ram Krishan Mishra left the spot at about 09:15 PM and reached near the residence of Kishore Kumar situated at House No.479, Sector-30, Faridabad, Haryana at about 09:45 PM.

17.6 Investigation has further revealed that after reaching near the vicinity of the spot it was decided to make a call from the mobile of Shri Ram Krishan Mishra on the mobile phone No. 9810444233 of Sh. Kishore Kumar in the presence of both the independent witnesses and to record the likely conversation which may take place between Sh. Ram Krishan Mishra and Sh. Kishore Kumar. Accordingly, a new DVR was opened in the presence of independent witnesses. A new SanDisk 8 GB memory card was also opened in the presence of independent witnesses. The memory card was inserted in the DVR to record the likely conversation. The introductory voices of both independent witnesses were recorded in the Memory Card through DVR. At about 10.20 PM. Ram Krishan Mishra was instructed to make a call from his mobile number 9910101968 on the mobile number 9810444233 of Sh. Kishore Kumar and enquire about the delivery of above said bribe amount of Rs. 07 Lakh. Accordingly a call was made and the mobile of Shri Ram Krishan Mishra was kept on

loudspeaker mode. During this call Sh. Ram Krishan Mishra enquired about the delivery of the files (bribe amount) on which Sh. Kishore Kumar replied that yes he has delivered to Bhai saheb. This call was heard by all the team members including both the independent witnesses and the same were simultaneously recorded in the memory card through DVR. This conversation confirms about the delivery of above bribe amount of Rs.7 Lac by Sh. Ram Krishan Mishra to Shri Kishore Kumar.

17.7 Investigation has further revealed that the CBI team reached at the residence of Sh. Kishore Kumar at about 11:00 Hrs. The introduction of the CBI team was given to him and the purpose of visit was informed to him.

17.8 Investigation has further revealed that on seeing Sh. Kishore Kumar, Sh. Ram Krishan Mishra identified him and told that this is the person to whom he had given an illegal gratification of Rs.7 Lakh on the direction of Saurav Sharma, Appraiser at ICD, Tuglakabad today (i.e. 17.08.2020) afternoon. Sh. Kishore Kumar, accused was examined and he revealed that he had accepted the envelope containing Rs. 7 Lakh and delivered it to Sonu (an employee of Sh.Neeraj), on the direction of Neeraj who is living at Patparganj and working as CHA and he had also provided the contact number of Sh. Neeraj. The house search of Kishore Kumar has been conducted in which the said amount could not be found. A search list to this effect has been prepared on spot separately.

17.9 Investigation has further revealed that after ascertaining the residential address of Shri Neeraj an authorization u/s 165 of Cr. PC was issued in the name of Sh. Sandeep Tiwari, Inspector, CBI, ACB, New Delhi to conduct search at the residence of Sh. Neeraj situated at B-103, Pooja Apartment, Plot No. 77, IP Extension, Patparganj, Delhi.

17.10 Investigation has further revealed that Sh. Sandeep Tiwari, Inspector informed that during the house search of Shri Neeraj, a cloth bag containing illegal gratification of Rs. 7 lakh received by Sh. Sonu from Sh. Kishore Kumar has been recovered. Sh. Sandeep Tiwari further informed that on interrogation Sh. Neeraj has stated that the said amount was collected by Sh. Sonu, his employee, from Shri Kishore Kumar and Sh. Kishore Kumar collected the said amount from Sh. Ram Krishan Mishra on the direction of Sh. Saurav Sharma, Appraiser, presently posted at Chennai (earlier posted at ICD, Tuglakabad, Delhi).

17.11 Investigation has further revealed that the CBI team alongwith Sh. Ram Krishan Mishra and Sh. Kishore Kumar returned to CBI office at around 04:00 Hrs. for further proceedings. The memory card used for recording the conversation held between Sh. Kishore Kumar and Sh. Ram Krishna Mishra during the trap proceeding was taken out from the DVR. An 10 copy was prepared by Shri Vikrant Tomer, Sub Inspector by using the write blocker device on the laptop for the purpose of investigation. The said memory card was then kept in its original cover and the cover was signed by both the witnesses and TLO and the cover was marked as "Q-1 in RC

24(A)/2020". This cover was again kept in a brown colour envelop and this envelop was sealed with CBI brass seal and marked as "Q-1 in RC 24(A)/2020". Both the independent witnesses and TLO signed on this brown envelope. The facsimile impression of the brass seal used for sealing the exhibits were taken on each page of this memorandum and also on separate white papers for sample seal in wax and ink. These papers were also signed by both the independent witnesses and TLO.

