

**CNR No. DLCT11-000083-2021
CBI vs Nalin Kumar
RC/DAI/2015-A-0036
CBI No. 14/2021**

07.08.2025

Present: Sh. A. K. Kushwaha, Ld. Sr. PP for CBI.

**Accused Nalin Kumar on bail.
Sh. Mohd. Ashaab and Sh. Kumar Vaibhav, Ld.
Counsels for the accused Nalin Kumar.**

**PW Manoj Kumar is present.
PW Udit Gupta is present.**

An application dated 03.06.2025 was filed on behalf of CBI for placing on record certain additional documents mentioned in the said application which were seized during the course of investigations vide Seizure Memo dated 13.08.2015.

Notice of this application was given to the accused.

Reply to this application has been filed by Ld. Defence Counsel and the same is taken on record. Copy supplied

I have heard the arguments advanced and have perused the documents sought to be placed on record.

It is submitted by Ld. Sr. PP for CBI that the documents which they seek to place on record are essential for the proper and just adjudication of the present case. It is submitted that the documents were taken into possession by CBI during the course of investigations vide Seizure Memo dated 13.08.2015, which finds mention in the list of documents. However inadvertently

the documents could not be filed along with the Charge Sheet. In support of his contentions, Ld. Sr. PP for CBI has relied upon CrI.A 1045/2000 titled “*Central Bureau Of Investigations vs. R.S. Pai and another AIE 2002 Supreme Court 1644, 2002*”

Countering the contentions of Ld. Sr. PP for CBI, it is submitted by Sh. Kumar Vaibhav, Advocate, Ld. Counsel for the accused that the present application has been filed by CBI to fill in the lacunae in their case. It is submitted that the documents which are sought to be placed on record were not inadvertently left by CBI while filing the Charge Sheet. He contended that CBI while preparing the Charge Sheet did consider all these documents and knowingly termed these documents as “*unrelied documents*” , list of which they supplied to defence. He contended that the list of unrelied upon documents supplied by CBI to the accused finds mention of these documents at Sr. No. 85 of the said list.

Ld. Defence Counsel to buttress his submissions has relied upon a law laid down by Hon’ble Supreme Court in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) SCC 1* , **relying** on which he contended that in order to have fair trial, the prosecution should have filed all the documents on which they intend to rely along with the Charge Sheet so as to give a fair opportunity to the accused to know what his case is.

It is submitted by Ld. Defence Counsel that once the trial begins, accused should not be surprised by the prosecution by

bringing in certain documents which earlier they had intentionally left out.

I have given my thoughtful consideration to the rival contentions. I have also gone through the law laid down by Hon'ble Supreme Court in this regard and as relied upon by Ld. Sr. PP for CBI as well as Ld. Defence Counsel.

Needless to say that the final destination of any criminal proceedings which once started is to unearth the truth so that justice should prevail. During this voyage, the trial needs to be just and fair and should not prejudice any of the parties. The court has to balance the twin interest of prosecution on one hand and accused on the other. An onerous duty is cast on the Court to see that the relevant and essential documents necessary for the outcome of the case should not be left out but it also need to watch the interest of the accused, so as to provide him a fair opportunity to defend himself and to see that by taking any such document at a subsequent stage, no prejudice should be caused, to the accused

Having said that, it is apparent that the precedent relied upon by Ld. Defence Counsel in Arjun Panditrao Khotkar(Supra.) did find mention of the precedent in *Central Bureau Of Investigations vs. R.S. Pai and another AIE 2002 Supreme Court 1644, 2002* , relied upon by the prosecution. It is relevant to make a mention of relevant paras as observed by Hon'ble Supreme Court in *Arjun Panditrao Khotkar case*, which reads as under:

52. It is pertinent to recollect that the stage of admitting documentary evidence in a criminal trial is the filing of the charge-sheet. When a criminal court summons the accused to stand trial, copies of all documents which are entered in the charge-sheet/final report have to be given to the accused. Section 207 of the CrPC, which reads as follows, is mandatory⁶. Therefore, the electronic evidence, i.e. the computer output, has to be furnished at the latest before the trial begins. The reason is not far to seek; this gives the accused a fair chance to prepare and defend the charges levelled against him during the trial. The general principle in criminal proceedings therefore, is to supply to the accused all documents that the prosecution seeks to rely upon before the commencement of the trial. The requirement of such full disclosure is an extremely valuable right and an essential feature of the right to a fair trial as it enables the accused to prepare for the trial before its commencement.

