



* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Reserved on: 08th January, 2026

Pronounced on: 5th June, 2026

W.P. (CRL.)925/2025, CRL.M.A.8681/2025 (stay)

DEVANGANA KALITA

D/o Dr. Hem Chandra Kalita

R/o A-P-Q-15, Assam Medical College Campus,

Dibrugarh, Assam-786002.

Also at:

Flat No.L-32,

Tara Apartments, Alaknanda,

New Delhi-110019.

.....Petitioner

Through: Mr. Adit S. Pujari, Mr. Chaitanya Sundriyal, Mr. Manvendra Singh Shekhwat, Mr. Siddharth Kaushal, Mr. Harshwardhan Pushkin Sharma, Advocates.

versus

STATE OF DELHI NCT

Through The SHO

PS Crime Branch.

.....Respondent

Through: Mr. Amit Prasad and Mr. Madhukar Pandey, SPP along with Mr. Ayodhya Prasad, Mr. Aarush Bhatia, Mr. Dhruv Pande, Mr. Saravjeet Singh, Mr. Harshil Jain Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.



W.P. (CRL.) 925/2025: To seek Inspection of Malkhana for un-relied Documents:

1. A Writ Petition under Article 226/227 of the Constitution of India read with Sections 528/529 of BNSS, has been filed on behalf of the Petitioner to challenge the Order dated 07.12.2024 of learned ASJ, Delhi, whereby the Application of the Petitioner for Inspection of Malkhana, as per Guidelines for Inspection of Malkhana, has been dismissed.
2. The Petitioner filed ***an Application on 21.09.2024 seeking inspection of Malkhana of the Investigating Agency*** that would contain the case property i.e. the material seized by the Investigating Agency, but not filed along with the Chargesheet.
3. Upon issuance of the Notice, no written response was filed by the Prosecuting Agency. The learned Special Judge ***dismissed this Application, by the impugned Order dated 07.12.2024.***
4. Aggrieved by the denial to inspect the Malkhana, ***the Order is challenged by this Writ Petition, on the ground that*** the learned Special Court has failed to appreciate that the right to inspect the Malkhana in relation to unrelayed documents is not founded on CBI (Crime) Manual 2020, but is a manifestation of principles of fair trial and natural justice, which has been acknowledged in the aforesaid two cases.
5. The learned Special Judge has placed reliance on the Order dated 05.08.2023. However, that Order dealt with supply of documents under Section 207 Cr.P.C and also to supply of list of un-relied documents. However, it did not deal with the aspect of inspection of un-relied



documents as at that stage, the Prosecuting Agency had submitted that investigation was pending.

6. It is only on 14.09.2023 and recorded in the Order dated 04.09.2024 of Special Judge, that the Prosecuting Agency submitted that the investigations were complete and the chargesheet against all the accused had been filed. It is then that the Application seeking inspection of the Malkhana, was filed by the Petitioner. The existence of un-relied documents and objects in the malkhana, has not been disputed by the Prosecuting Agency. Accordingly, occasion to Rely upon Order dated 05.08.2023 where supply of documents was sought, cannot be read into the issue of inspection of Malkhana of the Prosecuting Agency, as the two issues are distinct and separate.

7. The Petitioner and the other Accused have been denied the benefit of all the documents including electronic documents, such as WhatsApp Chats and Videos that were seized by the I.O., but were not relied upon against any of the persons who have been Charge sheeted.

8. The Investigating Agency in terms of Order dated 05.08.2023 undertook to provide the documents as part of this Supplementary Chargesheet, that is yet to be filed. However, by way of subsequent Order dated 04.09.2024, the learned Special Judge restricted filing of Supplementary Chargesheet only for placing on record fresh evidence collected, if any, against any other person who is not already an Accused before the learned Special Court.

9. The sequitur to the three Orders, would be that in the event no individual is charge sheeted in this case, all the existing material has already been seized by the Investigating Agency, but not relied upon, would never



see the light of the day and the Accused persons including the Petitioner, would be deprived of such material evidence as would have otherwise, have established their innocence.

10. The Investigating Agency had admittedly directed the MCD to secure videos of over 309 outdoor enclosures of CCTV cameras installed on roads, in various part of Delhi. Access to relevant CCTV cameras under and around the Jaffrabad Metro Station between February 22nd to 26th, 2020 would demonstrate the falsity of the narrative of the involvement of the Petitioner in alleged stone-throwing/ acid distribution/ use of sticks etc. The Petitioner had all along, maintained that the protest under the Jaffrabad Metro Station was peaceful, without any use of arms/ sticks/ stones/ acid or any other item that could cause harm.

