

IA No. 73/26 in CT Case No.22/2024
CNR No.DLCT11-000841-2024
Directorate of Enforcement Vs. Sh. Arvind Dham & Ors.
ECIR/GNZO/14/2024
(APPLICANT/PROPOSED ACCUSED NO. 54: Yashna Family
Trust)

20.05.2026

ORDER

This is an application u/s 230 of the Bhartiya Nagrik Suraksha Sanhita, 2023 (Erstwhile Section 207 of the Code of Criminal Procedure, 1973) on behalf of applicant/accused no. 54 Yashna Family Trust (Through its Trustee Mr. Anubhav Dham), seeking the supply of the list of unrelied documents.

Present : Sh. Manish Jain & Sh. Simon Benjamin, Ld. SPPs for ED.
Ld counsel for the applicant.

1. In the application, it is stated that section 230 of BNSS guarantees a free and fair trial to each and every accused individual/entity and mandates the supply of the list of unrelied documents. It is further stated that cardinal principle of criminal jurisprudence that accused must be furnished with all the documents that the prosecution seeks to rely upon before commencement of trial and there cannot be a piecemeal disclosure of documents/material to the accused. It is further stated that the investigating agency must supply the list of unrelied documents so that applicant can prepare their best possible defence in the instant matter.

2. Applicant/proposed accused has relied upon *Manish Sisodia Vs Directorate of Enforcement (2024 SCC Online SC 1920)*, *Arvind Kejriwal Vs State (NCT of Delhi)* and the order of **Hon'ble High Court, Delhi** passed in “ *CBI Vs INX Media & Ors (2021 SCC Online Del 4932)*. The relevant portion is as under :

“13. In the present case after the court has taken the cognizance and is in the process of supplying documents, applications have been filed under section 207 CrPC wherein to ensure a fair trial, the impugned order has been passed by the learned Special Court keeping due regard to the fact that at that stage it was deciding neither the relevancy of the un-relied documents nor whether they were of sterling quality.”

3. It is, therefore, prayed that Directorate of Enforcement be directed to supply the list of all records and materials that were collected by the ED during the course of investigation.

4. *Per Contra*, a common reply has been filed by the Directorate of Enforcement to various similar applications filed by the proposed accused persons wherein it is stated that the decision rendered by **Hon’ble Apex Court**, in *Sarla Gupta & Another Vs Directorate of Enforcement* is a culmination of law on the point of unrelieved documents and the time as to when the right of the accused to access such unrelieved documents comes into picture. It is further stated that as per the decision of **Hon’ble Apex Court** in *Sarla Gupta & Another Vs Directorate of Enforcement*, the accused is entitled to access unrelieved documents only after the cognizance is taken and only when an application is filed by the accused persons at the stage of charge. It is further stated that all the relied upon documents (RUD) have already been supplied to the proposed accused persons even though the proviso to section 223 (1) BNSS does not prescribe for supplying the same.

5. Heard.

6. Vide the present application, proposed accused has prayed for providing of list of all the records and materials that were collected by the ED during the course of investigation. Be that as it may, **Hon’ble Supreme Court** in “ *In Re : to issue certain guidelines regarding inadequacies and deficiencies in Criminal Trials Vs. State of Andhra Pradesh & Ors (2021) 10 SCC 598* had categorically held :-

“ This court is of the opinion that while furnishing the list of statements, documents and material objects under section 207/208 CrPC, the magistrate should also ensure that a list of other materials, (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused. This is to ensure that in case the accused is of the view that such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders, under the CrPC for their production during the trial, in the interests of justice. ”

7. Thus, it is apparent that **Hon’ble Supreme Court** had contemplated that the investigating agency might not disclose all the material that was seized or that came into its possession during the course of investigation and might not bring on record exculpatory material which might be material for the accused. However, the said proposition of ‘complete disclosure’ has not been contemplated at the primary threshold of the criminal proceedings. In fact, the stage of proceedings which has been specifically mentioned in the aforesaid decision is at the stage of supplying of documents **u/s 207/208 Cr.PC** i.e. just before the commencement of trial/ at the stage of framing of charge. Neither the said provision nor the said decision has anywhere stipulated that the documents on which the prosecution does not seek to rely be also supplied before the stage of section 207/208 CrPC.

