

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

IA No- 2/2024

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

CBI V. Saurav Kumar Sharma

RC No. DAI-2021-A-0024

PS CBI/ACB/ND

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

01.08.2024

Present : Sh. Arvind Kumar Shukla (VC), Ld. Counsel for the applicant/Komal Prasad Sharma.

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

ORDER

1. This order shall dispose off an application under Section 457 Cr.P.C moved on behalf of applicant Komal Prasad Sharma for releasing an amount of Rs. 1,03,50,000/- and Rs.9,00,000/- seized by the CBI.

2. It is, inter alia, pleaded in the application that applicant is senior citizen and is critically ill with various serious ailments. He has also undergone several surgeries and is still under regular treatment. It is further pleaded that on 18.08.2020, CBI team after pressuring and threatening brother-in-law of applicant herein namely Sh. Om Dutt Sharma (father of accused Saurav Kumar Sharma) visited his house C-45, Sector-44, Noida, U.P. The applicant was not available at his house. Sh. Om Dutt Sharma asked the son of the applicant to bring a bag from inside

which was having some stuff. The CBI team took said bag and left the house of applicant. On checking the bag, when no money was found, the CBI Inspector became furious and threatened his brother-in-law (Sh. Om Dutt Sharma father of accused Saruav Kumar Sharma) to arrange for money if he wanted to save the life of his son.

2.1 It is further pleaded that the CBI team again visited the house of the applicant herein and discovered a suitcase full of cash. The applicant had kept the said amount for his treatment and surgery. The CBI took signatures of son of the applicant namely Amit Sharma on various blank papers/ documents. The whole raid was conducted without any legal search warrant. The amount of Rs. 1,03,50,000/- in the suitcase was received by the applicant herein from his rental income and payments from agricultural sale proceeds in cash . Besides this, the applicant had withdrawn cash from his bank account etc. The copy of search memo is attached with the applicant as Annexure-A-1. It is further pleaded on behalf of the applicant that the said amount was kept for his treatment and surgeries during the Covid-19 pandemic.

2.2 It is further pleaded on behalf of applicant that amount/cash of Rs. 1,03,50,000/- belongs to the applicant .It is duly reflected in Income Tax Return for the Financial Year 2020-2021, 2021-2022, 2022-2023 and 2023-2024 of the applicant. The copies of income tax assessment records too are attached with the present application as annexure A-2 (colly).

2.3 It is further pleaded on behalf of the applicant that again on 01.07.2021 at around 4:10 p.m, one CBI team again came to the applicant's house for conducting search without any cogent reason. The applicant was still bed-ridden at that time. The CBI team recovered a sum of Rs. 15 lacs in cash in the house which the applicant had arranged and collected from his agricultural income besides borrowing from his relatives/friends for his surgeries as well as treatment of his daughter-in-law. The CBI seized cash of Rs.9 lacs, leaving behind Rs.6 lacs in cash arbitrarily. The medical condition of the applicant was duly mentioned in the search-seizure memo dated 02.07.2021 due to which amount of Rs.6 lacs was left by the CBI. The search memo dated 02.07.2021 is attached with application as Annexure-A-3.

2.4 It is further stated that due to aforesaid illegal search and seizure, the surgery of daughter-in-law of applicant got affected and she passed away leaving behind two year old toddler and new born infant. Copy of death certificate is attached with the application as Annexure-A-4. Copies of medical records are also attached as Annexure A-5 (colly).

2.5 The CBI team had shown to have recovered the amount in denomination of currency notes of Rs.2000/- which are now lying in the Malkhana. The currecny is now out of circulation. After the death of his daughter-in-law, his son is in serious trouble mentally, physically and financially. The applicant is also under liability to refund family loans taken by him for his treatment and seized by the CBI unauthorisedly without search

warrants. Thus, there is dire need of money. The applicant had no connection with the Saurav Kumar Sharma and no money was kept in the house by his father Om Dutt Sharma, however, the CBI has concocted the story. It is further pleaded that the amount recovered from the house of applicant belongs to the applicant only and accused Saurav Kumar Sharma had nothing to do with said amount of Rs. 1,03,50,000/- and Rs.9,00,000/- recovered from the house of the applicant. **Hence, prayer is made for passing appropriate orders for releasing the aforesaid amount seized vide seizure memo dated 18.08.2020 and 02.07.2021.**

