

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

I.A No. 10/2024

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.

ORDER

1. This order shall dispose off an application preferred by Applicant Ashutosh Kumar (A-1) seeking direction to CBI to supply unrelied documents.

2. It is, inter alia, stated in the application that the applicant herein had moved an application dated 01.11.2023 seeking direction to CBI to furnish list of unrelied documents in compliance of judgment of Hon'ble Supreme Court in the matters of **"In Re: to issue certain Guidelines regarding inadequacies and deficiencies in Criminal Trial V. The State of Andhra Pradesh & Ors."** (2021) 10 SCC 598 and **"Manoj & Ors. V. State of Madhya Pradesh"** (2023) 2 SCC 353. Thereafter, the CBI filed its reply on 07.12.2023 and vide application dated

06.04.2024 while bringing on record list of 706 un-relied documents sought permission to grant further time for filing remaining list of un-relied documents. The CBI filed another application dated 22.04.2024 with permission to bring on record the remaining unrelieved documents from serial no. 707 to 895.

2.1 It is further submitted by the applicant that the said documents are required to be provided to him in terms of judgment dated 10.11.2021 of Hon'ble Delhi High Court in matter "**Central Bureau of Investigation V. M/s INX Media Pvt Ltd & Ors**", 2021 SCC OnLine Del 4932 and same are crucial for purpose of filing application for discharge. The Hon'ble Supreme Court dismissed the SLP No. 1274/2022 against the judgment of Hon'ble DHC in CBI V. M/s INX Media Pvt Ltd (supra) case. Hence, prayer is made to direct the CBI to supply the applicant all the unrelieved documents (serial no. 1-895) as filed in the court.

3. In the reply filed by the CBI, it is submitted that the compliance of Section 207 Cr.P.C has already been done including supply of list of un-relied documents/articles to the accused/applicant herein on 06.04.2024 and 22.04.2024. Further, it is submitted that the judgments as referred and relied upon by accused/applicant herein in para-3 of his application are not applicable in the present case.

3.1 It is further submitted that the law is well settled that at the stage of arguments on point of charge, only the documents/material furnished by the prosecution has to be considered and not the material placed on record by the defence.

In this regard, reliance is placed upon judgments in case titled **State of Orissa V. Debendra nath Padhi (2005) 1 SCC 568 and State of Rajasthan V. Swaran Singh @ Baba, Criminal Appeal No. 856/2024 dated 12.02.2024**. Thus, it is stated that as the unrelieved documents as sought by the accused/applicant may not be required to be supplied to the accused as the same do not have any bearing on the case at this stage. Prayer is made to dismiss the present application.

4. It is argued on behalf of the applicant that the CBI has deliberately withheld some of the crucial documents seized during the investigation which might help the accused/applicant in his defence during the trial. It is further argued on behalf of the accused/applicant that originally the FIR/RC for the offence punishable under Section 13 (1) (e) of PC Act was registered against him wherein the check period for disproportionate assets (DA) was stated to be 01.01.2008 to 30.04.2016. But now, after the conclusion of the investigation, the goal post has been changed and now the check period has been stated to be 01.01.1997 to 31.12.2018.

5. As far as the legality of the said changed check period is concerned, Ld. Counsel for the applicant/accused submits that he will raise the relevant legal issue at the time of addressing the arguments on charge. The limited question now is as to whether the accused/applicant is entitled to supply of all the unrelieved upon documents seized by the CBI which are not forwarded to the Court as the same has the bearing on his defence. In this regard, the reliance is placed by the applicant upon the judgment of

Hon'ble Supreme Court in Suo Moto (supra) case and Manoj (supra) case and that of Hon'ble Delhi High Court judgment in CBI V. INX Media (supra) case.

7. It is further argued that the very same issue was raised before the Hon'ble Delhi High Court in CBI V. INX Media (supra) case wherein the right of the accused of seeking the unrelieved documents was upheld. It was further upheld that the such document which is relevant and is of sterling quality can certainly be looked into by the Court at the time of framing of charge. The issue as to whether the any of the unrelieved document falls in the said category can only be decided if he is given the right to inspect those documents. It is further argued that the SLP against the said order of the Hon'ble High Court of Delhi has been dismissed by the Hon'ble Supreme Court vide order dated 18.07.2023 and therefore, the legal position rests settled with respect to the supply unrelieved documents seized during the investigation.

8. Per contra, Ld. Sr. PP for the CBI argued that the present application is pre-mature and the judgments referred are not applicable of the case. It is argued that the list of unrelieved documents already stands supplied to the accused/applicant on 06.04.2024 and 22.04.2024.

9. As far as the issue of seeking supply of documents for purpose of his defence at this stage is concerned, the same is out of question. The reliance in this regard is placed upon the judgment of Hon'ble Supreme Court in case titled State of

Rajasthan V. Swaran Singh @ Baba (supra) case wherein it has been categorically held that the right to invoke Section 91 Cr.P.C at the stage of framing of charge is impermissible. No prayer has been made by the applicant for inspection of unrelieved documents as has been argued .

10. Heard and considered.

11. The applicant herein is seeking supply of unrelieved documents seized during investigation conducted in the present case or in alternative inspection of the said documents so as to find out as to whether due to malafide intent certain material documents which favour him have been deliberately withheld by the Investigating Authority.

