

IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

I.A NO. OF 2018

WRIT PETITION (CIVIL) NO. 1309 OF 2018

IN THE MATTER OF:

ALOK KUMAR VERMA

...PETITIONER

Versus

UNION OF INDIA & ANR.

... RESPONDENTS

AND IN THE MATTER OF:

SHRI MANISH KUMAR SINHA

...APPLICANT/INTERVENER

WITH

I.A. No. _____ OF 2018: An Application for Intervention

AND

**I.A. No. _____ OF 2018: An Application for seeking
Directions**

PAPER BOOK

[FOR INDEX PLEASE INSIDE]

ADVOCATE FOR THE APPLICANT: SUNIL FERNANDES

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**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
I.A NO. _____ OF 2018**

IN

WRIT PETITION (C) NO. 1309 OF 2018

IN THE MATTER OF:

ALOK KUMAR VERMA

...Petitioner

Versus

UNION OF INDIA & ANR.

...Respondents

AND IN THE MATTER OF:

SHRI MANISH KUMAR SINHA (IPS)

DIG (Head of Branch), CBI, Anti Corruption

Branch, Nagpur, Maharashtra

...Applicant/ Intervener

**APPLICATION FOR INTERVENTION ON BEHALF OF THE
APPLICANT- SHRI MANISH KUMAR SINHA (IPS)**

To,
**THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF
THE HON'BLE SUPREME COURT OF INDIA**

**THE HUMBLE APPLICATION OF
THE INTERVENER ABOVE NAMED**

MOST RESPECTFULLY SHOWETH

1. The present Writ Petition has been filed challenging the decisions taken by CVC/ Union of India dated 23.10.2018, divesting the Petitioner of his role as Director CBI and appointing another individual- Shri M Nageshwar Rao to carry on the duties and functions of the Director CBI.

2. The instant application is preferred by Shri Manish Kumar Sinha, IPS, presently the DIG (Head of Branch), CBI, Anti-Corruption Branch, Nagpur who was the Head of Branch (HoB) where the CBI case No. RC 13(A)/18 was registered on 15.10.2018 at AC-III, New Delhi. The Applicant herein was supervising the investigation of RC 13(A)/18 and was unjustly transferred to Nagpur in the wee hours of 24.10.2018. The aforementioned transfer of the Applicant is arbitrary, motivated and malafide, and was made solely with the purpose and intent to victimise the officer as the investigation revealed cogent evidence against certain powerful persons. It is submitted that the Applicant had worked diligently and performed the duties honestly, in the pursuit of investigation, and therefore the said transfer order is perverse, arbitrary and unfairly punitive and deserves to be quashed.
3. That the Applicant herein has filed the accompanying Application for Directions before this Hon'ble Court and averments raised therein may be read as a part and parcel of the present application which are not being repeated herein for prolixity.
4. The Applicant most humbly submits that the Applicant herein does not identify or seeks to espouse the cause of any of the senior officers of the CBI. The sole intention of the Applicant in knocking the doors of justice of this

Hon'ble Court is to bring certain material facts to the kind notice of this Hon'ble Court, which facts are essential for the adjudication of the instant Writ Petition.

5. Therefore it is most respectfully prayed that prayers sought for in the instant application be graciously allowed by this Hon'ble Court. This application is bonafide and deserves to be allowed in the interest of justice.

PRAYER

IN THE PREMISES STATED ABOVE, IT IS, THEREFORE, RESPECTFULLY PRAYED, THAT THIS HON'BLE COURT MAY BE PLEASED TO:

- (A) Allow the instant application and permit the Applicant herein to intervene in the instant matter;
- (B) **The case be investigated by a SIT under monitoring of Supreme Court;**
- (C) Pass any other Order/Direction has this Hon'ble Court may deem fit in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS THE INTERVENER AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN & FILED BY

[SUNIL FERNANDES]
Advocate for Applicant/ Intervener

NEW DELHI
DRAWN ON:
FILED ON: 19.11.2018

**IN THE SUPREME COURT OF INDIA
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I.A NO. _____ OF 2018**

**IN
WRIT PETITION (C) NO. 1309 OF 2018**

IN THE MATTER OF:

ALOK KUMAR VERMA

...Petitioner

Versus

UNION OF INDIA & ANR.

...Respondents

AND IN THE MATTER OF:

SHRI MANISH KUMAR SINHA (IPS)

DIG (Head of Branch), CBI, Anti Corruption

Branch, Nagpur, Maharashtra

...Applicant/ Intervener

**APPLICATION FOR DIRECTIONS ON BEHALF OF THE
APPLICANT/INTERVENER**

To,

**THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF
THE HON'BLE SUPREME COURT OF INDIA**

**THE HUMBLE APPLICATION OF
THE INTERVENER ABOVE NAMED**

MOST RESPECTFULLY SHOWETH

1. The Applicant herein- Shri Manish Kumar Sinha joined Indian Police Service (IPS) in the year 2000 and was allotted the Andhra Pradesh Cadre where he worked with distinction for 13 years. During this tenure, the Applicant herein worked in various districts particularly those infested with Naxals and factional violence. The Applicant has supervised the investigation of many cases including the Gokul Chat-Lumbini Park blast case which recently ended in conviction with death penalties to two of the accused persons.