11. Furthermore, as per the Chargesheet and the Seizure Memos, the Investigating Agency itself had engaged a photographer pursuant to a tender awarded in the year 2019 for recording events relating to the North-East Delhi riots. The statement of Sh. Prem Singh was recorded under Section 161 Cr.P.C., wherein he admitted that he had conducted videography on the Jaffrabad side at the instance of one Madan in connection with FIR No. 50/2020 and FIR No. 48/2020, P.S. Jaffrabad. However, the said videos were not supplied to the Petitioner in the aforesaid FIRs at the relevant time. In fact, the Prosecution has placed on record only still images extracted from the said videos, but has failed to furnish the source videos themselves. Consequently, only selective extracts appear to have been forwarded along with the Chargesheet, which seem to have been derived from the said videos. The source videos are, therefore, material evidence and ought to have been supplied to the Petitioner by the Prosecution. Reliance has been



placed on P. Gopalakrishnan @ Dileep vs. State of Kerala, Crl. A. No. 1794/2019, decided on 29.11.2019.

12. This Court in the case of Shambir and Ors. Vs. State, 254 (2018) DLT 488 which dealt with Sikh Riots observed that law must mandatorily require media persons or houses, to share the products of their efforts (by way of photographic material of video footages put in public domain by them in regard to the communal riots) with the Investigating Agency in all cases of communal riots, it being also their bounden duty thereafter, to prove such material at the time of trial.

13. The learned Special Judge has erroneously held that Order under Section 207 Cr.P.C., has already been passed and under the garb of present Application, the Applicant cannot be allowed to seek the desired remedy with respect to any material, which is there in the Malkhana.

14. It is submitted that such observations are erroneous, as the documents sought in the Application under Section 207 Cr.P.C. emanated from the List of Documents filed along with the Chargesheet, but this Application relates to other documents that are in the Malkhana in this case. The documents kept in Malkhana are distinct from case property; whereas Section 102(3) Cr.P.C mandates that all items seized by the Investigating Agency during the investigation of the FIR, would be the case property and would effectively be in the custody of learned Court.

15. It is further stated that the inspection of the case property in the Malkhana, would enable the Petitioner to place on record all such documents that had not been relied upon by the Prosecution, but are relevant for the adjudication of the Charge. By denying inspection of the Malkhana,



the Prosecution is choosing to withhold the best evidence of events from 20.02.2020 to 25.02.2020.

16. It is further contended that there are various procedures and rights, practices adopted by Courts, which do not otherwise find their source in Cr.P.C. or any other Code.

17. The present case is squarely covered by the judgment of Central Bureau of Investigation vs. M/s INX Media Pvt. Ltd. 2021 SCC OnLine Del 4932 and Dheeraj Wadhawan vs. Central Bureau of Investigation CrI.M.C.5108/2023 decided on 26.07.2023, wherein this Court has upheld the right of an Accused to inspect Malkhana of the Investigating Agency for documents seized by them, but not supplied by the Prosecution.

18. Moreover, the learned Trial Court/Special Court has permitted various accused persons to inspect the un-relied documents, in a number of cases. In the case of Manish Sisodia vs. Directorate of Enforcement, SLP (Crl.) 8781/2024 decided on 09.08.2024, the Apex Court held that taking into consideration the huge magnitude of documents involved, it cannot be stated that the accused is not entitled to take a reasonable time for inspection of the documents; and that in order to avail the right to fair trial, the Accused cannot be denied the right of inspection of the documents including “*un-relied documents*”.

19. Once the Supreme Court has recognized the right of inspection of the documents retained in the office of Investigating Agency, the Petitioner ought to have been permitted the inspection of Malkhana.

20. Hence, a prayer is made that the impugned Order dated 07.12.2024 of the learned Special Judge be set aside and the Petitioner be permitted to



inspect the Malkhana for all the documents seized by the Investigating Agency in FIR No.59/2020.

21. The **Respondent/NIA in the short Reply**, *has challenged the maintainability of the Writ Petition, at the very outset.* It is stated that the impugned Orders of learned Special Judge are purely interlocutory in nature and thus, Section 21(3) of the NIA Act puts an embargo on them being challenged. The Petitioner has sought to circumvent this express bar on interlocutory orders, in a backhanded manner by filing the present Writ Petitions. Such circumvention of the mandatory provisions may lead to complete derailment of trials, in anti-terror/national security offences.

22. Furthermore, under the garb of the present Writ Petition, the Petitioner is seeking guidelines for inspection of Malkhana; it is in as much in the nature of Public Interest Litigation and must be filed before the appropriate roster Bench. The rule which applies is no less well recognized, namely that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Reliance is placed on Nazir Ahmad vs. King-Emperor, AIR 1936 PC 253(2).

