

**CBI vs. Shri Naresh Kumar Gupta & Ors.
CC No.249/19**

28.07.2020

Present: Sh. B.K. Singh, Ld. Sr. PP for CBI.

Accused No. 1 Sh. Naresh Kumar Gupta, Accused No. 2 Mata Din Gupta, Accused No. 3 Sh. Rajesh Kumar Bhambi, Accused No. 4 Sh. Amit Dabas and Accused No. 5 Sh. Vilas Rao Godeshwar in person with Ld. Counsels Dr. A.K. Gautam, Sh. Ravi Mehrotra, Ms. Ankita Gautam and Sh. Harish Gautam.

Accused No. 6 Mr. Vibhuti Thakur in person along with Sh. J.N. Patel, Ld. Counsel for Accused Nos. 6 and 7.

(Through VC using Cisco WebEx app)

The Ld. Counsels for the accused have sent electronically the applications filed by them before lockdown for discharge of accused.

The Ld. Sr. PP for CBI is already having physical copies of the same.

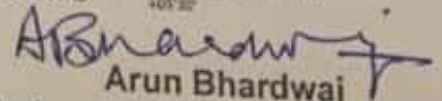
The Ld. Counsels have addressed the court at length before lockdown. However, Ld. Counsel for Accused No. 6 Sh. Vibhuti Thakur submits that he wishes to cite certain judgments in support of discharging of accused No. 6 Sh. Vibhuti Thakur.. Let the citations be given by the Ld. Counsel electronically to the Reader of this court and Ld. Sr. PP for CBI.

The Ld. District & Sessions Judge, cum- Special Judge, CBI, PC Act, Rouse Avenue District Court, New Delhi has adjourned this case en-block to 31.08.2020.

List on **31.08.2020 at 11:00 AM** for further directions. Let a copy of this order be sent by whatsapp to Ld. Sr. PP for CBI, all the accused persons as well as their learned counsels.

ARUN
BHARDWAJ

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Arun Bhardwaj
Special Judge (PC Act) (CBI-5)
Rouse Avenue District Court
New Delhi/28.07. 2020

28.07.2020

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. Pinky 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.

Accused No. 2 Sh. Suresh Nanda in person with Ld. Counsels Sh. Sandeep Kapoor, Sh. Vivek Suri, Sh. Sandeep Kapoor and Sh. Alok Sharma, Advocates.

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

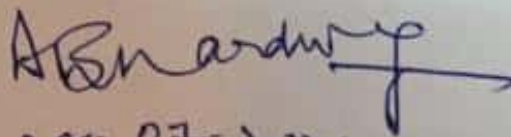
(Through VC using Cisco Webex App.)

Ld. Counsel Shri P.K. Dubey resumed final arguments and submitted that the D-17, Seizure Memo of CDR is hit by Section 162 Cr. P.C.

The Ld. Counsel reiterated that D-21 and D-64 are forged and fabricated. Once the Seizure Memos are found to be forged and fabricated, the seized material mentioned in those memos cannot be looked into.

Ld. Counsel referred to Section 88A of the Evidence Act, which is as under:-

"The Court may presume that an electronic message, forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent"


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Ld. Counsel read from the judgment of Arjun Pandit Rao to reiterate that admissibility of electronic evidence is to be seen first and referred to the concurring judgment authored by Hon'ble Mr. Justice V. Ramasubramanian.

Ld. Counsel submitted that now he will address arguments about alleged three meetings of Sh. Ashutosh Verma with Sh. Bipin Shah.

Ld. Counsel submitted that he has already addressed arguments regarding visit of Sh. Ashutosh Verma to Ashoka Hotel, while referring to the evidence of Sh. Sudama Singh.

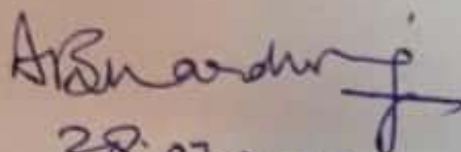
Ld. Counsel referred to the evidence of PW-1 Sh. Bhuvnesh Kulshrestha. Ld. Counsel pointed out that as per this witness, Sh. Bipin Shah was developed as a source by this witness when he was posted in Economic Intelligence Bureau and were meeting regularly each other.

