

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

M-89/2024

CBI No. 34/2022 (CNR No. DLCT11-000254-2022)

CBI Vs. Saurav Kumar Sharma (Applicant -CBI)

RC No DAI-2021-A-0024

PS CBI/ACB/ND

U/s 13 (2) r/w 13 (1) (b) PC Act

24.04.2024

ORDER

1. This order shall dispose off an application moved by the CBI/applicant for placing on record additional list/articles on record.

2. It is inter alia, stated on behalf of applicant/ CBI that the present case vide **RC-DAI-2021-A-0024 (hereinafter referred to as ‘DA case’/present case)** was registered against non-applicant/ accused who was the Appraiser, Customs, Chennai on 30.06.2021. Another case vide **RC-DAI-2020-A-0024 (hereinafter referred to as ‘trap case’)** was registered against non-applicant/accused and Ors while working on the aforesaid capacity under Section 120-B IPC read with Section 7, 7-A, 8 & 9 of PC Act . The said matter is now pending before the Court of Sh. Rakesh Kumar, III, Ld. Spl Judge, CBI, RADC, New Delhi and is at the stage of prosecution evidence.

2.1 It is further pleaded by the applicant/CBI that documents/articles were seized by the I.O of RC-DAI-2020-A-

0024. The chargesheet (RC-DAI-2020-A-0024) alongwith original documents were filed in the said court. The following additional documents/articles are required to be filed in the present case for purpose of trial of the present case :

(i) **An amount of Rs.1,03,50,000/-** seized vide search list/seizure/recovery memo dated 18.08.2020 in the trap case from the residential premises of Sh. Amit Kumar, C-45, Sector-44, Noida vide D-22 , which is part of the present case .

(ii) **An amount of Rs.95,000/-** seized vide search list dated 18.08.2020 made in the trap case at the flat no. 4XSIS Meridian, Velachery Chennai vide seizure memo D-27 which is part of the present case .

(iii) **DVR** seized vide handing over-cum-seizure memo dated 19.08.2020 made between Naresh Kumar DSP, CBI, SU, Delhi and Sh. Pushpender Parashar, Inspector, CBI, ACBI, Delhi alongwith secret order and certificate under Section 65B of Indian Evidence Act alongwith call recorded on 18.08.2020 seized vide seizure memo dated D-23 (which is part of the present case).

(iv) Certified copies of D-17 order of Ministry of Home Affairs in original seized in Trap case.

(v) CCTV footage seized on 18.08.2020 from the residential premises of Sh. Amit Kumar, C-45, Sector-44, Noida by Inspector Pushpendra Parashar .

3. It is argued by Ld. Sr. PP for the CBI/applicant that the documents/articles are essential for the decision in the present case and the basis of the same is already there in the chargesheet. The documents/articles are lying in the connected Trap case.

4. In the reply filed by the non-applicant/accused, it is submitted that the applicant had filed two applications under Section 207 Cr.PC during the scrutiny stage, to which CBI filed reply and the said applications were disposed off. Still the documents/articles now being sought to be placed on record were not disclosed to the accused/non-applicant herein. Besides that, following ground have also been pleaded for dismissal of the application in hand:

(i) The documents as mentioned in the application are neither replied upon nor un-relied upon documents in the present chargesheet.

(ii) The documents were never mentioned at the stage of charge nor its copies were supplied to the accused/non-applicant by the CBI.

(iii) The documents are sought to be filed at belated stage which shall cause grave prejudice to the accused/non-applicant.

(iv) The documents are unrelieved documents in the case pending before the court of Sh. Rakesh Kumar, III, Ld. Spl Judge, CBI, RADDC, New Delhi.

(v) There is no section/provision under the Cr.P.C which permits prosecution to file additional documents at the stage of trial which are neither relied upon nor unrelayed upon documents.

(vi) The documents which are sought to be filed have not been collected during further investigation.

(vii) The accused/non-applicant is entitled to have fair trial as per the procedure prescribed in the Cr.P.C.

(viii) At this stage, the prosecution cannot be allowed to fill up the lacuna and revert the case at the stage of charge.

(ix) The applicant/CBI had ample opportunity and time to disclose relied upon or unrelayed upon documents when fresh chargesheet was filed, cognizance was taken, first application and second application under Section 207/91 Cr.PC were filed before framing of charge. The CBI always submitted that there is no more relied upon or unrelayed upon documents were in the custody of CBI.

5. In addition to the grounds taken in the reply, Ld. Counsel for the non-applicant/accused has vehemently opposed the present application stating that he preferred the application under Section 207 read with 91 Cr.P.C twice before the framing of charge. His first application was filed on 05.11.2022 which was allowed vide order dated 14.11.2022. The second application was filed on 17.01.2023. The court disposed off the said application

on 23.02.2023. Ld. Counsel further argued that the documents mentioned in present application are neither relied upon documents nor unrelied upon documents in the present case. Copies of the same have never been supplied to the accused/non-applicant and therefore, at this belated stage during the trial, it shall cause grave prejudice to the accused/non-applicant and will render the trial to be unfair.