23. It is further submitted that by way of the Application the Petitioner, has sought material not forming part of the final Police Report/Chargesheet, at the stage of Charge. The reliance on un-relied documents at the stage of Charge, is not permissible in law particularly in anti-terror prosecutions under UAPA/NIA Act. The decision rendered by this Court shall carry far reaching consequences, given the heightened stakes of Prosecutions under special anti-terror legislation, as distinct from routine criminal or economic offences.



24. **On merits**, it is submitted that by way of the first Application dated 08.04.2021 the Petitioner had sought copies of “documents that had been forwarded to the Ld. Magistrate, as per the requirements under Section 170(2) Cr.P.C. These documents comprised of Chats in WhatsApp Group of Respondent Agency, CCTV footages, video clips and were stated to be instrumental at the stage of framing of Charge against the Petitioner.

25. Likewise, the Petitioner sought for the right to inspect these documents and more specifically the videos and WhatsApp chat groups, before arguments on discharge by way of second Application dated 07.12.2024. The right of inspection was expressly sought “for the purpose of efficacious arguments on charge/discharge”. The learned Special Court noted the similarity between two Applications and recorded that “when the court has already passed order on the Application under Section 207 Cr.P.C, in the garb of the present Application, the applicant cannot be allowed to seek the desired remedy with respect to any material which is there in the Malkhana”.

26. In order to appreciate the case of the Petitioner and the facts that substantially same reliefs in the nature of access to un-relied documents, was sought by the Petitioner, the Respondent sought to draw attention to the various part of the Writ Petition, to assert that the sole object of both the Petitions is to seek documents not forming part of the Chargesheet i.e. un-relied documents and that too, at the stage of framing of Charge. *Therefore, both the Writ Petitions are manifestly identical and are liable to be dismissed.*

27. Further, the learned Special Court while disposing of the Application under Section 207 Cr.P.C., wherever necessary, has directed furnishing of



relevant documents/information to the Accused and the said directions have been duly complied with. However, where the document/material sought by the Accused were found to be not relevant and unnecessary, the same had been rejected.

28. Pertinently, except the present Petitioner, no other Accused has challenged the Orders disposing of the Application under Section 207 Cr.P.C was sought un-relied documents.

29. The arguments on charge were directed to be advanced on day to day basis from 11.09.2023 by the learned Special Judge, *vide* Order dated 05.08.2023. The Petitioner first objected to continuation of arguments on Charge seeking specific statement about completion of investigations. Initially, Applications were filed by the Petitioner along with two other accused. Subsequently, similar Application was filed on 18.09.2023 by other two Accused, to counter prosecutions and to delay the trial to create ground for bail for persons in custody. Similar arguments have been adopted by the other accused persons.

30. The arguments on Charge have been stalled from 06.01.2024 to 04.09.2024 by the Accused persons through such misconceived Applications. The State has already completed arguments on Charge on five dates. Eleven Accused have already concluded their arguments, while seven are yet to commence their arguments. The counsel for none of the Accused persons have advanced arguments on Charge, despite being called upon on various dates clearly reflecting that they are attempting to delay the trial.

31. It is further submitted that a bare reading of the NIA Act and UAPA reveals that there is no statutory right to seek un-relied documents or inspect the Police Malkhana at the stage of charge, that has been conferred upon an



accused. By contrast, the CBI Manual expressly permits inspection of malkhana in cases investigated by the CBI, which is consistent with the nature of CBI cases, typically involving economic or corruption-related offences where physical evidence is less likely to be sensitive.

32. Reference is made to Central Bureau of Investigation vs. M/s INX Media Pvt. Ltd & Ors., (2021) SCC Online Del 4932 wherein an expansive interpretation has been given to Article 21 in permitting inspection in a CBI matter. However, prosecutions under the N.I.A Act and UAPA concern terrorism-related offences with heightened security implications, often involving electronic devices and classified intelligence material, and cannot be equated with CBI cases.

33. It is further contended that reliance of un-relied documents, is impermissible at the stage of charge. It is submitted that the conduct of the Petitioner in seeking to maintain multiple petitions for substantially the same relief amounts to forum shopping and must be thwarted at the threshold. It is settled law that the exercise of extraordinary Writ jurisdiction under Article 226/227, is a discretionary remedy and cannot be availed by a person, who approaches the Court with unclean hands.

Submission heard and Record Perused.

34. A *preliminary objection* has been taken on behalf of the respondent that impugned Orders of learned Special Judge, are purely interlocutory in nature and thus, Section 21(3) of the NIA Act puts an embargo on the impugned Order, which is interlocutory, being challenged.

35. Section 21 NI Act reads as under:

“S.21 Appeals.



