

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-8463-2023 (O&M)
Date of Decision:- 8.5.2023

Kalyani SinghPetitioner

Versus

Central Bureau of InvestigationRespondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Sartej Singh Narula, Mr. Harish Mehla and
Mr. Sandeep Sharma, Advocates for the petitioner.

Mr. Rajeev Anand, Advocate for the respondent - CBI
assisted by Inspector Balwinder Singh.

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GURVINDER SINGH GILL, J.

1. The petitioner, in addition to assailing the commitment order dated 4.2.2023 (Annexure P-1), assails the following four orders passed by learned Special Judicial Magistrate, CBI, Chandigarh, all of which pertain to furnishing of copies of '*relied-upon*' documents as well as '*un-relied*' documents, in compliance of provisions of Section 207 Cr.P.C. :

- (i) Order dated 4.2.2023 (Annexure P-2) vide which an application dated 20.1.2023 (Annexure P-13), filed by the petitioner to unseal the record which had earlier been sealed vide order dated 27.7.2022 (Annexure P-22) and to supply copy of the same, has been declined;
- (ii) order dated 30.1.2023 (Annexure P-3) vide which an application dated 20.1.2023 (Annexure P-14), moved by petitioner seeking copies of the evidence collected by the Chandigarh Police during the course of investigation of FIR No. 374 dated 21.9.2015, Police Station Sector 26,

Chandigarh, which was lodged prior to handing over the matter to the CBI, has been dismissed;

(iii) order dated 16.12.2022 (Annexure P-4) vide which an application dated 15.10.2022 (Annexure P-15), filed by the petitioner seeking copies of documents which were found deficient or were illegible which were part of the supplementary challan filed under section 173(8) Cr.PC, has been partly declined inasmuch as legible copies of "*relied upon*" documents only were directed to be furnished to petitioner; the Court had, however, directed that cloned copy of electronic evidence be furnished;

(iv) order dated 22.12.2022 (Annexure P-5) whereby the CBI Court clarified that aforesaid order dated 16.12.2022 is to be read so as to mean that a soft copy of '*relied upon*' data only is to be supplied to accused.

2. The petitioner faces allegations of having murdered Sukmanpreet Singh @ Sippy Sidhu on 20.9.2015. The matter was initially investigated by the Chandigarh Police but subsequently the investigation was transferred to CBI vide order dated 15.1.2016, passed by Administrator, Chandigarh. During the course of investigation, the Chandigarh Police as well as CBI police collected evidence in the shape of statements of witnesses, documents, digital data (from mobile phone and laptop of deceased). Initially, a report in terms of section 173(2) Cr.P.C. in the shape of an '*untraced*' report dated 7.12.2020 (Annexure P-9) was presented in the Court of Special Judicial Magistrate, Chandigarh, by the CBI on 7.12.2020 but the Court did not treat the same as *untraced* and vide order dated 14.12.2020, while granting permission to further investigate the matter, directed CBI to file fresh report upon conclusion. A protest petition had also been filed by *de-facto* complainant i.e. the mother of deceased.
3. Thereafter, an application was moved by the petitioner seeking issuance of a direction to the CBI to supply all the documents relied upon by the CBI while submitting '*untraced report*' dated 7.12.2020 including statements of

all witnesses recorded under Section 161 Cr.P.C. as well as electronic data. The trial Court, however, did not accede to the said request, while observing that investigation was still underway and that it was only upon conclusion of investigation and filing of report under Section 173 Cr.P.C. that copies of such documents could be furnished to the petitioner/accused. The relevant extract from said order dated 22.6.2022 (Annexure P-21) is reproduced herein-under:-

“ However, as final report under Section 173 Cr.P.C. is yet to be filed by the CBI after completion of its investigation, CBI cannot, at this stage, be directed to hand over the statement of witnesses so recorded under Section 161 Cr.P.C. as well as electronic data to the applicant-accused Kalyani Singh as in view of Section 207 Cr.P.C., accused is entitled to the entire record so relied upon by the prosecution only after filing of final report under Section 173 Cr.P.C. Thus, as admittedly the applicant has already received the copy of untrace report alongwith list of witnesses, concerned IO is directed to supply the copy of list of documents and list of articles so attached with the final report, so filed under Section 173 Cr.P.C. in the Court as per zimni order dated 08.12.2020, to the applicant. Application in hand stands disposed of accordingly.”

4. The petitioner, thereafter, moved another application before the Magistrate seeking compliance of provisions of Section 173(5) Cr.P.C. so as to direct CBI to place on record all the documents, record, statements under section 161 Cr.P.C., as were relied upon by the investigating agency at the stage of filing ‘*untraced report*’ under Section 173(2) Cr.P.C. The said application was opposed by the CBI on the ground that a similar application had already been disposed of vide order dated 22.6.2022 and that since investigation was still continuing, the documents in question could not be furnished till the final report is again presented. Although, the said application was dismissed

but the learned Magistrate ordered for sealing of the record which had been collected by the prosecution prior to presentation of the '*untraced*' report. The operative portion of the said order dated 27.7.2022 (Annexure P-22) reads as follows :-

“Thus, in order to remove the apprehension of prejudice to the applicant/accused Kalyani Singh and in view of apprehension of prosecution, Investigating Agency (CBI) is directed to file same statements of witnesses recorded under Section 161 Cr.P.C. and documents as mentioned in final report under Section 173 Cr.P.C. dated 07.12.2020, in a sealed cover in the Court along with separate affidavit of Investigating Officer that he has submitted the same statements and documents as mentioned in final report dated 07.12.2020 in the sealed cover. The question of opening the sealed cover and to make the documents contained in sealed cover as part of the record, will be considered after filing of the fresh final report under Section 173 Cr.P.C., which will be filed after completion of ongoing investigation.”

5. The matter was further investigated by CBI, during the course of which, the petitioner was arrested on 15.6.2022. Upon conclusion of investigation, a supplementary final report (Annexure P-11) under Section 173(8) Cr.P.C. was filed against the petitioner on 12.9.2022. The documents relied upon by the prosecution/CBI were furnished to the petitioner. However, the petitioner being aggrieved by not having been supplied copies of all the documents/evidence collected during investigation by both the agencies including '*unrelied documents*' moved applications before the Special Judicial Magistrate, Chandigarh which were dismissed vide impugned orders dated 4.2.2023, 30.1.2023, 16.12.2022 and 22.12.2022 (Annexures P-2 to P-5) which have been assailed by petitioner in the present case.

