**CNR No. DLCT11-001429-2019**
**CC No.354/2019**
**CBI Vs. Rakesh Tiwari & Ors.**

**08.08.2022**

Present : Ms. Shweta Dhingra Ld. PP for CBI alongwith IO/DSP Kailash Sahu.

A1 Rakesh Tiwari on bail with Sh. Ajit K. Singh, Ms. Anukriti and Sh. Deepak Bhadana, Advocates.

A3 Rohit Srivastava is absent. Sh. Ankit Shah, Ld. Counsel for A3 has filed an application seeking exemption from personal appearance of A3. Heard. Exemption of A3 is allowed only for today.

A4 Robindra Pradhan on bail with Sh. Harsh K.Sharma and Ms. Bhumika Yadav, Advocates.

Sh. Kanhaiya Singhal, Ld. SPP for Income Tax Department.

Sh. Aditya Rathee, Ld. Counsel for approver Neeraj Raja Kochhar.

Ld. Counsel for approver Neeraj Raja Kochhar has filed his itinerary on 27.07.2022 from 29.07.2022 to 09.08.2022, in compliance of order dated 23.12.2021. Same be taken on record.

Ld. Counsel for approver Neeraj Raja Kochhar also filed his undertaking regarding his arrival on 05.08.2022 to India from UK(London), in compliance of order dated 23.12.2021. Same be taken on record.

Ld. Counsel for A1 seeks some more time to file the reply to the application under Section 451 of Cr. P. C. of Income Tax Authority seeking custody of cash and jewellery articles seized at the premises of A1 Rakesh Tiwari during search by CBI. Let the same be filed as last opportunity on or before the next date of hearing, with advanced copy to Income Tax Authority.

An application of A1 seeking directions to the office of the Home Secretary, Government of India to produce the documents to ascertain that the phone tapping order has been forwarded to the Review Committee and placed on record the findings of the Review Committee is pending. A letter has been received by post from the Under Secretary, Govt. of India, that the said record has already been destroyed as per Sub Rule 18 of Rule 419A of the Indian Telegraph Rules. In view of this reply, no further orders can be passed to produce the documents. The application stands disposed off.

Another application of A1 for preserving the original hard disk of the computer system of call recording system and supply of mirror image is pending. It is argued for the applicant that in view of the judgment of Hon'ble Delhi High Court passed in ***Dharamvir Singh vs CBI,148(2008) DLT 289***, the accused has a right to get the mirror image of the hard disk relied upon and also to rule out tampering and therefore, should be preserved. The application is opposed on the ground that this judgment is not applicable in the present scenario as previous the call recording system was based on voice logger system in which recording and storage of intercepted communication of the individual telephone numbers were carried out on individual computers having independent hard disk. In the present system, the recording is based upon a centralized call recorder server containing an array of number of hard disk in which the array of hard disk together functions as a single hard disk which records the call of all the targets under the legal interception and therefore, the providing of mirror image would be against the public interest and the privacy and safety of other individuals.

I have perused the judgment relied upon by Ld. Counsel for A1. In that case, hard disk were already seized and sent to the laboratory for checking and preparing copies thereof. The Hon'ble High Court in those circumstances asked to prepare and to provide the mirror image of those hard disk to the Ld. Counsel for accused that to at the stage of recording evidence. In the present case, no such hard disk has been seized and as per the reply filed by the CBI, the present recording system is based upon centralized call recording system containing number of hard disk. In present scenario, it is not possible to preserve and prepare mirror image of all these hard disk used to intercept the calls of the targeted numbers and therefore, they can not be directed to preserve or the mirror image to be supplied to the accused. The contention of the accused that conversation of all the recording conversations were not supplied is only mere apprehension, unless he points out from the call detail records that the conversation of a particular relevant call has not been provided to him. His phone was under surveillance and he must remember or point out that a particular call relevant to this case has not been provided. Accused can not be provided the mirror image of the hard disk nor there can be given any direction to preserve the hard disk considering the present recording system. The application of A1 is dismissed.

Directions vide order dated 28.04.2022 were given to CBI on an application of A1, to file in the court in sealed envelope the internal communications of CBI sent to Ministry of Home Affairs for seeking permission to keep the phone numbers of accused on surveillance. This directions has yet not been complied and in fresh submissions filed on 22.07.2022, CBI has claimed privilege to these documents in light of sections 123 and 124 of Indian Evidence Act and has also relied upon one judgment of Hon'ble Delhi High Court passed in ***CBI Vs. Om Arora & Other, Crl. M. C. No. 787 of 2014 dated 02.06.2016.*** Same is strongly opposed by the Ld. Counsel for A1 on the ground that once a direction has been passed by the Court, the CBI either has to challenge that order or to comply and therefore, action should be taken for non compliance of the directions contained in order dated 28.04.2022. I find force in the submissions of Ld. Counsel for A1. However, in facts, CBI is given last and final opportunity for compliance of the directions contained in order dated 28.04.2022.

Matter is also listed for arguments on charge. Ld. Counsel for A1 seeks some time to argue on personal ground. However, in facts, put up for arguments on charge on **06.09.2022** and on request for arguments on the application of Income Tax Authority on **28.09.2022.**

**(AMIT KUMAR)**
**Special Judge, PC Act, CBI-04**
**Rouse Avenue Courts, New Delhi**
**08.08.2022**