17.12 Investigation has further revealed that the proceeding was concluded at 08:30 AM on 18.08.2020. The memorandum was prepared in the office, read over, explained in vernacular to all present and was signed on each page of the memorandum in token of correctness of facts mentioned therein.

17.13 Investigation has further revealed that after ascertaining the residential address of Shri Saurav Sharma, Appraiser, an authorization u/s 165 Cr. PC was issued in the name of Sh. H.V. Attri, Inspector, CBI, ACB, New Delhi to conduct search at the residence of Sh. Saurav Sharma. Similarly, the present place of posting and present residential address of Shri Saurav Sharma was also ascertained and accordingly authorizations u/s 165 Cr. PC were issued in the name of Sh. P. Muthu kumar, Inspector, CBI, ACB, Chennai to conduct the search at the residence of Sh. Saurav Sharma and another authorization in the name of Shri Robbi Mohan Rao, Inspector, CBI, ACB, Chennai to conduct search at the office premises of Shri Saurav Sharma, Appraiser. The search was also carried out at the residence of

Sh. Amit Sharma at C-45, Sec-44, Near Amity University, Noida, Uttar Pradesh. The said house belongs to the sister of Sh. Om Dutt Sharma.

17.14 Investigation has further revealed that after interrogation of accused persons Shri Ram Krishan Mishra, Shri Neeraj Kumar and Shri Kishore Kumar were arrested on 18.08.2020. Accused Neeraj Kumar and Kishore Kumar were remained in Police Custody upto 26.08.2020 while accused Ram Krishan Mishra remained in Police Custody upto 29.08.2020. Accused Shri Saurav Sharma on authorization given to CBI, ACB, Chennai was arrested on 18.08.2020 and brought to CBI, ACB, New Delhi from Chennai by Shri Sunil Kumar Dahiya, Inspector. The accused Saurva Sharma also remained in Police Custody upto 29.08.2020.

17.15 Investigation has further revealed that the Specimen voice of S/Shri Kishore Kumar, Ram Krishan Mishra, Onkar Singh, Saurav Sharma, Samrat Kapoor, Ravi Kumar Sharma and Dhoop Singh were also taken during the course of investigation and the same were sent to CFSL for comparison of voice of the the aforesaid persons available in the recorded conversation provided by CBI, SU, New Delhi. These conversations were recorded by CBI,SU, New Delhi after seeking permission from competent authority of Ministry of Home Affairs, Government of India and for comparison with Q-1 (containing voice of S/Sh. Ram Krishan Mishra and Kishore Kumar).

17.16 Investigation has further revealed that one sealed packet containing one DVD make Moser Baer PRO 8.5 GB marked as DVD-1

containing one "Calls" folder (containing 166 calls, two system files) and one PDF file containing hashkeys in respect of 168 files. Words "RC-DAI-2020-A-0024 of CBI, ACB, New Delhi"; "166 calls" are written on the DVD. The DVD has been duly signed by Sh. Naresh Kumar Sharma, Dy. SP and sealed with sealing wax. The specimen of the seal affixed on the said packet is given on this memo and on separate paper sheets as seal specimen. (b) One "Recorded_Calls_Information_Report" contains details of above calls. One unsealed copy of above DVD, marked as "DVD-2" which is duly signed by Sh. Naresh Kumar Sharma, Dy.SP and one "Recorded_Calls_Information_Report" alongwith 7 secret order no. 14/3/97-CBI dated 02.03.2020, 27.04.2020 pertaining to telephone no. 9971005227, 02.03.2020, 27.04.2020, 30.06.2020 pertaining to telephone no. 99101_01968 and 08.07.2020 of telephone no. 91761-41829 of Sh. Ajay Kumar Bhalla, Secretary to Govt. of India, Ministry of Home Affairs, New Delhi and certificate u/s 65-B of Indian Evidence Act 1872 were seized by Sh. Pushpender Kumar, Inspector, CBI, ACB, New Delhi from Shri Naresh Kumar Sharma, Dy. SP, CBI, SU, New Delhi vide handing over cum seizure memo dated 19.08.2020.

17.17 Investigation has further revealed that CBI has obtained permission for intercepting, monitor or decrypt or cause to be intercepted, monitored or decrypted any information generated, transmitted, received or stored in any computer resource in respect of the telephone numbers 99710-5227 vide order number 14/3/97-CBI dated 02.03.2020, 27.04.2020, 30.06.2020, in respect of telephone

number 99101-01968 vide order number 14/3/97-CBI dated 02.03.2020, 27.04.2020, 30.06.2020 and telephone number 91761-41829 vide order number 14/3/97-CBI dated 08.07.2020 of Sh. Ajay Kumar Bhalla, Secretary to Government of India, Ministry of Home Affairs, New Delhi which was seized during the course of investigation from Shri Naresh Kumar Sharma, Dy. SP, CBI, Special Unit, New Delhi. The recorded conversation also includes the conversation held between Shri Ram Krishan Mishra and Shri Kishore Kumar on 17.08.2020 when CBI team directed Shri Ram Krishan for the same.