6. The gist of the four impugned orders is stated herein-under, in chronological order :-

Gist of Order dated 16.12.2022 (Annexure P-4) :

After the CBI presented supplementary challan under Section 173(8) Cr.P.C. against the petitioner on 12.9.2022, the petitioner moved an application dated 15.10.2022 (Annexure P-15) praying therein that copies of the deficient documents and illegible documents be furnished to her. It was stated specifically that the copies of the statements/documents/records, the details of which have been mentioned therein in Para 3 of the application be supplied. The learned Special Judicial Magistrate, Chandigarh, vide order dated 16.12.2022 (Annexure P-4) disposed off the said application wherein it is held that the petitioner was entitled to copies of only relied upon documents and the cloned copies of electronic evidence. The relevant extract from the said order dated 16.12.2022 (Annexure P-4) is reproduced herein-under :-

“In view of the discussion made above, applicant/accused is held entitled only to legible copy of relied upon documents and cloned copy of electronic evidence contained in Articles, whereas her request to provide remaining documents/data is hereby declined. Resultantly, present application is accordingly disposed of, with direction to Investigating Officer to make necessary arrangement, for the compliance of this order.”

Gist of order dated 22.12.2022 (Annexure P-5) :

The said order was passed by the learned Special Judicial Magistrate, CBI Chandigarh pursuant to a request made on behalf of the CBI to the effect that in case cloned copy of the requisite data is furnished, so as to comply with order dated 16.12.2022, the same would result in furnishing irrelevant data as

well whereas the accused was entitled to be supplied relied upon data only which was the essence of order dated 16.12.2022. The trial Court accepted the said request while holding as under :-

“After hearing contentions raised by both the parties, this Court is of the considered view that if cloned copy of any hard disk, pen drive, DVD and CD, containing relied upon as well as other data, is given to accused, then it will be against the letter and spirit of order dated 16.12.2022, vide which accused was held entitled only to reliable material. Now, under the pretext of cloned copy of relied upon data, accused cannot once again raise her demand of entire data. This Court is well conscious of the fact that as per order dated 16.12.2022, cloned copy was ordered to be supplied, but in clear terms, demand of accused to supply remaining data was declined. The order dated 16.12.2022 is to be read in entirety. Even otherwise also, a specific rider was put in the order itself that only relied upon data will be supplied. Hence, request of accused that she be provided cloned copy of relied upon data is hereby declined. However, it is clarified that soft copy of relied upon data will be supplied to the accused as the main purpose is to ensure the compliance of provision contained under Section 207 Cr.P.C.”

Gist of order dated 30.1.2023 (Annexure P-3)

The petitioner moved an application dated 20.1.2023 (Annexure P-14) before the Special Judicial Magistrate, CBI, Chandigarh seeking issuance of a direction to CBI to supply copies of the evidence which had been collected by the Chandigarh Police during the course of investigation of the case before the investigation of the same was handed over to CBI. The learned Magistrate, upon considering the said application dismissed the same vide order dated 30.1.2023 (Annexure P-3) while observing that the petitioner will get an opportunity to cross-examine all the witnesses, as may be examined by the prosecution and that the applicant/accused/petitioner, in any

case, has a right to seek production of any document/Article during the course of trial in accordance with Section 91 Cr.P.C. in case any such document comes to the notice of the petitioner and that such exercise may be undertaken at appropriate stage. The concluding paragraph of said order dated 30.1.2023 (Annexure P-3) is reproduced herein-under :-

“ At the cost of repetition, it is reiterated that the statements of above named witnesses recorded under Section 161 Cr.P.C. have already been supplied to applicant/accused, in compliance of provision contained under Section 207 Cr.P.C. Needless to mention here that during trial, applicant/accused will have an opportunity to cross examine these witnesses, who also find mention in the statements of PW-64 Inspector Amanjot Singh, PW-69 Inspector Punam Dilawari and PW-70 Inspector Ram Rattan Sharma. Furthermore, applicant/accused has a right to seek production of any document/Article during the course of trial in accordance with Section 91 Cr.P.C. if such document/Article comes to the notice of the applicant/accused, in order to enable her to defend herself. Such exercise may be undertaken by applicant/accused at appropriate stage before Ld. Trial Court.”

Gist of order dated 4.2.2023 (Annexure P-2)

Another application an application dated 20.1.2023 (Annexure P-13), had been filed by the petitioner praying therein for unsealing the record which had earlier been sealed vide order dated 27.7.2002 (Annexure P-22) and to supply copy of the same. The said application was, however, dismissed while observing that the petitioner can move appropriate application before the trial Court and that no prejudice can be said to have been caused to the petitioner as trial is yet to commence. The concluding paragraph of said order dated 4.2.2023 (Annexure P-2) reads as under :-

“Even otherwise, at this stage, due to non supply of documents/Statements of witnesses recorded u/s 161 of Cr.P.C and Articles

to applicant/accused, no prejudice can be said to be caused to her as trial is yet to be commenced. Needless to mention here that apprehension of any possible prejudice to applicant/accused has already been removed by keeping the entire record forming part of Untrace report dated 07.12.2020 in a sealed cover, which is under the custody of Court. Moreso, it is misconceived averment that applicant/accused is entitled to copy of documents, statement of witnesses recorded u/s 161 Cr.P.C., electronic data/Articles, in terms of order dated 22.06.2022 passed by Sh. Randeep Kumar, Ld. Duty/JMIC, Chandigarh and order dated 27.07.2022 passed by Undersigned. Both orders have been perused, which speaks otherwise. So far as the case law relied upon by Ld. Counsel for applicant/accused is concerned, same does not apply to the different facts and circumstances of the present case.”

7. The learned counsel representing the petitioner submitted that although during the course of investigation of the present case, the investigating agency had taken into possession a large number of documents but it has chosen to file only those documents alongwith supplementary chargesheet (Annexure P-11), which suit the case of prosecution and has conveniently withheld the documents in favour of accused. It has been submitted that some of such documents which have not been filed alongwith said supplementary challan (Annexure P-11) could prove innocence of the accused.

- 7.1 The learned counsel for the petitioner submits that it is an indefeasible right of the petitioner to be supplied with all the relevant documents in possession of the investigating agency, which may even include ‘*unrelied documents*’ and that the same not having been furnished, the petitioner stands seriously prejudiced.