2. The Applicant herein joined CBI on deputation in November 2013 and has worked at various branches such as ACB Bhubaneswar, the Banks Securities and Frauds Cell (BS&FC), Bangalore with additional charge of Economic Offences Wing (EOW), Bhubaneswar; Head of the Branch of Anti Corruption III at Delhi with additional charge of BS&FC, Delhi. During the 5 years tenure at CBI, the Applicant herein has supervised the investigation of the chit-fund scam cases (Odisha part) which was entrusted for investigation to CBI by this Hon'ble Court, various bank fraud cases including the Nirav Modi and Mehul Choksi PNB Scam case. The President of India was pleased to award Police Medal for gallantry to Applicant herein in 2005 and Police Medal for Meritorious Service in 2016.

3. The Applicant herein was the Head of the Branch (HoB) when the CBI case, bearing RC No. 13(A)/18 was registered on 15.10.2018 at AC-III, New Delhi ("the FIR"). The Applicant herein in his official capacity was the nodal point and was interacting with Senior Officers such as Director CBI and Additional Director, CBI, Law Officers such as Director of Prosecution and the DIG/Deputy Director of Special Unit (the unit which does the technical surveillance/ lawful interception). Based on the information/ instruction received/ shared, the Applicant herein was giving instructions to the SP and the

Investigating Officer in relation to the said FIR. In this manner, the Applicant herein had a bird-eye's view of the entire investigation and possesses intricate knowledge of all aspects pertaining to the investigation of present FIR, including the discussions held on this case and the inputs shared by other units / agencies.

4. Shockingly, in the wee hours of 24.10.2018, the Applicant herein who was supervising the investigation in the FIR was abruptly transferred to Nagpur. That the Applicant had joined Delhi, only around two months back, on 16.10.2018. Shri Rakesh Asthana in his various complaints sent to CVC / Cabinet Secretary, has made no allegations on the Applicant. There is not even a whisper of allegation against the Applicant anywhere on record on this issue (or on any issue) on any document till 23.10.2018. Yet the Applicant stood abruptly transferred on the midnight of 23/24.10.2018, along with the other concerned officer who were investigating the said case like DySP Shri AK Bassi and SP Shri SS Gurm.

5. The subsequent events, which unfolded are even more shocking. There is a deliberate, concerted attempt to change the course of investigation of the said FIR, there is reasonable apprehension / likelihood of tampering with evidence, exonerate the existing accused persons against

whom there already exists overwhelming evidence and on the contrary, implicate / punish, as a first step of which the applicant was transferred to Nagpur twelve hundred kilometres away in completely arbitrary manner in the name of so called public interest, all those, like the Applicant herein, who were involved in the investigation and were merely discharging their duties, impartially, without fear or favour. Therefore the Applicant is constrained to move the instant application and place very important and crucial facts that have a material bearing on the adjudication of the instant Writ Petition.

6. The Applicant most humbly submits that the he does not identify or seeks to espouse the cause of any of the senior officers of the CBI, who are before this Hon'ble Court. The aforementioned transfer of the Applicant is arbitrary, motivated and malafide, and was made solely with the purpose and intent to victimise the officer as the investigation revealed cogent evidence against certain powerful persons. It is submitted that the Applicant had worked diligently and performed the duties honestly, in the pursuit of investigation, and therefore the said transfer order is perverse, arbitrary and unfairly punitive and deserves to be quashed.
7. The brief relevant facts in the present case are as here-under:

THE FIR

8. On 15.10.2018, one Shri Sathish Babu Sana (“the Complainant”) preferred a complaint with the Director, CBI making severe allegations of bribery charges against certain Senior Officers of the organization in the investigation of Moin Qureshi case. The complaint was verified by the SP Shri S.S. Gurm and a FIR was registered as R.C. 13(A)/18 on 15.10.2018 at 8 PM. The FIR was not uploaded on the website of CBI keeping the secret operations in view. The Applicant is given to understand that Shri S.S Gurm has come on record and has already filed an application for impleadment- Crl. MA No. 35599 of 2018 in Writ Petition (Crl.) No. 3248 of 2018 titled ‘Rakesh Asthana vs. Central Bureau of Investigation & Ors’ before the Hon’ble High Court of Delhi (i.e. the quashing petition filed by Shri Rakesh Asthana against the aforesaid FIR), regarding the process, steps taken by him, and due diligence done in registration of FIR. The investigation of this RC was handed over to Shri A.K. Bassi, DSP, CBI, AC-III, who too is before this Hon’ble Court by filing I.A. No. 157829 of 2018- Application for Intervention and I.A. No. 157831 of 2018- Application for Directions in the instant Writ Petition wherein he has clearly brought out the cogent evidences in the FIR No. 13(A)/2018/AC-III/New Delhi dated 15.10.2018.

