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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C.2816/2025**

CENTRAL BUREAU OF INVESTIGATION

.....Petitioner

Through: Mr. Anupam S. Sharrma, SPP, CBI
with Mr. Prakarsh Airan, Advocate
with Mr. Alok Kumar Singh Addl.
SPP, CBI and Insp. Prakhar M. (CBI).

versus

AVNISH KUMAR & OTHERS

.....Respondents

Through: Mr. Sandeep Kumar, Mr. Gagan
Kumar, Advocates for R-1.
Mr. Harsh Sharma, Advocate with
Mr. C. Parkash and Mr. Sachin
Kumar, Advocates for R-2.
Mr. Deepak Garg and Mr. Rahul
Bhagat, Advocates for R-3.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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25.04.2025

CRL.M.C.12578/2025 (Seeking Exemption)

1. Allowed, subject to just exceptions.
2. The Application stands disposed of.

CRL.M.C.2816/2025

3. The case is received on Transfer.
4. Petition under Section 528 BNSS has been filed on behalf of the Petitioner/CBI challenging the impugned Order dated 15.04.2025 passed by learned Special Judge, PC Act, New Delhi, whereby Police Custody/Remand to the three Respondents has been denied in CBI Case RC

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2182025A0010/AC-III/New Delhi under Section 61 (2) BNS Act, 2023 read with Section 7, 7A, 12 PC Act, 1988.

5. It is submitted in the Petition that a Complaint dated 08.04.2025 was made by the Complainant Himanshu Nanavaty who was an accused in one case and a Complainant in the another, wherein both the matters were under investigation by CBI, EO-II branch. According to the Complainant, Respondent No.1 Avnish Kumar introduced himself as a CBI Officer and offered to settle both the cases. He then introduced the Complainant to Respondent No.2 Anil Tanwar (A-2) as CBI Officer who offered to help the Complainant in his cases and demanded an amount of Rs.50 lakhs which was subsequently reduced to Rs.35 lakhs. Respondent no.2 directed the Complainant to coordinate with Respondent No.1 in the matter.

6. Respondent No.1 also introduced the Complainant to one Ramesh Kumar (A-3) as another CBI Officer who demanded Rs.10 lakhs and advised him to stay in touch with Respondent No.1.

7. On 07.04.2025, Respondent No.1 asked the Complainant to meet him again on the next day i.e. 08.04.2025 for a meeting with the concerned Officer and to decide the bribe amount to be paid. Unwilling to pay, the Complainant reported the matter to Head of Branch, CBI, AC-III, New Delhi for legal action.

8. After conducting discreet Verification and submission of the Verification Memo dated 09.04.2025, prima facie allegations made in the Complaint against Respondent No.1, 2 and Ramesh Kumar were made out. It was also revealed that Jyotimon Dethan, officer posted in Department of Revenue, Ministry of Finance, Government of India at CBIC, Judicial Cells, Hudco Vishala Building, Bikaji Cama Place, New Delhi (Respondent No.3)

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had also demanded illegal gratification of Rs.50,000/- for influencing ED Officers in the case related to him.

9. It is submitted by CBI that the Complaint and Verification Memo, prima facie reveal commission of cognizable offences punishable under Section 61(2) BN/S read with Section 7, 7A and 12 of PC Act, 2018 and substantive offences thereof. The present FIR/RC was registered on 09.04.2024 against the Respondent No.1 and 2 Ramesh Kumar and Respondent No.3 and other unknown public servants and private persons for commission of the offence punishable under Section 61(2) BNS read with Section 7, 7A and 12 PC Act, 2018 and substantive offences thereof.

10. During the investigations, a trap was laid wherein Respondent No.1 was caught red handed while accepting an undue advantage of Rs.3.5 lakhs from the Complainant, on behalf of Respondent No.2. Thereafter, Respondent No.1 was directed to make a call to Respondent No.2. During the conversation, Respondent No.1 informed Respondent No.2 about payment of undue advantage by the Complainant as token which was acknowledged by Respondent No.2.

11. During Verification proceedings it was also found that Jyotimon Dethan Respondent No.3 initially met the Complainant and subsequently accompanied Respondent No.1 to meet the Complainant in night and demanded an amount of Rs.50,000/- for favourable consideration of the ED case which was registered against him, on the basis of CBI FIR. The sum of Rs.50,000/- was transmitted to Respondent No.3 through G-pay and the Complainant called Respondent No.3 to confirm the receipt of the money. The Respondent No.3 was arrested by CBI from his office at HUDCO Place, New Delhi on 09.04.2025.