Ld. Counsel referred to the evidence of this witness where he has deposed that he had requested his friend Sh. Abhijit Rajan to arrange a room at guest house of the company i.e. Gammon India at Golf Links for Sh. Bipin Shah.

The Ld. Counsel submitted that Sh. Abhijit Rajan was not examined as a PW. It was submitted that PW-1 has deposed that Sh. Bipin Shah had clients including Hotel Claridges in Delhi and in this situation it contradicts need for Sh. Bipin Shah to take the guest house of the company M/s Gammon India at Golf Links.

Next, Ld. Counsel referred to the evidence of PW-3 Sh. Suresh Yadav, who deposed that in the year 2008 Sh. Bipin Shah had come to the guest house but he could not recollect the exact date. The Ld. Counsel submitted that the evidence of this witness is of no help for prosecution to show presence of Sh. Bipin Shah at guest house, Golf Links.

Ld. Counsel submitted that there is no CAF or CDR of PW-1 and PW-3. None of them says that Sh. Ashwani Verma visited guest house at Golf Links. Ld. Counsel submitted that PW-3 has not identified Sh. Ashwani Verma and has not deposed that he had seen him in the guest house with Sh. Bipin

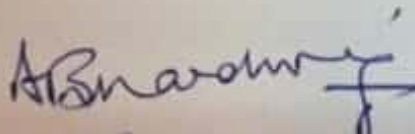

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Shah. It was submitted that no register for booking of guest house was produced. There is no CCTV of the guest house. Ld. Counsel submitted that it shows prosecution has proved meeting of Sh. Ashwani Verma with Sh. Bipin Shah neither at Golf Links nor at Ashoka Hotel.

Regarding stay of Sh. Bipin Shah at Hotel Claridges, Ld. Counsel referred to the evidence of PW-6 Sh. Gulzar Ahmad, who was the driver at that hotel. The witness has deposed that on 23.02.2008, he was assigned a duty around 3:30 pm to pick up a guest Sh. Bipin Shah from Hotel Claridges and drop him at a Kothi in Golf Links whose number was probably 40. The witness deposed that he received call from Sh. Bipin Shah around 11:30 pm and he went to Golf Links, picked him up and brought him back to Hotel Claridges.

Reference was made to D-25, the Seizure Memo vide which the log-book of this witness was seized and arguments were addressed with regard to page 14 of the said log-book. It was submitted that in the cross-examination of this witness it has come on record that the entry of log-book exhibited as Ex. PW-6/1 is not having signatures of Sh. Bipin Shah. The witness deposed that the passengers sign on a slip deposited with the Hotel but the prosecution did not seize the slip and has not proved any such slip. It was further submitted that the distance between Hotel Claridges and Golf Link is around 1.5 kilometers but the witness mentioned the distance travelled with Sh. Bipin Shah as 76 kilometers as full local run. It was submitted that a perusal of the original logbook will reveal that the entries in this book have been made with a different ink and the witness was also put this question during his cross-examination.

It was submitted that the witness has made false entries in this log-book. There are cuttings under the column "Signature of the person using the conveyance" where Kilometers have been mentioned. It was submitted that as against 29680, there is clear cut cutting to make it 29696 and the kilometers for the vehicle used by Sh. Bipin Shah is again showing 29001.


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It was submitted that this document has no sanctity and is a forged and fabricated document and therefore cannot be relied upon.

The third meeting of the accused Sh. Ashutosh Verma with the accused Sh. Bipin Shah is stated to be at Hotel Nehru Place. Ld. Counsel submitted that prosecution is relying on evidence of PW-5 Sh. Sultan Singh who was the driver of Sh. Ashutosh Verma.

The witness deposed that he was driving the official vehicle for Sh. Ashutosh Verma and the vehicle used to be left at the residence after dropping Sh. Ashutosh Verma at Koshambi, Ghaziabad. The witness deposed that the log-book was not audited till the time he appeared as a witness and deposed in the court i.e. for nearly 8 years. It was pointed out that this witness always took 35 liters of petrol irrespective of the use of vehicle. Reference was made to Page 28 of D-20 vide which the log-book of this vehicle was seized by CBI. It was submitted that the log-book at some places notes secret duty but does not mention the place of that secret duty and there is only single entry regarding secret duty (at night 10 pm to 12:15 am at Nehru Place Hotel). Simultaneously, the same page shows that the trip had ended at 11:40 pm meaning thereby, wherever Sh. Ashutosh Verma would have been on the night of 04.03.2008, he would have started for his residence by 11 pm and these two entries on same page contradict each other.

