

CBI vs. Sh. Ashutosh Verma & Ors.
CC No. 192/19

15.07.2020

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, Ms. Pinky Dubey, Mr. Gaganjyot Singh, Ms. Smriti Ramchandran, Mr. Nirvikar Singh and Sh. Prince Kumar.

Accused No. 2 Sh. Suresh Nanda in person with Ld. Sr. Counsel Sh. Ramesh Gupta along with Sh. Sandeep Kapoor, Sh. Alok Sharma and Sh. Vivek Suri, Advocates.

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

(Through VC using Cisco Webex App.)

Shri P.K. Dubey continued to attack the sanctity of the 132 calls record.

Learned counsel submitted that as per evidence of the investigating officer of the case, it had taken 15 days from 31.05.2008 to prepare the transcript of recorded conversations. Learned counsel submitted, it shows the investigating agency could not have the transcript ready by 12.03.2008 unless they had that conversation available with them even before registration of the case.

Moreover, it was submitted that without voice identification of the accused persons, the transcript could not have been prepared. He submitted that the transcript is by name and not as unknown person 1, unknown person 2, unknown person 3 and so on and so forth. Reference was made to the evidence of prosecution witness Sh. G.K. Ravi whose statement was recorded on 06.02.2009 for voice identification. It was submitted that no witness was

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examined in June 2008 for voice identification therefore it was not possible to prepare the transcript without voice identification. It was submitted that the directions given in CBI manual were not followed and the transcript is not signed by any witness who had identified the voice of the speaker.

Learned counsel submitted that the latest judgment by the Hon'ble Supreme Court has made it abundantly clear that first admissibility of electronic evidence is to be decided and later on its relevancy be considered (Learned Senior Counsel Shri Ramesh Gupta provided the details of the said judgment which is Arjun Pandit Rao, Criminal Appeal No. 20825/2017).

Today, at this stage, the learned counsel Shri P.K. Dubey started addressing arguments with regard to 32 recorded calls. Learned counsel referred to D-55, which is letter dated 21.03.2012 addressed to Special Unit by Sh. Ashwani Kumar Chand, S.P., CBI, New Delhi. This letter speaks about interception of calls between 09.02.2008 to 08.03.2008 by Special Unit, CBI. The letter also mentions that the IO of the said case visited office of Special Unit, CBI and heard the unfiltered calls. It was submitted that this letter talks about recording of discussion with regard to purchase of land which was the land at Goa. The letter was accompanied with Annexure-A which mentions the intercepted conversations.

It was pointed out that Annexure-A speaks about calls indicating date and time thereof. It was pointed out that the typed body of the Annexure speaks about 32 calls and Serial No. 33 has been added by hand written addition.

Learned counsel referred to D-64 which is the Seizure Memo dated 23.08. 2012 as per which the Special Unit had provided voice content of 32 calls in a sealed packet along with recorded calls information report.

Learned counsel submitted that whereas the requisition is made of 33 calls, the calls supplied in this seizure memo are only 32. It was submitted

that the calls are provided after 5 months of the requisition. The seizure memo also mentions about an unsealed recorded calls information report along with one compact disc. The learned counsel submitted that this unsealed recorded calls information report and the compact CD has not been placed on record. Learned counsel submitted that since the sealed packet containing CD was not sent to CFSL, it is for the prosecution to explain how copies were made for defence counsels and learned prosecutor. It was submitted that the recorded conversation was given to the defence counsels in a pen drive and not in a CD and therefore they could not find out the date of writing on the CD.

The learned counsel submitted that it is difficult to explain how Ashwani Kumar Chand, S.P., CBI, got details of the calls including date and timings of those calls.

The learned counsel submitted that letter dated 21.03.2012 speaks about unfiltered calls but when this question was asked from PW-21, he could not tell what is unfiltered call. This witness also deposed that IO had never entered the place where the interception was being done. The witness also deposed that he had not facilitated the IO to hear the recorded conversations prior to preparation of CD.

Learned counsel referred to application for remand filed on 14.03.2008, para 19, where there is a mention of purchasing property at Goa, Benami. Reference was also made to the order dated 14.03. 2008 passed on the remand application which also refers to the property at Goa.

It was submitted that the recorded conversations of 134 calls have no mention about property at Goa. Only in 32 recorded calls there is a mention of Goa property. The learned counsel submitted that it shows that recorded 32 calls were also available with investigating officer on 14.03.2008 and he has wrongly deposed that he got the CD of 32 calls on 23.08.2008.

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It was submitted that before 14.03.2008, CBI had examined only one witness namely Shakti Verma and had no other material with them. Reference was made to the statement of Nikhil Nanda recorded on 10.11.2010, Exhibit PW-22/D3 which records that a CD containing recorded conversations was played before him and he had identified the voice of Shri Ashutosh Verma. It would not have been possible if the recorded conversation CD came in the possession of the investigating officer on 23.08.2012.

The learned counsel submitted that it shows D-85 is a fabricated document. Learned counsel submitted that there is no mention in the case diary of the visit of investigating officer to the special unit for the purposes of hearing the recorded conversations. Similarly, there is no mention about the unfiltered calls in the case diary.

It was submitted that by Sh. Ashwani Kumar Chand, S.P., CBI, was not shown as a listed witness and the accused did not get the opportunity to cross examine him. Reference was made to the cross examination of the investigating officer of the case recorded on 31.01.2018 where he has deposed that he had sent the requisition to special unit for obtaining copy of 32 intercepted calls.

