

MHPU010210362024



CBI

Vs.

Naresh and others

Order below Exh.29(Dated: 05th August, 2025)

This application has been filed by applicant/accused No.3 **Shoaib Raju Shaikh**, for discharging him from the offence punishable under section 120B of the Indian Penal Code (IPC) read with section 7 of the Prevention of Corruption Act, 1988 (as amended in 2018) (P. C. Act).

2. Perused application, rejoinder and reply filed by CBI through Ld. PP at Exh.37. Also perused entire charge-sheet and record. Heard both the sides.

3. Ld. Advocate for the applicant/accused contended that the applicant/accused is not a public servant, therefore he cannot be prosecuted under PC Act. The offence punishable under section 120B of IPC cannot be placed in routine manner. For the application of section 120B of IPC, strong, cogent connecting evidence is required. The voice spectroscopic report are yet to be received from CFSL, New Delhi and as per Chemical Examination Report there is no incriminating evidence against the applicant/accused. The applicant/accused has not violated any provision of Law. He is innocent. The charge-sheet is nothing but a peace of hypothetical story in which there is nothing to constitute a prima facie case against the applicant/accused. There is no allegation that the applicant/accused demanded any bribe to complainant. There is also

no evidence to show that applicant/accused was working on behalf of accused No.1. There is no material of criminal intent on the part of applicant/accused. There is no evidence to show that applicant/accused hatched conspiracy with co-accused Naresh and Jaykumar and in pursuance of criminal conspiracy co-accused demanded and accepted undue advantage of Rs.1,00,000/-.

4. It is further contended that no work of complainant was pending with applicant/accused. The applicant/accused was not in a position to favor the complainant by abusing any official position connected with public duty, therefore there was no reason to demand any bribe by applicant/accused to complainant. It is contended that there is no allegation of demand against applicant/accused in entire charge-sheet. In entire story of prosecution no specific role is attributed to applicant/accused. The applicant/accused has been arrayed in this case only on the basis of conjuncture and surmises, which cannot take the place of proof. It is contended that as per prosecution, the applicant/accused acted as middle man for negotiation of amount for accused No.1 Naresh and the applicant/accused had knowledge of bribe and he was instrumental in citing to raise demand by accused No.1 Naresh from complainant, but there is no evidence to that regard to connect the applicant/accused with the said allegations. It is contended that the voice samples of accused persons have been taken without following the mandatory guidelines. It is contended that only on the basis of phone calls between the applicant/accused and co-accused, the applicant/accused cannot be prosecuted. The allegations against the applicant/accused are hypothetical and without legal proof. It is

contended that the applicant/accused never demanded or accepted any undue advantage from complainant. There is no recovery of bribe amount from applicant/accused. The name of applicant/accused is not mentioned in the FIR. Nothing incriminating has been found against applicant/accused in the phone of co-accused. There is no independent corroboration to the story of prosecution to connect the applicant/accused with crime. The statements of material witnesses have not recorded, which creates doubt on the prosecution case. The Voice Identification panchnama does not constitute any evidence against the applicant/accused. There is nothing incriminating in the conversation between accused No.1 Naresh and applicant/accused. There is no compliance of section 65B of the Indian Evidence Act. There is no independent, corroborating evidence on record to connect the applicant/accused with alleged crime. It is contended that initially only offence under section 7 of PC Act was levelled, but later on offence punishable under section 120B of IPC came to be added. It is contended that the applicant/accused is not public servant and there is no evidence on record to connect the applicant/accused with the alleged crime. There is absolutely no evidence to frame the charge against the present applicant/accused for alleged offences, therefore, the charge being groundless, the applicant/accused be discharged by allowing the present application.

5. The learned Advocate for the applicant/accused relied upon following authorities -

i) Dileepbhai Vs. State of Gujarat (decided by Hon'ble Supreme Court of India on 27.02.2025)

- ii) *Dharmesh Sharma Vs. Tanisha Sharma (decided by Hon'ble Himachal Pradesh bench at Shimla on 17/10/2024.)*
- iii) *Pravin Vs. State of Haryana (Appeal No.1571/2021-LL 2021 SC 715),*
- iv) *Dinesh Kumar Mathur Vs. State of M.P (2025 Live Law (SC) 20] and*
- v) *Niraj Datta Vs. State of NCP decided by Hon'ble Supreme Court on 15/12/2022.*