12. The issue in this regard has been dealt in great detail by the Hon'ble Supreme Court in Suo Moto (supra) case wherein the guidelines were issued to the criminal courts in relation to the supply of material collected during the course of investigation. The relevant extract of the judgment is reproduced hereunder:

“11. The amici pointed out that at the commencement of trial, accused are only furnished with list of documents and statements which the prosecution relies on and are kept in the dark about other material, which the police or the prosecution may have in their possession, which may be exculpatory in nature, or absolve or help the accused. This court is of the opinion that while furnishing the list of statements, documents and material objects under [Sections 207/208](#), Cr. PC, the magistrate should also ensure that a list of other materials, (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused. This is to ensure that in case the accused is of the view that such materials are necessary to

be produced for a proper and just trial, she or he may seek appropriate orders, under the Cr. PC. for their production during the trial, in the interests of justice. It is directed accordingly; the draft rules have been accordingly modified. [Rule 4(i)]"

12.1 Therefore, it is apparent in the clear terms that the direction was given for supply of list of statements, documents and material objects seized by the Investigating Authority, but not relied upon while filing the chargesheet. As far as the compliance of the said direction is concerned, the same stands already complied by the Investigating Authority as they have already supplied the list of unrelieved documents/articles on 06.04.2024 and 22.04.2024. It has already come on record that there are around 895 documents which are part of unrelieved documents seized by the Investigating Authority.

13. The limited issue before this Court at this stage when the main matter is at the stage of arguments on charge is as to whether the accused can seek supply of copies of all of such unrelieved documents or not. The right to supply of unrelieved documents in a way flow from the Constitutional Right to Life under Article 21 of the Constitution which prescribes that the personal liberty of the citizen can be deprived only as per the procedure established by law. The Right to Fair Trial is part and parcel of the said fundamental right. The contours of the said fundamental right demand that the Investigating Authority cannot be selective in placing on record the material seized by them during the investigation. Withholding of the material seized during the investigation which might help the accused in

his defence in a way infringes the right of accused to have a fair trial.

14. The issue as to whether the said unrelieved documents can be supplied to accused at the stage of arguments on charge has been directly addressed by Hon'ble High Court of Delhi in CBI V. INX Media (supra) case. The relevant part of the said judgment too is reproduced herein under for the sake of clarity and convenience:

“16. Indubitably, while passing an order of inspection of unrelieved upon documents, the Court is bound to strike a balance between the competing interest of ensuring a fair trial to the accused as also maintaining the sanctity of further investigation, in case further investigation is to be carried on. Case of learned counsel for the CBI before this Court is that since further investigation is going on, permitting the accused or their representatives to inspect the documents lying in Malkhana will hinder the investigation. As noted above, the learned Trial Court directed the CBI to supply copies of all the pages/ part thereof, or the entire document to the accused persons in relation to documents only a few pages or part of document were being relied by the CBI. In relation to the documents which have not been filed in the Court, the learned Trial Court did not direct the CBI to produce the said documents in Court and held that the ends of justice would be met if the accused persons are permitted to inspect the said documents lying in the Malkhana of CBI and to find out if any such document is relevant or vital for their defence or is of sterling quality to demolish the very case of prosecution and after making inspection learned counsel representing these accused shall let the Court know the details of these documents so that copies thereof can be supplied to them.”

14.1 The Hon'ble High Court of Delhi thereby upheld the order of Ld. Trial Court allowing the permission to conduct inspection with respect to the unrelieved documents lying with the CBI. It was thus, held that only after exercise of inspection, it can be

found whether there is any document which is relevant and of sterling quality that can be looked into by the Court at the stage of charge as has been held by the Hon'ble Supreme Court in *Nitya Dharananda vs Gopal Sheelum Reddy* (2018) 2 SCC 93. Without knowing the nature and context of the documents, the accused will not be able to reach any conclusion as to whether any such document lying with Investigating Authority will help him during trial or at the stage of charge.

14.2 Another aspect which has been also dealt with in the said case was the issue of further investigation which was still going on and it might get hampered due to the said inspection of the documents by the accused. In the present case in hand, no such further investigation is pending and the chargesheet stands already filed for the offences under Section 109 IPC read with Section 13(2) r/w 13 (1) (e) of PC Act against the accused persons.

15. As far as the judgment relied upon by CBI in *State of Rajasthan V. Swaran Singh @ Baba* (supra) case is concerned, the same is distinguishable on facts. In that case, the application under Section 91 Cr.P.C was moved seeking summoning of Call Details by the accused at the stage of charge. The issue of supply of unrelayed documents was not before the Hon'ble Supreme Court. Accordingly, the said judgment is not applicable to the facts of present case. The last objection raised on behalf of the CBI regarding there being no prayer for inspection of unrelayed documents is without any basis. The court can certainly

improvising the relief to the parties for meeting the ends of justice .

16. In these circumstances, **the application in hand is allowed by permitting the accused/applicant to inspect the unrelieved documents seized by the CBI during investigation as mentioned in list dated 06.04.2024 and 22.04.2024 .**

16.1 The clause 12.32 of CBI Manual 2020 which lays down the procedure of inspection of the documents kept in Malkhana on Court order be followed while allowing the inspection of records. The Defence Counsel on behalf of the applicant who is duly authorised is permitted to inspect the record alongwith the applicant accused . The S.P concerned to facilitate the inspection by issuing appropriate orders to his subordinate staff. The HIO/IO shall remain present during the said exercise so as to facilitate the said inspection. The said exercise of inspection be completed within One Week after the start of exercise of inspection by the Ld. Defence Counsel

With these directions, the application stands disposed off.

A copy of this order be given dasti to 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