(1) *Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.*

2)

(3) *Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.*

(4)”

36. From bare perusal of this Section, it emerges that Section 21(3) of NI Act bars the Appeal and Revision against interlocutory Order, but does not put absolute embargo to the challenge of such orders under Section 482 of Cr.P.C./528 of B.N.S.S. or under Articles 226 and 227 of the Constitution of India.

37. It is settled law that a party cannot be left remediless, merely because an Appeal / Revision is prohibited under NI Act. In the case of Krishnan and Anr. vs. Krishnaveni and Anr., 1997 SCC (CRI) 544, Apex Court held as under:

“Ordinarily, when revision has been barred by Section 397(3) of the Code, a person accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397 (1) or under inherent power of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397 (3) or section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or



abuse of process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstance, to exercise the inherent power and in an appropriate case even revisional power and in appropriate case even revisional power under Section 397 (1) read with Section 401 of the Code.”

38. In the case of Madhu Limaye vs. The State of Maharashtra, (1977) 4 SCC 551, the Apex Court observed that label of a petition filed by an aggrieved party, is immaterial. The High Court can always enquire into an controversy in an appropriate case, in exercise of its inherent powers.

39. It is well settled that Orders under Sections 207, 91 and 311 of Cr.P.C. are interlocutory in nature, in as much as these Orders, do not decide any issue finally. It is also the claim of the Respondents that the Orders, are interlocutory in nature.

40. Since, they are interlocutory in nature, no Appeal or Revision, as provided under Section 21(3) of NI Act, is maintainable. Therefore, such Orders, if challenged under Section 482 of Cr.P.C., are amenable to the jurisdiction of the exercise of inherent powers by the Court, as has been held in the case of Arun Kumar Kaushik vs. State of U.P., 2013 (81) ACC 659.

41. Furthermore, the Petitioner has referred to the case of State (N.C.T. of Delhi) vs. Navjot Sandhu @ Afsan Guru, (2003) 6 SCC 641, which was dealing with Section 34 of POTA, which is *pari materia* with Section 21 of NI Act, it was held that supervisory jurisdiction intends to keeping the



subordinate Tribunals within the limits of their authority and to ensure that the law is followed. Powers under Article 227 of the Constitution of India are wide and can be used to meet the ends of justice. They can be used to interfere, even with the interlocutory Orders. Inherent jurisdiction of the High Court under Section 482 of Cr.P.C., can be exercised even when there is bar under Section 397 or other provisions of Cr.P.C.

42. For this, reference may also be made to Union of India vs. Md. Asarudeen & Ors., CRL.O.P.No.2872/2024 and Union of India vs. Md. Asarudeen, 2025 INSC 746.

43. Likewise, this proposition of law of inherent powers of the Court under Section 482 of Cr.P.C., has also been affirmed in the case of Prabhu Chawla vs. State of Rajasthan & Anr., (2016) 16 SCC 30, wherein while examining the scope of Sections 397 and 482 of Cr.P.C., the Apex Court held that nothing in Cr.P.C., not even Section 397, can affect amplitude of inherent power preserved in the High Court in the language of Section 482 of Cr.P.C. Such power should not invade areas set apart for specific powers, but cannot be a total ban on the exercise of inherent powers, where abuse of process of Court or extraordinary situation, warrants exercise of inherent jurisdiction. The limitation is self-restrain and nothing more.

44. In the case of CBI vs. Ravi Shankar Srivastava, 2006 (7) SCC 188, while considering the scope of jurisdiction under Section 482 of Cr.P.C., the Supreme Court observed that legislative enactment dealing with procedure can provide for all cases that may possibly arise. The Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. All Courts, whether Civil or Criminal possess, in the absence of any express



provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong, in the course of administration of justice on the principle '*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*' (when the law gives a person anything it gives him that without which it cannot exist). It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it, amounts to abuse of the process of Court.

45. This technical objection, is therefore, not tenable.

46. The short controversy raised in the present Petition is: *whether at the stage of arguments on Charge, Petitioner can be permitted inspection of the un-relied documents which are kept in the Malkhana.*

47. The petitioner has already been supplied all the documents, in compliance of S.207 Cr.P.C. The main issue is in regard to many other documents that may be collected during the investigation, but which may not be relied upon by the Prosecution. *The question is whether the Petitioner is entitled to such un-relied documents.*