6. *Per contra*, Ld. P.P. Mr. Arvind Kumar for CBI strongly opposed the application contending that the instant case was registered by CBI-ACB, Pune on 19/09/2022 for the offence punishable under section 7 of P.C. Act on the basis of verification of written complaint dated 17/09/2020 lodged by complainant Nitin Jagtap. As per complaint, accused No.1 Naresh had demanded an undue advantage of Rs.3 Lakh from the complainant for not forwarding the inspection queries and to avoid any action from department of telecom with regard to business of Hindavi Telecom Pvt. Ltd where complainant was working as Nodal Officer. It is contended that during the verification panchnama the demand was confirmed and therefore on 19/09/2022 the trap was led and during trap, the accused No.1 Naresh was caught red-handed while demanding and accepting undue advantage of Rs. One Lakh as first installment from complainant. It is contended that during investigation it is revealed that applicant/accused has acted as middle man for accused Naresh for negotiation of amount of advantage to be obtained from complainant. It is contended that the conversation found in the seized mobile handset of accused No.1, the role of

applicant/accused is confirmed. There are incriminating conversation which connects the applicant/accused with the crime. The offence punishable under section 120B of IPC read with section 7 of P.C. Act is clearly made out against the applicant/accused. It is contended that the offences committed by the applicant/accused and co-accused are very serious in nature. The applicant/accused has given his voice samples voluntarily, therefore there is no question of breach of any guidelines. The FIR is not encyclopedia, therefore, non mentioning of name of applicant/accused in FIR is not sufficient to discharge him when there is ample evidence on record against him to connect with the crime. It is contended that the minor discrepancy, if any, is to be decided during trial. It is contended that at the time of deciding discharge application no roving inquiry is required. The charge can be framed on the basis of strong suspicion, but in this case, there is prima facie case against the applicant/accused for alleged offence. Therefore, it is prayed to reject the application.

7. At the outset, it is pertinent to mention that from record it appears that the applicant/accused has been charge-sheeted for the offence punishable under section 120B of IPC read with section 7 of P. C. Act.

8. No doubt, that the applicant/accused is not public servant, but for prosecuting person for offence punishable under section 120B of IPC read with section 7 of P.C. Act, the person need not be a public servant. It is not the case of prosecution that the applicant misused his position to receive the undue advantage, but the allegations against the applicant/accused are that he conspired

with co-accused, aided him and abetted him to demand and accept the bribe from the complainant.

9. As per prosecution case, the complainant Nitin Jagtap was working as Nodal Officer of Hindavi Telecom Pvt Ltd, Wadki, Pune and accused No.1 Naresh Badhawat, ITS was working as Asst. Divisional Engineer, Telecom (technology) office at Advisor MH LSA, Pune, Department of Telecom (DoT), Ministry of Communication. It appears that the co-accused Naresh Badhawat had conducted inspection and made queries in respect of work of Hindavi Telecom Pvt. Ltd. It further appears from charge-sheet that the co-accused Naresh had demanded an undue advantage of Rs.3,00,000/- from complainant for not forwarding the said inspection queries and to avoid any action from DoT with regard to business of Hindavi Telecom Pvt. Ltd. as internet service provider for which license was obtained from DoT. It further appears from the charge-sheet that the verification of the complaint was made and the demand was confirmed. It appears that during meeting complainant requested co-accused Naresh to reduce the demand of undue advantage of Rs.3,00,000/- and accordingly accused Naresh reduced the same to Rs.2,00,000/- and stated to obtain Rs.1,00,000/- on 19/09/2022 and remaining amount after four-five days. It further appears that the trap was led on 19/09/2022 and the co-accused Naresh caught red handed while demanding and accepting undue advantage of Rs.1,00,000/- as first installment from complainant. It further appears that the involvement of another co-accused Jaykumar Thorat is revealed, therefore, he also came to be arrested in this case. It appears that on the day of trap, the mobile handset of accused

Naresh Badhawat came to be seized and during investigation the conversation between accused Naresh and applicant/accused found in the said mobile. It appears that the applicant/accused voluntarily gave his voice specimen in presence of witnesses. The complainant who was having previous acquaintance with the applicant/accused identified the voice of accused Naresh and applicant/accused.