3. In the reply filed by the CBI, it is pleaded that RC DAI-2021-A-0024 was registered against accused Saurav Kumar Sharma, Appraiser, O/o Chief Commissioner of Customs, Chennai, Tamil Nadu and other unknown person on 30.06.2021 under Section 13 (1) (e) & 13 (1) (b) of PC Act on the basis of source information. Accused Saurav Kumar Sharma was found indulging in corrupt activities and had amassed assets disproportionate to his known source of income. It is further pleaded that another RC DAI-2020-A0024 CBI ACB Delhi was already registered against said accused Saurav Kumar Sharma & others on 18.08.2020 with allegation of undue advantage obtained by the accused persons in criminal conspiracy with each other. In the said case CBI team recovered a sum of Rs. 1,03,50,000/- at the instance of Om Prakash Sharma (father of accused Saurav Kumar Sharma) from the residence of applicant herein Sh, Komal Prasad Sharma (Fufaji of accused Saurav

Kumar Sharma) situated at C-45, Sector-44, Near Amity University, Noida.

3.1 It is further alleged that on 18.08.2020 accused Saurav Kumar Sharma made a telephone call to his father Om Dutt Sharma over his mobile phone no. 9971512522 at about 4:00 a.m from his mobile no. 9176141829 and asked him to remove all the things from his residence. The conversation between them is detailed in para-5 of the reply. The said call was intercepted and recorded by Special Unit, CBI, New Delhi. Subsequent to the said call, father of accused Saurav Kumar Sharma took a bag containing amount of Rs. 1,03,50,000/- and handed over the same to Amit Sharma son of the applicant herein. Sh. Om Dutt Sharma later admitted having received call from accused Saurav Kumar Sharma and taking the aforesaid amount in a bag and keeping the same at the house of applicant. The CBI on 18.08.2020 alongwith independent witness reached at the aforesaid house C-45, Sector-44, Near Amity University, Noida and recovered the said amount at the instance of Om Dutt Sharma.

3.2 It is further submitted in the reply that though later on during investigation Om Dutt Sharma claimed that the recovered amount of Rs. 1,03,50,000/- belonged to him which was duly reflected in his ITRs. However, the investigation revealed that neither Om Dutt Sharma had filed any ITRs prior to 18.08.2020 nor any plausible explanation/document was provided by him or the applicant herein. Amit Kumar son of the applicant herein too admitted in his statement that Om Dutt Sharma came to his

house with large bag and handed over the same in his safe custody. CCTV footage of the house also proved entry of the Om Dutt Shama and recovery of the amount made by CBI.

3.3 During the investigation no ITR record was filed by applicant .The ITRs now filed were analysed which showed inconsistency in rental income which were shown at the higher side in order to legitimize ill-gotten money of accused Saurav Kumar Sharma. Thus, there is no ground shown by the applicant as to how huge amount of Rs. 1,03,50,000/- was found accumulated in cash.

3.4 Other pleas made in the applicant have been denied parawise. It is specifically submitted that when instant DA case was registered against accused Saurav Kumar Sharma, searches were conducted including the residential premise of the applicant herein on 01.07.2021. **During the said proceedings, the seized items recovered from the residential premise of the applicant which are unrelid documents including cash of Rs. 9,00,000/-.** In this regard, CBI has already submitted list of unrelid documents in the court. Hence, prayer is made to dismiss the present application.

4 **Heard and considered.**

5. The present application has been moved by the applicant with following two prayers:

- (i) **Allow the present application and pass the orders for releasing of Rs. 1,03,50,000/- which were seized by CBI officials on 18.08.2020;**
and or

(ii) Also pass the orders for releasing of Rs. 9,00,000/- which the CBI had seized on on 01.07.2021.

6. In nutshell, it is the case of the prosecution that initially accused Saurav Kumar Sharma who is the son of brother-in-law of the applicant herein was booked in connected case bearing R.C DAI-2020-A-0024 CBI/ACB. During investigation in the said case, the search of the various premises connected to the said Saurav Kumar Sharma and his father Om Dutt Sharma (brother-in-law of applicant herein) were conducted. In this manner, the recovery of amount of Rs.1,03,50,000/- was effected. The recovery of the second amount of Rs.9,00,000/- sought to be released in the present application was effected after the registration of present case of DA against Saurav Kumar Sharma.

7. As the prayers concern to the release of above-said two amount, firstly the issue of release of Rs.1,03,50,000/- is being taken up.

