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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 1886/2024 & CRL.M.A. 7231/2024**

SH. UDAY SHANKAR BHATPetitioner

Through: Mr. Anindya Malhotra and Mr.
Kartike Wadhwa, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATIONRespondent

Through: Mr. Ravi Sharma, SPP for the CBI
with Mr. Anjani Kumar Rai, Mr.
Praphull Kumar, Mr. Ishann
Bhardwaj and Ms. Madhulika Rai
Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

09.07.2024

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By way of the present petition filed under section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C.') read with Article 227 of the Constitution of India, the petitioner who is under-trial in case bearing CC No. CBI/422/2019 arising from RC-2A/2022 titled ***CBI vs. Anirudh Prasad Pandey*** impugns order dated 10.01.2024 passed by the learned Additional Chief Metropolitan Magistrate ('ACMM'), whereby the petitioner's application under section 207 Cr.P.C. seeking a direction to the CBI to file the 'un-relied' upon documents and statements on record and to supply copies of the same to the petitioner, has been rejected.

2. Notice on this petition was issued on 06.03.2024; following which reply dated 15.05.2024 has been filed by the CBI to the petition.



3. The court has heard Mr. Anindya Malhotra, learned counsel appearing for the petitioner as well as Mr. Ravi Sharma, learned SPP appearing for the CBI.
4. Relying upon decisions of Co-ordinate Benches of this court in ***Dheeraj Wadhwan vs. Central Bureau of Investigation***¹ and ***Central Bureau of Investigation vs. M/s. INX Media Pvt. Ltd.***², Mr. Malhotra submits, that it is now the settled position of law that accused persons are permitted inspection of the even the ‘un-relied’ upon documents; and that therefore the petitioner be also permitted such inspection.
5. In this behalf, learned counsel cites the following observations in *M/s. INX Media Pvt. Ltd* (supra):

*“16. Indubitably, while passing an order of inspection of unrelieved upon documents, **the Court is bound to strike a balance between the competing interest of ensuring a fair trial to the accused as also maintaining the sanctity of further investigation, in case further investigation is to be carried on.** Case of learned counsel for the CBI before this Court is that since further investigation is going on, permitting the accused or their representatives to inspect the documents lying in Malkhana will hinder the investigation. As noted above, the learned Trial Court directed the CBI to supply copies of all the pages/part thereof, or the entire document to the accused persons in relation to documents only a few pages or part of document were being relied by the CBI. In relation to the documents which have not been filed in the Court, the learned Trial Court did not direct the CBI to produce the said documents in Court and held that the ends of justice would be met if the accused persons are permitted to inspect the said documents lying in the Malkhana of CBI and to find out if any such document is relevant or vital for their defence or is of sterling quality to demolish the very case of prosecution and after making inspection*

¹ (2023) SCC OnLine Del 4870

² (2021) SCC OnLine Del 4932



learned counsel representing these accused shall let the Court know the details of these documents so that copies thereof can be supplied to them.

“17. By the impugned order, the learned trial Court has already clarified that the permission to conduct inspection being granted by the Court was not in respect of those documents in relation to which the investigation by the CBI was still pending. Therefore, the apprehension of the CBI that inspection would hinder in the further investigation is wholly unwarranted. Claim of learned counsel for the CBI is that the CBI at the moment cannot pre-empt which document would be necessary for the further investigation. In the present case charge sheet has already been filed and thus the claim of CBI that it is not aware which document would be relevant for further investigation is unwarranted.

“18. In the decision reported as (2012) 9 SCC 771 V.K. Sasikala v. State Hon'ble Supreme Court noted a common feature that seizure of a large number of documents takes place in the course of investigation in a criminal case and that after completion of the process of investigation and before submission of the report under Section 173 Cr.P.C., the investigating officer is bound to apply its mind to the two sets of documents i.e. the one which support the prosecution case and the other which support the accused, however it is not impossible to visualise a situation where the documents favouring the accused are not forwarded to the Court, even though the prayer in the said case was in relation to the documents forwarded to the Court but not relied by the prosecution.

“19. Further, Clause 12.32 of the CBI (Crime) Manual 2020 also lays down the procedure of inspection of documents kept in the Malkhana on Court order. Thus Clause 12.32 of the CBI (Crime) Manual 2020 recognizes the right of the accused to carry out inspection as per the procedure laid down in the Manual of the CBI”

(emphasis supplied)

6. Counsel submits however, that in the present case, the documents in question run-into some 9800 pages. In this behalf, he draws attention to



the reply filed by the CBI to the petitioner's application under section 207 Cr.P.C. in the court of the learned ACMM, to point-out that the list of un-relied upon documents and statements, appended as Annexure A & Annexure B to that reply, shows that there are about 130 such documents, running into about 9800 pages.