10. On perusal of transcript of conversation dated 17/09/2022 between accused Naresh and applicant/accused, it appears that the applicant/accused said “हा आपका इश्यु क्या है, आप कैसे लटक सकते हो, क्या कर सकते हो, आपके हिसाब से बता दिजीए” (What is your issue, How you can involved, what can you do, tell as per your choice). “हम पेमेंट का फिर देख लिजिए, (then look after about my payment), when the accused Naresh asked to applicant/accused "तो क्या कितना करेगा, आप थोडा बता दो, थोडा हिंट तो दे दो, मै उसके हिसाब से बोलता हू, जादा देर रुकना नही चाहता मै” (How much he will pay, you tell me, give some hint, accordingly I will tell, I do not want to wait for long time), at that time applicant/accused replied, “मुझेही समझ् नही आ रहा है क्या बोलु” (I am not getting what to say) then again accused Naresh asked to applicant/accused, "एक लाख तक ले सकते है क्या” (whether upto one lakh can be obtained), on that applicant/accused replied "हा बोल दिजिए एक लाख” (yes tell him one lakh). So also the conversation between accused Naresh and applicant/accused not only shows his knowledge about the demand of bribe, but he was very much involved in the said offence of demanding bribe as he suggested accused Naresh how much amount he can demand to the complainant. The conversation between the accused Naresh and applicant/accused prima facie shows that they hatched conspiracy of the offence of demand of

bribe. The material in the charge-sheet is sufficient to attract the offence punishable under section 120B of IPC read with section 7 of P.C. Act against the applicant/accused. Moreover, the applicant/accused had voluntarily had given his voice specimen. The voice of the accused Naresh and applicant/accused has been identified by the complainant, who had earlier had conversation with accused Naresh and applicant/accused. So, there is prima facie case against the applicant/accused for the alleged offences. It is settled law that FIR is not encyclopedia therefore not mentioning name of applicant/accused is not sufficient to discharge him when his involvement in crime is revealed during investigation. So also the certificate under section 65B of Indian Evidence Act is required at the time of tendering electronic evidence, that stage is far away. During investigation the other offences can be added. Moreover, the applicant/accused has not made complaint that his voice samples were taken forcefully, therefore, the contentions of Ld. Advocate for applicant/accused are having no force.

11. Though, the Ld. Advocate for applicant/accused cited above mentioned ruling in his rejoinder (Exh.39) but has not filed the said rulings before this Court. Even then I go through some rulings which could be trace out, so that the applicant/accused should not get prejudiced.

12. In case of **Dharmesh** (supra), the conversation between wife and her mother was being produced before the Family Court by the husband as evidence against the wife. In that case, the conversation between wife and her mother was recorded by husband

without legal permission and therefore, the said conversation was held not admissible and breach of right of privacy. In the case in hand, the conversation of accused Naresh with applicant/accused is found in the mobile of accused. The same is a prima facie circumstantial evidence against the applicant/accused in respect of hatching of conspiracy with accused Naresh. The said conversation was not illegally recorded by the investigation agency, who intends to prove the case against the applicant/accused. Therefore, with due respect the cited authority is not helpful for applicant/accused.

13. In case of **Pravin** (supra) except the confession statement of co-accused there was no other corroborative evidence on record, therefore, the conviction of accused was set aside. The said case was decided on merit after conclusion of evidence. In the case in hand, the charge is yet to be framed. Moreover, there is recorded conversation between applicant/accused and co-accused available on record. Therefore, with due respect the cited authority is not helpful for applicant/accused.

14. The facts and circumstances of cases of **Dinesh Kumar and Niraj** are altogether different from the facts of case in hand, therefore, with due respect both the authorities are not helpful for applicant/accused.

15. In case of **Dileepbhai** (supra) only offence punishable under sections PC Act were levelled against the accused, but in case in hand the offence punishable under section 120B of IPC read with section 7 of PC Act has been levelled against the applicant/accused,

therefore, with due respect the cited authority is not helpful for the applicant/accused.

16. It is settled that while considering the application for discharge, it is not required to see whether the accused shall ultimately be convicted for the alleged charge, but it is required to be seen whether there is *prima facie* case against the accused for framing charge. It is settled that even on the strong suspicion, the charge can be framed against the accused. In the case in hand, in view of above discussion sufficient material is on record which *prima facie* shows the involvement of present applicant/accused in alleged crime. Other contentions of Ld. Advocate for applicant/accused are required to be decided at the time of trial, thus, the contention of Ld. PP for CBI is having substance and the applicant/accused has not made out any case for his discharge, so the application is liable to be rejected. Hence, I proceed to pass following order:-

Application (**Exh.29**) is hereby rejected.

Date : 05/08/2025.

(R.R. Mendhe)
Special Judge CBI-ACB,
Pune.

CERTIFICATE

I affirm that the contents of this P.D.F. file of Order are same word for word as per original Order.

Name of Steno : I.E. Deshmukh (Steno Grade-1)

Court Name : Shri. R.R.Mendhe,
Special Judge CBI-ACB, Pune

Date of Order : 05/08/2025

Order signed by PO. : 13/08/2025

Order uploaded on : 18/08/2025