17.18 Investigation further revealed that in the recorded conversation dated 08.07.2020 accused Saurav Sharma and Ram Krishan Mishra were discussing about the transaction of amount pertaining to M/s Uniclear Logistics Pvt. Ltd. Sh. Saurav Sharma directed Sh. Ram Krishan Mishra that today (08.07.2020) Uniclear will give the payment of 94,500 and don't take the payment less than 94,500. On the same day in another conversation Sh. Onkar told the accused Saurav Sharma that he had given 85 to Bhaiya and 10% has been deducted. On this Sh.Saurav Sharma stated that "kis hisab se wo jara dhang se de de, bematlab dimag ki dahi mat kar vaise time nahi hai". In another conversation Sh. Ram Krishan informed Sh. Saurav Sharma that nine zero have done.

17.19 Investigation has further revealed that from the above conversations it is clear that Shri Saurav Sharma and Shri Ram Krishan Mishra were discussing about the delivery of 94,500/- by the representative of M/s Uniclear. Shri Onkar Singh has also stated that

he has handed over Eighty Five. Shri Ram Krishan Mishra is intimating to Saurav Sharma that he has received Ninety (Nine Zero).

17.20 Investigation further revealed that there are calls of Ram Krishan Mishra with Ravi Sharma and other private parties where reference of money to be given to Saurav Sharma and other Public servants (Ahirwar, Balinder, Pabri etc.).

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17.23. Investigation has further revealed that in view of above Shri Saurav Sharma and Ram Krishan Mishra were discussing about the handing over of amount to a person being deputed by Sh. Saurav Sharma and at the time of handing over of amount Sh. Ram Krishan Mishra telephonically confirmed that he is handing over 7 files and Sh. Saurav Sharma is asking that Sh. Kishore has come but he did not talk with Sh. Kishore at the time of delivering of amount.

17.24 During investigation a telephonic call was made by Shri Ram Krishan Mishra from his mobile phone on the mobile phone of Shri Kishore Kumar and the conversation which took place was recorded in the memory card through DVR and marked as Q-1 in RC 24(A)/2020. Since, the mobile phone of Shri Ram Krishan Mishra was already under interception with SU, CBI, New Delhi with the approval of competent authority from concerned Ministry. The said conversation was also recorded and was received from SU and the transcription of the same was also prepared in presence of

independent witness and the same was sent to CFSL for comparison. Hence, no separate transcription of Q-1 was prepared.

17.25 Investigation has further revealed that Shri Ram Krishan Mishra handed over Rs. 7 lakh to Shri Kishore on the instruction of Shri Saurav Sharma. Shri Ram Krishan Mishra during investigation has accepted that he has delivered Rs. 7 lakh to Sh. Kishore.

17.26 ----

17.27 Investigation further revealed that the SIM of mobile subscriber number 9315530568 along with the MI mobile phone was seized by CBI during the search conducted on 18.08.2020 from the possession of Sh. Neeraj Kumar S/o Sh. V.S. Gupta R/o B-103, Pooja Apartment, Plot No. 76 IP Extention Patparganj, New Delhi. The aforesaid SIM of Jio is registered in the name of Shri Vinod Kumar S/o Sh. Chote Lal R/o A-73, Near Durga Mandir, Vill. Gazipur, Delhi-96 which was purchased by him on 15.05.2018 on the request of Sh. Neeraj Kumar owner of M/s. PCC Consultants who is having its office at A-73, Near Durga Mandir, Vill. Gazipur, East Delhi-96. The aforesaid SIM of mobile number 9315530568 was handed over by Sh. Vinod Kumar to Sh. Neeraj Kumar after purchasing of same and since 15.05.2018 the mobile number 9315530568 is being used by Sh. Neeraj Kumar till date. Sh. Vinod Kumar had never used the mobile number 9315530568.

17.28 Investigation further revealed that the SIM of mobile no. 9810444233 is registered in the name of Sh. Kishore Kumar S/o Sh.

Paras Ram, R/o Sector-30, Amar Nagar, Near Mother Dairy, Faridabad, Haryana-121003, SIM of mobile no. 919176141829 is registered in the name of Sh. Saurav Sharma, S/o Sh. Om Dutt Sharma R/o D-175C, Block -D, New Ashok Nagar, Delhi-96 Mobile no. 919910101968 is registered in the name of Sh. Ram Krishan Mishra S/o Sh. Ganesh Prasad Mishra R/o D-170, Shyam Park Extention, Shahibad, Ghaziabad, Uttar Pradesh-201005, SIM of mobile no. 919871701844 is registered in the name of Sh. Harinder Singh S/o Sh. Jagbir Singh, R/o Plot No. 7/353, Ground Floor, Shahdara North East Delhi-110032.