48. Historically, the consistent view was that as per the scheme of Cr.P.C., and in terms of S.207 Cr.P.C. all the documents which formed the part of the Charge-Sheet were mandatorily required to be supplied to the accused, to ensure that he was aware of the evidence against him, so as to enable him to prepare and conduct his defence, effectively and properly. This was to ensure and he may not be left in dark about what was pitted



against him, and thereby, impede his right to fair trial. **It was consistently being held that the documents referred to under Section 173(4) Cr.P.C. were not required to be made available at the stage of framing of Charge. However, the same shall be made available to the Accused at the stage of evidence, which would be sufficient to safeguard their interest.**

49. In L.R. Melwani (supra), a reference was made to Section 94(1) Section 91 under Amended Cr.P.C.) to observe that where production of any document or any other thing is necessary or desirable for the purpose of trial or any other proceeding, the Court may issue a Summon to the person in whose possession and power such document or thing is believed to be. This Section does not empower a Magistrate to direct the Prosecution to give the copies of any document to the Accused person, as is evident from the plain language of the Section. Furthermore, it is in the discretion of the Magistrate who is the best person to assess the relevance of the documents sought at the stage of trial and the same may be directed to be made available to the Defence Counsel, when the statements of the concerned witnesses were being recorded.

50. Likewise, in Om Prakash Sharma vs. CBI Delhi, 2005 (1) SCC 568, the issue was whether an Application under Section 91 by the accused, was maintainable before framing of Charge. The Apex Court observed that :

“the powers under Section 91 are enabling in nature aimed at arming the court or any officer in charge of a police station concerned to enforce and to ensure the production of any document or other things “necessary or desirable” for the purposes of any investigation, inquiry, trial or other proceeding under the Code, by issuing a summons or a



written order to those in possession of such material. **The language of Section 91 would, no doubt, indicate the width of the powers to be unlimited but the inbuilt limitation inherent therein takes its colour and shape from the stage or point of time of its exercise, commensurately with the nature of proceedings as also the compulsions of necessity and desirability, to fulfil the task or achieve the object.** The question, at the present stage of the proceedings before the trial court would be to address itself to find whether there is sufficient ground for proceeding to the next stage against the accused. If the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to even look into the materials so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time. It is trite law that the standard of proof normally adhered to at the final stage is not to be insisted upon at the stage where the consideration is to be confined to find out a prima facie case and decide whether it is necessary to proceed to the next stage of framing the charges and making the accused to stand trial for the same. This Court has already cautioned against undertaking a roving inquiry into the pros and cons of the case by weighing the evidence or collecting materials, as if during the course or after trial vide *Union of India vs. Prafull Kumar Samal* [(1979) 3 SCC 4 : 1979 SCC (Cri) 609]. Ultimately, this would always depend upon the facts of each case and it would be difficult to lay down a rule of universal application and for all times. The fact that in one case the court thought fit to exercise such powers is no compelling circumstance to do so in all and every case before it, as a matter of course and for the mere asking. The court concerned must be allowed a large latitude in the matter of exercise of discretion and unless in a given case the court was found to have conducted itself in so demonstrably an unreasonable manner unbecoming of a judicial authority, the court superior to that court cannot intervene very lightly or in a routine fashion to interpose or impose itself even at that stage. The reason being, at that stage, the question is one of mere proprieties involved in the exercise of judicial discretion by the court and not of any rights concretised in favour of the accused.” Thus, this



decision will have no application when it comes to the right of the accused to apply for the production of documents by invoking Section 91 CrPC at the stage of entering defence. The decision means that the said right is ordinarily not available at the time of framing of the charge. The reason is that while framing a charge, the Court can consider only that material which forms part of the chargesheet.”

51. This can be understood in the light of the scope of the court to consider the evidence annexed with the charge-Sheet, at the stage of the arguments on Charge.

52. In this context, it would be pertinent to refer to the Judgment of Union of India vs. Prafull Kumar Samal, [(1979) 3 SCC 4, wherein it was held that the Court is not a post office or mouth piece of the Prosecution, but must consider the probabilities of the case, the total effect of evidence and the documents produced before the Court any basic infirmities etc. to consider whether there is prima facie case made out for framing of Charge. The Magistrate undoubtedly has the power to sift and weight the evidence, but it is for the limited purpose of finding out whether or not a prima facie case against the Accused has been made out.

53. It was held in Sidharth Vashist @ Manu Sharma (supra) that the investigating officer is entitled to collect all the material, which in his wisdom is required to prove the guilt of the offender. The right of the accused to receive such documents/ statements submitted before the Court, is absolute and must be adhered to by the prosecution and the court must ensure supply of such documents/ statement to the accused in accordance with law.

54. Therefore, the general view was that the enquiry at the stage of charge, was confined to the case as presented by the prosecution, and not the



defence of the accused, which he was entitled to produce at the relevant stage, after the Charge was framed.

