

18.08.2020

Present:

Sh. B.K. Singh Ld. Sr. P.P. for CBI along with IO Inspector Yashwant Singh.

Accused No. 1 Smt. Aarti Kalra from Dubai through video conferencing with Ld. Counsel Sh. Bharat Gupta.

Accused No. 2 Sh. Shailendra Kumar Upadhyay with Ld. Counsel Sh. Vikas Arora.

Accused No. 3 Sh. Harbans Lal Maan with Ld. Counsel Sh. I.D. Vaid.

Accused No. 4 Sh. Ravinder Nath with Ld. Counsel Sh. Ravinder Kumar Gupta.

Accused No. 5 Sh. Nakul Gheek with Ld. Counsel Sh. Virender Kumar Kalra.

Accused No. 6 Sh. Harmeet Singh with Ld. Counsel Sh. P.K. Bhardwaj.

Accused No. 7 Sh. Radhey Shyam Goel with Ld. Counsel Sh. Aarshdeep Singh Kalra.

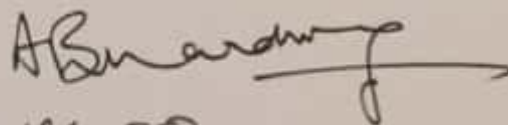
Accused No.8 Sh. Prashant Kumar @ Bobby with Ld. Counsels Sh. Ankur Jain and Sh. R.K. Jain.

(Through VC using Cisco Webex App.)

Arguments heard on applications for bail on behalf of Ld. Counsel for Accused Nos. 2 to 8.

List for orders now on 02.09.2020 at 11:00 AM.

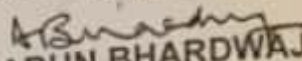
The arguments with regard to the bail application of Accused No. 1 Ms. Aarti Kalra shall be heard when she arrives in India from United Arab Emirates (UAE).

  
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Ld. Counsel representing Accused No. 1 submitted that the Accused No. 1 Smt. Aarti Kalra has children aged 12 and 9 years and therefore she is not medically advised at present to take a flight for coming to India.

Let a copy of this order be sent by WhatsApp to Ld. Sr. PP for CBI, all the accused and their learned counsels.

ARUN BHARDWAJ  
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Date: 2020.08.18 16:57:36 +05'30'

  
(ARUN BHARDWAJ)  
Special Judge (P.C. Act)(CBI-05)  
Rouse Avenue District Court,  
New Delhi/18.08.2020

18.08.2020

Present:- Sh. Brijesh Kumar Singh, Ld. Senior P.P for CBI.

Accused No. 1 Sh. Ashutosh Verma in person with Ld. Counsels Sh. P.K. Dubey, Ms. Smriti Sinha, Mr. Shri Singh, Mr. Gautam Khazanchi, Mr. Shiv Chopra, Mr. Anurag Andley, Mr. Gaganjyot Singh, Ms. Smriti Ramchandran, Sh. Prince Kumar and Ms. Pinky Dubey.

Accused No. 2 Sh. Suresh Nanda in person with Ld. Sr. Counsel Sh. Ramesh Gupta along with Sh. Sandeep Kapoor.

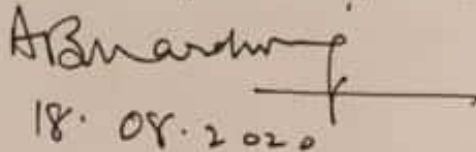
Accused No. 3 Sh. Bipin Shah in person with Ld. Counsel Sh. Anindya Malhotra.

**(Through VC using Cisco Webex App.)**

In the beginning, the Ld. Counsel for Accused No. 1 Sh. Ashutosh Verma submitted that in the previous order sheet at Page 2 Para 2 where there is a reference to "source", the same be read as "alleged source" as it is the case of Accused No. 1 that in this case there is no source who had recorded the conversation.

The Ld. Counsel also referred to the submissions of Ld. Sr. PP for CBI recorded at the end of previous order sheet where he had submitted that the judgment in the case of "Ram Singh" is of the era when Section 65B of Evidence Act was not there in the Statute Book and now all electronic evidence has to be seen in the light of conditions laid down under Section 65B of the Evidence Act.

