

30.09.2020

Present: Shri BK Singh learned Senior PP for CBI.

Accused No.1 and 4 with their learned counsels.

Shri Suresh Nanda Accused No.2 (through VC from UAE) with Sh. Ramesh Gupta Ld Sr Advocate with Sh. Sandeep Kapur, Id counsel.

(Through VC using Cisco WebEx app)

Shri P.K. Dubey, learned counsel for Accused No. 1 Sh.

Ashutosh Verma continued addressing final arguments with regard to sanction and read evidence of PW-7 Dr Prashant Khambra.

The witness explained in general narration the custom and ordinary process followed in the office for grant of sanction. He deposed in this case also similar process was followed. He proved the sanction order dated 29th November 2012 as Exhibit PW-7/1 (D-65).

Learned counsel submitted that the witness did not depose that they got request for sanction from CBI along with

SP report. The witness did not depose how the matter was put up before the sanctioning authority and how it came back to him. The witness did not depose what documents were enclosed by CBI for seeking sanction. Even the date of sanction by the sanctioning authority was not disclosed.

During cross examination the witness deposed that he is IRS officer of the batch of 2004. Learned counsel submitted that Accused No. 1 Shri Ashutosh Verma is IRS officer of 1999 batch and therefore much senior than this witness.

On the first date, the matter had to be adjourned as the witness could not remember when was the request for sanction received by the Department or the mode through which it was received or who had received the request.

On the adjourned day, the witness even after checking the records could not say the mode through which the request for sanction was received by his department as this fact was not recorded. The witness could not say what documents were received by the department and put up before the competent authority for the purpose of grant of

sanction because when he received the file it was received with sanction order, note sheets and approved draft sanction order only. The witness deposed that he had not dealt with the file at that level but he had brought file of vigilance department in the court and as per that there is letter dated 30th August 2012 vide which CBI had made a request for grant of sanction under Section 19 of Prevention of Corruption Act against Shri Ashutosh Verma and as per that letter, the copies of statements of witnesses and relied upon documents as well as copy of CBI report was sent along with that letter. However there were neither statements of witnesses nor documents nor any CD nor any transcript of recorded conversation in the file. Learned counsel submitted that if the letter mentioned that these documents were being sent by CBI, why they disappeared from the records. Learned counsel submitted that onus is on the prosecution to show that all the material was placed before the sanctioning authority but in this case even after checking the office record the witness could show no such material which was placed before the sanctioning authority. Learned counsel submitted

that the witness has deposed that he had received additional copies of sanction order and had signed one of those copies and sent to CBI but this cannot be possible because the sanction order is written on behalf of this witness in first person where this witness is stated to be granting sanction for prosecution which could not be possible if he had received sanction order from the sanctioning authority. The tone and tenor of sanction order is not as if this witness was conveying the sanction order as per business rules. The learned counsel submitted that attention of the witness was drawn to para No. 9, 10 and 11 of the sanction order to rule out any clerical mistake but the witness deposed that he has not made any addition in these paragraphs. Learned counsel submitted that in this case not only the appraisal report, FSL report with regard to laptop, CD recording conversations and transcripts and those statements of witnesses recorded under section 161 CrPC which were not relied on and not filed with the chargesheet were not shown to the sanctioning authority but the sanctioning authority was shown no material.

Learned counsel submitted that the investigating officer of this case has deposed that he had not taken any steps for seeking sanction and sanction was procured by SP and no one from CBI has deposed what documents were sent to sanctioning authority for seeking the sanction for prosecution.

Learned counsel relied on Mansukhlal V. Chauhan versus State of Gujarat, Criminal Appeal No. 302/1993 dated 3rd September 1997 decided by the Hon'ble Supreme Court and read para 36 and 37. In this case, two prosecution witnesses were claiming having given the sanction for prosecution. Learned counsel submitted the present case is such where it is not clear who has given the sanction. Learned counsel submitted that in the absence of sanction the entire proceedings are void and ab initio.

Learned counsel also referred and relied on K. Devasiva, 2016 (10) SCC 447 where the sanction was by incompetent authority.

Reliance is also placed on PA Mohadas versus State of Kerala (2003) 9 SCC 504 and state of Tamil Nadu versus MM

Rajendra, (1998) 9 SCC 268. Learned counsel submitted that on the basis of this judgement the CBI manual was amended and it requires that entire material be placed before the sanctioning authority and merely report of vigilance department is not sufficient.