8. In fact, the purpose which has been specifically mentioned in the said decision is to ensure that the material which is necessary for the proper and just trial is duly provided to the accused and he may, infact, move appropriate application for production of those documents which are not relied upon by the prosecution, in case the same are required for the defence of the proposed accused. Therefore, the stage at which these documents are contemplated to be produced is not at the stage of cognizance, not necessarily at the stage of framing of charge or at the stage of prosecution evidence but at a much later stage of defence evidence.

9. Therefore, the entire thrust of the prosecution would actually remain on the relied upon documents (RUD) which it had procured and it seeks to produce during the course of its evidence and also at the stage of framing of charge and the thrust of the prosecuting agency is not on the 'non relied' upon documents at this stage. The thrust on 'non relied' documents would come into picture only when the accused wants to rely upon those documents.

10. Having said that, it has been argued that grave prejudice shall be caused to the proposed accused in case the list of unrelayed documents is not supplied at this preliminary stage of cognizance. However, the said contention is without any merits, as the stage of cognizance is a very primarily stage and is a threshold stage, wherein the court has to examine whether the allegations as leveled by the prosecution and the documents relied upon the prosecution warrant, commencement of criminal proceedings against the proposed accused or not and at that stage, Court is not to test 'in depth' the veracity of those documents or the case of the prosecution but to see whether the said allegation have 'a mere semblance of substance', so as to launch the criminal proceedings into motion against the proposed accused. It is, in fact, the subsequent stage of framing of charge, if at all the proceeding reaches at this stage, that the proposed accused can bring up some semblance of defence, which would weigh upon the mind of the court so as to either discharge him or would lead to framing of charge against him.

11. It is not to say that at the stage of cognizance the accused is not to be heard or the arguments of the accused are not to be considered. In fact, **section 223 BNSS** now categorically contemplates a hearing at the stage of taking of cognizance and for that purpose, it is deemed imperative that the proposed accused persons be specifically provided with the

documents 'relied upon' by the prosecution, so that the proposed accused persons can bring forth their line of defence against the case of the prosecution, even though, the said provision does not specifically mention regarding the providing of any such documents.

12. The entire exercise of providing both the relied upon documents (RUD) and list of non-relied upon documents at this preliminary stage would in fact, be conducting a sort of mini trial which is not contemplated at this stage and in case this court does not proceed with taking of cognizance against the proposed accused person, the same would only result in wasteful exercise and in case, this Court proceeds to taking of cognizance of the offence, the same would result in duplicacy of proceedings. The same obviously is not contemplate by the said provision or by the decision of **Hon'ble Apex Court** as aforementioned.

13. In fact, in '*Sarla Gupta & Another Vs Directorate of Enforcement (2025) 7 SCC 626*', the stage at which the unrelieved documents are to be supplied has been specifically mentioned, and reference has been made to '*State of Orissa Vs Debendra Nath Padhi*' and it has been categorically held that :

“ Even this judgment recognizes the right of the accused to seek documents at the time of leading defence evidence by invoking section 91 of the CrPC. We may note here that what is observed by this Court is that there is no absolute prohibition on an accused making an application under section 91 of CrPC, before the stage of entering upon defence. It is held that ordinarily, the entitlement of the accused to apply under section 91 will not arise till the stage of defence.”

14. Thus, the same is no longer *res- integra* that the appropriate stage for production of these document is essentially at the stage of defence evidence and the accused is not to be provided with any such document or it's list at the stage of cognizance. It is pertinent to mention that the relied upon documents have already been supplied to the proposed accused persons. **Therefore, there is no merit in the contention raised on behalf of the accused and the list of unrelieved documents can be duly supplied to the proposed accused persons in case the proceedings reach the stage of section 231 BNSS.**

In view thereof, there is no merit in the application.

The same is hereby dismissed. *Dasti.*

(Manisha Khurana Kakkar)
Special Judge (PC Act) (CBI)-06
RADC/ New Delhi/20.05.2026