

**IN THE COURT OF SPECIAL JUDGE:
PC ACT (CBI) - 04, ROUSE AVENUE COURTS, DELHI.**

I.A No. 2/2023

CBI No. 55/2023

CBI Vs. Ashutosh Kumar & Anr.

RC DAI-2016-A-0020

U/s 109 IPC R/w Section 13 (2) R/W 13(1) (e) of PC Act.

06.03.2024

Present: Sh. Shree Prakash Sinha, Sh. Rakesh Mishra,
Newalendra Kr and Sh. Rishabh Kr, Ld. Counsel
for the applicant alongwith applicant in person.

Sh. Hari Mohan, Ld. Sr. Public Prosecutor for CBI/non-
applicant.

IO/DSP R.K Tiwari, CBI, ACB, Delhi in person.

None for the E.D

ORDER

1. This order shall dispose off an application (bearing **I.A No.2/2023**) under Section 457 Cr.P.C preferred by Applicant Ashutosh Kumar seeking release of documents (annexure A/1) as seized which are not part of the chargesheet.

2. It is, inter alia, pleaded in the application that applicant/accused Ashutosh Kumar was arrested in the connected RC-DAI-A-2016-11 on 02.05.2016. During the investigation of the said case, on 01.05.2016 search was conducted in the premises of the applicant and accordingly documents/articles were seized through various memos. The said documents/articles as seized were later on handed over to the I.O of the present case (RC DAI-2016-A-0020) vide order dated 15.06.2016 of Ld. Spl Judge, PC Act. Pursuant to that handing/taking of documents took place between the I.Os of the two cases on the same day.

2.1 It is further submitted that chargesheet in the present matter has been filed on 24.04.2023. The court has taken the cognizance of offence vide order dated 18.07.2023 and summons have been issued to the accused taking into account check period from 01.01.1997 to 31.12.2008. The chargesheet alongwith documents have been supplied to applicant herein. The applicant is thus entitled for release of all the documents/articles as seized which are not part of the chargesheet in terms of Section 457 Cr.P.C. Hence, prayer is made to direct the CBI to return all the documents/articles as seized/hand over in terms of order dated 15.06.2016 which are not part of the chargesheet.

3. In the reply filed by the CBI, they have given details of the documents/articles/cash etc seized vide seizure memo dated 15.06.2016 and also categorically stated whether the said documents/articles have been made part of the present chargesheet or not. It is also stated whether the same pertain to the accused/applicant herein.

3.1 It is further submitted that on the reference of CBI, E.D has registered a case vide ECIR No. DLZO-I/30/2023 dated 22.03.2023 against applicant herein under the PMLA. The E.D has requisitioned all the documents related to the financial transactions/acquisition of property seized by the CBI pertaining to the applicant for investigation. Since the said documents as sought by the applicant are necessarily required E.D, the present application of the applicant deserves to be dismissed. Ld. Sr. PP for the CBI has thus, opposed the present application.

4. Heard and considered.

5. The applicant herein has approached the court for release of documents which either handed over or seized from him as reflected in handing/taking of documents memo dated 15.06.2016. The premise of the present application is that the majority of the said documents seized or handed over by him are not part of the chargesheet or relied upon by the prosecution. Therefore, he is legally entitled for release of the said documents.

6. The only ground on which the present application has been opposed by the CBI is that the said documents might be required by the Enforcement Directorate (E.D) as ECIR No. DLZO-I/30/2023 dated 22.03.2022 is already registered against the accused/applicant herein. In the said backdrop, notice was issued to E.D. Ld. Spl. PP for the E.D appeared and categorically submitted that they do not wish to file any reply and also do not want say anything else.

