

J. Dalvin Suresh vs Central Bureau Of Investigation & Anr. on 1 April, 2025

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment delivered on: 01.04.2025

+

W.P.(CRL) 3042/2024, CRL.M.A. 29545/2024 & CRL.M.A. 29546/2024

J. DALVIN SURESH

.....Petitioner

versus

CENTRAL BUREAU OF
INVESTIGATION& ANR.

..... Respondent

Advocates who appeared in this case:

For the Applicant : Mr. Abhijit Anand, Advocate (Through V.C.).

For the Respondent : Mr. Rajesh Kumar, SPP with Ms. Mishra Pandit & Mr. Mohd. Changez Ali Khan, Advocates.
Ms. Rebecca John, Sr. Advocate, Mr. Sanjeev Kumar Sharma, Mr. Anirudh Gandhi, Mr. Sanga Sud, Ms. Vaishali Goel, Mr. Debargha Roy & Ms. Anshuka Barua, Advocates for R-2.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') challenging the impugned order dated 26.09.2024 (hereafter 'impugned order'), passed by the learned Trial Court, in Misc. Crl. No. 65/2024 arising out of RC-048 2024 S0008.

2. The brief facts of the case are that on 27.07.2024, the petitioner's son, who was preparing for the UPSC Civil Services Examination, died due to drowning on account of the flooding of the basement with rainwater in Rau's IAS Study Circle. Pursuant to the incident which claimed the life of three students, an FIR being FIR No. 151/2024 dated 28.07.2024 was registered under Section 105, 106(1), 115(2), 290, 3(5) of the Bharatiya Nyaya Sanhita, 2023. It is alleged that the library built in the basement of the Rau's IAS Study Circle had been running illegally, and in violation of the Master Plan for Delhi, 2021.

3. Respondent No. 2 is stated to be the owner of Rau's IAS Study Circle. By the impugned order, the learned Trial Court, in an application filed by Respondent No. 2 seeking return of certain financial documents belonging to him, and lying at the premises of RAU's IAS Study Circle, allowed Respondent No. 2 to obtain the photocopy of the same in the presence of the CBI officials.

4. The learned counsel for the petitioner submitted that the learned Trial Court erroneously allowed the application filed by Respondent No.2 seeking return of certain documents, even though the case was still under active consideration. He submitted that the documents form part of the investigation, and cannot be handed over to Respondent No. 2 prior to the filing of the chargesheet. He submitted that in terms of Section 230 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS'), even the photocopy of the documents that form part of the investigation, cannot be handed over to the accused before the filing of the chargesheet.

5. The learned Senior Counsel for Respondent No. 2 submitted that the documents in question are only some financial documents belonging to Respondent No. 2. She submitted that since the documents in question do not form part of the investigation, and are only the financial documents belonging to Respondent No. 2, the same would also not prejudice the investigation.

6. The learned Special Public Prosecutor for the CBI submitted that only a photocopy of the financial documents of Respondent No. 2 are being given to Respondent No. 2, which in any event would not prejudice the investigation being conducted.

Analysis

7. The petitioner is essentially aggrieved that Respondent No.2, even before the chargesheet is filed, was permitted to photocopy certain financial documents that were seized from the premises of RAU's IAS Study Circle.

8. The petitioner has placed reliance on the provision of Section 230 of the BNSS to thrust his argument that the documents which are part of the investigation can only be provided to the accused after the filing of the chargesheet as the same would otherwise have the effect of derailing the investigation. It is argued that the said provision provides that a copy of any document that is forwarded to the Magistrate with the police report is to be provided to the accused and therefore no copy of such material ought to be provided during the pendency of the investigation.

9. Before analysing the said legal issue, this Court considers it apposite to refer to Section 230 of the BNSS. The same is reproduced hereunder:

"230. Supply to accused of copy of police report and other documents.--In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay, and in no case beyond fourteen days from the date of production or appearance of the accused, furnish to the accused and the victim (if represented by an advocate) free of cost, a copy of each of the following:--

- (i) the police report;
- (ii) the first information report recorded under Section 173;
- (iii) the statements recorded under sub-section (3) of Section 180 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-section (7) of Section 193;
- (iv) the confessions and statements, if any, recorded under Section 183;
- (v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (6) of Section 193;

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:

Provided further that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused and the victim (if represented by an advocate) with a copy thereof, may furnish the copies through electronic means or direct that he will only be allowed to inspect it either personally or through an advocate in Court:

Provided also that supply of documents in electronic form shall be considered as duly furnished."

10. Earlier, Section 207 of the Code of Criminal Procedure, 1973 ('CRPC') dealt with supply of police report and other documents to the accused. While Section 230 of the BNSS stipulates that the supply of such documents should be effected beyond fourteen days from the date of production or appearance of the accused, the spirit of both the provisions remains the same.

11. A bare perusal of the aforesaid provision shows that it is meant to galvanise an accused person's right to a fair trial as has been enshrined under Article 21 of the Constitution of India. Thus, the purpose of the provision is to protect the right of an accused to be provided with all the material that the prosecution proposes to rely upon in the trial [Ref. P. Gopalkrishnan v. State of Kerala:(2020) 9 SCC 161].

12. The Hon'ble Apex Court in the case of Tarun Tyagi v. CBI:

(2017) 4 SCC 490 has expounded the purport of Section 207 of the CrPC. The relevant portion of the judgment is reproduced hereunder:

"8. Section 207 puts an obligation on the prosecution to furnish to the accused, free of cost, copies of the documents mentioned therein, without any delay. It includes, documents or the relevant extracts thereof which are forwarded by the police to the Magistrate with its report under Section 173(5) of the Code. Such a compliance has to be made on the first date when the accused appears or is brought before the Magistrate at the commencement of the trial inasmuch as Section 238 of the Code warrants the Magistrate to satisfy himself that provisions of Section 207 have been complied with. Proviso to Section 207 states that if documents are voluminous, instead of furnishing the accused with the copy thereof, the Magistrate can allow the accused to inspect it either personally or through pleader in the court."