The Ld. Counsel for Accused No. 1 vehemently opposed this submission of Ld. Sr. PP for CBI and argued that Section 65B of Evidence Act is in the nature of a bridge between original evidence and secondary evidence and at the very threshold when leading secondary evidence, it is to be accompanied

  
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with Certificate under Section 65B of Evidence Act, otherwise the secondary evidence is not admissible. Ld. Counsel referred to the judgment in the case of Anvar P.V. vs. P.K. Basheer and read Para 17, where it is held that electronic records are susceptible to tampering, alteration, transposition, excision etc. without safeguards ensuring the source and authenticity of electronic evidence, the whole trial based on proof of electronic records can lead to travesty of justice.

It is further held in the said judgment that only if the electronic record is duly produced in terms of Section 65B of the Evidence Act, the question would arise as to the genuineness thereof and in that situation, resort can be made to Section 45A – opinion of examiner of electronic evidence. Ld. Counsel submitted to ensure the authenticity and genuineness of electronic evidence, the law enforcing agencies send the same to CFSL to rule out any tampering. Ld. Counsel also referred to the judgment in the case of S.K. Saini, Para 77.

Ld. Counsel reiterated his submissions with regard to the recording at EROS Hotel and submitted that, had there been any truth in the allegations of investigating agency it would have collected Cell Tower location of Sh. Bipin Shah and Sh. Ashutosh Verma to prove their presence at EROS Hotel on the date and time alleged in the chargesheet.

Next, the Ld. Counsel submitted that today he will address arguments about the evidence of five official witnesses of Income Tax Department who are PW-18, PW-20, PW-46, PW-58 and PW-50.

Before that, Ld. Counsel referred to the order of Hon'ble Delhi High Court granting bail to the accused persons to show that the argument of the accused from day one is that the Accused No.1 had submitted the Appraisal Report on 22.02.2008. There is no money trail from other accused to this accused(Public Servant). CBI has not seized any document which was tampered with to favour the private persons.

The Ld. Counsel submitted that the arguments of the Ld. Additional Solicitor General at that time were that they are examining the dilution of Appraisal Report by Accused No. 1. Ld. Counsel submitted that contrary to the submissions made by prosecution at that time, no accused is charged under Section 13(1)(d) of P.C. Act. There is no evidence of meetings of this accused with Sh. Bipin Shah on 22.02.2008, 23.02.2008 and 04.03.2008. Ld. Counsel submitted that for opposing the bail of the accused, prosecution had alleged dilution and suppression of the Appraisal Report to favour the private persons and now at the end of trial they have to make good their allegations of dilution and suppression of Appraisal Report by Accused No. 1.

He also referred to Para 11 of the said order where the Ld. Additional Solicitor General had argued that they are examining the amount of bribe. Ld. Counsel submitted that now, after completion of trial, the prosecuting agency has to show what bribe was taken by public servant from private persons.

The Ld. Counsel first addressed arguments on the evidence of PW-12 Sh. Shailender Handa, who was Director, Investigation at the relevant time. The Ld. Counsel pointed out to the hierarchy of officials mentioned by him in the very beginning of the arguments and submitted that this witness was two ranks senior to the accused and in between was another officer Sh. Rehman. He submitted that although the case of the prosecution is that the accused diluted the Appraisal Report by suppressing material facts but the Appraisal Report was not a relied upon document though seized and was brought on record on the application of the accused and with the directions of Hon'ble High Court.

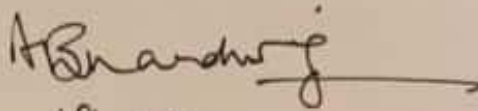
Ld. Counsel referred to internal Page 2 of the evidence of PW-12 recorded on 31.01.2017, where it is noted that the witness had deposed that the Appraisal Report does not have any bearing on the tax liability of a person directly because the assessment of tax is to be done by the assessing officer. It was also submitted that PW-12 himself had deposed that it was a complex case

and therefore the accused Sh. Ashutosh Verma cannot be blamed for the delay in submitting the Appraisal Report.

