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

+ **CRL.REV.P. 300/2025, CRL.M.A. 22908-22909/2025**

A K SHANKARAN

.....Petitioner

Through: Mr. Uday Gupta, Senior Advocate
with Mr. Hiren Dasan, Mr. Rajiv
Ranjan and Mr. Deepangshu Rana,
Advocates.

versus

CENTRAL BUREAU OF INVESTIGATIONRespondent

Through: Mr. Ripudaman Bhardwaj, SPP with
Mr. Kushagra Kumar, Mr. Himanshu
Kaushik and Mr. Amit Kumar Rana,
Advocates for CBI with
Mr. Deepak Verma, Insp.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

06.08.2025

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1. The present petition under Section 397 read with Section 401 of Code of Criminal Procedure, 1973¹ assails order dated 26th July, 2025 passed by the Special Judge, PC Act, CBI-15, Rouse Avenue Courts in CBI Case No. 216/2019, titled “***CBI v. Basant Kumar Birla Etc (Shan Yuth CGHS)***”. By the said order, the Trial Court allowed an application filed by the Central Bureau of Investigation² under Section 311 of the Cr.P.C., seeking leave to summon and examine certain independent witnesses, whose names were not part of the original list of prosecution witnesses.

¹ “Cr.P.C.”



2. Brief factual background:

2.1. The present CBI case stems from an order of this Court dated 2nd August, 2005, pursuant to which the Central Bureau of Investigation registered an FIR. The Petitioner is arrayed as Accused No. 19. The enquiry/ investigation revealed that one M/s Shan Yuth CGHS, a society comprising 90 members, was registered with the office of the concerned Registrar, but became non-functional owing to an escalation in land prices by the DDA, ultimately resulting in its liquidation.

2.2. During the liquidation proceedings, the Secretary of the Society, pursuant to the direction of the Liquidator, handed over all records pertaining to the Society to the Liquidator. However, the Liquidator transferred the records during an administrative shift and sold them to M.M. Sharma (Accused No. 17) through one Dinesh Goswami. These individuals fabricated false Minutes of Meetings by tampering with original records, falsely recorded the resignation of 44 original members, and fraudulently inducted 47 fictitious members. A person was also falsely shown as the Secretary of the Society. Forged affidavits purporting to be from the newly inducted members were created using fabricated signatures.

2.3. The specific allegation against the Petitioner is that he was involved in preparing forged documents relating to the functioning of the Society, including interpolation in the Minutes, addition of fictitious members, and fabrication of resignations of original members. The Government Examiner of Questioned Documents (GEQD) report confirmed the Petitioner's handwriting on the forged documents.

2.4. Upon conclusion of investigation, a chargesheet was filed, listing 213

² "CBI"



Prosecution witnesses. The Trial Court took cognizance of the offences on 7th December, 2009. Thereafter, certain accused persons filed applications under Section 256B Cr.P.C. seeking plea bargaining, which were later withdrawn. Subsequently, one of the co-accused filed an appeal before the Supreme Court, which resulted in a stay of proceedings. The proceedings eventually resumed, charges were framed, and the case is currently at the stage of prosecution evidence.

2.5. Prosecution witnesses have been examined from time to time. The Trial Court has taken steps to secure the attendance of absconding witnesses, and has dropped witnesses found to be deceased or irrelevant. At present, the examination of the Investigating Officer (PW-163) is underway.

2.6. During the investigation, the Investigating Officer obtained specimen signatures and handwriting of the accused in the presence of certain individuals, whose names were recorded in the specimen memo. The accused have denied their handwriting and signatures appearing on that memo. To establish the contrary, the CBI moved an application under Section 311 Cr.P.C. before the Trial Court, seeking to summon those individuals as witnesses.

2.7. The said application was allowed by the Trial Court *vide* impugned order dated 26th July, 2025. Furthermore, in view of the fact that the said witnesses are yet to be examined, the Trial Court deferred the further recording of the statement of the IO.