17.29 Investigation has revealed that as per information provided by the Customs Department and statement of Shri Rahul Goad, Superintendent, ICD, Tuglakabad, Sh. Saurav Sharma during the period from 1.1.2020 to 03.07.2020 has assessed total number of the bill of entries of the below mentioned firms, the details of the same are as under :(1) M/s Him Logistics (2) M/s Uniclear (3) M/s R.G. Logistics (4) M/s True Value

17.30 During investigation the statement of the independent witnesses were recorded. They have corroborated fact about the interception of Shri Ram Krishan Mishra and after reaching at the residence of Shri Kishore Kumar a call was made on the mobile of Shri Kishore Kumar for confirmation of delivery of amount.

17.31 During investigation, Sh. Harinder Singh @ Sonu, an employee of Sh. Neeraj, Prop. Of M/s PCC Consultant stated that he

had collected the packet from Sh. Kishore on 17.08.2020 on the direction of Sh. Neeraj Kumar.

17.32 Investigation further revealed that Shri Ashwini, Director of M/s Star Clearing during his examination stated that as a routine practice they used to give Rs. 500/- to 5,000/- for clearing of Bill of Entry and Shri Kaushal Kishore, Dock Clerk of M/s Star Clearing, also stated that Rs. 5,000/- has to be given by him to Sh. Ram Krishan Mishra for clearing of bill of entry by Sh. Saurav Sharma but no amount was paid by him. They have identified the voice of Saurav Sharma in the conversation held between Sh. Saurav Sharma and Sh. Kaushal Kishore.

17.33 During investigation Sh. Aditya Gupta of M/s Uniclear was examined who stated that Shri Saurav Sharma has assessed 53 Bill of Entry pertaining to his CHA Firm. Similarly, 41 bill of entry were cleared under RMS System which were also assigned to Shri Saurav Sharma under group assessment. He has also identified the voice of Shri Onkar Singh in the conversation held between Saurav Sharma and Shri Onkar Singh.

17.34 Investigation further revealed that during search conducted at the residence of Sh. Onkar Singh i.e. H. No. B-437, gali No. 6, Sai Nagar, Meethapur Extension, Jaitpur, New Delhi CBI seized loose slips. The said loose slips contains the names/surnames (R Meena, Ahirwar, Saurav Sharma, Verma, Baljeet, Munesh M. Balender etc.) of the various officers of ICD, Tugalakabad alongwith the seven digit

number with date. The bill of entries numbers 7226599 dated 13.03.2020, 7265287 dated 17/03, 7858076 dated 08/06 and 7902534 dated 14.06.2020 which were processed by Sh. Saurav Sharma also mentioned in the said loose slips.

17.35 Investigation has further revealed that Shri Saurav Sharma telephonically requested Sh. Daya Chand Verma, Dy. Commissioner, Shri Yatish Ramavtar Pabri, Appraiser, Sh. Ganga Singh, Appraiser for pursuing with M/s R.G. for delivery of amount. During investigation Sh. D.C. Verma, Sh. Ramawtar Pabri have denied to have contacted the representative of M/s R.G. Logistics.

17.37 Investigation further revealed that on the strength of search authorization, Smt. Veerjyoti conducted search at the residence of Shri Mahendra Tiwari @ Anil in the presence of independent witness and during the house search Rs. 3.5 lacs were seized. Sh. Mahendra Tiwari has stated that this amount has also been taken from the office premises of Sh. Ram Krishan Mishra.

17.38 Investigation has further revealed that during the course of search conducted at the residence of Shri Neeraj the mobile phone was checked by Sh. Pawan Kumar, Sub Inspr. and the snaps shot /print out of extract of whatsapp message between Shri Saurav Sharma and Neeraj was taken in the presence of independent witness Sh. Suresh. There is previous history and chat dated 17.08.2020 over whats app in which Sh. Saurav Sharma asked Sh. Neeraj Kumar 'hi call me' by sending message. After receiving amount of Rs. 7 Lac, Sh. Neeraj gave

the message and give statement of amount by quoting .700, 0.259 & 0.441. The said history of chats was retrieved from the mobile of Sh. Neeraj during the search conducted by the CBI at the residence of Sh. Neeraj Kumar in presence of independent witness Sh. Suresh, Grade-II, O/o Vigilance Division, MCD, Lajpat Nagar, New Delhi. Sh. Neeraj in his disclosure statement disclosed that the meaning of "700, -0.259 and 0.441" is that total Rs. 7 lacs had been collected by him on behalf of Saurav Sharma and the meaning of 0.259 is that he had kept Rs. 2,59,000/- out of 7 lacs for the misc. expenditures incurred by him on Saurav Sharma.