7. Even otherwise, after seizure of the said documents by the Investigating Authority in the present case, the same become the custody of the court irrespective of the fact whether the said documents are part of relied upon or unrelieved documents. By way of present application, only the unrelieved documents have been sought to be released by the applicant which were seized from him or handed over. He is legally entitled to the same in terms of Section 457 of Cr.P.C The requirement of E.D for the said documents has to be looked by the E.D only for which they have to approach the court or follow the procedure prescribed under Prevention of Money Laundering Act (PMLA). It is not for the CBI to decide upon the requirement of said document by

the E.D. Therefore, the objection raised for non-release of the said unrelies documents is without any basis.

8. Now, coming to the documents sought to be released in terms of handing /taking of documents memo dated 15.06.2016, CBI in their detailed reply has submitted as under qua the said documents:

Sr. No.	Nature/Detail of document	Response of CBI
1	Search List Dt.04.05.2016 in respect of Flat No. 1203, D Wing, Raj Lifestyle Building, Meera Road, District Thane	No such document seized
2	Memo dated 04.05.2016	Three documents seized, but none is mentioned in the chargesheet.
3	Search list dt 03.05.2016 of H.No 401 Versova Kiran CHS Versova Telephone Exchange, Mumbai	None of the articles/documents or cash cited in the chargesheet.
4	Search list dated 02.05.2016 of H.No. 6/6, RSC-12, Near Versova MTNL Exchange, MWADA Colony, Versova, Andheri West, Mumbai	None of the documents is cited in the chargesheet and not related to the applicant .
5.	Search list dated 02.05.2016 of Plot No.336, Sector-7, Charkop, Kandiwali West Mumbai	Five documents were seized, but one is mentioned in the chargesheet.
6.	Search list dt. 02.5.2016 of Room No. 702, C Wing, Rajmandir Complex, Meera Road, District Thane	One document was seized but the same is not mentioned in the chargesheet.
7.	Search list dated 02.05.2016 of Office of Finstock Services Ltd (LFS House) Bungalow 92 RSC, SVP Nagar, Noorjahan School Versova, Andheri West, Mumbai	29 documents were seized, however, none of them is mentioned in the chargesheet.
8	Search List dated 07.05.2016 of house no.8 Ideal Home, Posh Complex, Meera Road, East Mumbai	Three documents and cash of Rs.667500/- seized, however, the same are not cited in the chargesheet.
9	Search List dated 02.05.2016 of H. No.402 Rajmandir	6 bunches of documents and cash of Rs.3,00,000/- was seized. Only

	Complex Hatkesh Meera Road, Thane	Conveyance Deed and Aay Pramaan Patra and Kaaryalay Tehsildar are mentioned in chargesheet at Sr. No. 27 & 49 respectively
10.	Search List dated 01.05.2016 of house No. 246, Block B, Sector -50 Noida	121 bunches of articles, 16 watches and cash of Rs.40,96,200/- were seized. Some of the documents i.e at Srl. No. 23,24-C,38-A, 41,42,52A,53A,54-A, 55A,56A,57A,58A,59A,60A,60B , 61, 62A,63A, 64A and 65. No cash or watches mentioned in the chargesheet.
11.	Notices/letters issued in RC11(A)/2016	The same do not pertain to the applicant/accused herein
12.	Car search memo UP 16AH 0888 dated 02.05.2016	Documents related to car, I.D of applicant, cash of Rs.1.50 lacs, mobile phone and a walkie-talkie seized. None of the documents/articles are citted in the chargesheet.

9. In these circumstances, **the application under Section 457 of Cr.P.C moved by the applicant/Ashutosh Kumar is allowed. The CBI is accordingly directed to release the said documents belonging to applicant as disccused in the aforesaid table which are unrelied one subject to furnishing of photocopies of the said documents by the applicant at his own cost The copies be certified by the applicant. The applicant also to furnish an undertaking to produce the said documents if required during the trial of the case. CBI also to prepare detailed *Panchnama* in this regard.**

The application stands disposed off accordingly.

Announced in the open Court
on 06.03.2024

(GAGANDEEP SINGH)
Special Judge, PC Act, CBI-04
Rouse Avenue Courts, New Delhi