

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

I.A No. 9/2024

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.

06.07.2024

Present: Sh. Shree Prakash Sinha, Nawalendra Kr
& Sh. Rishab Kumar, Ld. Counsel for the applicant.

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

Documents/orders as mentioned in the application are
filed on record today in term of previous orders.

ORDER

1. This order shall dispose off an application preferred by Applicant Ashutosh Kumar (A-1) seeking direction to release cash/FDR amount as seized in terms of order dated 22.04.2024 in I.A No. 8/2024.

2. It is, inter alia, pleaded in the application that applicant herein had moved an application under Section 457 dated 20.10.2023 seeking release of documents as seized which are not part of the chargesheet. Alongwith the said application, applicant brought on record order dated 15.06.2016 in R.C DAI-2016-A-11 alongwith documents pertaining to handing/taking of documents. The CBI filed its reply contending that Directorate of Enforcement (E.D), Delhi had lodged ECIR No. DLZO-

1/30/2023 dated 22.03.2023 under PMLA 2002 and the documents should not be released/returned to the applicant herein. The CBI also filed another reply dated 08.02.2024 whereby they brought on record all the seizure memos contending that the same are unrelieved documents.

2.1 It is further pleaded in the application that vide order dated 06.03.2024 allowed application (I.A No.02/2023) directing the cash amount which was part of unrelieved documents as mentioned be furnished to the applicant. The CBI did not comply the said directions and hence, applicant filed another application bearing I.A No. 8/2024 dated 06.04.2024 seeking direction CBI to comply with order dated 06.03.2024. The CBI thereafter filed reply stating that they had seized total cash amount of Rs.1,90,11,200/- and 43 watches. The CBI stated that certain amount was kept in FDR in the name of S.P, CBI in compliance of order dated 03.09.2016 and 02.01.2017 passed by this Court. It was contended by the CBI that there was no direction for return of Rs.1,90,11,200/- and 43 watches and clarification in this regard was sought.

2.2 It is further submitted that vide order dated 22.04.2024 in I.A N. 8/2024 referring the order dated 03.09.2016 and 02.01.2017, this court recorded as the amount was kept in the form of FDRs and there was no prayer for release of the same, the court dated 06.03.2024 cannot operate qua the release of said FDRs. The applicant herein was given liberty to show change of circumstances consequent to order dated 03.09.2016 and 02.01.2017.

2.3 It is further pleaded by the applicant that he moved an application under Section 451 Cr.P.C for return of seized amount of Rs. 1,88,63,700/- which was rejected by the Hon'ble Court vide order dated 26.02.2018 on the ground that the investigation was pending. The investigation in the matter is now complete and CBI has filed the chargesheet wherein the above amount of cash is not made part of the same. After taking the cognizance, the Court has summoned the accused persons. The applicant was supplied with chargesheet alongwith documents. In pursuance to the orders of the court, CBI filed list of unrelieved documents on 22.04.2024 which contain a total number of 896 documents. The details of the cash sought to be returned is given in para-11 of the application.

2.4 It is apparent that the above-amount is not part of chargesheet and figure in the list of unrelieved documents submitted by the CBI on 22.04.2024. Thus, the said fact is change in circumstances in as much as at the time of passing of orders dated 03.09.2016 and 02.01.2017, the investigation was going on and the amount was also subject matter of investigation. Accordingly, after filing of the chargesheet and submission of unrelieved documents, the applicant is entitled to be released the said amount in terms of order dated 22.04.2024 in I.A No. 8/2024. Hence, prayer is made to direct the CBI to release FDR/Cash Amount as seized and reflecting in unrelieved documents as mentioned in Para-11 of the present application.

3. In the reply filed by the CBI, it is submitted that due to oversight, the seizure/recovery of cash amount of Rs.3,00,000/-

has been inadvertently doubly mentioned at serial no.391 and serial no. 713 in the list of unrelieved documents. The said oversight is deeply regretted. Thus, it is submitted that there is only one instance of recovery/seizure of Rs.3 lacs in cash which may be taken on record. The details of cash amount recovered/seized from various premises of accused/his associates during searches are as follows:

Sr. No.	Amount
1	Cash amount of Rs. 1.38 crores
2	Cash amount of Rs. 6,67,500/-
3	Cash amount of Rs. 3,00,000/- (MR-II, Memo-IX, Sl.No.7
4	Cash amounting to Rs. 40,96,200/- (MR II, Memo-XI) S. No. 122
5	Cash amount of Rs. 1,50,000/- (MR-II, Memo-I, S; No.3)
Total	Rs. 1,90,13,700/-

3.1 It is further submitted that out of cash amount of Rs.1.38 crores, one currency note of denomination of Rs.500 was found to be counterfeit. Thus, the amount comes to Rs. 1,37,99,500/- (as mentioned at Sr. No.1) Besides this, two currency notes of denomination of Rs.1,000/- were found counterfeited among the seized cash of Rs. 40,96,200/- (as mentioned at Srl. No.4). Thus, the total cash amount comes to Rs.1,90,11,200/-. Out of the said amount of Rs. 1,90,11,200/-, the FDR of Rs. 1,37,99,500/- was made in the name of S.P, CBI in compliance of order dated 03.09.2016 passed by the Court .Another FDR of Rs.3 lacs was made in the name of S.P., CBI in compliance of order dated 02.01.2017 passed by the Hon'ble Special Court. Further it is prayed that court may pass the order as it deemed appropriate .