17.39 Investigation further revealed that the at the instance of Sh. Om Dutt Sharma father of the accused Sh. Saurav Sharma, a search was carried out at the residential premises i.e. C-45, Sector-44, Near Amity University, Noida. The said house belongs to the sister of Sh. Om Dutt Sharma. During CBI search an amount of Rs. 1,03,50,000/- was recovered from the said house in presence of the independent witness. Sh. Om Dutt Sharma stated that he received a call over his mobile number from the mobile number of his Saurav Sharma. Shri Om Dutt Sharma during search proceedings also stated in presence of the independent witness that the meaning of "clear everything" to remove the money belongs to his son Saurav Sharma. (A separate case for accumulating assets disproportionate to the known sources of income has been registered against Sh. Saurav Sharma on 30.06.2021 in CBI, ACB, New Delhi vide RC DAI-2021-A-0024-CBI-ACB-New Delhi).

17.40 -----

17.41 On 18.08.2020, the tower location of the aforesaid mobile no. 9971512522 is found at D-173, D Block, New Ashok Gar, Delhi between the time i.e. 04:11:43 to 05:15:05. Thereafter the tower location of the said mobile is found at C-42, Noida Sec-44 on 18.08.2020 between the time 5:50:31 to 5:57:35. At last, the tower location of the said mobiles is found at D-173, D Block, New Ashok Gar, Delhi on 18.08.2020 from 6:58:39 onwards. It is pertinent to mention here that the tower location of the said mobile is changed after receipt of the aforesaid call. On 18.08.2020, CBI has also also conducted the search at the residential premises of Sh. Saurav Sharma S/o Om Dutt Sharma i.e. D-175, New Ashok Nagar, Delhi-96.

17.42 The voice of the aforesaid recorded conversation held between Shri Om Dutt Sharma and his son Shri Saurav Sharma was identified by Shri Neeraj Kumar Vashishtha S/o Shri Devi Ram Vashishtha, R/o Village- Sadullapur, post office-Baidpura, PS - Ecotech-III, Dist. Gautam Budh Nagar, Uttar Pradesh who stated that Smt. Rajendree w/o Sh. Om Dutt Sharma is the sister of his father. Further Shri Neeraj Kumar Vashishtha also stated that the mobile number 9971512522 is registered in his name but the same is being used by Shri Om Dutt Sharma since Nov. 2008. Sh. Neeraj Kumar Vashishtha stated that he had never took the said SIM back from Sh. Om Dutt Sharma and the said SIM was used by him for entire period. Similarly the voice of Sh. Saurav Sharma from aforesaid conversation has also been identified by Sh. Sanjay Sharma, Addl. Commissioner

(SIIB), New Custom House, near IGI Airport, New Delhi as Sh. Saurav Sharma had worked under his supervision during his posting at ICD Tugalkabad.

17.43 Investigation further revealed that in the recorded conversations Shri Ram Krishan Mishra was having discussion with the different parties regarding the payment (in coded language) to be given by the different parties to the public servants including accused Saurav Sharma. The voices of both the aforesaid persons were identified by the independent witness from the relevant recorded conversations. The voice identification memo alongwith transcriptions of the recorded conversations were prepared.

17.44 Investigation further revealed that in the recorded conversations accused Saurav Sharma is also using threatening language for the different parties during discussion held with the accused Ram Krishan Mishra over his mobile and pursuing with him for the payments from the different parties. The voices of both the aforesaid persons were identified by independent witness from the relevant recorded conversations. The voice identification memo alongwith transcriptions of the recorded conversations were prepared. Investigation further revealed that Sh. Mahender Kumar Tiwari @ Anil identified the voices of S/Sh. Ram Krishan Mishra, Saurav Sharma, Ravi Kumar Sharma, Onkar Singh, Kishore Kumar, Daya Chand Verma, Ganga Singh and others from relevant available intercepted calls received from CBI, SU, New Delhi. The voices of S/Sh. Saurav Sharma, Daya Chand Verma, Ganga Singh and Yatish

Ramavtar Pabri have also been identified by Sh. Sanjay Sharma, Addl. Commissioner (SIIB), New Custom House, near IGI Airport, New Delhi as the aforesaid persons had worked under his supervision.

17.46 During the course of investigation, voice sample of accused persons viz Saurav Sharma, Ram Krishan Mishra, Onkar Singh, Kishore Kumar and other persons i.e. Ravi Kumar Sharma, Dhoop Singh and Samrat Kapoor were obtained and same were sent to CFSL for comparison with the questioned voice recorded by CBI on 17.08.2020 as well as intercepted calls provided by Special Unit, CBI.

