

CBI No. 334/2019 (CNR No. DLCT11-001373-2019)
CBI Vs. Dushyant Kumar
RC No. DAI-2018-A-0020
P.S CBI/ACB/ND U/s 7,13(2) r/w 13 (1) (d) of PC Act 1988

04.09.2024

Present : Sh. Hari Mohan, Ld. Sr. Public Prosecutor for CBI.
HIO Dy. S.P Sachan Anmol.

Accused Dushyant Kumar on bail with
Ld. Counsel Sh. Umesh Sinha & Sh. Aditya Yadav,
Advocate.

MHC (M) Constable Gopal with case property

PW-15 Nikesh Upadhyay has sent written request for exemption from personal appearance through Pairvi Officer via Whatsapp stating that as he is appear before Hon'ble High Court in case FIR No.58/2017, PW EOW, Delhi, he is unable to appear today. In view of the submission, PW-15 is exempted from personal appearance only for today.

PW-19 Dr. Subrat Kumar Choudhary examined-in-chief and cross-examined at length on behalf of accused today till 1:30 p.m. His further cross-examination is deferred at request of Ld. Counsel for accused as he is not available after lunch and also wants to go through the worksheets supplied to him today before further cross-examining PW-19.

Reply to the application (IA No.2/2024) of accused seeking supply of spectrogram analysis and any other report of Voice Expert on the basis of which he gave his opinion before effective cross-examination.

The copy of said spectrogram analysis has been supplied to Ld. Counsel for the accused/applicant during the cross-

examination of PW-19 Dr. Subrat Kumar Choudhary. Accordingly, the application (**IA No.2/2024**) in hand stands disposed off.

The Medical condition report qua Mohinder Singh (PW-8) is also filed by the HIO in terms of previous order.

It is, inter alia, stated in the aforesaid report that Dr. Sachin Gupta, Senior Consultant/Assistant Professor, Neuro-Surgery, Amrita Institute of Medical Sciences and Research Centre, Faridabad has informed through his letter dated 30.08.2024 that he examined Mohinder Singh last on 23.07.2024 when he was conscious and oriented. He has not examined him thereafter and as such he is not in a position to comment on the present status of the patient. The said letter is annexed with the report.

It is further stated in the report that Mohinder Singh (PW-8) was visited at his residence at B001, Kunjean Heights, Sector-88, Faridabad on 30.08.2024. He was found present in his residence alongwith his wife Ms. Jaswinder Kaur and his attendant namely Deepak Chaudhary. His wife told that Mohinder Singh (PW-8) is still under treatment from Dr. Sachin Gupta at Amrita Hospital. She further told that he is wheel chair bound and needs assistance in his day to day activities. The photographs of the Mohinder Singh (PW-8) are enclosed with the report.

At this stage, Ld. HIO and Ld. Sr.P.P for the CBI submits that Mohinder Singh (PW-8) is bed-ridden condition though he is fit for deposition. Therefore, request is made by Ld. Sr. PP for CBI for examination of the said witness through Video-Conferencing.

Ld. Counsel for the accused also submits that he has no objection to the recording of the examination of said witness through Video- Conferencing in terms of **Video Conferencing Rules 2021** dated 26.10.2021 of Hon'ble High Court of Delhi.

As far as the mental condition of the witness is concerned, the concerned doctor Sh. Sachin Gupta, Senior Consultant/Assistant Professor, Neuro-Surgery, Amrita Institute of Medical Sciences and Research Centre, Faridabad, in his letter dated 30.08.2024 has opined that at the time of discharge i.e 23.07.2024, the patient was conscious and oriented. The discharge summary report is also there which too reflects that after necessary treatment, he was discharged and his vitals were stable at that point of time. The discharge instructions do not in any manner reflect he being not mentally fit to depose as a witness. Though as far as his physical condition is concerned, his photographs annexed with the report itself reflect that he is on wheel chair and not in a position to appear before the Court for his deposition. In these circumstances, the issue to be seen as to whether his examination is to be conducted through Commission as has been requested through his application by the accused or through Video-Conferencing.

It is stated by Ld. Sr. PP as well as Ld. Counsel for the accused that his examination-in-chief is already recorded on 12.03.2020 and 09.02.2021. He has been cross-examined on behalf of the accused on 26.11.2021 and 22.09.2022. Thus, extensive cross-examination of the witness is already conducted and only some cross-examination is left to be done/conducted.

Thus, keeping in view the circumstances and also the physical condition of the witness, the appropriate course is to make an attempt for recording his cross-examination through Video-Conferencing.

The Video-Conferencing Rules 2021 as well as Section 254 of BNSS, 2023 provides for recording of testimony of such witness. Rule 5.3.10 also provides for the cases where required person/witness can be examined at any other location apart from the locations specified from 5.3.1 to 5.3.9.

Thus, Mohinder Singh (PW-8) can be examined from his home provided the facilities as stipulated in Rule 4 are available. **Ld. Sr. PP for the CBI and HIO submits that they will ensure the availability of said facilities under Rule 4 at the residential accommodation of the witness at their own expenses.**

Under these circumstances, the request for examination of Mohinder Singh (PW-8) is allowed through Video-Conferencing from his home. The Remote Point for examination of Mohinder Singh (PW-38) shall be B001, Kunjean Heights, Sector-88, Faridabad, Haryana. The Co-ordinator at the Court Point shall be the Reader and Co-ordinator at the Remote Point shall be Ahlmad. The expenses qua travelling of the Co-ordinator to Remote Point shall be borne CBI.

Ld. Counsel for the accused to produce the list of documents, if any, which are required to be confronted or shown to the witness during cross-examination so that requirement of Rule 5 can be complied with.

Copy of the order be given dasti to Ld. Counsel for the accused as well as CBI for compliance.

The date of examination of the said witness shall be fixed on the next date of hearing.

Issue fresh summons to **PW-15 Nikesh Upadhyay and PW-19 Dr. Subrat Kumar Choudhary for NDOH.**

The case property desealed in the examination of the witness today be resealed.

Be listed for PE on **23rd September 2024.**

(GAGANDEEP SINGH)
Special Judge, PC Act, CBI-04
Rouse Avenue District Courts,
New Delhi: 04.09.2024