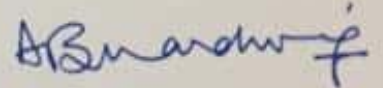
The witness also deposed that he was the main investigating officer of this case and only for few days investigation was handed over to Inspector V.M. Mittal. Reference was also made to the evidence of the witness where he deposed that complete CD of 32 intercepted calls was not with him prior to 23.08.2012 and only few calls out of 32 intercepted calls were provided to him prior to 23.08.2012 by Mr. Ramnish. It was pointed out that the witness had made no handing over memo in this regard.

The learned counsel submitted that the witness has deposed he was given the few calls in a pen drive but neither the said pen drive is on record nor the same was sent to CFSL for examination. The learned counsel submitted that

it shows the genuineness of the Pen drive was not tested. Therefore, tempering cannot be ruled out.

Further arguments shall now be heard on **Friday, 17.07.2020 at 2:15 PM.**

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



(ARUN BHARDWAJ)
Special Judge (P.C. Act)(CBI-05)
Rouse Avenue District Court,
New Delhi/15.07.2020

CBI Vs. Smt. Aarti Kalra & Others.
CC No. 164/2020

15.07.2020

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 Khurana.

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

(Through VC using Cisco Webex App.)

CBI has filed Bail Bond verification of Accused No. 8 Sh. Prashant Kumar @ Bobby. Simultaneously, Ld. Counsel for Accused No. 8 has filed application to recall earlier surety and furnish fresh surety. The new Bail Bond is accompanied by soft copy of FDR of Central Bank of India, for a sum of Rs.1,00,000/-. In view of this, the earlier surety Sh. Mukesh Kumar Jha is discharged. Let a letter be sent to his Banker to release the FDR furnished by him with the bail bond. Another letter be sent to the banker of Sh. Suresh Kumar with directions not to release the FDR without order of the court. It is noticed that this surety Sh. Suresh Kumar is occupying the present premises only w.e.f. 11.07.2020. This is evident from Rent Agreement placed on record. It is made clear that this surety bond is accepted only till opening of courts, thereafter, the accused shall furnish sound surety with permanent address.

Arshdeep Singh
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Ld. Sr. PP for CBI has also filed reply to the application of bail of Accused No. 1 Smt. Aarti Kalra, Accused No. 3 Sh. Harbans Lal Maan and Accused No. 8 Sh. Prashant Kumar @ Bobby. The reader is directed to send replies of these bail applications to the Ld. Counsels for the accused.

Bail application filed on behalf of Accused No. 2 Sh. Shailendra Kumar Upadhyay. Be supplied by the reader of the court to Ld. Sr. PP for CBI for reply. Till further orders, accused is admitted to interim bail on furnishing bail bond and surety bond of a sum of Rs.1,00,000/-. On the request of Ld. Counsel for accused, let the bond be furnished within three working days.

Accused No. 3 Sh. Harbans Lal Maan has already furnished bail bond on 09.07.2020. Same is accepted till the disposal of the application for bail.

Accused No. 4 Sh. Ravinder Nath has also filed application for bail. Copy be supplied to Ld. Sr. PP for CBI for reply. Till further orders, this accused is admitted to interim bail on furnishing bail bond for a sum of Rs.1,00,000/-. Bond furnished and accepted till the pendency of this bail application.

Accused No. 5 Sh. Nakul Gheek has also filed application for bail along with vakalatnama. Be supplied to Ld. Sr. PP for CBI for reply. Till further orders, this accused is admitted to interim bail on furnishing bail bond for a sum of Rs.1,00,000/-. Bail Bond furnished and the same is accepted till the pendency of this bail application. Letter be written to the bank concerned not to release the FDR without order of the court.

Accused No. 6 Sh. Harmeet Singh has also filed application for bail. Copy be supplied to Ld. Sr. PP for CBI for reply. Till further orders, this accused is admitted to interim bail on furnishing bail bond for a sum of Rs.1,00,000/-. Ld. Counsel for accused no. 6 requested for two days time to furnish the bail bond. Request allowed.

Application for bail also filed on behalf of Accused No. 7 Sh. Radhey Shyam Goel. Ld. Counsel for accused no. 7 has also filed judgments relied on. Be supplied to Ld. Sr. PP for CBI for reply. Till further orders, this accused is admitted to interim bail on furnishing bail bond for a sum of Rs.1,00,000/-. Bail Bond furnished. Letter be sent to the banker not to release the FDR without leave of the court.

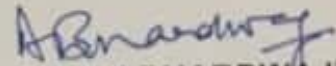
Ld. Sr. PP for CBI submitted that out of 8 accused persons, 5 have already collected the CD and documents. These accused persons are Accused No. 3 Sh. Harbans Lal Maan, Accused No. 4 Sh. Ravinder Nath, Accused No. 5 Sh. Nakul Gheek, Accused No. 6 Sh. Harmeet Singh and Accused No. 7 Sh. Radhey Shyam Goel. The other accused shall also collect the documents and CD from the Ld. Sr. PP for CBI.

Ld. Counsel for Accused No. 7 informs that the CD given to him is not working. He is at liberty to return the CD to Ld. Sr. PP for CBI at Rouse Avenue District Court and collect new CD from him.

Ld. District & Sessions Judge-cum-Special Judge, PC Act, CBI, Rouse Avenue District Court, Delhi has adjourned this case en-block to 18.08.2020.

Be listed on **18.08.2020** at 11 am for reply to the bail application/arguments on applications for bail

Let a copy of this order be sent by WhatsApp to all the accused and their learned counsels.



(ARUN BHARDWAJ)
Special Judge (P.C. Act)(CBI-05)
Rouse Avenue District Court,
New Delhi/15.07.2020