5.1 It is further argued that there is no provision in the law which permits the prosecution to file additional documents at the stage of trial which prosecution seems to be doing by moving the present application.

6. Heard and considered.

At the outset, it has to be observed that the application in hand is ill-drafted by the CBI. I.O as well as the forwarding authority need to be careful in this regard.

7. A query has been put to the CBI as to the reasons for not filing on record the said additional documents/articles as the application is completely silent in this regard. It is also apparent from the contents of the application that these articles as well as documents were very much in possession of CBI at the time of registration of present RC (DA Case) being already seized in the connected matter (Trap Case). Ld. Sr. PP for the CBI submits that it is only an inadvertent error.

8. The precursor to the present application is the trap case case registered against the accused/non-applicant herein and others on 17.08.2020. The trial of the said case is also pending in the court of Sh. Rakesh Kumar-III, Ld. Spl Judge, CBI, RADC, New Delhi. The prosecution has filed on record the documents connected to the said trap case being part of D-21 and onwards. The orders of Special Judge dated 24.01.2022 and 30.03.2022 in the said connected case are seen and perused. The application was moved by the CBI during investigation of present case seeking handing over the records i.e documents/articles from trap case to the present case (DA case) being relevant herein . Both the said requests were allowed vide order dated 24.01.2022. Specific permission was given for taking copies/certified copies of the documents/articles as mentioned in the application of CBI.

The subsequent order dated 30.03.2022 concerns the transfer of Rs.1,03,50,000/- recovered on 18.08.2020 from the house of Amit Kumar, C-45, Sector-44, Noida (examined herein as PW-4) and Rs.95,000/- on 18.08.2020 in the trap case from flat no. 4XSIS Meridian, Velachery Chennai respectively. Thus it is not new fact or article which is now being introduced . Rather CBI since beginning has been claiming that these Documents/Articles seized in Trap Case were relevant and to relied upon herein .

8.1 The original inventory memos were allowed to be handed over to the I.O of the present case as well as transfer of said seized currency amount. But, it appears that the I.O of the present case failed to comply with the said order. Accordingly, these cash amounts do not find mention in the list of relied upon

articles in the present case. It is thus apparent from the abovesaid two orders passed by the Ld. Special Judge, CBI that these articles as well as documents are not new piece of evidence which could cause prejudice to the accused/non-applicant herein. Rather the said evidence was very much in existence at the time of registration of present case.

9. As far as the contention of accused/non-applicant that filing of said articles/documents shall cause great prejudice and shall amount to unfair trial also appears to be invalid defence. The basis of all the said articles as well as documents find categorical mention in the contents of the chargesheet. The paragraph 16.8 onwards in the chargesheet has the details and reliance of investigation for recovery of Rs.1,03,50,000/- and Rs.95,000/- as well as interception of telephonic calls. The seizure memos qua the said seized amounts are already part of the present chargesheet being part of list of relied upon documents as D-22 and D-27 respectively.

10. As far as the intercepted calls are concerned, the seizure memo of the call recordings being handed to Inspector Pushpender Parashar (LW-27 herein) finds mentioned in seizure memo (D-23) part of relied upon document . Similarly, the CCTV footage seized on 18.08.2020 from the residential premises of Sh. Amit Kumar (PW-4), C-45, Sector-44, Noida, is also part of search list D-22 part of the list of relied upon documents in the present case. Therefore, the basis for the said articles as well as documents already finds part of the allegations in the chargesheet, sanction order Ex.PW-1/1 dated 24.12.2021 as

well as list of relied upon documents i.e D-22, D-23 and D-27. The mere error/lapse on the part of CBI in not filing the list of relied upon Articles separately cannot be the ground for discarding the said material piece of evidence. The contention of the accused/non-applicant that taking on record these documents/articles, at this stage during trial, would cause prejudice to him is also not reflected from the record as the chargesheet as well as sanction order (Ex.PW-1/1) and documents referred as D-22, D-23 and D-27 already stand supplied to him. Therefore, the non-applicant/accused had the knowledge of allegations and material against him before the start of the trial.

11. The next contention of the accused that despite his two applications u/s 207 CrPC, CBI never placed these documents/articles on record is also misinterpretation of the said applications. Both the applications dated 05.11.2022 and 17.01.2023 concern the supply of unrelieved upon documents and articles/documents now sought to be placed on record were rather part of already relied upon documents as discussed-above. The contention of the accused about lack of any provision of law for such application is also rejected as the Court u/s 91 of CrPC has all the powers for summoning the documents/articles which is necessary for the trial in any case pending before it. In the present case in hand the articles /documents now sought to be placed on record are material piece of evidence which were earlier not cited due to clerical lapse on the part of CBI at the time of filing of the chargesheet.

12. In view of the above, the application in hand is allowed and the documents/articles as mentioned in Para-4 of the application of CBI are taken on record.

CBI to file fresh list of documents in this regard.

Announced in the open Court
on 24.04.2024

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