- 7.2 The learned counsel has next submitted that the prosecution for reasons best known to it has chosen to withhold the documents collected by the Chandigarh Police, some of which were part of the untraced report filed by the CBI initially on 7.12.2020, though the said untraced report cannot be taken off the record and would always remain tagged with the supplementary report filed under provisions of Section 173(8) Cr.P.C. on 12.9.2022, particularly when the application for merging both the reports was disposed off by the Special Judicial Magistrate, Chandigarh by ordering that the 'untraced' report be tagged with the supplementary challan at the time of committing the case to the Special Judge, CBI.
- 7.3 The learned counsel has next submitted that in the present case the petitioner has not been furnished with complete digital data i.e. the complete electronic record as was found stored in the i-Phone (mobile phone) of the deceased and in his laptop and that it is only copy of the selective parts which suits the prosecution which have been furnished and the parts which would have demolished the case of the prosecution have been withheld.
- 7.4 It has been submitted that while previously, as of practice all over India, the investigating agencies/prosecution had been furnishing only such documents which were relied upon by the prosecution in compliance of provisions of Section 207 Cr.P.C. leaving it to the accused to procure and prove such documents at a later stage but Hon'ble Supreme Court, taking note of such practice, prejudicial to the rights of accused had issued directions to frame rules for enabling accused to get copies of even 'unrelied' documents. The learned counsel pressed into service 2021(10) SCC 598, In Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal

Trials Vs. The State of Andhra Pradesh & Others, wherein the Hon'ble Supreme Court, realising the aforesaid flaw in procedure has approved Draft Rules 2021, pertaining to certain procedural aspects of trial including providing copies of "*un-relied*" documents to accused and directed all the High Courts to amend the existing rules accordingly. It has been submitted that despite this Court having framed rules and having carried out amendments in "Punjab and Haryana High Court Rules and Orders", which were duly notified on 10.12.2021, the trial Court still chose not to provide such documents to petitioner, resulting in prejudice to petitioner inasmuch as she will be unable to effectively oppose the framing of charges in the absence of relevant documents.

- 7.5 The learned counsel has, thus, submitted that the impugned orders dismissing his applications be set aside and the accused be provided all the documents prayed for including '*un-relied*' documents and that the matter regarding framing of charges be considered only after such documents are furnished to petitioner.
8. Opposing the petition, the learned State counsel has submitted that the petitioner has been furnished with all such documents as have been relied upon by the prosecution in the supplementary charge-sheet filed under provisions of Section 173(8) Cr.P.C. and that the accused shall be provided opportunity to lead evidence to establish her innocence at the stage of recording defence evidence.
- 8.1 It has been submitted by learned State counsel that in compliance of the rules framed by this Court pursuant to directions issued by Hon'ble Supreme Court, the petitioner has been furnished with a list of '*unrelied upon*'

documents and that in case the petitioner desires to obtain any such document out of the said list, he may move an appropriate application in terms of Section 91 Cr.P.C. at appropriate stage during the trial and that as such, it cannot be said that the rights of the petitioner has been defeated in any manner. The learned State counsel, while pointing out that as on date even the charges have not even been framed, the trial can not be said to have commenced and thus, there is no occasion for demanding or supplying such documents to the petitioner.

8.2 The learned State counsel has next submitted that as far as the contention of the petitioner for supplying complete cloned copy of the data as found stored in i-Phone and laptop of the deceased is concerned, the said record i.e. entire data stored in the said devices cannot be said to be relevant to the case and majority of it would be in the nature of personal data and as such, the petitioner cannot stake her claim on the entire data found stored in the said devices and on account of which she has been furnished with the relevant data only out of the data retrieved from the said two devices.

8.3 The learned State counsel has submitted that in any case even provisions of Sections 173(6) and 207(iii) Cr.P.C. and its provisos, vest a right with prosecution to exclude any part of the statement of any witness or document. The learned State counsel further submitted that even in cases of a record which is voluminous, the Magistrate can direct that the accused would be allowed only to inspect the record and may not be furnished with the entire record and which would clearly show that in fit cases exceptions can be drawn as have been drawn in the present case.

8.4 The learned State counsel has further submitted that the data stored in the two devices could include some information pertaining to passwords of various bank accounts, software accounts, income tax information etc. which the family of the deceased would not like to share with anybody and in any case would be irrelevant for the purpose of the case and thus, the entire data cannot be shared with petitioner, being personal information or being irrelevant. A prayer has, thus, been made for dismissal of the petition.

9. This Court has considered rival submissions addressed before this Court. The controversy involved and the contentions put forth would require the following question to be addressed:

- (i) Whether an accused is entitled to copies of '*un-relied*' documents/evidence which may have been collected by the investigating agency during the course of investigation but does not intend to rely upon the same during the course of trial and are thus, not part of the report under Section 173 Cr.P.C.?
- (ii) In case the accused is entitled to copies of such '*un-relied*' documents/evidence, then at what stage can he be provided with such documents/evidence? In other words, can the accused ask for such '*un-relied*' documents/evidence immediately upon presentation of challan i.e. before the charges are framed or as to whether he can exercise such right only after framing of charges?
- (iii) Whether the accused is entitled to be furnished with copies of statements/documents/evidence collected by the first investigating agency i.e. before the investigation is handed over to another investigating agency, towards compliance of section 207 Cr.P.C.?
- (iv) In a case where the '*relied upon*' document/evidence is in digital form (electronic data) stored in a device/storage device wherein other data is also stored which is '*un-relied*' document then as to whether the accused would be entitled to a copy of the entire stored data in such device/storage device or to only selective data?

10. Each of the above framed question is being discussed individually herein under:

11. **First Question** :

- (i) *Whether an accused is entitled to copies of ‘un-relied’ documents/evidence which may have been collected by the investigating agency during the course of investigation but does not intend to rely upon the same during the course of trial and are thus, not part of the report under Section 173 Cr.P.C.?*

Under the scheme of the Code, upon completion of investigation by the police, a final report shall be prepared by the police which is to be forwarded to Magistrate concerned, accompanied by all documents on which the prosecution proposes to rely and the statements recorded under section 161 Cr.P.C. of all the persons whom the prosecution proposes to examine as its witnesses. The said procedure is prescribed in section 173 Cr.P.C. Section 207 Cr.PC, further provides that the Magistrate shall without delay furnish all such documents i.e a complete copy of report filed by police in terms of section 173 Cr.P.C. alongwith all statements and documents to the accused.