3. Aggrieved, the Petitioner has invoked the revisional jurisdiction of this Court, seeking setting aside/modification of the impugned order. Mr. Mr. Uday Gupta, Senior Counsel for the Petitioner, has advanced the following submissions to assail the impugned order:



3.1. The Trial Court erred in permitting the summoning of fresh witnesses at a stage when substantial prosecution evidence already stands recorded and the examination-in-chief of the Investigating Officer, Mr. Javed Siraj (PW-163), is in progress. This course of action, it is argued, runs contrary to the statutory scheme for production and examination of witnesses prescribed under Sections 135 and 138 of the Indian Evidence Act, 1872.

3.2. A conjoint reading of Sections 135 and 138 makes it evident that the established procedure during trial is to first conduct the examination-in-chief of a witness, followed by cross-examination by the adverse party (if so desired), and finally, re-examination (if necessary). While Section 231 Cr.P.C. permits the deferment of cross-examination of a witness until after other witnesses have been examined, there is no statutory provision allowing the deferment of examination-in-chief midstream in order to first examine other witnesses.

3.3. There is no provision to defer the examination-in-chief of a witness already under examination, summon additional witnesses for their deposition, and subsequently resume the chief examination of the earlier witness. The Trial Court has thus erred in directing that the statements of other witnesses be recorded first, deferring the examination-in-chief of PW-163.

3.4. As for the merits of the impugned decision to summon additional witnesses, it is significant to note that the chargesheet, filed as far back as 2006, did not cite them as prosecution witnesses. If such independent witnesses had, in fact, been present when the specimen signatures or handwriting were taken, the Investigating Officer would have named them in the chargesheet or at least referred to them in the course of his testimony.



Their complete omission over nearly two decades suggests that the present move is an afterthought, intended to fill evident gaps in the prosecution's case, an exercise the law does not permit.

3.5. The proposed witnesses have no real connection with the alleged offences, and their testimony would be irrelevant and prejudicial.

4. The Court has considered the aforementioned contentions as well as perused the material on record. At the outset, it is imperative to underscore that Section 311 Cr.P.C. empowers courts to *inter alia* summon any person as a witness, at any stage of the inquiry, trial, or other proceeding, if such evidence appears to be essential to the just decision of the case. The Supreme Court has consistently reiterated that the object of Section 311 is to enable the Court to discover the truth and unearth proof of relevant facts, with a view to arriving at a just and fair adjudication.³ It has further observed that the primary duty of a Court is to ensure justice, and the mere summoning or recalling of a witness, if deemed necessary for that purpose, cannot be dubbed an attempt at filling in the lacuna in the prosecution's case.⁴

5. In light of the foregoing legal principles, this Court now proceeds to examine the rationale of the Trial Court in allowing CBI's application under Section 311 Cr.P.C. The relevant observations of the Trial Court are extracted below:

"35. It was on 27.03.2025, that present application was preferred by CBI, before this Court.

36. Aforesaid ordersheets, therefore reveal that this court had proceeded further with the trial, assiduously. Witnesses were examined regularly. Those witnesses who did not turn up in the court despite receiving

³ Raj Deo Sharma (II) v. State of Bihar, (1999) 7 SCC 604.

⁴ U.T. of Dadra & Nagar Haveli v. Fatehsinh Mohansinh Chauhan, (2006) 7 SCC 529.



summons were called again by issuing coercive processes. Witness who expired and those witnesses who were not found relevant by Ld. PP, were dropped from the list of witnesses. So, all possible effective orders were passed by the court, in a reasonable manner for expeditious adjudication of this case.

37. This brings me to the arguments made by Ld. Sr. PP for CBI and by accused. Based on those arguments, I find that certain issues were flagged. They are highlighted in subsequent paragraphs and decided, accordingly.

Issue No. 1- Whether application is filed at a belated stage, to cover up lacunae by CBI?

38. In order to decide said issue, I have considered the contents of charge-sheet and previous ordersheets, of this matter, as referred by me above in preceding paragraphs. Same are not repeated here for the sake of brevity.

39. After considering the contents of charge-sheet, I find that scope of investigation in present case, was very wide. Issues of preparation of forged documents by accused persons, were involved, besides corruption. This case was registered, in the year 2006, whereas facts regarding forgery of documents, cheating and corruption pertained to the time period, which commenced from the year, 1992. The charge-sheet was filed in the year 2008. Matter was stayed for about four years, as per the directions of Hon'ble Apex Court in criminal appeal.