4. Heard and considered.

5. The applicant herein is seeking release of the cash amount as stipulated/mentioned in Para-11 of the application in tabulated form which is reproduced hereunder:

Sr. No.	Amount
341	Cash amount of Rs.1.38 Crores (Part of search list dated 03.05.2016, Srl. 307 unrelieid documents
384	Cash amount of Rs. 6,67,500/- (Part of search list dated 07.05.2016)
391	Cash amount of Rs.3,00,000/- (Search List dated 02.05.2016, MR-II, Memo VI, Sr. No.1-7)
713	Cash amount of Rs. 3,00,000/- (MR-II, Memo IX Sl. No.7)
744	Cash amounting to Rs. 40,96,200/- (MR-II Memo XI, Sl. No. 122, search list dated 01.05.2016
749	Cash amounting to Rs. 1,50,000/- (MR-II, Memo-I, Sl. No.3, Car Search dated 02.05.2016
Total	Rs.1,93,13,700/-

5.1 The primary contention on behalf of the applicant seeking the release of the said amount, out of which certain part has been converted into FDR by the order of this Court is that the said amount is now part of unrelieid documents .It is not part of the relieid upon documents/articles in the chargesheet in previous R.C No. 11(A)/2016 as well as present R.C DAI-2016-A-0020.

5.2 The said request of the applicant seeking the release of above-referred cash amount is not disputed on behalf of the CBI

in their reply. Rather, they have left it to the court to pass order as deem appropriate. Though there is certain correction with respect to the release of cash amount in the tabulated form in para-6 of the reply of CBI, as there was double entry with respect to Rs.3 lacs in the list of unrelieved documents already supplied to the applicant. Therefore, it is stated that the total amount lying with them seized from accused/applicant is **Rs. 1,90,11,200/-**.

As far as first entry of cash amount of Rs. 1.38 crores, the same has been got converted into fixed deposit by virtue of order of the Ld. Predecessor dated 03.09.2016. It is apparent from the said order that at that point of time the investigation was pending with respect to the said amount and accordingly it was ordered to be converted into FDR. It was got done as reflected from compliance report dated 07.10.2016. Another amount of Rs. 3 lacs too was got converted into FDR vide order of Ld. Predecessor dated 02.01.2017.

5.3 It is also reflected from the record that for the same relief, the applicant herein approached the Ld. Predecessor seeking release of the cash amount, but the same was denied vide order dated 27.02.2018. The relevant part of the said order is reproduced hereunder:

“The applicant is claiming amount of Rs. 1,88,63,700/- on supardari but this amount cannot be released to the applicant on superdari at this stage as the matter is under investigation and it is the case of the CBI that accused has transferred his ill-gotten money by routing it through the accounts of the other companies. It has no where stated by the applicant during investigation that he has taken the amount from Solaries Group of Companies. The cash amount of Rs. 1,88,63,700 is case property in RC No. DAI-2016-A-0020 under Section 13 (2) r/w 13 (1) (e) of PC Act. Thus, this defence is an after thought and the amount as claimed

cannot be released to the applicant on superdari. The application filed by the applicant is without any merit and the same is hereby dismissed.”

5.4 The said relief was earlier denied as that point of time, the investigation qua the said seized amount was pending which since now has been completed and the chargesheet has been filed. The said seized cash amount is not now part of the list of relied upon documents or articles and hence, CBI is not now opposing the release of said cash amount. The applicant being the rightful claimant is entitled to release of the said amount .

6. In these circumstances, **the application in hand is allowed.** The amount as mentioned in tabulated form in paragraph-6 of reply of CBI be released to the applicant/accused against execution Indemnity bond in the name of the Court with the condition that to deposit the said amount if directed so at the conclusion of trial or otherwise. The proper Panchnama be also got prepared with respect to the release of cash amount lying with the CBI Malkhana.

6.1 As far as the FDR's to tune of Rs.1,37,99,500/- and Rs.3,00,000/-, the same be endorsed and released in favour of the applicant.

With these directions, the application stands disposed off.

A copy of this order be given dasti to the applicant/his counsel as well as the CBI.

Announced in the open Court
on 06.07.2024

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