

Arun Kumar Goenka vs Central Bureau Of Investigation on 20 December, 2021

Author: Rajnish Bhatnagar

Bench: Rajnish Bhatnagar

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 3368/2021
ARUN KUMAR GOENKA

Through: Mr. N. Hariharan, Sr.
Mr. P.S. Singal, Mr. J
Mr. Akansh Singal, Adv

versus

CENTRAL BUREAU OF INVESTIGATION Respondent
Through: Mr. Ripu Daman Bhardwaj, SPP for
CBI with Mr. Kushagra Kumar,
Advocate.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR
ORDER

% 20.12.2021 CRL.M.A. 20438/2021 (for exemption) Exemption allowed subject to just exceptions.

The application stands disposed of.

CRL.M.C. 3368/2021 and Crl.M.A. 20437/2021 (for stay)

1. This is a petition filed by the petitioner under Section 482 Cr.P.C. read with Articles 226/227 of the Constitution of India seeking modification of order dated 30.11.2021 for the unrelied documents and directions to CBI to make complete disclosure of all the unrelied documents/replies/questionnaires collected by the investigating agency during the investigation and all unrelied statements recorded u/s 161 CrPC during investigation.

2. It is submitted by learned senior counsel for the petitioner that respondent - CBI has not supplied unrelied documents to the petitioner. He has placed reliance on the judgment of this Court titled as CBI Vs. INX Media Pvt. Ltd. passed in Crl.M.C. 1338/2021 decided on 10.11.2021. It is submitted that the Trial Court has also not passed directions for further investigation in this case. It is submitted by learned senior counsel that the documents which have not been relied upon by the respondent - CBI are of unimpeachable quality which would throw light on the innocence of the petitioner and these documents are required by the petitioner before addressing arguments on charge. It is further submitted that the Trial Court has refused the prayers of the petitioner simply because if the said prayers are allowed it would further cause delay in the case. It is further submitted that simply on the ground that delay would be caused to the prosecution's case, rights of

the petitioner cannot be sacrificed and the petitioner is entitled to be given unrelieved documents for proving his innocence.

3. Issue notice. Learned SPP for CBI enters appearance on advance notice and accepts notice.

4. It is submitted by learned SPP that vide impugned order dated 30.11.2021 petitioner has been granted liberty to inspect the documents lying in the malkhana of CBI after obtaining the orders of the Court. He further submits that further investigation cannot be ordered in this case as it would further delay the trial which is already delayed by twenty years.

5. The relevant para of the impugned order with regard to supply of unrelieved documents is para 27, which reads as under:-

"27. In this application, no specific document have been mentioned which accused no. 3 intends to take and unrelieved by the CBI. Since already 20 years have lapsed ever since completion of investigation in this case it would be rather causing undue delay in a matter which is already 20 years old, if at this stage, unrelieved upon documents are called upon which are very voluminous and in thousands of pages. In such situation in order to strike a balance between right of the accused to get disclosure of all unrelieved documents as well as to avoid unnecessary delay in the proceedings, I am of the view that as per Clause 12.32 of CBI Crime Manual 2020 which lays down inspection of the record of CBI lying in the Malkhana of CBI on the orders of the court. In this case accused persons can be permitted to the inspection of all the documents unrelieved upon by the CBI in this case and lying in the Malkhana of the CBI so that they can determine if any of the documents which is relevant for proving their defence can be called upon during the trial upon moving an application under the appropriate provision of Cr.P.C."

6. During the course of arguments, it is submitted by learned SPP that respondent - CBI will supply the list of unrelieved documents to the petitioner and thereafter the petitioner can point out the documents which are required by him for the purpose of addressing arguments on charge.

7. Accordingly, respondent - CBI is directed to supply the list of unrelieved documents to the petitioner within a period of one week and thereafter petitioner shall point out to the IO, the relevant unrelieved documents which are required by him for the purpose of addressing arguments and the said documents can be supplied to him within one week so that the matter may not get delayed any further.

8. As far as the question of further investigation is concerned, Trial Court has rightly observed that further investigation can only be allowed if the Court is satisfied that investigation has been tainted or incomplete and giving of opinion on factual aspect involved in the investigation of this case would rather cause delay in the proceedings.

9. I find no infirmity in the aforesaid observations made by the Trial Court as far as the question of further investigation is concerned, and it may in the facts and circumstances of this case shall cause further prejudice to the case of either of the parties and for the purpose of further investigation a case has to be made out and the Trial Court has further observed that no case has been made out for further investigation in the instant case. As far as this relief is concerned, the same cannot be granted to the petitioner, however, arguments on charge may be addressed by other accused persons other than the present petitioner.

10. The petition, along with the pending application, stands disposed of in the aforesaid terms.

RAJNISH BHATNAGAR, J DECEMBER 20, 2021 AK