40. I also find that after removal of stay order, proceedings in this case, took place in a swift manner. The ordersheets, as mentioned above, reflected that after framing of charges against accused persons, till now 163 witnesses have been examined and examination of IO, who is the last prosecution witness, is pending to be completed. The ordersheets reflected that witnesses were examined and discharged regularly. Matter was only adjourned without recording of evidence when witnesses did not turn up in the court or when accused persons did not appear in the court. Further, witnesses were dropped also from being examined due to their death or at request of Ld. Sr. PP for CBI. The said ordersheets revealed that effective work was done by the court on almost on all dates. Considering the number of witnesses cited by CBI, plethora of documents involved, number of accused persons and other factors mentioned herein, I find that trial in this case has proceeded in a reasonable fast manner. In such circumstances, issue of present application, filed at a belated stage, as such cannot be raised, as prosecution evidence is yet to be completed and prosecution has right to bring its witnesses, during the said period.

41. In the application, CBI has admitted that due to inadvertent mistake, proposed witnesses to be examined, were not mentioned in the list of witnesses. As such CBI admitted its mistake. Such like mistakes happen in ordinary course by different persons and entities. So considering the wide scope of present case, I find that CBI has not done any mistake which can be treated as intentional mistake for delaying present matter. More so



where no reason can be attributed to CBI as basis for delaying adjudication of present matter.

42. Infact, I find one peculiar situation in this case, which is, that few accused persons have filed miscellaneous applications, for plea bargaining which after few months they withdrew. One of the accused persons had preferred appeal before Hon'ble Apex Court, which after few years, he withdrew. Details of said applications and appeal are mentioned in this order, which are not repeated here, for the sake of brevity. So, those accused persons, filed applications and appeal and later on withdrew it. Why they withdrew it, is not mentioned in the ordersheets and never explained by said accused persons. In the absence of any explanation, I find that only possibility, which remained, was that they wanted to delay adjudication of present matter. This conclusion, does not help the cause of accused, who had contested present application.

43. This brings me to the issue of covering up lacunae, by prosecution. That argument of accused, again is not tenable. Reason being, that prosecution evidence, yet to be completed. After examining more than 150 witnesses, if prosecution has come to know that certain witnesses were not mentioned in the list of witnesses, inadvertently, then said claim of prosecution, cannot be seen with suspicion. I have already mentioned details of charge-sheet, number of witnesses, number of accused persons and have observed involvement of plethora of documents, in this case, in my preceding paragraphs. In such situations, such mistakes can happen. There is nothing unreasonable about it. To colour said mistake with the covering the lacunae', will not be proper. Situation, would have been different, if suggestion with regard to absence of those proposed witnesses was given by accused persons to prosecution witnesses and prosecution witnesses had denied the same. If after said denial, prosecution had filed present application, then I would have appreciated the claims of accused, based on 'covering the lacunae'. So, I find that argument of accused, to the effect that prosecution wants to fill in the gap/lacunae in its version is not acceptable. Same stands dismissed.

Issue no. 2-Whether examination of proposed witnesses is necessary for just decision of this case?

44. In order to decide said issue, I have to appreciate, as to what those witnesses will prove if they are examined by prosecution.

45. As per record, I find that as per CBI, proposed witnesses were the persons, before whom specimen signatures/handwriting of accused persons was taken, by the IO during investigation. The aspect of proof of taking specimen signatures/handwriting of accused persons is a relevant aspect. Reason being, that there are allegations of forgery in documents, being done by some of the accused persons. Now, whether those accused persons had committed forgery or not is a relevant aspect. For proving said aspect, one of the legal ways in which prosecution can prove, is by proving the handwriting/signatures of said accused persons. That can be done, by



comparing disputed signatures/handwriting of accused persons with their specimen signatures/handwriting. It brings in the fact as to whether specimen signature/handwriting of accused persons, was taken by CBI, during investigation. Now CBI is claiming that it has taken specimen signature/handwriting of accused persons, in the presence of proposed witnesses, which are to be examined. Thus, in such circumstances, CBI, as such cannot be denied the right of proving said aspect. Evidence of said proposed witnesses, therefore, is essential for the just decision of this case.

Issue no. 3- Whether perspectives of both sides are considered?

46. Ld. Sr. Counsel for accused, argued that this Court has to appreciate and balance perspectives of prosecution and accused. As per him this Court should not simply believe the version of prosecution and allow the application.

