

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 51 of 2022

Shashi Kumar Unnikrishnan

....

Petitioner

Mr. D.P. Dhal, Sr. Advocate
with Mr. A. Ray, Advocate

-Versus -

Republic of India (CBI)

....

Opp.Party

Mr. S. Nayak, Advocate for CBI

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

17.11.2022

Order No.
05.

1. This matter is taken up through hybrid mode.
2. Heard Mr. D.P. Dhal, learned Senior Counsel along with Mr. A. Ray, learned counsel for the petitioner and Mr. Sarthak Nayak, learned counsel for the CBI.
3. The order dated 23.11.2021 passed by learned Special Judge, CBI-1, Bhubaneswar, which is impugned in the present revision, thereby the application filed by the petitioner for discharge under Section 239 of Cr.P.C. was rejected.
4. It is the petitioner's case that he has been entangled in the case without any evidence or material against him. In particular, he has referred to the so called Voice Recording Sample (VR-2), which the prosecution claims to contain his voice and which in turn shows that he has conspired with the co-accused persons in commission of the alleged offences.
5. Mr. D.P. Dhal, learned Senior Counsel has argued at length referring to the FIR as well as the statement of witnesses and the charge sheet. Mr. Dhal has particularly referred to the report of the CFSL wherein it is clearly

mentioned that VR-2 contains no audio file and something has been said regarding VR-3, but VR-3 itself is not on record. Learned court below has referred to VR-3 in the impugned order under paragraph-12 thereof. According to Mr. Dhal, learned court below could not have referred to a document which does not form part of the record.

6. Mr. S. Nayak, learned counsel appearing for the CBI on the other hand contends that law permits the prosecution to produce additional documents collected during investigation even after submission of charge sheet. Mr. Nayak has also submitted that the CBI has filed a petition on 08.08.2022 before the court below with prayer to add the Sample Voice Collection and Sealing Memorandum dated 14.12.2017 as additional documents to the list attached to the charge sheet. In the body of the petitioner it is submitted that the said sample voice collection includes VR-3, which is sought to be utilized against the accused.

7. After considering the rival submissions, this Court finds that VR-3 is not on record as yet. An application to include the same with the record is pending before the court below. In the fitness of things learned court below should first dispose of the petition by passing a lawful order and thereafter should consider the application for discharge filed by the accused.

8. In such view of the matter, the impugned order is set aside. The matter is remitted to the court below to pass order on the discharge petition afresh after disposal of the petition dated 22.08.2022 filed by the CBI.

9. The CRLREV is accordingly disposed of.
10. Issue urgent certified copy as per Rules.
11. A free copy of this order be handed over to Mr. S. Nayak, learned counsel for CBI.

(Sashikanta Mishra)
Judge

A.K. Rana

