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

+ **CRL.M.C. 6868/2024, CRL.M.A. 26245/2024**

SYED ASHRAF

.....Petitioner

Through: **Mr. Archit Upadhayay and Ms. Charu
Sharma, Advocates.**

versus

CBI

.....Respondent

Through: **Mr. Anurag Ahluwali and Mr. Abhay
Singh, Advocates for CBI.**

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **02.09.2024**

CRL.M.A. 26246/2024 (Seeking Exemption)

1. Allowed, subject to just exceptions.
2. The application is accordingly disposed of.

CRL.M.C. 6868/2024

3. A Petition under Section 528 of BNSS has been filed on behalf of the petitioner for quashing of Order dated 09.08.2024 whereby the learned CJM has allowed the Application under Section 311 Cr.P.C of the respondent to examine Shri Ashok Kumar, the then SSO-II, CFSL, New Delhi as its witness to depose if the Photographs which form the basis of the Handwriting Report, had been taken by him.
4. It is submitted in the Application that CBI has relied upon the Handwriting Expert in respect of proving the allegations of forgery. However, as per their own case, the original document is not available and



the entire case rests on a photocopy which per se is not permissible under law.

5. It is further submitted that the Prosecution witness Handwriting Expert Shri T.R. Nehra has died and now the CBI wants to examine Mr. Ashok Kumar on the basis of a Report given by FSL that there is no record available about who assisted Shri Nehra but as per the record, the documents had been handed over by Shri Ashok Kumar to Late Shri Nehra from where it is possible that he may have assisted him in preparation of the Report.

6. It is submitted that the basis on which Mr. Ashok Kumar is sought to be summoned is a speculative response from CFSL, which does not justify permitting Mr. Ashok Kumar to be examined as a witness. Hence, it is prayed that the impugned Order dated 09.08.2024 be set aside.

7. **Learned counsel on behalf of CBI** has opposed the petition on the ground that the basis of opposing the claim of the petitioner in the present petition are speculative and conjectural. The examination of Mr. Ashok Kumar is in no way, going to prejudice the rights of the petitioner. It is submitted that this petition is without merit and may be rejected.

8. **Submissions heard.**

9. Admittedly, the Prosecution Witness Mr. Nehra, the person who had prepared the Handwriting Report is dead. The CBI is left with no option but to look for some person who had assisted him in order to prove the FSL Report. Though, as per the Note received from FSL it is stated that Mr. Ashok Kumar, who had handed over the documents to Mr. Nehra, may have assisted him in preparation of the Report, but at this stage it cannot be said that Mr. Ashok Kumar may or may not be able to depose about the relevant facts. In case he deposes about being the part of the team of the



Handwriting Expert, the petitioner has absolute right of cross-examination. In case the witness does not support the prosecution, it again enures to the benefit of the petitioner.

10. The learned CJM has rightly allowed the Application under Section 311 Cr.P.C which does not cause any prejudice to the petitioner.

11. The application is without merit and is hereby rejected along with the pending application.

NEENA BANSAL KRISHNA, J

SEPTEMBER 2, 2024/va