17.47 Investigation further revealed that Sh. Saurav Sharma was appointed as Inspector (Examining Officer) on 19.11.2012 in the office of Commissioner of Custom, Custom House, 60 Rajaji Salai, Chennai - 600001 vide order number 304/2012 dated 19/20.11.2012 issued from f. Number S8/18/2012-Estt./S14/66/2012-Estt. of Sh. Jane K. Nathaniel, Commissioner of Custom, Custom House, Chennai. Sh. Saurav Sharma was promoted to the Rank of Appraiser vide order no. 100/2016 dated 01.04.2016 issued from F No. C41/01/2016-Estt. of Sh. Jane K. Nathaniel, Commissioner of Custom, Custom House, Chennai.

17.48 Investigation has further revealed that Sh. Saurav K. Sharma was relieved for joining at Delhi vide order dated 16.05.2017 of Sh. M. Jeyakumar, Assistant Commissioner of Custom (Vigilance) Custom House, Chennai in pursuance to the transfer order number 148/2017 dated 15.05.2017 of Sh. K.K. Suja, Joint Commissioner of

Custom, P&B, Office of Commissioner of Custom, Custom House, Chennai issued from F. No. Misc. 10/2003/Vig.

17.49 Investigation has further revealed that Sh. Saurav Sharma, Appraiser joined office of Joint Commissioner (P&V), ICD Patpadganj Delhi consequent upon establishment order no. 30/CUS/2017 dated 28.06.2017 of Sh. R.I. Meena, Additional Commissioner, Cader Control, Commissioner of Custom, New Custom House, Near Indira Gandhi International Airport, New Delhi,.

17.50 Investigation has further revealed that Sh. Saurav K. Sharma was transferred from Delhi to Chennai vide order number 88/2020 dated 26.06.2020 (F.Misc.04/2020-Enquiry) of Sh. R. Gopal Swami, Joint Commissioner of Customs, Chennai - VIII, Custom House, No. 60, Rajaji Salai, Chennai-600001 with direction to report to New Commissionarates concerned on or before 20.07.2020. On 09.07.2020, Sh. Saurav K. Sharma submitted his joining report addressed to the Asstt. Commissioner of Customs (Admin), The Commissioner of Customs-Chennaill/Commissionerate, Custom House No. 60, Rajaji Salai, Chennai and relevant entries have been made in his service book. Certified copy of the relevant extract of service book was provided by the Chief Account Officer, Custom "House, Chennai.

17.51 Investigation has further revealed that Sh. Saurav K. Sharma was placed under suspension w.e.f. 18.08.2020 vide order number 20/2020 dated 07.09.2020 of Sh. M.M. Parthiban, Principal Commissioner of Custom VIII (General) Chennai.

17.52 That the aforesaid facts and circumstances constitute offences punishable u/s 120-B r/w section 7, 7A and 8 of PC Act 1988 (as amended in 2018) and substantive offences thereof against accused Saurav Sharma, the then appraiser, Ram Krishan Mishra, Onkar Singh, Kishore Kumar and Neeraj Kumar.

17.53 That sanction for prosecution against the accused Sh. Saurav Sharma, the then Appraiser, Inland Container Depot, Tugalakabad. New Delhi (presently posted in the office of Commissioner of Customs (Appeals II, Custom House, Chennai) has been accorded by Sh. G. Ravindranath, IRS, Principal Commissioner of Customs (General), Custom House No. 60, Rajaji Salai, Chennai-600001 u/s 19 of PC Act 1988 (as amended in 2018) which is enclosed in original with this final report.

Submissions by Ld counsels for accused persons:-

3. Ld. counsels Sh. Naveen Kumar, Sh. Arvind Shukla, Sh. Shantanu Shukla and Abhishek Mandal, appearing for all the accused persons submitted that case of prosecution suffers from various discrepancies which render the case wholly unreliable. According to the settled legal position, if in a case two views are possible, the view favouring the accused must be adopted. There is no consistency as to the bribe amount demanded by the accused persons as also contradictions are appearing as to the amount demanded and delivered.

