

Spl Case No. 04/16

Reg No.02/22

CNR No. WBCS01 000002-2022

Order No.249

Order dated 29.10.25

Today is fixed for clarification by the HIO on the point whether they had seized any documents of Review Committee or not.

A1 A.M Sahay,A2 Mihir Sen Barman,A3 Rabindra Bhalotia, A4 Prateek Bhalotia, A5 Jaspal Singh Chandok, A6 Sandeep Singh Chaddha, A7 Piyush Mahasukhlal Seth, A8 Uday Bhan Pandey are absent by petition u/s 317 CrPC.

Ld. PP for CBI is present and files compliance regarding the seizure of any documents of the Review Committee.

Ld. Advocate for A2 Mihir Sen Barman files another petition praying for adjournment on the ground stated therein.

The record is taken up for passing order in respect of petitions filed by accused no.1 Arvind Mohan Sahay dated 12.03.24 and accused no.4 Prateek Bhalotia dated 12.03.24 for supplying the documents and its rejoinder dated 05.07.25 filed by A4.

I have already heard both sides in details. During hearing it was submitted that the documents relating to the interception of telephonic messages/calls and its approval by the Review Committee have not been supplied by the CBI to the accused persons and those documents are very vital to the merit of this case and accordingly prayed for supplying the documents in addition to the documents mentioned in D-11 of the charge sheet.

It was submitted that the case was originated on the basis of certain interception of certain telephonic conversation by the special unit through different dates and the said interception continued for more than 3 months. According to the ld. Advocate for the accused persons the interception of telephonic conversation infringed the

(contd..)

fundamental right to privacy and hence to intercept the conversation certain procedures are required to be followed. According to the ld. advocate for the accused persons to intercept telephonic conversation the procedure prescribed u/s 5(2) of the Telegraph Act r/w of Sub-Rule 2(16)(17) and (18) of Rule 419 (A) of the Telegraph Rule 1951(as amended with effect from 12th March 2007) required to be followed.

Ld. Advocate for the accused persons vehemently argued on the point that unless Review Committee is formed in accordance with sub-Rule 16 of Rule 419(A) of the Telegraph Rule and the Review Committee has acted in accordance with sub-Rule 17 of Rule 419 (A) of the Telegraph Act, the entire materials collected by CBI without approval of Review Committee infringes the fundamental right of the accused persons i.e. right to life and hence the entire investigation is perfunctory in nature.

It is further submitted that in case no document is supplied to the accused persons regarding the approval, constitution and direction by the Review Committee, the accused persons are not in a position to make out a case whether those directions were issued for public emergency or in the interest of public safety.

It is further submitted that the investigating agency i.e. CBI is bound to supply the copy of minutes of the Review Committee wherein the order of interception dated 06.02.14, 07.03.14, 31.03.14 and 07.04.14 were approved. The contention of the ld. Advocate for the accused persons is that the documents i.e. D-11 (as mentioned in the charge sheet) have no leg to stand unless those orders were passed by Home Secretary and placed before the Review Committee for its approval. Since those procedures have not followed the whole process has been vitiated and accordingly prayed that all the documents pertaining to Review Committee and its exercise of its power should be supplied to the accused persons.

(contd..)

In support of the contention, Ld; advocate for the accused persons relied on the following decisions:-

1. Lalita Kumari Vs Govt. of UP and others.
2. People's Union for Civil Liberty Vs. Union of India and Another.
3. Jatindra Pal Singh Vs Central Bureau of Investigation
4. P. Kishore Vs Secretary to Government of India
5. Ijjat Ali Takuldar Vs Emperor
6. State of Punjab Vs Sodhi Sukhdev Singh
7. Sidhartha Vashisht @ Manu Sharma Vs State (NCT, Delhi)
8. V. K Sashikala Vs State
9. Anuradha Bhasin Vs Union of India and Another
10. Manish Sishdhiya Vs Director of Enformcement.
11. P. Ponnusamy Vs State of Tamil Nadu
12. Monoharlal Sharma Vs Union of India.