55. This is also understandable, as the accused did not have a right to rely on his documents, at the stage of charge. The landmark judgment of the Apex Court in State of Orissa vs. Debendra Nath Padhi, AIR 2005 SC 359 has crystallised the law on this aspect, wherein the issue was *whether the trial Court, at the time of framing of charge, considers material filed by the accused?*

56. The Apex Court after a brief discussion on Sections 209, 227, and 228 held that jurisdiction under Section 91 of the Code, when invoked by accused, the necessity and desirability would have to be seen by the Court in the context of the purpose - investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry. It was held that “...no provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.” The Court has further held that *looking into any documents supplied by the Accused at the stage of framing of Charge would amount to a mini trial, which would defeat the object of the Code. The Accused can only be heard on the record and documents filed along with it, by the Prosecution.*

57. In Debendra Nath Padhi (supra), it was further explained that insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for



summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document, to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. S.91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.”

58. However, the Apex Court noted an exception to this general rule of law, by placing reliance on the judgment of Minakshi Bala vs. Sudhir Kumar & Ors., (1994) 4 SCC 142, wherein it was held that in exceptional cases the Court can look into only those *documents which are of unimpeachable and sterling quality*.

59. In Hardeep Singh, etc. versus State of Punjab and ors., etc., (2014) 3 SCC 92 a Bench of five-Judges observed:

“19. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.”



60. This judgement was endorsed in the case of Nitya Dharmananda @ K. Lenin vs Sri Gopal Sheelum Reddy, (2018) 2 SCC 93, wherein it was held as under:

“ Thus, it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge sheet for dealing with the issue of charge but if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge sheet. It does not mean that the defence has a right to invoke Section 91 Cr.P.C. de hors the satisfaction of the court, at the stage of charge.”

61. Thus, the criminal jurisprudence as has developed over the years, is that though the defence and documents assume relevance at the stage of trial, as the stage of charge cannot be converted into a mini trial, but in the balancing of the rights of the prosecution and the accused, it has been interpreted that to ensure fair trial, the accused must not be driven to face the entire trial, when there exist some documents of sterling quality, which may lead to a more informed and a fair decision, at the initial stage, itself.

62. Another facet of this same trend, is the jurisprudence around the un-relied documents. The investigating officer, while conducting the investigations, may collect lot of material, but may choose to not rely on all the material, but only to such material, which according to him, is sufficient to establish the guilt of the accused. However, the accused may find some defence in the un-relied documents, and may seek them, at the stage of Charge. Thus, arises the fairness of the claim of the accused to the un-relied documents, at the stage of Charge.



63. A reference may now be made to Sidharth Vashist @ Manu Sharma vs. State (NCT of Delhi), [(2010) 6 SCC 1], wherein the Apex Court held that though the primary duty of a Prosecutor is to ensure that an Accused is to ensure that an Accused is punished, his duties extend to *ensuring fairness in the proceedings* and also to ensure that all the relevant facts and circumstances are brought to the notice of the Court, for a just determination of truth so that due justice prevails. The fairness of the investigative process so as to maintain the citizens' rights under Articles 19 and 21 and also the active role of the Court in a criminal trial, had been exhaustively dealt with by the Apex Court and *it was held that it is the responsibility of the investigating agency as well as the Courts to ensure that every investigation is fair and does not erode the freedom of an individual except in accordance with law. One of the established facets of just, fair and transparent investigation is the right of the accused to ask for all such documents that he may be entitled to, under the scheme contemplated by the Code of Criminal Procedure.*

64. In Sarla Gupta (supra) a reference was made to the observations made in Sidharth Vashist (supra) and it was held that individual notion of prejudice, difficulty or handicap in putting forward a defence, would vary from person to person and there can be no uniform yardstick to measure such perceptions. *If the accused has perceived certain difficulties in answering or explaining some part of the evidence brought by the Prosecution on the basis of specific documents and seeks to ascertain if the allegedly incriminating documents can be better explained by reference to some other documents which are in the court's custody, an opportunity must be given to the accused to satisfy himself in this regard.* It is not for the



prosecution or for the court to comprehend the prejudice that is likely to be caused to the accused. The perception of prejudice is for the accused to develop and if the same is founded on a reasonable basis, it is the duty of the court as well as the prosecution to ensure that the accused should not be made to labour under any such perception and the same must be put to rest at the earliest. Such a view was held to be an inalienable attribute of process of fair trial under Article 21, which guarantees to every accused.