47. For once, I am in agreement with the said argument. It is only, for that reason, that I have mentioned the chain of events, which took place in the past, prior to filing of present application, in this order, in my preceding paragraphs. Surprisingly, after considering the record, I find that it is not the prosecution which has delayed adjudication of present matter, rather it is accused persons who have filed and withdrawn their applications, just like that, without any reason, leading to delay in adjudication of present case. As such, I cannot help if prosecution has filed list of more than 150 witnesses, in this case or if this matter was stayed by Hon'ble Apex Court or if matter was delayed due to want of sanction orders from competent authority. What this Court, could have done, was that it could have proceeded with the trial in an expeditious manner. Same was, in fact done, in this case. Ld. Predecessors of this Court have diligently recorded evidence. It is only due to said approach, that this case is at the stage of recording of evidence of last witness in the shape of investigating officer of the case.

48. Based on aforesaid appreciation, endeavour is made by me, to balance out perspectives of rival parties. Suffice it is to conclude that based on conduct of the parties, present application cannot be seen with suspicion. This conclusion, therefore, does not help the cause of accused.

Issue No. 4- Whether application is meritless on account of facts viz. that proposed witnesses not mentioned in the list of witnesses, that lineage of Proposed witness Jaqdish is not mentioned, that application was filed after this Court had raised query and that IO had not stated in his testimony about the said proposed witnesses?

49. Abovementioned facts, based on which accused has claimed that present application is meritless, again are not tenable. Reason being, that this Court has ample power under Section 311 Cr. PC to call proposed witnesses who are not mentioned in the list of witnesses. The relevant expressions used in Section 311 Cr. PC, which are required to be considered in this regard are '**any Court at any stage of trial summon any person as a witness,.... though not summoned as a witness if his evidence appear to it be essential to the just decision of the case**'. The



said expressions of law have to be given widest interpretation and are not supposed to be given narrow interpretation as what the Court is required to appreciate while calling a witness for examination is whether examination of such witness is essential to the **just decision of the case**. That is the backbone of Section 311 Cr. PC and it cannot be brushed aside, just like that. I have already referred to the case laws, which have highlighted the relevance of said words used in Section 311 Cr. PC. It supports my conclusion, drawn above.

50. Further, non-mentioning of lineage of proposed witness Jagdish is not a material ground to dismiss the application as it is for the prosecution, to bring correct 'Jagdish', who is required in this case. If false 'Jagdish' is examined by prosecution, then not only accused persons who can test veracity of said witness by cross-examination, this Court can also check the veracity of said witness, through Court questions.

51. Lastly, whether proposed witnesses are examined before the query put by this Court or after the query is put by this Court, is not a relevant consideration, as neither Section 311 Cr. PC nor case laws interpreting said provision, recognise the same.

Issue No. 5- Whether proper course is to examine IO first and then proposed witnesses?

52. Ld. Counsel for accused, argued that firstly evidence of IO should be completely recorded and then if required, this Court may examine proposed witnesses.

53. Again that proposal by way of arguments, is not correct and proper.

54. Reason being, that ordinarily IO is examined, once all the witnesses, except him are examined by the Court. This manner of examination of witnesses is correct. There are various reasons, for concluding so. One is, that IO is responsible for producing all material witnesses, during trial. The presence of investigating officer at the time of trial is a must. It is his duty to keep the witnesses present. Reliance in this regard is placed upon case law titled as **Shailendra Kumar Vs. State of Bihar (2002) 1SCC 655**. Further in criminal trial, particularly in Sessions Case, the presence of investigating officer during trial is not only essential, but imperative. Reliance in this regard is placed upon case law titled as **Asif Balwa Vs. CBI (2012) SCC Online Del 903**. So in the wake of said case laws, it is clear that IO is required to be present in the Court, till examination of prosecution of witnesses is completed. In other words, it is required, in present case that proposed witnesses should be examined first, in the presence of IO and thereafter, once testimonies of said proposed witnesses are recorded completely, IO is examined.