Reliance is also placed on Amirjaan, 2007 (11) SCC 273 para 8,9 and 10 to submit that at least the entire material that was placed before the sanctioning authority be shown before the court. Learned counsel submitted that in this case PW-7 has deposed that only one letter of CBI is on record and there is nothing else to show what material was placed before the sanctioning authority.

Reliance is also placed on the decision of Hon'ble Delhi High Court in the case of Ashok Aggarwal and reference was made to para-23, 38, 71 and 72 of the judgement. Learned counsel submitted in this case even the list of documents placed before the sanctioning authority is not on record and this case is on better footing than the case of Ashok Aggarwal. In the said case one important document was not placed before the sanctioning authority which resulted in

vitiating the sanction but in this case no document was placed before the sanctioning authority.

Learned counsel also referred to the order of Hon'ble Supreme Court was in Criminal Appeal No.1843/2013 of the Hon'ble Supreme Court where the order in the case of Ashok Aggarwal was challenged and read para 9 from the said judgement. Learned counsel submitted that in this case the statements of Shri Nikhil Nanda, Shri Ajay Kumar Gupta, Shri Rajinder Kashyap and others recorded under section 161 of CrPC were not part of chargesheet and therefore could not have been placed by CBI before the sanctioning authority. Learned counsel submitted these statements were recorded before seeking the sanction and therefore should have been placed before the sanctioning authority. Referring to para 15 of the judgement learned counsel submitted when there is no material on record before the sanctioning authority, the question of application of mind would not arise. The learned counsel also read paragraph 16.1 onwards where the principles required for proving sanction were enunciated.

Learned counsel also referred to the judgement of Hon'ble Delhi High Court in the case of Mukesh Kumar Singh 2018 (248) DLT 564 and read para 100, 113 and 114.

Reference was also made to the judgement in the case of R Balakrishna Pillai and Prof NK Ganguly. In the former case, there was no sanction under section 197 of CrPC. Learned counsel submitted that section 197 CrPC applies to a retired person also whereas Accused No. 1 is a serving government officer. Learned counsel submitted that in this case sanction for prosecution under section 197 CrPC was neither sought nor therefore granted.

Learned counsel submitted that on the next date he will refer to three-four more judgements including the judgement of Sheetla Sahay and conclude his arguments.

Sh. Ramesh Gupta learned Senior Counsel representing Accused No. 2 Shri Suresh Nanda submitted that if arguments on behalf of Accused No. 1 are concluded on the next date, he will address arguments on 16th October 2020,

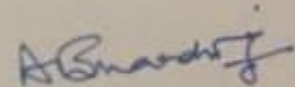
21st October 2020 and 23rd October 2020 and conclude his arguments in those three days.

List on **07.10.2020** at **02.15P.M.** for further final arguments.

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

ARUN
BHARDWAJ

Digitally signed by
ARUN BHARDWAJ
Date: 2020.09.30
19:24:48 +05'30'



(ARUN BHARDWAJ)

Special Judge, CBI-05 (PC Act),
RADC, New Delhi/ 30.09.2020

C.Case No. 303/2019

CBI Vs Ramesh Nambiar

30.09.2020

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

Accused Ramesh Nambiar with Ld. Counsel Sh.Hemant Shah.

(Through VC using Cisco WebEx app.)

Further part arguments heard on the point of charge, remaining arguments adjourned as the case pertains to Disproportionate Assets and require perusal of a large number of documents physically. Hence, it will be appropriate if this case is fixed on the date at which the Court is convening physically.

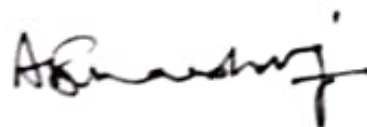
However, Ld. Counsel for the accused is at liberty to either attend the Court physically or through VC.

Accordingly, list on **09.10.2020** (on which date the Court is convening physically as per the roster prepared by the Ld. Principal District & Sessions Judge-cum-Special Judge CBI (PC Act), RADC, Delhi) for further arguments on charge.

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

ARUN
BHARDWAJ

Digitally signed by ARUN
BHARDWAJ
Date: 2020.09.30 13:12:04
+05'30'



(ARUN BHARDWAJ)
Special Judge, CBI-05 (PC Act),
RADC, New Delhi/30.09.2020

C.Case No. 246/2019

CBI Vs Sunny Kalra & ors.