4. It has been strongly argued by counsels Sh. Naveen Kumar, Sh. Arvind Shukla, Sh. Shantanu Shukla and Sh. Abhishek Mandal that there is no

complaint of demand in this case and how can this transaction be termed as bribe. It is further argued that there is no illegal gratification and CBI has failed to bring out what was the official act and for whom it was performed. It is further argued that A-1 is not working in Tugalakabad department and CBI has no evidence to prove acceptance of illegal gratification. It is further argued that there is no recovery from A-1 and money is alleged to have been recovered from Neeraj who has no connection with other accused persons. It is further argued by counsel for A-1 that interception of calls is illegal and it is not in accordance with the rules framed by Central Govt. It is further argued that telephone interception was illegal and done without following the legal procedure and it is infringement of right to privacy of accused persons. It is argued by Ld counsel for A-5 that accused is not named in the FIR and the trap was illegitimate. It is further argued that there is no evidence that A-5 has been ever demanded or paid any money to any person or public persons. Ld counsels for accused persons have relied upon the following Judgments:-

☛ *Jatinder Pal Singh vs. Central Bureau of Investigation*, 2022 SCC OnLine Del 132 (2022) 287 DLT 334

☛ *State of Madras vs A Vaidyanta Iyer*, 1958 AIR 61 1958 SCR 580 decided on 26.09.1957

☛ *State of Kerala vs CP Rao* CA No.1098/2006 SC.

☛ *Satvir Singh vs State of NCT of Delhi through CBI*, Criminal Appeal no.920/2011 SCC.

☪ S. Nagoor Hussain Mohaideen vs State, represented by The Inspector of Police, Vigilance and Anti Corruption Thoothukudi, CrI.A. (MD) no.318/2013

☪ P. Satyanarayan Murthy vs The Dist. Inspector of Police and Anr. Criminal Appeal no.31/2009 SC.

☪ Mukhtiar Singh and Anr. Vs State of Punjab (1995) 01 SC CK 0023 Criminal Appeal No. 434 and 489 of 1985 SC.

☪ M.K. Harshan vs State of Kerala (1995) 03 SC CK 0003, Criminal Appeal No.121/1989 SC.

☪ Krishan Chander vs NCT Delhi, Criminal Appeal no.14/2016 SC.

☪ B. Jayaraj vs State of A.P. Criminal Appeal no.696/2014, SLP (CrI.) No.2085/212

☪ Subair vs State of Kerala, CrI. No.639/2004, SC.

☪ Virender Nath vs. State of Maharsatra (1996) 11 SCC 68.

Submissions by Ld. Sr. Public Prosecutor:-

5. On the other hand, it is submitted by Sh. V.K. Pathak, ld. prosecutor for CBI that at the stage of charge, the court is not required to undertake detailed inquiry about the facts and events of the case. The trap was laid on receiving information about demand of bribe by accused public servant and all the rules and regulations were duly followed. It is submitted by Ld. Sr. PP that illegal gratification of Rs. 7 lacs was given on the directions of

accused Saurav Sharma and this money was recovered from co-accused Neeraj. It is stated that the recorded conversations clearly demonstrate that accused Saurav Sharma was collecting illegal gratification from the parties for extending undue favour as reward for inspection and clearance of import/export consignments. It is further submitted by Ld. Sr. PP that interception of calls is legal and it is according to the rules framed by Central Govt. It is further submitted that Secretary to Govt of India namely Sh. Ajay Kumar Bhalla vide order dated 02.03.2020 had permitted the CBI to monitor the telephone no. 9971005227/computer resource as the information could not be acquired through any other reasonable means. It is submitted that a person cannot be discharged merely on the ground that he is not named in the FIR. Role of each accused came into light only after conclusion of investigation and sufficient material came into light against all the accused persons. It is stated that there is sufficient evidence on record for framing the charges against the accused persons in terms of charge sheet. It is argued by Ld. Sr. PP for CBI that the facts of the present case are different from the facts of the judgments filed by Ld counsels for accused and are not applicable in the present case.

6. I have given due consideration to the facts and material placed on record in the light of aforesaid contentions.

7. The law on the question of consideration of charge is well settled. If the criminal court, on consideration of the material submitted with the charge sheet finds that a grave suspicion exists about the involvement of the accused in the crime alleged, it is expected to frame the charge and put the accused on trial. At such initial stage of the trial, the truth, veracity and

effect of the evidence which the prosecutor proposes to adduce is not required to be meticulously judged, nor any weight is to be attached to the probable defence of the accused.

8. It has been held in the case of **Union of India Vs. Prafulla Kumar Samal and another, (1979) 3 SCC 4** that:

“

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge :

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the

Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

.....”

9. It was held in the case of **Niranjan Singh Karam Singh Punjabi vs. Jitendra Bhimraj Bijjaya, (1990), 4 SCC 76**, that, at the time of framing charges having regard to section 227 and 228 CrPC, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face-value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

10. It was also held in the case of **P. Vijayan Vs. State of Kerala and another (2010) 2 SCC 398** that,

“....