7.1 It is the case of the prosecution that the recovery of said amount of Rs.1,03,50,000/- was effected at the instance of Om Dutt Sharma, father of the accused Saurav Kumar Sharma from the residence of applicant herein i.e C-45, Sector-44, near Amity University, Noida on 18.08.2020. The document D-22 is the search list with respect to the description of articles seized from the residential premises at the instance of Amit Sharma son of applicant herein. The description of the articles seized and the remarks column narrates the sequence of events which took place leading to the recovery of Rs.1,03,50,000/- as well as seizure of

CCTV DVR installed at the said premises apart from other documents.

7.2 The CBI team was led by Inspector Pushpender Prashar who has been examined as PW-6 in the present case. He was accompanied by other CBI officials and one independent witness namely Azad Singh who is under examination as PW-15. He is the official from Horticulture Department, MCD, Rohini, Sector-5, Delhi. The address of the said premises came to be disclosed to the CBI officials by Om Dutt Sharma father of accused Saurav Kr. Sharma and at his instance only, the CBI team proceeded towards the said house. Search authorisation was obtained before conducting the search of the said house/premises.

7.3 As far as the recovery of amount of Rs.1,03,50,000/- is concerned, as per the contents of D-22, Om Dutt Sharma himself asked Amit Sharma to bring the bag which had delivered to him in the morning which Amit Sharma brought . The said bag, on search, was found to be containing currency notes of denomination of Rs.2000/- and Rs.500/- totalling to Rs.1,03,50,000/-.

7.4 Though the applicant herein in the application has pleaded altogether different version with respect to the events which took place leading to the recovery of above-said amount. It is further argued on behalf of the applicant, that his brother-in-law (Om Dutt Sharma) who is the senior citizen was coerced for recovery of the said amount. Firstly, the bag which was handed over by his son contained stuff of applicant's deceased mother-in-law

who had expired on 14.08.2020. Thereafter under the pressure from CBI officials, the search was again carried out at their house in an illegal manner which led to recovery of said cash. The applicant claims to have arranged the said amount for his treatment and surgery during Pandemic Covid-19.

7.5 As far as the said events as pleaded by the applicant are concerned, no evidence has come on record till date except the version of his son Amit Sharma (PW-4). He too in the cross-examination conducted on behalf of accused stated that after search of their house, suitcase of their father was taken out by the CBI officials having some money. However, he failed to disclose about the details of the said money seized. Further, he claimed that his signatures were obtained on four-five blank pages. As far as his signature on D-22 (Ex.PW-4/1) is concerned, he claimed that he had signed the same without going through its contents. Though, the version of PW-4, at this stage, cannot be appreciated, however, taking a bird's eye view, it does not probablise the contents of the present application. On the contrary, the independent witness Azad Singh (PW-15) has deposed about the bag being brought by Om Dutt Sharma having currency notes of Rs.1,03,50,000/-.

8. The primary ground taken by the applicant herein for justifying the claim over the said recovered amount is that he had arranged the said funds for his treatment and surgery during Pandemic Covid-19. No doubt, the period in question i.e August 2020 was the time when the country was hit by Covid-19, but the issue to be seen as to whether the documents relied upon by the

applicant probablizes his version with respect to his claim of having kept the said huge funds to the tune of Rs.1,03,50,000/- for his treatment and surgery. The medical documents are annexure A-5 (collectively). The said medical documents are from the period w.e.f Feb.2018 to the period till date. The medical documents of period right from Feb.2018 till August 2020 are relevant herein. None of the documents reflects that the applicant was advised any medical surgery though he was having kidney problem and was getting symptomatic treatment. Further, the medical documents itself reflect that during the year 2020, the primary mode of payment, be it Max Hospital or Kailash Heart Institute, was through credit card or other banking channels. Thus, the said medical documents do not, in any manner, probabalize the plea of the applicant that he had arranged and kept such a huge amount in cash with him for his medical emergencies during Covid-19 Pandemic period.

9. The other ground pleaded on behalf of the applicant herein for justifying his claim over the said seized amount Rs.1,03,50,000/- is by placing reliance upon the Income Tax records. The applicant has filed on record ITR for the assessment year 2020-2021,2021-2022, 2022-2023 & 2023-2024 (Annexure-2 collectively). Surprisingly, the analysis of the said Income Tax Returns (ITRs) reflects that how his total income has consistently decreased since year 2020 which is as under :

	Year	Amount
(I)	Assessment Year 2020-2021	Rs.58,160,20/-
(II)	Assessment Year 2021-2022	Rs.36,15,580/-
(III)	Assessment Year 2022-2023	Rs.28,68,390/-
(II)	Assessment Year 2023-2024 -	Rs. 12,82,920/-

10. It is well established fact that the FY 2020-2021 as well as 2021-2022 were affected by Covid-19 Pandemic and income of every individual having private business had suffered losses. But, the applicant's income was consistently high during the said Pandemic affected assessment years which has now taken sudden drop after the end of the Pandemic, despite his claim that his majority income was from rent.