30.09.2020

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

A-1 Sunny Kalra present through VC from Tihar Jail.

All remaining accused with their respective Ld. Counsels.

(Through VC using Cisco WebEx App)

Vide separate detailed order, bail applications filed by A-3, A-5, A-6, A-7, A-8, A-9, A-10 and A-11 are allowed subject to the terms and conditions as mentioned in the said order.

Accused persons submit that they have not received the soft copy of chargesheet as well as the documents of the present case. Accused/Ld. Counsels for the accused are shall provide their e-mail IDs to the Reader of the Court and IO shall provide copy of chargesheet as well as documents to the accused in soft copy.

List on 16.10.2020 for scrutiny of documents.

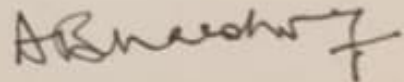
Let a copy of this order be sent by WhatsApp to Ld. Sr.PP for CBI, the accused and their Ld. Counsels .

Ahlmad is directed to send copy of the order by e-mail to the accused through Jail Superintendent, Tihar Jail, Delhi.

Jail Superintendent, Tihar Jail, Delhi is directed to produce A-1 Sh.Sunny Kalra through VC on the next date of hearing.

ARUN
BHARDWAJ

Digitally signed by ARUN
BHARDWAJ
Date: 2020.09.30
13:06:12 +05'30'



(ARUN BHARDWAJ)
Special Judge, CBI-05 (PC Act),
RADC, New Delhi/ 30.09.2020

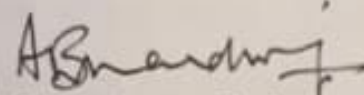
30.09.2020.

CC No.246/2019

CBI Versus Sunny Kalra and Ors.

Order on applications for bail moved on behalf of accused No. 3 of Pavan Arya, accused No. 5 ARK Prasad, accused No. 6 G Balasubramanian, accused No. 7 Rajesh Goel, accused No. 8 Amit Aggarwal, accused No. 9 Puran Nath Juneja, accused No. 10 Madan Lal Nasa under section 439 of CrPC.

1. **Accused No. 3 of Pavan Arya** has mainly relied on Court On Its Own Motion versus CBI (109 (2003) DLT49) and Lt Gen Tejinder Singh versus CBI, Bail Application No. 1946 of 2014 Decided by the Hon'ble Delhi High Court for seeking bail for the reason that the accused was not arrested during investigation. He has submitted that this court has summoned the accused and on receiving the same the accused as submitted himself to the jurisdiction of this court. The submission of the accused is that he is innocent. The application is **opposed by CBI** giving in detail the role attributed to this accused and with the apprehension that if granted bail there is every likelihood that he will influence the witnesses, which shall affect the trial of the case.
2. **Accused No. 5 ARK Prasad** has relied on Lt Gen Tejinder Singh versus CBI for seeking bail claiming that he is innocent. The application is **opposed by CBI** giving in detail the role attributed to this accused and with the apprehension that if granted bail there is every likelihood that he will influence the witnesses, which shall affect the trial of the case.


30.09.2020

3. **Accused No. 6 G Balasubramanian** has relied on Lt Gen Tejinder Singh versus CBI for seeking bail claiming that he is innocent. The application is **opposed by CBI** giving in detail the role attributed to this accused and with the apprehension that if granted bail there is every likelihood that he will influence the witnesses, which shall affect the trial of the case.
4. **Accused No. 7 Rajesh Goel** has submitted in the application that the accused was acting only as a professional due diligence agency for verification of records and documents submitted by the Corporation Bank through its officers and the scope of work was limited to the extent that to submit report to the bank after verification of the documents. He has submitted that he cooperated during investigation and appeared when received the summons of this court. The application is **opposed by CBI** giving in detail the role attributed to this accused and with the apprehension that if granted bail there is every likelihood that he will influence the witnesses, which shall affect the trial of the case.
5. **Accused No. 8 Amit Aggarwal** has made submissions that he was employed with accused No. 2 due diligence agency and had acted only as a professional work for verification of records and documents submitted by the Corporation Bank through its officers and the scope of said work was limited to the extent that to submit report to the bank after verification of the documents. The accused had acted in professional capacity and had no connection either with the borrower

or bank or in the loan account. The application is **opposed by CBI** giving in detail the role attributed to this accused and with the apprehension that if granted bail there is every likelihood that he will influence the witnesses, which shall affect the trial of the case.