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12. Respondent No.2 was arrested on 10.04.2025.
13. During the search of vehicle of Respondent No.1, identity cards of various Departments including CBI, NCB, Haryana State Narcotics were recovered. The CBI submits that Custodial interrogation is required to unearth possibility of a racket being run by Respondents.
14. The Respondent No.1 and 3 were produced before learned Special Judge, New Delhi on 10.04.2025 for seeking their Police Custody for 5 days. The Police Custody of Respondent No.2 was not sought since he was admitted at Safdarjung Hospital for medical checkup. The learned Special Judge vide Order dated 10.04.2025 deferred the Police Remand Application which was kept pending, by observing that the Prosecution may press the said Application if and when it is able to collect some more evidence with which the Accused persons were required to be confronted or recovery of some documents, articles is to be effected. The Respondents were remanded to Judicial Custody and the Application for Police Remand was kept pending.
15. An Application dated 15.04.2025 in continuation of earlier Application dated 10.04.2025, was filed for seeking Police Custody of the accused persons. However, it has been denied vide Order dated 15.04.2025. Hence, the present Petition has been filed for seeking Police Custody for 10 days.
16. The grounds for seeking Police Custody are :
- (i) that it is imperative of facilitate an effective and meaningful investigation;
 - (ii) that it has not been appreciated that in the peculiar facts and circumstances of the case which prima facie point towards a

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large scale conspiracy spanning multiple Departments, Agencies and Institutions, Custodial Interrogation of Respondents for a thorough and in-depth investigation is merited; and

(iii) that the crucial facts and material evidence that has emerged during the initial stage of investigation has been overlooked and the Police Custody has been wrongly declined.

17. Reference is made to the judgment of Constitution Bench of Supreme Court in Puttaswamy-I and Puttaswamy-II to assert that prevention and investigation of crime and protection of Revenue are amongst the legitimate aims of the State. The impugned Order has hindered the investigations and has lead to a situation where no concrete and complete investigations can be concluded to expose the nexus between the public persons and higher government officials indulging in high level corruption and thereby putting at risk the investigative and entire judicial process.

18. The case pertains to Senior CBI Official trying to manage the investigations being carried out by CBI. If the present matter is not thoroughly investigated, it would have far reaching consequences.

19. It is trite law the custodial interrogation is qualitatively more elicitation oriented than questioning an accused who is well ensconced in judicial custody. Custodial interrogation offers a crucial opportunity to extract valuable information and uncover material evidence that may otherwise remain concealed. The efficacy of interrogation is greatly enhanced when the accused is not shielded by the comfort and security of Judicial Custody, as the psychological impact of Police Custody often leads to more truthful and revealing disclosures.

20. In CBI vs. Anupam J. Kulkarni 1992 (3) SCC 141, the threshold limit

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of seeking Police Custody remand under Section 167 Cr.P.C was for the initial 15 days or arrest However, in BNSS, 2023, this period of 15 days of Police Custody has been granted to 40 days during 60 days of investigation. The purpose for which threshold limit of granting Police Custody to 15 days has been modified to 40 days is to permit thorough and proper investigation which would be defeated if Police Custody is denied.

21. In the present case, the CBI has not been granted even one day Police Custody leading to the situation where the entire investigating process has been brought to a standstill. It has not been considered that Respondent No.2 is holding a high post in CBI. In order to uncover the conspiracy, their confrontation with each other including the Complainant, is essential.

22. It is further submitted that in addition to the Identity Cards which have been recovered in regard to which Custodial interrogation is still continuing, there is certain other incriminating material which has to be recovered from the digital devices seized from Respondent No.1. The nature, context and evidentiary value of this digital evidence can only be fully ascertained through custodial interrogation. Denial of Policy Custody hampers the fair and effective investigation particularly in a matter involving potential abuse of official insignia and documents.

23. The learned Special Judge denied the custodial interrogation of Respondent No.2, a CBI official on the ground that he was not caught red handed and no incriminating material was recovered from his possession. However, it is overlooked that Respondent No.2 is the key conspirator and his custodial interrogation would be crucial to uncover further evidence of his involvement and trace the broader conspiracy.

24. **In regard to Respondent No.3** while denying the Police Custody, it

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has not been appreciated that by remanding him directly to judicial custody, the right of the Investigating Agency to subject him to custodial interrogation has been effectively curtailed. The learned Special Judge while suggesting that Departmental verification is sufficient to ascertain the genuineness of the Identity Cards recovered from Respondent No.1 has erroneously ventured into prescribing the manner, method and course of investigation. Such observations amount to judicial overreach and constitute impermissible interference in the investigative process, which is an exclusive domain of the Executive. The investigation of an offence falls solely within the purview of the Police Authorities, which power remains unfettered so long as they are exercised within the provisions of law. The Courts are not justified to obstruct or alter the course of investigations which is being conducted lawfully.