It was submitted that this entry of visiting for secret duty at Nehru Place is result of interpolation only to show meeting of Sh. Bipin Shah and Sh. Ashutosh Verma on 04.03.2008 at Hotel Nehru Place.

It was submitted that this witness was pressurized by CBI to make a false and fabricated document. Ld. Counsel submitted that the witness in cross-examination admitted that entry at point 'A' on Ex. PW-5/2 was filled by him at a later stage at the instance of CBI. The Ld. Counsel submitted that although his cross-examination had not finished but the witness was allowed to be re-examined and in re-examination the witness deposed that he was filling the diary

once in a week. It was submitted that it is not a day-to-day account as it used to be filled once in a week. The witness was not knowing the date on which Sh. Ashwani Verma had gone to Hotel Continental, Nehru Place. He reiterated that when he was called by CBI, he was informed about this date and asked to fill in this entry by putting the date of 04.03.2008. He deposed that except for this entry, he has not made any other entry on the directions of CBI. The Ld. Counsel pointed out to a court question where the witness responded that there is no space available wherein an entry such as entry at point 'A' can be inserted in between two entries on log-book Ex. PW-5/2. The Ld. Counsel submitted that in response to this, he had further cross-examined the witness and the witness deposed that there is a gap of 3-4 lines in column no. 8 of Ex. PW-5/2.

Ld. Counsel submitted that the entire prosecution is passed on forged, fabricated and tampered material and in the light of this evidence, it cannot be said that this driver had taken Sh. Ashutosh Verma to Hotel at Nehru Place on 04.03.2008.

Lastly, Ld. Counsel addressed arguments with regard to Security Officer PW-13 Sh. Suresh Kumar Rajput. It was submitted that this witness was examined to prove the stay of Sh. Bipin Shah at Hotel at Nehru Place. It was submitted that this witness identified the signatures of Sh. Kamal Rana, Chief of Security who had given guest registration in the name of Sh. Bipin Shah but as the witness was not identifying the signatures of anyone from the hotel, the document was not exhibited and was simply marked. It was submitted that no one from reception was examined to prove the guest registration in the name of Sh. Bipin Shah from 04.03.2008 to 05.03.2008. It was submitted that even Sh. Kamal Rana, Chief of Security was not examined. So far as CCTV footage is concerned, it was submitted that the same is not accompanied by Certificate under Section 65 B and was merely sealed with a tape upon the cross signatures and there was no seal in the true sense. The CD containing CCTV footage was not forensically examined to rule out its tampering. Hard disk of CCTV was not

seized. The IO made no investigation in this regard by visiting the hotel. The witness on seeing all the five recorded files of CCTV recording did not identify Sh. Ashutosh Verma or Sh. Bipin Shah.

Ld. Counsel submitted that on the back of D-19, the date of 04.03.2008 and name of Sh. Vipin Kumar Shah is noted and certain timings and entry and exit of guest/visitor are mentioned. The same has not been proved but even otherwise the above shows duration of the guests for 2 hours 34 minutes but the CCTV CD is of 3 hours 10 minutes and 48 seconds. Ld. Counsel submitted that therefore prosecution could not prove meeting of Sh. Bipin Shah and Sh. Ashutosh Verma at any of the three places namely Ashoka Hotel, Golf Link Guest House and at Hotel at Nehru Place.

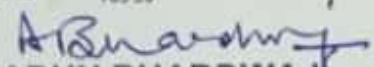
Further arguments in this case shall now be heard on **31.07.2020 at 2:15 pm.**

Ld. Counsel submitted that in the previous order sheet, it is noted that no mobile was seized whereas the submission is that certain mobiles were seized but they were not got forensically examined and are not case property before the court. Correction is noted.

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.

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(ARUN BHARDWAJ)

Special Judge (P.C. Act)(CBI-05)
Rouse Avenue District Court,
New Delhi/28.07.2020