6. **Accused No. 9 Puran Nath Juneja** has mentioned in the application that he is a senior citizen and falsely implicated in this case. He has stated that he has been cheated of his hard earned money by accused Sunny Kalra and his brother Sanjay Kalra. Chargesheet has been filed and applicant is not required for any purpose. Reliance is also placed on court on its own Motion (supra). The application is **opposed by CBI** giving in detail the role attributed to this accused and with the apprehension that if granted bail there is every likelihood that he will influence the witnesses, which shall affect the trial of the case.

7. **Accused No. 10 Anil Kumar Goel** has submitted that chargesheet has been filed and he was not arrested during investigation which shows is not required for any custodial interrogation. No useful purpose would be served by sending the accused in custody at this stage. The application is **opposed by CBI** giving in detail the role attributed to this accused and with the apprehension that if granted bail there is every likelihood that he will influence the witnesses, which shall affect the trial of the case.

ABM...
30.09.2020

8. **Accused No. 11 Madan Lal Nasa** has also relied on Court on its Own Motion (supra) of the year 2003 as well as 2017. He has submitted that chargesheet has been filed and accused has been summoned to face the trial. He has mentioned that he is 80 years of age suffering from Parkinson's disease and various health ailments and is in a dilapidated health condition. The accused is also unable to walk and move on his own and is always under medical supervision. The application is **opposed by CBI** giving in detail the role attributed by this accused and with the apprehension that if granted bail there is every likelihood that he will influence the witnesses, which shall affect the trial of the case.

9. The directions of the Hon'ble Delhi High Court in the case of court on its own Motion (supra) to the criminal courts are that in case the accused was not arrested during investigation, he be granted bail after filing of chargesheet. All the accused were summoned and appeared on receiving the summons of this court. Bail applications are not very seriously opposed and the opposition is only for the reason that the accused if granted bail shall try to influence witnesses. In this regard, the investigating agency is always at liberty to seek cancellation of bail in case any of the accused tries to influence any witness.

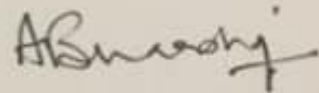
10. Resultantly, the applications for bail moved on behalf of accused No. 3 Pavan Arya, accused No. 5 ARK Prasad, accused No. 6 G Balasubramanian, accused No. 7 Rajesh Goel, accused No. 8 Amit Aggarwal, accused No. 9 Puran Nath Juneja, accused No. 10

Anil Kumar Goel and accused No. 11 Madan Lal Nasa are allowed subject to following terms and conditions:-

- (i) The accused shall furnish personal bond and surety bond in the sum of Rs.50,000 each. The bonds furnished at the time of grant of interim bail are accepted till the opening of courts physically when the accused and their sureties will appear in person and submit solvency documents in the court.
- (ii) The accused shall not try to influence any witness or tamper with the evidence.
- (iii) The accused shall not leave the country without permission of this court.
- (iv) The accused shall deposit their passports in the court on resumption of physical hearings.
- (v) The accused shall inform the court as well as investigating officer in case they change their addresses or mobile numbers.

ARUN
BHARDWAJ

Digitally signed by
ARUN BHARDWAJ
Date: 2020.09.30
10:47:40 +05'30'



(ARUN BHARDWAJ)
SPECIAL JUDGE, CBI-05

(PC ACT) RADC, NEW DELHI/30.09.2020.

Ct.Case No. 51/2019

ED Vs Ramesh Nambiar

30.09.2020

Present: Sh.Atul Tripathi, Ld.Spl.PP for ED.

Accused Ramesh Nambiar with Ld. Counsel Sh.Hemant Shah.

(Through VC using Cisco WebEx app.)

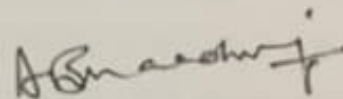
Part arguments on charge have been heard in the predicate offence case which is also fixed for today. Arguments on charge in the present matter shall be heard after the conclusion of arguments on charge in the predicate offence case.

List on **09.10.2020** for arguments on charge.

Let a copy of this order be sent by WhatsApp to Ld. Spl.PP for ED, the accused and Ld. Counsel for the accused.

ARUN
BHARDWAJ

Digitally signed by
ARUN BHARDWAJ
Date: 2020.09.30
13:15:46 +05'30'



(ARUN BHARDWAJ)
Special Judge, CBI-05 (PC Act),
RADC, New Delhi/30.09.2020