On the contrary, Ld. PP for CBI submits that the documents are confidentially in nature and those documents are privileged communication and accordingly prosecution is exempted to supply those communication and prayed for rejection of the petitions filed by the accused persons.

I have gone through the decisions cited by the ld. Advocate for the accused persons. In Ijjat Ali Talukdar's Case Hon'ble Calcuta High Court held that supplying of privileged document is a discretionary power of the court and it should be exercised for interest of justice. From the above decisions it is now well settled principle that in order to intercept telephonic conversation, the procedure mentioned in section 5(2) of the Telegraph Act r/w of Rule 419 (A) of the Telegraph Rule 1951 should be followed. It is also now well settled principle of law that conversation between two private persons, if intercepted without following the due process of law, it would infringe the privacy of those persons and

(contd..)

ultimately it infringes right to life. But at this juncture, while deciding a petition u/s 207 CrPC, I am not authorized to look into the effect of non-compliance of procedural aspect of collecting any evidence by the CBI. In case, there is procedural lapses in collecting evidence that will be decided at appropriate stage of a criminal proceeding and not at the time of deciding a petition u/s 207 CrPC.

To appreciate the power of a Court, let us look into the section 207 CrPC. Section 207 CrPC provides for supply to the accused of police report and other documents :-

In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following;

- i) the police report;
- ii) the first information report recorded under section [154](#);
- iii) the statements recorded under Sub-Section (3) of section [161](#) of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under Sub-Section (6) of section [173](#);
- iv) the confessions and statements, if any, recorded under section [164](#);
- v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under Sub-Section (5) of section [173](#);

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused;

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

(contd..)

On bare perusal of the aforesaid section, it is crystal clear that while exercising the power of a Magistrate to supply the copy to the accused persons, the accused persons are entitled to the copies which are forwarded with the charge sheet. In the charge sheet on the relied upon documents, it appears that the prosecution relied on Letter No. SU/KOL/TS(05)/2015/pt file 807 dated 13.05.2015 issued under the signature of SL Dhillon, DIG, CBI, Spl Unit II Delhi along with original order no.14/3/97-CBI dated 06.02.14, dated 31.03.14 dated 07.04.14 and copy of order no. 14/3/97-CBI dated 07.03.14 (D-11).

It is crystal clear that neither in the list of relied documents or unrelayed document any communication made by CBI to the Review Committee is forwarded to the this court along with charge sheet. In this context, this court directed to clarify the position of CBI whether they had in their possession any document of any communication with the Review Committee to which Sri Amlan Maitra, DSP of Police, CBI/SPE/ACB Kolkata in writing has mentioned that no document of Review Committee of such telephonic surveillances was seized by CBI during the course of investigation. It clarified that no document of Review Committee of telephonic surveillances was forwarded along with charge sheet. Since no such document is forwarded or lying in the possession of the court or the prosecution, the document pertaining to telephonic surveillances can be supplied to the accused persons at this stage. It is however made clear that the prosecution cannot hide themselves with an excuse that those documents are privileged communication.

(contd..)

At the same time, I did not make any final decision regarding non-compliance of procedure as laid down in section 5(2) of the Telegraph Act r/w 419 (A) of the Telegraph Rule in connection with this case and the accused persons at liberty to raise this issue as appropriate stage if they desire to do so.

Hence, it is

ordered

that the petition filed by A1 and A4 on 12.03.24 and rejoinder dated 05.07.25 filed by A4 for supplying the documents regarding communication between CBI and the Review Committee or Minutes of Review Committee or Approval of Review Committee are rejected on the contest but without costs.

The prosecution is directed to supply D-11 as mentioned in the charge sheet at the earliest .

To-date (01.12.25) for supply of D-11 and appearance.

Sd/-
Judge, 3rd Special
(CBI Designated) Court,
Bankshall Court, Calcutta