

# Gaurav Bhasin vs Central Bureau Of Investigation on 16 December, 2022

**Author: Anup Jairam Bhambhani**

**Bench: Anup Jairam Bhambhani**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ CRL.REV.P. 870/2022  
GAURAV BHASIN

..... Petitioner

Through: Mr. Mohit Mathur, Senior Advocate  
with Mr. Harsh K. Sharma, Ms.  
Vaibhavi Sharma, Mr. Lakshya  
Parasher, Ms. Bhumiya Yadav and  
Mr. Rishabh Sharma, Advocates

versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent  
Through: Mr. Nikhil Goel, SPP with Mr. Karti  
Kaushal, Advocate

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI  
ORDER

% 16.12.2022 CRL.M.A. No.26520/2022 (Exemption) Exemption allowed, subject to just exceptions. Let requisite compliances be made within 01 week. The application stands disposed-of.

By way of the present petition under sections 397 and 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), the petitioner Gaurav Bhasin, impugns order dated 10.11.2022, whereby the learned Special Judge, (PC Act Cases), Rouse Avenue Courts, New Delhi has been pleased to frame charge in case bearing CBI No. 28/2021 titled 'CBI Vs. R.K. Garg & Ors.' inter-alia against the petitioner under section 120-B of Indian Penal Code, 1860 ('IPC') read with sections 7, 12, 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988. Mr. Mohit Mathur, learned senior counsel appearing on behalf of the petitioner submits that the petitioner is a commercial pilot by profession and has been baselessly roped into the case along with his brother Pushkar Bhasin, who is a Government Contractor. Mr. Mathur submits that the petitioner is ordinarily resident of Delhi whereas his brother Pushkar Bhasin runs a company by the name of M/s. Pushkarraj Constructions Private Limited with its registered office in Kolkata and its local office in Kochi. Senior counsel submits that the petitioner has nothing to do with his brother's business; and, for that reason was never even called-in for investigation nor was he ever arrested in the case.

2. It is submitted, however, that in chargesheet dated 29.06.2021 filed in the matter, the following came to be recorded :

"16.16. That investigation with regard to delivery of Rs.88 lakhs as illegal gratification by accused Pushkar Bhasin (A-3) to accused Rakesh Kumar Garg (A-1) through Shri Sanjeev Khanna and Shri Kanav Khanna has revealed that Gaurav Bhasin (A-5) is brother of Pushkar Bhasin (A-3). Pushkar Bhasin has his residence cum official premises at C-21, Kirti Nagar, New Delhi and his younger brother Gaurav Bhasin (A-5) used to reside there, who was a commercial license holder Pilot but unemployed at that point of time. In furtherance of the said criminal conspiracy, accused Gaurav Bhasin (A-5), on the direction of his brother accused Pushkar Bhasin (A-3) and on being made available Rs.50 lakhs and Rs.38 lakhs, had delivered the said cash of Rs.50 Lakhs and Rs.38 lakhs on 22.06.2018 and on 26.06.2018 to Shri Sanjeev Khanna at his residence at 29, Silver Oak Farms, Road No.1, Ghitorni, M.G. Road near Bakshi Farms, New Delhi."

(emphasis supplied)

3. Mr. Mathur submits that apart from the allegation contained in the aforesaid para No.16.6, there is no other allegation much less any material connecting the petitioner with the alleged offence against the other co-accused persons. It is pointed-out that the order on charge proceeds purely on the statement of two-accused persons recorded under section 164 Cr.P.C., who have turned approver; and whose statements have been recorded by the learned Special Judge in the following way :

"32.4 As far as A-5 Gaurav Bhasin is concerned, though there is no direct conversation between Gaurav Bhasin and other accused persons, however conduit Sanjeev Khanna and Kanav Khanna have clearly stated in their statement U/s 164 Cr.P.C that brother of Pushkar Bhasin namely Gaurav Bhasin visited their house on 22.06.2018 and handed over Rs. 50 lakhs to Sanjeev Khanna. Gaurav Bhasin further visited their house on 25/26.06.2018 and handed over Rs. 38 lakhs to Sanjeev Khanna. PW-55 Sh. Rakesh Kumar Chauhan who is running a hardware shop in Chawri Bazar under the name and style of M/s Shiv Enterprises stated that one day in June 2018 Pushkar Bhasin called him through whatsapp and asked him to deliver a bag containing heavy cash lying with PW-55 to his younger Gaurav Bhasin. Accordingly, on the direction of Pushkar Bhasin PW-55 handed over cash amount of Rs. 38 lakhs to Gaurav Bhasin. Thus, the statement of PW-55 along-with the statement U/s 164 Cr.P.C of Sanjeev Khanna and Kanav Khanna prima facie goes on to show that Gaurav Bhasin played an active role at the behest of his brother Pushkar Bhasin in receipt of amount of Hawala operators and delivering the same at the residence of Sanjeev Khanna for A-1. Thus, his role in conspiracy with other accused persons cannot be questioned at this stage. Hence, prima facie offence is made out against A-5 Gaurav Bhasin."

(emphasis supplied)

4. Mr. Mathur submits that there is no material at all to support the charge of criminal conspiracy; nor is there even an allegation of 'meeting of the minds' prior to the alleged offence; and the limited role ascribed to the petitioner, if at all, is that he acted as a courier of some money for his brother, without knowing who he was collecting the money from, and to whom he was delivering the same, nor the purpose thereof.

5. Upon a prima-facie of the averments made in the petition and the submissions made, and on perusal of the relevant portions of the chargesheet and the order on charge, issue notice.

6. Mr. Nikhil Goel, learned SPP appears for the CBI on advance notice;

accepts notice; and seeks time to file reply.

7. Let reply be filed within 06 weeks; rejoinder, if any be filed within 04 weeks thereafter; with advance copies to the opposing counsel.

8. Re-notify on 15th March 2023.

9. By way of the present application under section 482 CrPC, the petitioner seeks stay of operation of impugned order dated 10.11.2022.

10. Issue notice.

11. Mr. Nikhil Goel, learned SPP appears for the CBI on advance notice;

and accepts notice; and seeks time to file reply.

12. Let reply be filed within 06 weeks; rejoinder, if any be filed within 04 weeks thereafter; with advance copies to the opposing counsel.

13. Upon a prima-facie view of the matter, and based on what is recorded above, it would appear that there is no allegation or material against the petitioner that would be suggestive of the critical ingredient of the offence under section 120-B IPC, viz. prior meeting of the minds in relation to the alleged offences; for which charges been framed against him.

14. Accordingly, further proceedings against the petitioner before the learned Special Judge shall remain stayed, till the next date of hearing.

15. Re-notify on 15th March 2023.

ANUP JAIRAM BHAMBHANI, J DECEMBER 16, 2022/ak