The relevant extracts read as under:

“173. Report of police officer on completion of investigation.

- (1) Every investigation under this Chapter shall be completed without unnecessary delay.
1A. x x x
- (2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating
.....
- (3) x x x
- (4) x x x
- (5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report-
 - (a) all documents or relevant extracts thereof **on which the prosecution proposes to rely** other than those already sent to the Magistrate during investigation;
 - (b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) x x x

(7) x x x

(8) x x x

207. Supply to the accused of copy 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 post, 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 exclusion has been made by the police officer under sub-section (6) of section 173;

(iv) x x x

(v) x x x

(emphasis supplied)

12. One need not go far to appreciate that the idea underlying the aforesaid provisions is that the accused is duly made aware as to what case he has to meet and as to what is the evidence relied upon by prosecution to substantiate allegations against the accused. The accused is not to be taken by surprise at the stage of recording prosecution evidence and is expected to know beforehand about the evidence proposed to be brought against him by prosecution so that he is prepared in advance to defend himself. Such defence would include submissions to be made at the stage of considering framing of charges.

13. While the scheme of Cr.P.C., does specifically provide for an opportunity to accused to produce evidence/documents in his defence to establish his innocence at the stage of recording defence evidence, but in appropriate cases, if permitted by Court, the accused, at the stage of recording prosecution evidence, may confront such witness with documents during cross-examination, subject to admissibility of such document. However, one can visualize certain cases where investigating agency during course of investigation would have laid its hands on some evidence which could be suggestive of innocence of accused but more often than not, the prosecution

in its zeal to secure conviction would not chose to make such documents/evidence a part of report filed under section 173 Cr.P.C. and in which case the accused, who in some case would be in custody, is left on his own to collect evidence to be produced in Court and which would mean filing an application and its adjudication by Court and passing of order, when infact such evidence/document is already in possession of prosecution. While the documents annexed with report filed under section 173 Cr.P.C. are generally referred to as '*relied upon documents*', the remaining documents though collected during investigation by police but not brought forth with report under section 173 Cr.PC. are generally referred to as '*un-relied*' documents'.

14. Realising the aforesaid shortcoming in procedure, Hon'ble Supreme Court in 2021(10) SCC 598, In Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials Vs. The State of Andhra Pradesh & Others, issued certain directions to remedial effect. Para 11 of said judgement reads as follow:

“11. The amici pointed out that at the commencement of trial, accused are only furnished with list of documents and statements which the prosecution relies on and **are kept in the dark about other material, which the police or the prosecution may have in their possession, which may be exculpatory in nature, or absolve or help the accused**. This court is of the opinion that while furnishing the list of statements, documents and material objects **under Sections 207 /208, Cr. PC, 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 Cr. PC. for their production during the trial, in the interests of justice. It is directed accordingly; the draft rules have been accordingly modified. [Rule 4(i)]”

(emphasis supplied)

15. Hon'ble Supreme Court, in aforesaid judgement, further issued directions to all the High Courts to suitably amend the relevant rules. Pursuant to aforesaid directions, our High Court has carried out necessary changes in '*Punjab and Haryana High Court Rules and Orders, Volume III*' vide notification dated notification no. 40/Rules/II.D4 dated 10th December, 2021. The amended Rule 6, Part-D, Chapter 1 of Volume III of said rules reads as follows:

Rule 6, Volume-III Chapter-1 Part-D, Punjab and Haryana High Rules and Orders
(*substituted vide C.S. no. 40 Rules/II.D4 dated 10.12.2021.*)

PART D

PROCEDURE IN ENQUIRIES AND TRIALS BY MAGISTRATES

“6. Warrant case on Police report – Police to furnish copies to accused before the trial commences:-

In a warrant-case (Chapter XIX of the Code of Criminal Procedure, 1973) the procedure would now depend on whether the case has been instituted on a police report or otherwise. Section 238 to 243 of Code of Criminal Procedure, 1973 govern the procedure in warrant cases instituted on police reports. When the accused appears or is brought before the magistrate, the magistrate should, at the commencement of the trial, satisfy himself that he has complied with the provisions of Section 207 Cr.P.C. Further, every accused should be supplied with statements of witness recorded under Sections 161 and 164 Cr.P.C and a list of documents, material objects and exhibits seized during investigation and relied upon by the Investigating Officer in accordance with Sections 207 and 208 Cr.P.C.

Explanation: The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits **that are not relied upon** by the Investigating Officer.”

(emphasis supplied)

16. The emphasized portion shows the significant changes made in above substituted Rule 6 which provides for not just copies of documents and statements relied upon by prosecution but also a list of all the documents including documents not proposed to be relied upon by prosecution.

17. The aforesaid judgment and the rules framed thereunder clearly show that while the investigating agency may not furnish all these documents in the first instance to the accused alongwith report under Section 173 Cr.P.C. but it cannot be said that he is dis-entitled for the same. The prosecution is required to file a list on '*un-relied*' documents along with the report under Section 173 Cr.P.C. and it is then for the accused to decide as to which of those '*un-relied* documents' are required by him. Once the accused moves an application for supply of such documents, the Magistrate would be obliged to furnish copies of the same to the accused. It is only in exceptional cases that instead of providing copy of any document, the accused may be permitted to inspection only of such record. The said exception to the general rule shall be discussed while discussing "Question no. 4". The first question stands answered accordingly to the effect that an accused is entitled to ask for supply of '*un-relied*' documents and that the Magistrate would be obliged to furnish copies of the same unless specific case for exclusion is made out.

18. **Second Question :**

(ii) *In case the accused is entitled to copies of such '*un-relied*' documents/evidence', then at what stage can he be provided with such documents/evidence? In other words, can the accused ask for such '*un-relied*' documents/evidence immediately upon presentation of challan i.e. before the charges are framed or as to whether he can exercise such right only after framing of charges?*

As already held above an accused against whom report under section 173 Cr.P.C. has been presented is entitled to copies of '*unrelied upon documents*' though the prosecution is not obliged to furnish these documents when report under section 173 Cr.P.C. is presented and the only obligation cast upon the prosecution, as per the rules framed by this Court pursuant to directions of Hon'ble Supreme Court, is that apart from supplying copies of

'relied upon documents', a List of *'un-relied'* documents shall be furnished to the accused at the time of presentation of challan. It is thereafter, that the accused may make an application to the trial Court for furnishing all or any of such *'un-relied'* documents, as mentioned in the list of *'un-relied'* documents and which shall be furnished to the accused.