Ld. Counsel read internal Page 3 of the evidence where the witness has deposed that Sh. Rehman, Additional Director (Investigation) had given to him, rough executive summary along with order sheet dated 22.02.2008 by Sh. Ashutosh Verma and order sheet dated 28.02.2008 by the said Sh. Rehman. Ld. Counsel submitted that in case the Appraisal Report was given by Sh. Ashutosh Verma on 28.02.2008 and not on 22.02.2008 as is the allegation of prosecution, then Sh. Rehman would have got no time to make executive summary of 44 pages. He submitted that the Appraisal Report itself is more than 500 pages, which rules out the possibility that the Appraisal Report was given on 28.02.2008 and not on 22.08.2008.

Thereafter, Ld. Counsel referred to internal Page 6 of the cross-examination of PW-12 recorded on 01.02.2017. Ld. Counsel submitted that after reading examination-in-chief of PW-12, it can be safely argued that there is no allegation by the witness of diluting or suppressing any fact in the Appraisal Report. So much so, the briefing of PW-12 was jointly by Sh. Rehman and the accused Sh. Ashutosh Verma. The Ld. Counsel submitted that the recorded conversation is not admissible and even otherwise the witness has deposed that probably this is the voice of Sh. Ashutosh Verma and has not confirmed the same to be the voice of Sh. Ashutosh Verma.

The Ld. Counsel thereafter referred to the various documents exhibited in the evidence of PW-12 and then referred to the cross-examination of this witness. The Ld. Counsel referred to the court questions to the witness noted at internal Page 7 of evidence dated 01.02.2017 where the witness had deposed that the assessing officer forms his independent opinion and he has a choice to accept or not the recommendations in the Appraisal Report on his own considered view.

  
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Ld. Counsel again referred to a court question noted at internal Page 9 where the witness was asked whether it would help the assessee in the decision of assessing officer, if the officer preparing Appraisal Report withholds some material and keeps it out of Appraisal Report, Though the response of the witness was in affirmative but the Ld. Counsel submitted that it is a general response and there is no specific case of dilution or suppression in the Appraisal Report which helped or could have helped the assessee in the assessment order.

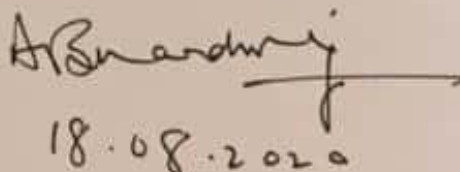
Ld. Counsel referred to the evidence of PW-18 Sh. G.K. Ravi, recorded on 18.02.2017 and submitted that this witness was a subordinate officer of the Accused No. 1 Sh. Ashutosh Verma.

The Ld. Counsel also referred to the evidence of PW-20 Sh. S.S. Rathore, who has not deposed anything against the accused.

Ld. Counsel also referred to the evidence of PW-36 Sh. Somnath Gauba, another subordinate officer who deposed that whenever Sh. Bipin Shah had a meeting with Sh. Ashutosh Verma, that was in closed doors and Sh. Ashutosh Verma used to ask him to wait outside. The Ld. Counsel submitted that this witness was three ranks junior to the accused and when there is an official meeting, he could not be expected to be present, unless required by his senior officer. He submitted that as raid was also conducted at the residence of Sh. Bipin Shah, he was also the assessee and for that purpose, he was attending the office of the accused No. 1 Sh. Ashutosh Verma.

In cross-examination, the witness deposed that Inspector is not required to attend proceedings when the assessee is examined by DDI after searches and preparation of Appraisal Report.

Ld. Counsel submitted that on the next date he will address arguments with regard to PW-48 Sh. S. Rehman, who was the Additional Director, Income Tax (Investigation Unit) at relevant time and another official

  
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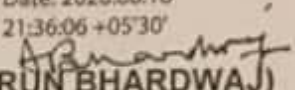
witness and thereafter he will address arguments with regard to allegations against the accused at Bombay and Goa.

The case shall now be taken up on **Friday i.e. 21.08.2020 at 2:15 pm.**

Let a copy of this order be sent by WhatsApp to the learned Senior PP for CBI, all the accused persons and their learned counsels.

ARUN  
BHARDWAJ

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ARUN BHARDWAJ  
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(ARUN BHARDWAJ)

Special Judge (P.C. Act)(CBI-05)  
Rouse Avenue District Court,  
New Delhi/18.08.2020