7. In the circumstances, Mr. Malhotra submits, that the CBI should be directed to furnish to the petitioner electronic copies of the the 'un-relied' upon documents and statements, for ease of perusal and reference. Counsel submits, that in several cases pending before the learned Special Judges, such prayers have not been opposed by the CBI.
8. On the other hand, learned SPP appearing for the CBI submits, that the position of law as settled by the Supreme Court in '***P.Ponnusamy vs. The State of Tamil Nadu***'³, is as follows :

"13. It is true that this court in V.K. Sasikala (supra) was dealing with material/documents that were forwarded to the Magistrate under Section 173 CrPC, but were not being relied upon by the prosecution. However, it is undeniable that there could also arise a situation wherein the investigating officer, ignores or does not rely on seized documents, material or evidence which favours the accused, and fails to forward it to the Magistrate [as required under Section 173 CrPC, specifically sub-section (6)]. Merely because it is not already on the record of the court, cannot disentitle the accused from accessing material that may have exculpatory value. It is this gap, that was recognised and addressed (paragraph 11 of final order) in the suo-moto proceedings, and suitably codified in the text of the Draft Rule 4, by introducing a requirement of providing a list (at the commencement of the trial) of all documents, material, evidence,

³ 2022 SCC OnLine SC 1543



etc. seized during the course of investigation or in the possession of the prosecution, regardless of whether the prosecution plans to rely on it. The facts in Manoj, having reflected such a situation (of suppression of evidence that favoured the accused) similarly, necessitated elaboration of this right.

“14. The framework that emerges (by reading Section 173, 207, 208 and Draft Rule 4) is that based on the list of statements, documents, etc. received at the commencement of the trial, the accused can seek appropriate orders under Section 91 of the CrPC, wherein the magistrate on application of judicial mind, may decide on whether it ought to be called for. Additionally, by virtue of Section 391 of the CrPC, the appellate court, if it deems necessary, may take further evidence (or direct it be taken by a magistrate or court of sessions) upon recording reasoning. **This safeguards the right of the accused in a situation where concern has been raised regarding evidence or material in possession of the prosecution, that had not been furnished, but was material to the trial and disposal of the case.**

“15. By way of Miscellaneous Application No. 505/2022 in SMW(Crl) No. 1 of 2017, this court was apprised of the fact that some states had complied, and other had not complied with the directions in final order dated 20.04.2021 regarding adoption of the Draft Rules and amending police manuals, etc. in a time-bound manner (6 months); the states were directed to comply within 8 weeks and the matter is still pending.

“16. That some High Courts or governments of the States/Union Territories have failed to comply with this court's order and are delayed in adopting the Draft Rules or amending the concerned police/practice manuals, cannot prejudice the right of an accused (to receive this list of the statements, documents, material, etc. in the possession of the prosecution), which has unequivocally been recognized by this court in its final order of the suo-moto proceedings (paragraph 11, extracted above), itself. Further, to say that the judgment in Manoj in relation to this, and the right of the accused to receive the said list of documents, material, etc. would only apply after the draft rules are adopted - would lead to an



anomalous situation where the right of the accused in one state, prejudicially differs from that afforded to an accused, in another.

“17. As stated earlier, the requirement of disclosure elaborated on in Manoj, not only was premised on the formulation of draft rules, but normatively premised on the ratio of the three-judge bench decision in Manu Sharma (supra). In these circumstances, the proper and suitable interpretation of the disclosure requirement in Manoj (supra) would be that:

(a) It applies at the trial stage, after the charges are framed.

(b) The court is required to give one opportunity of disclosure, and the accused may choose to avail of the facility at that stage.

(c) In case documents are sought, the trial court should exercise its discretion, having regard to the rule of relevance in the context of the accused's right of defence. If the document or material is relevant and does not merely have remote bearing to the defence, its production may be directed. This opportunity cannot be sought repeatedly - the trial court can decline to issue orders, if it feels that the attempt is to delay.

(d) At the appellate stage, the rights of the accused are to be worked out within the parameters of Section 391 CrPC.

(emphasis supplied)

9. Furthermore, learned SPP points-out that in any case, the petitioner is only entitled to *inspection* of documents, since that is the limited dispensation in clause 12.32 of the CBI (Crime) Manual 2020. To the extent of granting inspection therefore, learned SPP does not oppose the prayer made.
10. Mr. Malhotra rejoins to say, that quite apart from the fact that furnishing copies of the ‘un-relied’ upon documents and statements is now the usual and ordinary practices in similar matters, in the present case, inspecting such a large volume of documents would also cause



inconvenience to the investigating officer, since the inspection would require the investigating officer to also remain present.

11. Learned SPP however submits, that the documents are available in the CBI *Malkhana* and inspection would be granted to the petitioner under the supervision of the *Malkhana* In-charge, whether or not the investigating officer is present.
12. In the circumstances, the present petition is disposed-of, directing the CBI to grant to the petitioner inspection of all 'un-relied' upon documents and statements as listed in Annexures-A & B appended to the reply filed by the CBI to the petitioner's application filed under section 207 CrPC before the learned ACMM.
13. It is made clear that inspection would be granted to the petitioner and his counsel under the supervision of the *Malkhana* In-charge (or other officer deputed in that behalf) regardless of whether the investigating officer is present or not; and, considering the large volume of documents involved, the CBI would not unreasonably curtail the time permitted for such inspection.
14. The petition is disposed-of in the above terms.
15. Pending applications, if any, stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

JULY 9, 2024

V.Rawat