19. The question as regards the stage when an accused may exercise such right has to be examined in light of the object for which this right has been vested in an accused. The Hon'ble Supreme Court in Guidelines Regarding Inadequacies and Deficiencies's case (supra) highlighted the necessity of such right while observing that the material which is withheld by prosecution may be such which could be exculpatory in nature, or absolve or help the accused.
20. While, it is trite law that an accused builds his defence not only by leading defence evidence but even while cross-examining the prosecution witness but there could even be a situation that he could come out clean on the basis of the evidence collected by the police itself. But the same is possible only if such evidence/document recovered during the course of investigation is not held back by the investigating agency and the accused is given an access to such document/evidence. There could be a situation where the record/evidence collected by police during investigation but not relied upon by prosecution may include some document/evidence to explain the allegations levelled against him on the basis of which he may be able to establish his innocence. Say, in a case of some embezzlement or misappropriation or cheating of some amount, the accused may be able to show some ledger entry in one of the ledgers seized by police, but not a *'relied upon document'*, which reflects that the allegedly misappropriated

amount had been paid back. In such a case, if accused is deprived of opportunity of drawing the attention of the Court to evidence of such sterling quality at initial stage when Court is to consider framing of charges, he certainly would stand prejudiced inasmuch as such accused once charged will have to undergo the ordeal of trial to establish his innocence on basis of such document. Once charges are framed by Court, the trial has to proceed to conduct a full-fledged trial and the case would end only upon conclusion of trial as there is no intervening stage for discharge. It will result in a futile exercise of holding an agonising trial and ultimately acquitting accused on the basis of same very evidence which had been withheld earlier and which the accused, in any case, would be entitled to produce at the stage of recording defence evidence.

21. Section 229 Cr.PC does provide the accused with an opportunity to convince the Court that he is innocent when the Court has to consider the question whether to frame charges against the accused or not. The accused can effectively put up his case only if he has access to the documents upon which the case of prosecution is based and also documents which could prove his innocence but are a part of '*unrelied*' documents.
22. If the right of an accused to get copies of 'unrelied upon documents' has been recognised, there would be no rationale in deferring supply of such documents. Access to such documents at initial stage i.e immediately after presentation of report under Section 173 Cr.P.C. should not be denied solely on the ground that charges are yet to be framed or that trial has not commenced.

23. In other words, the accused would stand seriously prejudiced for want of such evidence at the initial stage when framing of charges is to be considered. On the other hand, the prosecution cannot claim to be prejudiced on account of supply of such documents at the very outset, in case asked for. The second Question is answered accordingly to the effect that an accused can apply for and be furnished copies of ‘*unrelied*’ documents immediately after presentation of challan before framing of charges.

24. **Third Question** :

(iii) Whether the accused is entitled to be furnished with copies of statements/documents/evidence collected by the first investigating agency i.e. before the investigation is handed over to another investigating agency, towards compliance of section 207 Cr.P.C.?

Whenever any offence is reported to have been committed, it is the police officers assigned to the police station within whose territorial jurisdiction the offence has been committed, who would investigate the case. The State for certain reasons, at any point of time, may consider handing over of investigation to any other agency including a central agency which has acquired specialisation in such cases. Such a direction may even be issued by High Court or Supreme Court in exercise of powers under Article 32 or 226 of the Constitution of India. The instant case is also one such case where the matter was initially investigated by the Chandigarh Police but subsequently the investigation was transferred to CBI vide order dated 15.1.2016, passed by Administrator Chandigarh.

25. Both the investigating agencies had recorded statements of witnesses under Section 161 Cr.P.C., and also collected other evidence during investigation. Initially a report in terms of section 173(2) Cr.P.C. in the shape of an

'untraced report' dated 7.12.2020 (Annexure P-9) was presented in the Court of Magistrate by the CBI on 7.12.2020 but the Court did not treat the same as untraced and CBI was directed to further investigate the matter. Subsequently upon further investigation, supplementary challan was presented by the CBI against the petitioner on 12.9.2022. It may here be mentioned that upon an application made by the petitioner for merging both the challans, the trial Court directed that the *'untraced report'* be tagged with the supplementary report. The petitioner moved two applications dated 20.1.2023 (Annexures P-13 and P-14) seeking supply of documents collected by Chandigarh Police but both the said applications were dismissed vide orders dated 4.2.2023 and 30.1.2023 (Annexures P-2 and P-3). An extract from order Annexure P-3 is reproduced herein-under:

“Needless to mention here that during trial, applicant/accused will have an opportunity to cross examine these witnesses, who also find mention in the statements of PW-64 Inspector Amanjot Singh, PW-69 Inspector Punam Dilawari and PW-70 Inspector Ram Rattan Sharma. Furthermore, applicant/accused has a right to seek production of any document/Article during the course of trial in accordance with Section 91 Cr.P.C. if such document/Article comes to the notice of the applicant/accused, in order to enable her to defend herself. Such exercise may be undertaken by applicant/accused at appropriate stage before Ld. Trial Court.”

(emphasis supplied)

26. The investigation having concluded and a supplementary report having been filed by CBI against the petitioner, the investigation conducted initially by the Chandigarh police would form part of record and cannot be segregated. While some of the said documents, are stated to be part of the documents which are lying sealed pursuant to order dated 27.7.2022 (Annexure P-22), some of them are stated to be with CBI, being *'un-relied'* documents'. Said

record includes statements of some witnesses recorded under Section 161 Cr.PC., whose statements have also been recorded by CBI. Section 207(iii) Cr.P.C. clearly mandates that statements of witnesses recorded under section 161 Cr.P.C., whom the prosecution proposes to examine as witnesses, are to be supplied to the accused. Section 207(iii) Cr.P.C. is reproduced herein under :

207. Supply to the accused of copy 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) x x x ;
- (ii) x x x ;
- (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 exclusion has been made by the police officer under sub-section (6) of section 173;
- (iv) x x x
- (v) x x x

27. Hon'ble Supreme Court in AIR 1964 (SC) 286 Noor Khan versus State of Rajasthan while interpreting the purpose of Sections 162, 173(4) and 207(iii) Cr.P.C. held that the object of the said provision was to enable the accused to obtain a clear picture of the case against him before commencement of enquiry so that he may utilize such statement for cross-examining the witnesses to establish his defence. The relevant extract is reproduced herein-under:-

“15. The object of Sections 162, 173 (4) and 207A(3) is to enable the accused to obtain a clear picture of the case against him before the commencement of the inquiry. The sections impose an obligation upon the investigation officer to supply before the commencement of the inquiry copies of the statements of witnesses who are intended to be examined at the trial so that the accused may utilise those statements for cross-examining the witnesses to establish such defence as he desires to put up, and also to shake their testimony.