Case Laws, referred by accused

55. Alongwith written submissions, accused filed certain case laws, viz-Mohanlal Shamji Soni vs. Union of India and Anr, 1991 Supp(1) SCC 271, Natasha Singh vs. Central Bureau of Investigation (State), (2013) 5



SCC 741, *Rajaram Prasad Yadav Vs. State of Bihar and Anr.*, (2013) 14 SCC 461, *Mannan Shaikh and Others Vs. State of West Bengal and Anr.*, (2014) 13 SCC 59, *Vijay Kumar Vs. State of Uttar Pradesh & Anr.*, (2011) 8 SCC 136 and *Manju Devi vs. State of Rajasthan and Anr.*, (2019) 6 SCC 203. So far as law is concerned, all the said case laws laid down uniform law, while interpreting Section 311 Cr. PC. There is no doubt about that. At the same time, those case laws are distinguishable on facts. As such they did not help the cause of accused.

56. In *Mohan Lal Shamji Soni Case (Supra)*, prosecution filed application for recalling witnesses, at the stage of final arguments. Same is not the situation here.

57. In *Natasha Singh case (Supra)*, again application u/s 311 Cr PC was filed at the stage of final arguments, though by accused, therein. Same is not the situation here.

58. In *Mannan Shaikh Case (Supra)*, prosecution filed application for calling record of statement of the concerned deceased, which was not brought on record earlier. Hon'ble Apex Court, noted that findings of Ld. Trial Court to the effect that said record is not necessary for just decision of the case, was correct. Here, in present matter, I have concluded otherwise, to the effect that evidence of those witnesses is necessary for just decision of the case. The offence involved in the said case was Section 304, 447, 326/34 IPC, r/w section 3 & 4 of Explosive Substances Act, which are not involved in present matter.

59. In *Vijay Kumar Case (Supra)*, at the stage of recording of statement of accused, applications were moved by accused for re-calling certain witnesses alongwith one witness namely Smt. Ruchi Saxena, as court witness who was not mentioned in the list of witnesses in the chargesheet. Same is not the situation here.

60. In *Manju Devi Case (Supra)*, offences involved were Section 302/304B/498A IPC. Application u/s 311 Cr PC was filed by the mother of deceased, for summoning of Dr. I. Yusuf, who had conducted Post Mortem of dead body of daughter of applicant. That witness was resident of Nigeria and request was made to examine him either by summoning him through High Commission of Nigeria or to record his evidence through Video Conferencing after issuing a commission. That application was dismissed by Ld. Trial Court and Hon'ble High Court. It was finally allowed by Hon'ble Apex Court by over turning the orders passed by Ld. Trial Court and Hon'ble High Court. Said situation, does not exist in present matter, before me.

Conclusion

61. The net result is that CBI was able to show that it had filed present application, bona-fidely. No doubt, it was filed after examination of more than 150 witnesses but that fact by itself did not make the application suspicious. Accused will get opportunity to cross-examine the proposed witnesses. As such there is no possibility of accused getting prejudiced in



any manner. In this case, long pendency of the matter, was not something, for which prosecution, alone is responsible. Certain accused persons filed applications and appeal which led to delay in present matter. As such, no party can be blamed. Parties exercised their legal rights and in the process this matter got delayed. Except that, no other observation can be made, in this matter. Fact of the matter, remains that proposed witnesses are found by me to be relevant and their testimonies are required for just decision of this case.

62. *In the wake of abovementioned appreciation and conclusions, present application, filed by CBI is allowed.*

63. *CBI is allowed to examine proposed witnesses, namely Jagdish Prasad, Raman Kumar (Assistant Group-I, NPI, Pussa, N.D-12), Mohan S. Naidu (Special Assistant, BOB, Chembur Branch, Mumbai), Surender Singh, S/o Prakash Singh, Rio H.No. 7478, Street No. 8, Dabba Colony, Ludhiana, Punjab and N.C. Sood, employee of GEQD under Section 311 Cr. PC.*

64. *A copy of this order be given dasti to accused."*

6. Having perused the impugned order, this Court finds no infirmity in the Trial Court's exercise of discretion under Section 311 Cr.P.C. The provision, as interpreted by the Supreme Court, is couched in the widest terms, permitting the summoning of any person as a witness at any stage of the trial, if the Court considers such evidence essential to a just decision. The Supreme Court in **Iddar v. Aabida**,⁵ has clarified that the test is not one of convenience to either party, but of necessity for arriving at the truth. In the present case, the Trial Court correctly noted that the proposed witnesses are those whose names appear on the document containing the specimen signatures and handwriting of the accused. In light of the accused's denial of this document, their testimony bears directly on a foundational fact in issue, whether those specimens were taken in the manner alleged. Considering the nature of the charges, which involve forgery and fabrication of records, such evidence cannot be treated as peripheral or an afterthought. The Trial

⁵ (2007) 11 SCC 211.