25. Reliance has been placed on CBI vs. Vikas Mishra CrI. Appeal No.957 of 2023, wherein it has been observed that no accused can be permitted to play with the investigation and/or with the court process.

26. It is, therefore, submitted that the impugned Order dated 15.04.2025 be set aside and the Police Custody of the Respondents be granted to the Petitioner.

27. **Learned counsel on behalf of Respondent No.2 as well as Respondent No.1 and 3** have submitted that there is no document or any substantive investigation which is to be carried out from the three Respondents for which custodial interrogation is required. As has been observed by the Learned Special Judge, CBI, there are no documents or other evidence with which the Respondents are required to be confronted. No such documents have been collected by the CBI justifying Custodial

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Interrogation.

28. It is further submitted that it has been held in catena of judgments and reference is made to the judgment of Santosh W/o Dwarkadas Fafat vs. State of Maharashtra (2017) 9 SCC 714 and Bijender vs. State of Haryana SLP (Crl.) No.1079/2024, wherein it has been held that custodial interrogations are not mandated purely for the purpose of extraction of confessions from the accused.

29. It is submitted that the Respondent No.2 had not even been arrested on the spot and the only allegation against him is a telephonic conversation, the authenticity of which can be established by taking the voice sample and getting the same verified from FSL. No custodial interrogation is thus, merited.

30. **Submissions heard and record perused.**

31. It is one of the unique cases of rampant corruption in CBI, ED and such other Departments, which shakes the entire edifice of our Executive and the Investigating machinery which have the primary duty of investigations in crime and bring the culprits to face the Penalty Corruption. From the averments made in the Complaint it emerges that it is not one stand alone case of corruption by the Government official, but it reflects a large conspiracy amongst the officials of various Departments who have in a nexus and take bribes for giving undue advantage to the approaching party or even to impact and interfere in the fair investigations and the functioning of these Government Department. The investigations are still at an infancy and to unearth this larger conspiracy, the interrogation of the three accused is imperative. To say that the interrogation is intended for extracting a confessional statement, is not correct because as has been observed in the

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case of Prakash Gupta vs. State of Delhi MANU/DE/2052/2017 while considering the aspect of Police Custody the gravity and the seriousness of the offence is of primary consideration. Custodial interrogation of a Petitioner when required to unearth the conspiracy, cannot be denied.

32. In the case of CBI vs. Anil Sharma MANU/SC/0947/1997 while considering the requirement of custodial interrogation of an accused, it was observed that the argument that custodial interrogation is fraught with danger of the person being subjected to third degree methods need not be countenanced for such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders.

33. In Prakash Gupta (supra) it was further observed that it is only the custodial interrogation that leads to vital clues in recovering the case property, involvement of other persons, criminal conspiracy, place of concealment of case property etc. Persons accused of grave offences cannot be permitted to take the administration of justice for a ride. The Court has to strike a balance and to examine meticulously in the facts and circumstances of each case, as to whether custodial interrogation of the accused is required or not.

34. In Parvinderjit Singh & Anr. vs. State (U.T. of Chandigarh) & Anr. 2008 (4) SCC 2873, it was further noted that it may be necessary to curtail the freedom in order to enable the investigation to proceed without hindrance and to protect the witnesses and persons connected with the victim of crime, to prevent his disappearance and to maintain Law and Order in the locality. The Court ordinarily would not interfere in the investigation

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of a crime or the arrest of the accused.

35. Reference be also made to Assistant Director, Directorate of Enforcement vs. Hassan Ali Khan (2011) 12 SCC 684, wherein it had been noted that ordinarily arrest is a part of the process of investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. The custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. Effective interrogation of a suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected persons knows that he is well protected and insulated by a pre-arrest Bail Order during the time he is interrogated.

36. It is, therefore evident that in certain situations as in the present case which is to unearth the larger conspiracy, the custodial interrogation at the initial stage of investigation to unearth the material facts cannot be denied.

37. Considering the gravity and the magnitude of the alleged conspiracy, two days Police Custody/ remand of the three Respondents is granted to CBI from 26.04.2025 and the Respondents be produced before the learned Special Judge, CBI on Monday i.e. 28.04.2025 at 02:00 P.M. The guidelines laid down in the case of D.K. Basu shall be duly complied by the CBI.

38. The observations made herein are without prejudice to the contentions of the parties in any other proceedings including Bail.

39. The copy of the Order be sent to the Jail Superintendent and to the

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learned Special Judge, CBI, New Delhi.

40. Copy of the Order be given Dasti to all the parties, under the signatures of the Court Master.

41. The Petition stands disposed of.

NEENA BANSAL KRISHNA, J

APRIL 25, 2025/va