13. In the case of Sidhartha Vashisht v. State (NCT of Delhi):(2010) 6 SCC 1, the Hon'ble Apex Court had held as under:

"218. The liberty of an accused cannot be interfered with except under due process of law. The expression "due process of law"

shall deem to include fairness in trial. The court (sic Code) gives a right to the accused to receive all documents and statements as well as to move an application for production of any record or witness in support of his case. This constitutional mandate and statutory rights given to the accused place an implied obligation upon the prosecution (prosecution and the Prosecutor) to make fair disclosure. The concept of fair disclosure would take in its ambit furnishing of a document which the prosecution relies upon whether filed in court or not. That document should essentially be furnished to the accused and even in the cases where during investigation a document is bona fide obtained by the investigating agency and in the opinion of the Prosecutor is relevant and would help in arriving at the truth, that document should also be disclosed to the accused.

219. The role and obligation of the Prosecutor particularly in relation to disclosure cannot be equated under our law to that prevalent under the English system as aforesaid. But at the same time, the demand for a fair trial cannot be ignored. It may be of different consequences where a document which has been obtained suspiciously, fraudulently or by causing undue advantage to the accused during investigation such document could be denied in the discretion of the Prosecutor to the accused whether the prosecution relies or not upon such documents, however in other cases the obligation to disclose would be more certain. As already noticed the provisions of Section 207 have a material bearing on this subject and make an interesting reading. This provision not only require or mandate that the court without delay and free of cost should furnish to the accused copies of the police report, first information report, statements, confessional statements of the persons recorded under Section 161 whom the prosecution wishes to examine as witnesses, of course, excluding any part of a statement or document as contemplated under Section 173(6) of the Code, any other document or relevant extract thereof which has been submitted to the Magistrate by the police under sub- section (5) of Section 173. In contradistinction to the provisions of Section 173, where the legislature has used the expression "documents on which the prosecution relies" are not used under Section 207 of the Code. Therefore, the provisions of Section 207 of the Code will have to be given liberal and relevant meaning so as to achieve its object. Not only this, the documents

submitted to the Magistrate along with the report under Section 173(5) would deem to include the documents which have to be sent to the Magistrate during the course of investigation as per the requirement of Section 170(2) of the Code.

220. The right of the accused with regard to disclosure of documents is a limited right but is codified and is the very foundation of a fair investigation and trial. On such matters, the accused cannot claim an indefeasible legal right to claim every document of the police file or even the portions which are permitted to be excluded from the documents annexed to the report under Section 173(2) as per orders of the court. But certain rights of the accused flow both from the codified law as well as from equitable concepts of the constitutional jurisdiction, as substantial variation to such procedure would frustrate the very basis of a fair trial. To claim documents within the purview of scope of Sections 207, 243 read with the provisions of Section 173 in its entirety and power of the court under Section 91 of the Code to summon documents signifies and provides precepts which will govern the right of the accused to claim copies of the statement and documents which the prosecution has collected during investigation and upon which they rely."

(emphasis supplied)

14. As discussed in the aforesaid judgments, the purpose of Section 230 of the BNSS is to protect the right of an accused to the material that the prosecution seeks to rely upon. The same is in extension of the right of the accused person to be put to notice of the material against him.

15. The scope of the said provision cannot be misconstrued so as to mean that the Court is precluded from supplying any document that is/is not a part of the investigation. The provision does not put any embargo on the Court to not order supply of documents that are part of the investigation to the accused and such a blanket restriction cannot be read into the intention of the legislature.

16. In the present case, it has been emphasised by the learned Senior counsel for Respondent No. 2 that the documents sought by Respondent No. 2 are only some financial documents belonging to him. The learned Special Public Prosecutor for the CBI, on being pointedly asked, has stated that the documents sought by Respondent No. 2 would not derail the investigation in any manner, and has also expressed his no objection on Respondent No. 2 obtaining a photocopy of the said documents in the presence of the CBI officials.

17. This Court also does not mean to suggest that the accused can claim to have an indefeasible right to supply of any such material before the filing of the police report. It cannot be ignored that not every document that is seized during the course of investigation is relevant and may not be relied upon by the prosecution to prove its case. Further, the Courts are well within their power to refuse any such prayer if the material or documents so sought have the potential of prejudicing the investigation. In the present case, however, Respondent No.2 has sought his financial documents from the premises of RAU's IAS Study Circle.

18. While it is argued on behalf of the petitioner that the application being allowed will derail the investigation as the accused will get to know in which direction the investigation is going, the nature

of the said documents when one looks at the scope of the investigation as well as the no objection from CBI points towards the contrary.

19. Moreover, it is also relevant to note that while Respondent No.2 had sought return of the concerned documents, the learned Trial Court has only permitted him to obtain a photocopy of the same at his own cost. This Court fails to understand as to how enabling Respondent No.2 to get photocopies of certain documents that were seized from his office will prejudice the case of the prosecution, especially when no such objection is raised by the investigating agency.

20. In view of the aforesaid discussion, this Court finds no reason to interfere with the impugned order.

21. The present petition is dismissed in the aforesaid terms.

22. Pending applications also stand disposed of.

AMIT MAHAJAN, J APRIL 1, 2025