28. Confrontation of a witness during his cross-examination with his previous statements which may be contradictory is the most lethal weapon in the armoury of defence counsel and the accused under no circumstances can be deprived of the same by not supplying him all the previous statements as may have been recorded during investigation. Hon'ble Supreme Court in Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762, while dealing with a similar proposition, wherein also there two reports under section 173 Cr.PC., framed the following question:

“Whether in exercise of its powers under Section 173 of the Code of Criminal Procedure, 1973 (for short “the Code”), the trial court has the jurisdiction to ignore any one of the reports, where there are two reports by the same or different investigating agencies in furtherance of the orders of a court? If so, to what effect?”

29. Referring extensively to case-law, the aforesaid question was answered in following manner:

“52. In light of the above discussion, we answer the questions formulated at the opening of this judgment as follows.

53. The court of competent jurisdiction is duty-bound to consider all reports, entire records and documents submitted therewith by the investigating agency as its report in terms of Section 173(2) of the Code. This rule is subject to only the following exceptions:

- (a) Where a specific order has been passed by the learned Magistrate at the request of the prosecution limited to exclude any document or statement or any part thereof;
- (b) Where an order is passed by the higher courts in exercise of its extraordinary or inherent jurisdiction directing that any of the reports i.e. primary report, supplementary report or the report submitted on “fresh investigation” or “reinvestigation” or any part of it be excluded, struck off the court record and be treated as non-est.

30. The Supreme Court, thus, having held that documents/evidence collected by both the investigating agencies has to be taken into account unless held non-est by a higher Court, then it goes without saying that copies thereof are

required to be furnished to accused. In a recent judgment, in somewhat similar circumstances, delivered by Hon'ble Karnataka High Court in 2023 AIR (Karn.) 123 Muzammil Pasha versus National Investigating Agency wherein the matter was initially investigated by the State police but was later on transferred to NIA and the statements recorded by the State police under Section 161 Cr.P.C. were not made part of the charge-sheet presented by NIA, the Court directed for supply of the said statements to the accused while observing that investigating agency was not entitled to withhold the same.

31. In view of the discussion made above, this Court has no hesitation in holding that any such evidence collected by the investigating agency which has initially investigated the case before such investigation is transferred to another investigation would very much form part of the case and cannot be segregated. Neither the previous proceedings can be said to have become void or non-est nor such evidence can be said to be *alien* to the case. It is for the Court to assess the value and reliability of such evidence. The copies of all such documents collected in evidence by the first investigating agency cannot be withheld and are required to be dealt with in the same manner as if the same were collected by the second investigating agency which presented final report under Section 173 Cr.P.C.

32. **Fourth Question :**

- (iv) *In a case where the 'relied upon' document/evidence is in digital form (electronic data) stored in a device/storage device wherein other data is also stored which is 'un-relied' document then as to whether the accused would be entitled to a copy of the entire stored data in such device/storage device or to only selective data?*

It is not in dispute that a mobile phone, laptop, external drive of deceased were seized by the police. The data stored in said i-phone 5 was retrieved with the help of FBI, USA, and the volume of such data was found to be 51.6 GB. The said data included call logs, chats, facebook messages, text messages, images, videos, MMS, audio recordings, emails etc including some objectionable pictures. As per '*untraced report*' under Section 173 Cr.P.C (Annexure P-9) chats with another 6 girlfriends were found, who are referred to as GF-1, GF-2, GF-3, GF-4, GF-5 and GF-6 in the said report.

33. Interestingly, while there is specific mention in the '*untraced report*' initially filed by CBI that deceased was having multiple affairs with women and some details and extent of relationship is also disclosed therein but the the same is conspicuously missing in supplementary report (Annexure P-11) filed by CBI. Similarly there is no reference to property transactions in supplementary report (Annexure P-11) though the same was there in '*untraced report*'. A majority of such information had been extracted from the i-phone, laptop etc. which had been taken into possession by police and do find referred in '*untraced report*' .
34. The prosecution, however, has chosen not to furnish the entire copy of such electronic data but has chosen to furnish extracts thereof only. Once the police has taken into possession record, a part of which could have propensity to dent the case of prosecution, the entire record ought to be supplied to accused and the prosecution cannot be selective in furnishing such data. If the data retrieved from mobile phone was found to be 51.6 GB, the entire data (51.6 GB) ought to be furnished to accused, unless specifically permitted to be excluded by Court.

35. No such request in terms of section 173(6) Cr.P.C. for excluding any statement or record was ever made nor any application was ever moved by the prosecution seeking exclusion of any document/data. In the absence of any such order, the record which finds mentioned to have been seized by police cannot be withheld. This power to withhold statements or documents cannot be unbridled or uncanalised. It can only be used under the circumstances narrated in sub-section (6) of Section 173 of the Cr.P.C. or under any specific order of Court. The investigating agency is not entitled to use the power according to its whims and fancies so as to deprive an accused of his invaluable right to effectively defend himself.
36. Still further, when the 'untraced report was filed, the *de-facto* complainant i.e. the mother of the deceased had filed protest petition and she was supplied copies of the entire record as is evident from order dated 22.9.2021 (Annexure P-19) vide which the complainant was furnished with a copy of untraced report including statements of witnesses recorded under Section 161 Cr.P.C. and order dated 18.11.2021 (Annexure P-20) vide which the complainant was furnished with electronic evidence in the shape of pen-drive. In such circumstances, the accused cannot be kept at a disadvantageous position by not supplying copies to him. More so, when the case is based mainly on circumstantial evidence wherein the motive being imputed to the accused i.e. her relationship with deceased having gone sour, could be imputed to his other girl-friends as well particularly when his talks of his matrimony were going on with one of them and he he was intimate with one of them. The petitioner may even be successful in establishing her plea that murder was a result of some property deal. It is such

record/evidence which could have propensity to shatter the case of prosecution.