65. Thus, the debate about the un-relied documents. This aspect was first considered in the case of *In Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials vs The State of Andhra Pradesh & Ors., Suo Moto Writ (Crl) Nos. 1/2017*, wherein it was inter alia held, as under:

“11. The amici pointed out that at the commencement of trial, accused are only furnished with list of documents and statements which the prosecution relies on and are kept in the dark about other material, which the police or the prosecution may have in their possession, which may be exculpatory in nature, or absolve or help the accused. This court is of the opinion that while furnishing the list of statements, documents and material objects under Sections 207/208, Cr. PC, the magistrate should also ensure that a list of other materials, (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused. This is to ensure that in case the accused is of the view that such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders, under the Cr.PC. for their production during the trial, in the interests of justice.”

66. In *Re - Suo Motu (supra)*, the **Model Draft Rules** were also framed. The relevant Model Draft Rule is as under:

"4. SUPPLY OF DOCUMENTS UNDER SECTIONS 173, 207 AND 208 Cr.P.C.



i. Every accused shall be supplied with statements of witnesses recorded under Section 161 and 164 Cr.P.C. and a list of documents, material objects and exhibits seized during investigation and relied upon by the Investigating Officer in accordance with Section 207 and 208 Cr.P.C.

Explanation: The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the Investigating Officer.

67. Thereafter, in State of Tamil Nadu vs P.Ponnusamy, 2022 SCC OnLine SC 1543, the Apex Court held as under:

13. However, it is undeniable that there could also arise a situation wherein the investigating officer, ignores or does not rely on seized documents, material or evidence which favours the accused, and fails to forward it to the Magistrate [as required under Section 173 CrPC, specifically sub-section (6)]. Merely because it is not already on the record of the court, cannot disentitle the accused from accessing material that may have exculpatory value. It is this gap, that was recognised and addressed (paragraph 11 of final order) in the suo-moto proceedings, and suitably codified in the text of the Draft Rule 4, by introducing a requirement of providing a list (at the commencement of the trial) of all documents, material, evidence, etc. seized during the course of investigation or in the possession of the prosecution, regardless of whether the prosecution plans to rely on it.

68. In Manu Sharma v State, NCT of Delhi, (2010) 6 SCC 1 while elaborating on the due process protection afforded to the accused, and its effect on fair disclosure responsibilities of the public prosecutor, Apex Court noted as follows:

“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.”

69. The judgement in *Manu Sharma (supra)*, was referred in the case of *Manoj v State of Madhya Pradesh*, 2022 INSC 606 and the Apex Court observed thus:

*“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.***

221. It will be difficult for the Court to say that the accused has no right to claim copies of the documents or request the Court for production of a document which is part of the general diary



subject to satisfying the basic ingredients of law stated therein. A document which has been obtained bona fide and has bearing on the case of the prosecution and in the opinion of the Public Prosecutor, the same should be disclosed to the accused in the interest of justice and fair investigation and trial should be furnished to the accused. Then that document should be disclosed to the accused giving him chance of fair defence, particularly when non-production or disclosure of such a document would affect administration of criminal justice and the defence of the accused prejudicially.”

70. In Sarla Gupta v Directorate Of Enforcement, 2025 SCC OnLine SC 1063 while referring to *Manu Sharma*(supra) , it was observed:

“220. The declaration of the law in Manu Sharma [(2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] may have touched upon the outer fringe of the issues arising in the present case. However, the positive advancement that has been achieved cannot, in our view, be allowed to take a roundabout turn and the march has only to be carried forward. If the claim of the appellant is viewed in the context and perspective outlined above, according to us, a perception of possible prejudice, if the documents or at least an inspection thereof is denied, looms large. The absence of any claim on the part of the accused to the said documents at any earlier point of time cannot have the effect of foreclosing such a right of the accused.

221. ...What is of significance is if in a given situation the accused comes to the court contending that some papers forwarded to the court by the investigating agency have not been exhibited by the prosecution as the same favours the accused the court must concede a right to the accused to have an access to the said documents, if so claimed. This, according to us, is the core issue in the case which must be answered affirmatively. In this regard, we would like to be specific in saying that we find it difficult to agree with the view taken by the High Court that the accused must be made to await the conclusion of the trial to test the plea of prejudice that he may have raised. Such a plea must be answered at the earliest and certainly before the conclusion of the trial, even though it may be raised by the accused



belatedly. This is how the scales of justice in our criminal jurisprudence have to be balanced.” (emphasis added)

71. In *Sarla Gupta (supra)* it was thus, concluded that at the time of hearing for framing of charge, reliance can be placed only on the documents forming part of the chargesheet. In case of the PMLA, at the time of framing charge, reliance can be placed only on those documents which are produced along with the complaint or supplementary complaint. ***Though the accused will be entitled to the list of documents, objects, exhibits etc. that are not relied upon by the ED at the stage of framing of charge, in ordinary course, the accused is not entitled to seek copies of the said documents at the stage of framing of charge.***