10. Before considering the merits of the claim of both the parties, it is useful to refer Section 227 of the Code of Criminal Procedure, 1973, which reads as under:-

"227. Discharge.--If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the Trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere Post Office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts.....”

11. The scope of Section 227 of the Code was considered by Apex Court in the case of **State of Bihar Vs. Ramesh Singh (1977) 4 SCC 39**, wherein it was observed that:

“4....Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the, initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. if the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused

committed the offence, then there will be no sufficient ground for proceeding with the trial....”

This court has thus held that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Trial Judge in order to frame a charge against the accused.

12. In **Kanti Bhadra Shah and Anr. vs. State of West Bengal**, Id. Apex court observed that:

“We wish to point out that if the trial court decides to frame a charge there is no legal requirement that he should pass an order specifying the reasons as to why he opts to do so. Framing of charge itself is prima facie order that the trial judge has formed the opinion, upon consideration of the police report and other documents and after hearing both sides, that there is ground for presuming that the accused has committed the offence concerned. Chapter XIX deals with provisions for trial of warrant cases instituted on police report. Section

239 reads thus :

"239. When accused shall be discharged. - (1) If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing." The said Section shows that the Magistrate is obliged to record his reasons if he decides to discharge the accused. The next section (Section 240) reads thus :

"240, Framing of charge - (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an

offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately 1 2000 SCC (Cri) 303 punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried."

It is pertinent to note that this section required a Magistrate to record his reasons for discharging the accused but there is no such requirement if he forms the opinion that there is ground for presuming that the accused had committed the offence which he is competent to try. In such a situation he is only required to frame a charge in writing against the accused.

13. Coming to the case in hand, charge sheet has been submitted against the accused including public servant for the offences u/s 120 B r/w Section 7, 7-A and 8 of Prevention of Corruption Act, 1988. The basis of the case is the source information that accused persons have been delivering illegal gratification on regular basis to the official of ICD, Tuglakabad, Delhi for extending undue favour for inspection and clearance of import consignments. Accused Ram Kumar Mishra was in regular contact with Saurav Sharma (Public Servant) for getting cleared import consignment of his company and for other companies and coded language was being used for exchange of bribe. Accused Saurav Sharma deputed Ram Kishan Mishra for collecting payment of Rs. 90,000/- and Rs. 7,00,000/-. Accused Onkar Singh of M/s Uniclear delivered Rs. 90,000/- to Ram Krishan Mishra for Saurav Sharma. Illegal gratification of Rs. 7,00,000/- was also delivered to accused Kishore Kumar and Kishore Kumar delivered it to Sonu, employee of accused Neeraj, Sonu delivered the money to Neeraj

from whom Rs. 7 lakhs was recovered. The factum of demand of bribe was intercepted and verified. A trap team was constituted and two independent witnesses joined the trap team. The accused Ram Kishan Misra (A-2) was apprehended firstly and he disclosed that he delivered the amount to Kishore Kumar and Kishore Kumar was apprehended who disclosed that he delivered the amount to employee of Neeraj namely Sonu and lastly Neeraj was apprehended from where illegal gratification of Rs. 7 lacs was recovered which was to be given to Saurav Sharma. The sanction for prosecution has been granted w.r.t. accused Saurav Sharma.

14. On considering the documentary evidence and statements of witnesses, I find that there is sufficient prime facie evidence against all the accused persons including public servant with respect to the demand and acceptance of bribe, which is punishable u/s 120B IPC r/w Section 7, 7-A & 8 of Prevention of Corruption Act, 1988 and Substantive Offence thereof. The recorded conversations are also strong evidence about involvement of accused persons in demanding and accepting bribe in complicity.

15. I do not find any merit or substance in the arguments of defence as the various questions of facts are raised, which can only be a matter of trial. There is no legal impediment in framing the charges as sanction has also been duly granted against accused Saurav Sharma.

16. Consequently, from the above said facts and circumstances, accused persons namely Saurav Sharma (A-1), Ram Krishan Mishra (A-2), Onkar Singh (A-3), Kishore Kumar Shrichandani (A-4) and Neeraj Kumar (A-5)

are liable to be charged for the offences punishable U/s 120B r/w Sections 7, 7A & 8 of Prevention of Corruption Act, 1988. Accused persons namely Saurav Sharma (A-1) also is liable to be charged u/s 7 of Prevention of Corruption Act, Ram Krishan Mishra (A-2) is liable to charged u/s 7A of Prevention of Corruption Act and Onkar Singh (A-3) is liable to be charged u/s 8 of Prevention of Corruption Act. Application of A-5 Neeraj Kumar for his discharge is dismissed.

(Rakesh Kumar-III)
Special Judge (PC Act) (CBI)-02
Rouse Avenue District Court
New Delhi/11.10.2023