37. The manner in which the aforesaid aspects are now being underplayed would be evident from juxtaposing relevant extracts from ‘*untraced report*’ (Annexure P-9) and supplementary challan (Annexure P-11), pertaining to data retrieved from mobile phone of deceased. The said extracts are as under:

Para 16.76 of ‘ <i>Untraced Report</i> ’ dated 7.12.2020 filed u/s 173(2) Cr.P.C.(Anx.P-9)	Para 16.67 of Supplementary Challan dated 12.9.2022 (P-11) filed u/s 173(8) Cr.P.C.
Investigation has revealed that one mobile phone i-phone 5 was recovered from the person of the deceased on 20.09.2015 was got retrieved with the help of FBI, USA. The copy of 51.6 GB data in the shape of call logs, chats i.e. facebook messages etc., device notifications, emails, MMSs, recordings, SMSs, Audios, Vidoes, Images, text, documents etc. revealed the presence of objectionable pictures which were subject matter of sour relations of Ms. Kalyani Singh with the deceased <u>beside incriminating chats of other girl friends.</u>	Investigation has disclosed that data from one mobile phone i-phone 5 recovered from the person of the deceased on 20.09.2015 was got retrieved with the help of FBI, USA. The copy of 51.6 GB data in the shape of call logs, chats i.e. Facebook messages etc., device notifications, emails, MMSs, recordings, SMSs, Audios, Vidoes, Images, text, documents etc. revealed the presence of objectionable pictures which were subject matter of sour relations of Ms. Kalyani Singh with the deceased.

38. From the aforesaid juxtaposition, it is noticed that both are verbatim same excepting for the fact that last seven words i.e. ‘*beside incriminating chats of other girl friends*’ have been deleted in supplementary challan. Infact the

entire reference to affairs with other girls and also property details are missing in supplementary report.

39. Hon'ble Supreme Court in Nirmal Singh Kahlon v. State of Punjab (2009)1 SCC 441, specifically stated that a concept of fair investigation and fair trial are concomitant to preservation of the fundamental right of the accused under Article 21 of the Constitution of India.
40. Recognising the rights of the accused, vis-à-vis the role of prosecution, Hon'ble Supreme Court in Shiv Kumar v. Hukam Chand (1999)7 SCC 467, observed as under :

“13. A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case. The expected attitude of the Public Prosecutor while conducting prosecution must be couched in fairness not only to the court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle/conceal it. On the contrary, it is the duty of the Public Prosecutor to winch it to the force and make it available to the accused. Even if the defence counsel overlooked it, the Public Prosecutor has the added responsibility to bring it to the notice of the court if it comes to his knowledge.....”

41. While relying upon the aforesaid judgement, Hon'ble Apex Court in a recent judgment rendered in Manoj v. State of M.P., (2023) 2 SCC 353, further highlighted the role of prosecution in the following words:

“199. A Public Prosecutor (appointed under Section 24 CrPC) occupies a statutory office of high regard. Rather than a part of the investigating agency, they are instead, an independent statutory authority who serve as officers to the court. The role of the Public Prosecutor is intrinsically dedicated to conducting a fair trial, and not for a “thirst to reach the case in conviction”. This Court in *Shiv Kumar v. Hukam Chand* further held that :

‘13. ... If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle/conceal it. On the contrary, it is the duty of the Public Prosecutor to winch it to the fore and make it available to the accused.’

200. In *Manu Sharma v. State (NCT of Delhi) 2010(6) SCC 1*, (hereafter “*Manu Sharma*”) it was concluded that :

‘187. Therefore, a Public Prosecutor has wider set of duties than to merely ensure that the accused is punished, the duties of ensuring fair play in the proceedings, all relevant facts are brought before the court in order for the determination of truth and justice for all the parties including the victims. It must be noted that these duties do not allow the Prosecutor to be lax in any of his duties as against the accused.’

207. In this manner, the Public Prosecutor, and then the trial court’s scrutiny, both play an essential role in safeguarding the accused’s right to fair investigation, when faced with the might of the State’s police machinery.”

42. While admittedly, the police and the prosecution are integral part of Criminal Justice Administration system but their job is not just to secure conviction once FIR is lodged by complainant but to find out the truth and to place all facts before the court, whether establishing his guilt or innocence. Every effort has be made to ensure that no person is deprived of his liberty except strictly in accordance with law. In a given case, even if the data in question is otherwise highly sensitive but relevant, the accused can be given access to the same by imposing certain safeguards and riders to ensure that it is not misused or made public. Hon’ble Supreme Court in 2017 (2) RCR (Criminal) 85 Tarun Tyagi versus Central Bureau of Investigation dealt with a similar question regarding non-supply of some electronic data which had been seized by the police during the course of investigation but not supplied to the accused alongwith the charge-sheet. Apprehension had been raised by the prosecution regarding misuse of the data but Hon’ble Supreme Court while recognizing the right of the accused to such data held that while supplying a cloned copy of the hard disk some safeguards may be imposed while ensuring a fair trial to the accused so as to enable him to defend himself and while also taking care of the apprehension of the prosecution.

43. In view of the discussion made above, there is no justification for withholding complete data/electronic evidence retrieved from electronic/digital devices of deceased. Question no. (iv) stands answered accordingly.
44. In view of the discussion made, and having regard to the conclusion drawn on the questions framed above, the impugned orders dated 4.2.2023, 30.1.2023, 16.12.2022 and 22.12.2022 (Annexures P-2 to Annexure P-5), inasmuch as the same pertain to denying the petitioner of his rights to get complete set of copies of documents filed by prosecution alongwith '*untraced report*' (Annexure P-9) including statements of witnesses recorded under section 161 Cr.P.C. and denying complete copies of electronic data retrieved from mobile phone, laptop and CDs seized by police during investigation either by Chandigarh Police or by CBI, cannot sustain and are hereby set aside. As regards the commitment order, the learned counsel for petitioner has not seriously assailed the same. The same otherwise also is not found to be suffering from any infirmity and cannot be set aside on account of some document not having been furnished to accused.
45. The prosecution is directed to furnish complete set of documents which were filed by prosecution alongwith '*untraced report*' (Annexure P-9) including statements of witnesses recorded under section 161 Cr.P.C. Since some of the documents are lying sealed in the Court, the prosecution shall move appropriate application before the trial Court for unsealing the same so as to supply copies of such record immediately to accused. In case, any other record in respect of investigation conducted by Chandigarh Police is lying with CBI, copies of the same shall also be furnished to accused.