11. Another factor which puts a big question mark over the claim of the applicant is the material inconsistency with respect to the income earned from house property with respect to the letting out of top floor of his property bearing No. C-45, Sector-44, Noida, U.P. All the ITRs reflect that the said property was with tenant M/s ATC Telecom Infrastructure Pvt Ltd. The rent paid towards the said property by said tenant was Rs. 79,98,70,000 for the Assessment Year (AY) 2020-2021, Rs. 50,00,680/- for the AY 2021-2022. Then suddenly there is drop and rent is stated to be Rs. 7,64,000/- for the AY 2022-2023 and Rs. 5,67,507/- during AY 2023-2024. It is apparent that the same tenant for the same premises was initially paying around Rs. 79 lacs which has suddenly dropped to meagre amount of 5.5 lacs. Therefore, in the said backdrop, not much reliance can be placed upon the said Income Tax record relied upon by the applicant herein to justify his claim for income with respect to the seized cash of Rs. 1,03,50,000/-. Rather the said inconsistency in the income record of the applicant requires investigation by the IT authorities.

12. It is also reflected from the search seizure memo (D-22 Ex.PW-1/4) that the copy of the seizure memo was handed over to the son of the applicant herein. Despite that, the applicant herein never raised his claim over the said seized amount during investigation. Rather, his brother-in-law Om Dutt Sharma, father of accused Saurav Kr. Sharma, raised claim over the said amount during the investigation. But, the said claim was found to be false. No explanation is offered in the entire application as to the unreasonable delay right from August 2020 till July 2024 in not raising the claim for the said amount. Thus, the prayer made in the present application qua release of Rs.1,03,50,000/- is declined being devoid of any merits and applicant having failed to justify his claim over the said amount.

13. As far as second prayer with respect to release of amount of Rs.9 lacs is concerned, it is apparent from the reply filed by the CBI that the said amount is part of Unrelied List of Documents being not part of present chargesheet. Therefore, in the said backdrop, there is no hindrance with respect to release of the said amount of Rs.9 lacs as the applicant herein being the rightful claimant.

14. In view of the above, the applicant in hand is partially allowed only with respect to prayer no.(ii) for releasing the amount of Rs.9 lacs only and the prayer no.(i) qua release of Rs.1,03,50,000/- is rejected. **The CBI is directed to release amount of Rs.9 lacs to the applicant herein 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 said cash amount lying with the CBI Malkhana.

15. As far the amount of Rs 1,03,50000 is concerned it is lying in the CBI malkhana. The apprehension is expressed by the applicant that it is not the appropriate and safe mode for keeping the said huge cash amount. The said issue needs to be looked into in view of the mandate of the Hon'ble Supreme Court in Sunderbhai Ambalal Desai vs State of Gujarat (2002) 10SCC 283 and appropriate order needs to be passed as the claim of the applicant has been rejected. The relevant para 14 of the judgment is reproduced hereunder :-

“In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the Court may direct that such articles be kept in bank lockers. Similarly, if articles are required to kept in police custody, it would be open to the SIO after preparing proper panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the Court may direct that such articles be handed over back to the Investigating Officer for further investigation and identification, However, in no set of circumstances, the Investigating Officer should keep such articles in custody for a longer period for the purpose of investigation and identification. For currency notes, similar procedure can be followed.”

16. The investigation qua the said amount 1,03,50,000/- is already over and the chargesheet has already been filed against the accused. The matter is under trial and the recovery of said amount is only required to be proved. Therefore, in the said backdrop, the amount in question of 1,03,50,000/- be deposited as FDR in the bank by S.P. concerned. Before depositing the said

amount appropriate Panchnama be prepared having all the necessary details of the said seized amount. The Panchnama and the compliance report be filed on the date fixed in the main case.

Nothing stated here-in-above shall tantamount to an expression of opinion on the merits of the present case.

A copy of this order be given dasti to the parties.

Copy of the order be also sent to S.P concerned for necessary action.

Announced in the open Court
on 01.08.2024

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