53. In a criminal trial, it is assumed that the investigation is completed and the prosecution has, as such, concretised its case against an

accused before commencement of the trial. It is further settled law that the prosecution ought not to be allowed to fill up any lacunae during a trial. As recognised by this Court in Central Bureau of Investigation v. R.S. Pai (2002) 5 SCC 82, the only exception to this general rule is if the prosecution had 'mistakenly' not filed a document, the said document can be allowed to be placed on record. The Court held as follows:

"7. From the aforesaid sub-sections, it is apparent that normally, the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or the charge-sheet, it is always open to the investigating officer to produce the same with the permission of the court."

54. Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an accused before commencement of the trial. Thus, the exercise of power by the courts

in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution under Sections 91 or 311 of the CrPC or Section 165 of the Evidence Act. Depending on the facts of each case, and the Court exercising discretion after seeing that the accused is not prejudiced by want of a fair trial, the Court may in appropriate cases allow the prosecution to produce such certificate at a later point in time. If it is the accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case - discretion to be exercised by the Court in accordance with law.

It is clearly evident on perusal of the observations made by Hon'ble Supreme Court that the discretion lies with the Court depending on the facts of each case to allow the prosecution to produce documents at a later stage while seeing the fact that no prejudice should be caused to the accused.

In the present case, it is apparent that the documents which are sought to be placed on record did find mention in the Seizure

memo dated 13.08.2025 and this Seizure Memo is part of list of documents relied upon by the prosecution filed along with the Charge Sheet. However, the documents which were seized through this Seizure Memo which are now sought to be placed on record were not filed by the prosecution with the Charge Sheet.

In view thereof, simpliciter to allow the prosecution to place on record these documents does not mean that the same stand proved as these documents are required to be proved by the prosecution and for that, it is evident on perusal of list of witnesses that Sh. Vidya Ratan, Sr. Office Supdt., Joint Plan Committee and Ms. Geeta Seth, wife of Sh. Anil Seth are already cited as prosecution witnesses in the list of witnesses filed along with the Charge Sheet and these witnesses are yet to be examined by the prosecution. Meaning thereby that opportunity to cross-examine these witnesses will be available to the defence and shall be granted to them. Thus, no prejudice would be caused to the accused, if the present application is allowed and the documents which are sought to be placed, on record are taken on record.

The application filed by the prosecution is accordingly allowed and the documents mentioned in the application are taken on record. Copy of these documents be supplied to the accused.

Before parting with this Order, I shall state that CBI had earlier filed a similar application for placing on record certain documents which was also allowed by Ld. Predecessor of this

Court with a caution to CBI to be careful in future but it seems that CBI has not learned from the said observation of Ld. Predecessor of this Court. Perhaps it takes time to learn.

I do hope and believe that prosecution shall not spring any other surprises for the defence as well as for the court by moving such applications in future. The application stands disposed of with these observations.

Two witness namely Sh. Manoj Kumar and Sh. Udit Gupta are present.

Summons to PW Deepak Lama has been received back unserved with the report that the address mentioned in the summons is incomplete. He be summoned again after getting his full address.

PW Manoj Kumar is examined, cross-examined as PW-16, and stands discharged.

PW Udit Gupta is examined, cross-examined as PW-17, and stands discharged.

Put up on **14.08.2025 i.e. date already fixed** for PE.

(Kanwal Jeet Arora)
Principal District & Sessions Judge-
cum-Special Judge (PC Act) (CBI),
Rouse Avenue District Court
New Delhi/07.08.2025