46. As far as electronic record/data found stored on mobile phone, laptop and CDs seized by police is concerned, though the petitioner is held entitled to same in entirety, whether a 'relied upon' document or 'unrelied' documents but this Court upon perusal of the '*untraced report*' finds that there is some data in the shape of chats between deceased and his girlfriends apart from objectionable photographs, which could cause embarrassment to those to whom it relates.
47. Although, section 173(6) Cr.P.C. provides for exclusion of statements from the copies to be supplied to accused but no such provision is provided for exclusion of documents. The only provision with regard to documents can be found in proviso to section 207 Cr.P.C. wherein the Magistrate upon finding the document to be voluminous can, instead of providing copy of such document, direct that only inspection of such document shall be permitted only to record and not the documents.
48. However, concerns as regards privacy have been duly acknowledged by Hon'ble Supreme Court in in *P. Gopalkrishnan v. State of Kerala, (2020) 9 SCC 161*. Hon'ble Apex Court, while being fully aware that unlike in case of 'statements', there is no specific provision for withholding 'document' from an accused, held that safeguards could be imposed while providing sensitive data. The conclusions drawn therein are reproduced herein-under:

“50. In conclusion, we hold that the contents of the memory card/pen-drive being electronic record must be regarded as a document. If the prosecution is relying on the same, ordinarily, the accused must be given a cloned copy thereof to enable him/her to present an effective defence during the trial. However, in cases involving issues such as of privacy of the complainant/witness or his/her identity, the Court may be justified in providing only inspection thereof to the accused and his/her lawyer or

expert for presenting effective defence during the trial. The court may issue suitable directions to balance the interests of both sides.”

49. The above referred judgment makes it clear that in case where personal sensitive information of complainant is pitted against right of accused to defend himself, some workable solution has to be made. An electronic storage device, in layman's language could contain digitised record in the nature of text, image, audio or video. Depending upon storage capacity of such device, any volume of data/record can be stored. Each such text document or image etc. are referred to as '*files*' which could be further managed and stored together in one part or section of storage device in the nature of a compilation which, like in case of physical documents, are called '*folders*' which can be assigned any name for identification and quick retrieval. There can even be '*sub-folders*' within '*folders*'. To have ready access to any '*file*' from amongst various '*folders*', there are '*directories*' and '*paths*', which are basically road-maps to reach the destination and be able to have quick access to the required '*files*' in stored data. There, for sure, would be a large number of files which would be irrelevant to the case which, in a given case, cannot possibly have any bearing on the case or some personal information or some information which has tendency to scandalise or be misused. If in such a case, the prosecution seeks to exclude certain record or part of record from the copies of documents to be supplied to the accused under Section 207 Cr.PC, it is required to make out a case for same. P. Gopalkrishnan's case (supra) makes it clear that in fit cases some safeguards may be ensured to check misuse of data.
50. Since, a part of data includes chats between deceased and his girlfriends apart from objectionable photographs, which could lead embarrassment to

those concerned, it will be in the fitness of things that such data be either provided by imposing some strict conditions on accused or only regulated access is provided to the same to the accused. The prosecution may move an application in this regard within one week from today. Such application shall be moved after preparing a complete list of files/folders/directories found stored on storage devices. If, the accused has no objection, only a general description may be recorded as regards contents of folders. However, the description and location, complete with directory/path of data, with respect to which prosecution seeks imposing of some conditions on accused or seeks that only regulated access be provided, should be specifically mentioned.

51. Though, no specific procedure has been laid in Cr.P.C. or High Court Rules and Orders for considering such exclusion but in cases where such a request for exclusion of some personal sensitive data is made by prosecution, the same could be considered by the Magistrate in the following manner:

- (i) the Magistrate should peruse or watch such data or part of data which is identified and proposed to be excluded, as the case may be, with the help of computer or any other compatible device. In case, upon such perusal, the Magistrate is of the opinion that such data or part of data is highly sensitive and could be misused, then some safeguards could be imposed while sharing the same with accused. The accused could be strictly directed not to share the same with others and not to play or watch in presence of anybody else except his lawyer. If feasible, such data could be given in a form which cannot be copied further;
- (ii) in case such data or part of data is found sensitive to such an extent that it is not safe to hand over a copy of the same to accused, having regard to his character or position or any other consideration, the Magistrate may, instead of furnishing copy of the same, chose to allow the accused to have access to such record only in the Court in a very

regulated manner so that chances of the same being shared or made public are eliminated. The accused and his counsel, in such case, would be permitted to see such record in the presence of Magistrate only. However, such permission to be granted liberally and may be availed of any number of times, subject to convenience of Court. Such permission may be granted anytime after presentation of report under Section 173 Cr.P.C. In such cases, the original storage device shall be kept sealed and shall be unsealed only when required and shall again be resealed;

- (iii) complete description and location of all files on storage device, whether classified as '*relied upon*' documents' or '*unrelied upon*' documents' including documents to which only regulated access is provided, shall be incorporated in the lists to be prepared, so as to facilitate quick access to relevant data/files whenever required. As far as possible such list/lists shall broadly account for each GB/MB of the total capacity of storage device seized or recovered during investigation. Such lists shall also be provided to accused;
- (iv) the accused may be provided assistance of some computer savvy person, preferably from amongst official of the Court like System Analyst, for having access to such record in Court, if only regulated access/inspection has been permitted;
- (v) the Court may fine-tune the above stated procedure as may be required in the given circumstances of a case;
- (vi) it is clarified that such exercise, at the instance of prosecution, would be in the nature of request for 'exclusion' from supplying some specific data to accused. Since there is no provision for absolute exclusion, the Magistrate would be competent only to either supply such data with certain conditions as safeguard or to provide regulated access only to such data in Court instead of supplying such data. The accused would be furnished with complete copy of the data which was found stored on storage devices excepting for such specific data in respect of which only regulated access in Court is provided.

52. The trial Court shall defer the consideration as regards framing of charges till the aforesaid documents/data is supplied to the petitioner. Since, during the course of arguments, the learned counsel for the petitioner had offered to bear all the expenses that may be incurred for copying the electronic data, the CBI may inform the accused beforehand as regards the entire expenses to be incurred for supplying electronic record including cost of storage devices, which shall be deposited in advance by the petitioner either in Court or in the office of the CBI. Needless to mention, it shall also be open to petitioner to move any fresh application so as to seek copies of any other record. The entire exercise be concluded expeditiously preferably within a period of two weeks.
53. The petition stands accepted in above mentioned terms.

8.5.2023

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No