72. The law being settled that only a list of documents, not relied upon by the Prosecution and not the copies, can be provided to the accused, the next question which arises is ***whether the Appellant can be permitted inspection of such documents that are not relied upon by the Prosecution.***

73. In *M/s. INX Media Pvt. Ltd., Crl.M.C.1338/2021*, a coordinate bench of this Court, considered the right of inspection of the un-relied documents and has held, as under:

"16. Indubitably, while passing an order of inspection of un-relied upon documents, the Court is bound to strike a balance between the competing interest of ensuring a fair trial to the accused as also maintaining the sanctity of further investigation, in case further investigation is to be carried on. As noted above, the learned Trial Court directed the CBI to supply copies of all the pages/ part thereof, or the entire document to the accused persons in relation to documents only a few pages or part of document were being relied by the CBI. In relation to the documents which have not been filed in the Court, the learned Trial Court did not direct the CBI to produce the said documents in Court and held that the ends of justice would be met if the accused persons are permitted to inspect the said documents lying in the Malkhana of CBI and to find out if any such document is relevant or vital for their defence or is of sterling



quality to demolish the very case of prosecution and after making inspection learned counsel representing these accused shall let the Court know the details of these documents so that copies thereof can be supplied to them.

17. By the impugned order, the learned trial Court has already clarified that the permission to conduct inspection being granted by the Court was not in respect of those documents in relation to which the investigation by the CBI was still pending.....”

74. Similarly, in the case of *Dheeraj Wadhawan vs. Central Bureau of Investigation*, Crl.M.C.5108/2023, decided on 26.07.2023, the Co-ordinate bench of this Court, following *M/s. INX Media Pvt. Ltd.*, had granted inspection of the un-relied documents.

75. Recently, in the case of *Manish Sisodia (supra)*, while considering the bail Application, a plea was taken by the State that the accused were intentionally causing delay and having been allowed malkhana inspection for un-relied documents by the Ld. Special Judge, the accused were delaying the inspection, it was observed that “*In that view of the matter, we find that the finding of the learned trial judge that it is the appellant who is responsible for delaying the trial is not supported by the record. The learned Single Judge of the High Court endorses the finding of the trial court on the ground that the accused persons have taken three months’ time from 19th October 2023 to 19th January 2024 for inspection of “un-relied upon documents” despite repeated directions from the learned trial court to conclude the same expeditiously.* It is to be noted that there are around 69,000 pages of documents involved in both the CBI and the ED matters. Taking into consideration the huge magnitude of the documents involved, it cannot be stated that the accused is not entitled to take a reasonable time for inspection of the said documents. **In order to avail the right to fair trial, the**



accused cannot be denied the right to have inspection of the documents including the “un-relied upon documents”.

76. The State had also tried to draw a distinction between the trial, which takes place in the CBI matters and those, which are investigations and pursued by NIA/UAPA, by claiming that the offences under latter are terror crimes involving the nation’s security and integrity of the country and the principles applicable to regular criminal trials, cannot be made applicable to the investigations and the trials undertaken by NIA.

77. However, the fundamental principles of criminal jurisprudence in regard to ensuring a fair trial under Article 21 of the Constitution of India and transparency in the judicial proceedings, cannot be compartmentalised into terror offences and the regular criminal offences. It is not the nature of trial but the rights of the accused, who is facing a trial, which is the focal point in any criminal trial. The Constitution of India grants equal protection to every kind of accused and such artificial distinction would not only be contrary to the criminal jurisprudence but would also shake the foundations of right to life and liberty, which are the core values of the constitution of India. This argument, therefore, is not tenable.

78. Therefore, it emerges from the aforesaid judgements that in order to ensure fairness of procedure and to allay any perceived prejudice, it is well settled that the accused is not only entitled to list of un-relied documents, but also to the inspection, to be able to address arguments on Charge effectively. The Ld. Special Judge, therefore, fell in error in declining the inspection of un-relied documents.

79. The impugned Order of the Id. Special Judge, being patently contrary to the law as explained in the judgements by this Court and settled by Apex Court, is hereby, set aside.

80. In view of the inspection allowed to the Petitioner, it is expected that the appropriate facility shall be provided by the Respondent to facilitate this



inspection. At the same time, it is expected that the Petitioner shall not unduly delay the inspection as it would only delay the trial, which is neither in the interest of the Respondent or the Petitioner. The interim stay granted in this case stands vacated.

81. The respondent is, hereby directed to permit the inspection of un-relied documents in the Malkhana, to the Petitioners.

82. The Petition is accordingly, allowed. Pending Application(s) are disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

JUNE 05, 2026/va