

IN THE SPECIAL COURT FOR CBI AT GREATER BOMBAY

ORDER BELOW EXH.318

IN

SPECIAL CASE NO.33 OF 2012

CBI, ACB, Mumbai

.. Applicant/prosecution

Versus

S. N. Pradhan and others

.. Respondent/accused

Shri. Sandip Singh, SPP for applicant/prosecution

Shri. R. B. Mokashi, Advocate for respondent/accused

**CORAM : S. H. GWALANI, SPECIAL JUDGE
COURT ROOM NO.48**

DATED : 19th DECEMBER, 2023

ORAL ORDER

Application in hand is filed by CBI/prosecution for production of certificate under section 65B of the Evidence Act, on record by contending that prosecution wants to submit the certificate under section 65-B for computer print out in D-22 of list of documents particularly statement of accounts December, 2008 to January, 2009 (810 pages).

2. Per contra, learned advocate for accused has strongly opposed the application by contending that said certificate is not as per Bankers Book Evidence Act, 1891. The certificate is not dated nor as per the format of section 65B. The said cannot be recorded in evidence and marked as exhibit and application is liable to be rejected. Accordingly, prayed in above terms.

3. Heard both sides at length. Perused court proceeding.

4. Present matter is pending since 2012 before this Court. Till today, prosecution has examined 32 witnesses. Today during the course of examination-in-chief of PW-33 Nozer Morena, prosecution has filed present application. No doubt, in support of alleged documents, as to whether certificate under section 65-B of the Evidence Act or certificate under Bankers Book Evidence Act is required, this Court is not going to decide admissibility of the documents. It is to be noted that in the case of **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and others, (2020) 7 SCC 1**, the Hon'ble Apex Court observed that:

56. Therefore, in terms of general procedure, the prosecution is obligated to supply all documents upon which reliance may be placed to an accused before commencement of the trial. Thus, the exercise of power by the courts in criminal trials in permitting evidence to be filed at a later stage should not result in serious or irreversible prejudice to the accused. A balancing exercise in respect of the rights of parties has to be carried out by the court, in examining any application by the prosecution under Sections 91 or 311 of the CrPC or Section 165 of the Evidence Act. Depending on the facts of each case, and the Court exercising discretion after seeing that the accused is not prejudiced by want of a fair trial, the Court may in appropriate cases allow the prosecution to produce such certificate at a later point in time. If it is the accused who desires to produce the requisite certificate as part of his defence, this again will depend upon the justice of the case - discretion to be exercised by the Court in accordance with law.

5. The ratio in the aforesaid case law is squarely applicable to the case in hand. Therefore, I am of the view that if this Court is permitted to file said certificate on record and for identification if it is marked as exhibit then there will be no prejudice to the accused. Hence, I pass following order.

ORDER

Application Exh.318 for production of certificate under section 65-B of the Evidence Act, is allowed as prayed and application stands disposed of accordingly.

(S. H. Gwalani)
Special Judge, CBI
Gr. Bombay

Date : 19.12.2023

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER.”

19.12.2023, 5.30 p.m.

UPLOAD DATE AND TIME

Mrs. S. P. Pawar
Stenographer (Grade - I)

Name of the Judge (With Court Room No.)	H.H.J. Shri. S. H. Gwalani C.R.No.48
Date of Pronouncement of JUDGMENT/ORDER	19.12.2023
JUDGMENT/ORDER signed by P.O. on	19.12.2023
JUDGMENT/ORDER uploaded on	19.12.2023