Court's reasoning reflects a proper appreciation of the object of Section 311, to prevent a failure of justice by ensuring that material evidence is brought on record, irrespective of the stage at which it is sought to be produced.

7. The objection that summoning these witnesses amounts to filling a lacuna in the Prosecution's case is equally without merit. The Supreme Court in **Natasha Singh v. CBI**,⁶ has held that the power under Section 311 Cr.P.C. cannot be curtailed on such a ground where the evidence sought is relevant and essential for a just decision. The distinction lies between an attempt to patch up a weak case, which is impermissible, and the *bona fide* bringing in of material evidence necessary for the truth to emerge, which the law not only permits, but rather enjoins. In the present case, the memo of specimen signatures/handwriting, bearing the signatures of the proposed witnesses, already forms part of the chargesheet, as duly acknowledged by Mr. Uday Gupta, Senior Counsel representing the Petitioner, and has been available to the defence throughout. The Petitioner having denied the authenticity of the said document, it is only appropriate that the persons in whose presence it was prepared are examined. This step fortifies, rather than circumvents, the fairness of the trial process.

8. The Trial Court also correctly took note of the scale and complexity of case, spanning numerous accused, an extensive witness list, and a vast documentary material. In that context, the CBI's explanation that the proposed witnesses were omitted earlier due to inadvertence was reasonably accepted. The omission, seen against the backdrop of a case of this magnitude, cannot be presumed to be either deliberate or motivated. As the Supreme Court has recognised, procedural lapses in such multi-accused,



document-heavy trials are not uncommon and cannot, without more, be equated with an attempt to patch over evidentiary gaps. What matters is whether the evidence sought is material to the determination of the issues in controversy.

9. Turning to the objection that the Investigating Officer made no reference to the proposed witnesses during his testimony, this Court finds the contention unpersuasive. The determinative consideration under Section 311 Cr.P.C. is whether the proposed evidence is essential for a just decision, not whether it was earlier adverted to by a particular witness. The fact that the IO did not specifically name these witnesses in his deposition does not, in itself, fetter the Trial Court's power to summon them, particularly when their testimony bears directly on proving whether the accused's specimen signatures were duly obtained and whether forgery was committed. The Petitioner will retain full liberty to confront both the IO and the proposed witnesses in cross-examination on every relevant aspect, including the timing of their introduction and the CBI's explanation regarding their presence, thereby safeguarding the defence against any prejudice.

10. Lastly, as to the objection that the proposed witnesses should not be examined while PW-163 (the Investigating Officer) is still under examination, this Court finds no infirmity in the Trial Court's approach. It is a settled practice that the Investigating Officer, being the witness tasked with presenting the entire chain of investigation, is ordinarily examined after other material witnesses have been brought on record. In the present matter, his examination-in-chief is yet to conclude. The temporary deferment of his further testimony, to first record the evidence of witnesses whose presence

⁶ (2013) 5 SCC 741.



at the time of obtaining specimen signatures is directly in issue, ensures that his eventual testimony can address the case in its complete factual context. Such sequencing neither causes prejudice to the defence nor departs from the letter or spirit of Sections 231 and 311 Cr.P.C., and the Trial Court's decision to adopt it discloses no error warranting revisional interference.

11. In view of the foregoing, this Court finds no infirmity in the impugned order. The Trial Court has duly considered each contention advanced by the Petitioner and, applying the settled principles governing the exercise of power under Section 311 Cr.P.C., correctly concluded that the examination of the proposed witnesses was necessary to secure a just adjudication. The discretion exercised warrants no interference by this Court in exercise of its revisional jurisdiction or inherent powers.

12. The petition is, therefore, devoid of merit and stands dismissed. Pending applications, if any, also stand disposed of.

SANJEEV NARULA, J

AUGUST 6, 2025

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