9. The salient points of the affidavit of Shri AK Bassi and Shri SS Gurm as endorsed and supplemented by the Applicant herein are as hereunder:-

9.1. The allegation of the act of demand and acceptance of illegal gratification primarily pertained to two distinct periods of December 2017 and October 2018. There are two instances of acceptance of bribe in December 2017 totalling to Rs. 2.95 crores and three instances of acceptance of bribe in October 2018 totalling to around Rs. 36 Lacs. The FIR cited accused were the public servants Shri Rakesh Asthana and Shri Devender Kumar, DSP CBI and also the IO of the said case against Moin Qureshi and private persons Shri Manoj Prasad and Shri Somesh Prasad and unknown others.

9.2. On the morning of 16.10.2018, the accused Shri Manoj Prasad was intercepted at Delhi Airport on his arrival from Dubai and brought to CBI HQ. During the first few hours of his arrival at CBI HO, Manoj was garrulous and arrogant, both at the same time, and in equal measure. He was interviewed by the applicant and others. He tried his best to ward off the investigation by dropping names of 'high and mighty' and mentioning his 'top contacts' to create fear in our mind.

- 9.3. The relevant conversation of his initial outburst is being placed on record here. As per Manoj Prasad, Shri Dineshwar Prasad, father of Manoj and Somesh, retired as Joint Secretary, R&AW and has close acquaintance with the present National Security Advisor Shri Ajit K. Doval (“NSA”). This was one of the first things Manoj claimed on being brought to CBI HQ and expressed complete surprise and anger as to how CBI could pick him up, despite his close links with the NSA Shri Doval.
- 9.4. He started bragging and claimed that his brother Shri Somesh is very close to an officer at Dubai (name withheld) and to Samant Goel, presently Special Secretary, R&AW and he can get us “finished off” / “kicked out”.
- 9.5. Manoj taunted us that you people have no standing whatsoever and therefore should “stay in limits” and let him free. He claimed that recently his brother Somesh and Samant Goel, helped the NSA Shri Ajit Doval on an important personal matter. He further claimed that India opted out of a contest from INTERPOL. Regarding genuineness of this claim of Manoj, no attempt was made to verify the claim regarding the NSA Shri Doval.
- 9.6. However, the INTERPOL part was discreetly verified. It is factually correct. It transpires that India was contesting for the post of delegate in INTERPOL with Joint Director, CBI

Policy (Shri AK Sharma) as its nominee. There were four other contending countries. The elections were to be held sometime in 3rd week of November this year. Sometime in September, Shri AK Sharma was to go to abroad for a meeting but at the last minute, his trip was abruptly cancelled. It was informed that India is tacitly withdrawing from the contest. All the material facts mentioned in this paragraph may be available on record with IPCC, CBI, Delhi.

- 9.7. Manoj also claimed a few other facts to his personal knowledge which is placed here only as the same are relevant to the context. **Manoj claimed that he had met Nitin Sandesara of Sterling Biotech in London. Nitin and his brother Chetan Sandesara are the main accused in the Sterling Biotech Case (RC 8 (A)/ 2017 registered on 30.08.2017 at AC-III, New Delhi).**
- 9.8. After his initial outburst he went quite. All the matters disclosed by Manoj were reported to senior officers. The Applicant is unaware whether the aforementioned facts were duly recorded in the interrogation statement of Mr Manoj Prasad. Manoj was in Police custody till 31st October 2018.
- 9.9. **His Mobile phones were seized and the Whatsapp messages were studied. One of his phones had the Whatsapp messages stored since March 2017. The**

exchange of messages between Manoj and Sana, and Manoj and Somesh were studied which corroborates the instances of bribery mentioned in the complaint. There was no specific mention of the name of any Public Servant in any of the Whatsapp messages stored in the phone. There were references such as “too powerful people”, “Boss” etc. Messages indicated that they pertain to a CBI case and that Manoj and Somesh are able to obtain relief in the case on receiving payments. Further, it brought into picture one unidentified person who appeared to be the conduit between the “boss”, to obtain the relief from CBI. This unidentified person was someone who was high in standing in CBI and too powerful, as the messages indicated.

9.10. The October 2018 messages also include the photo of notice issued by the IO under Section 160 Cr. P.C. for appearance on 09.10.2018 with the request to get relief till 25.10.2018. Somesh had also confirmed the relief in the message.

9.11. Manoj Prasad (from the CBI Head Office) spoke to Somesh (Dubai) on 16th October afternoon and late evening. The phone number was in technical surveillance and therefore should be on record with SU. During one of the talks, Manoj told Somesh about him being interviewed by Ministry of Corporate Affairs. Somesh almost interrogated Manoj and among many other things,

Somesh told Manoj that he will tackle any investigation / enquiry, that he is received and seen off at the airport by IB and R&AW officials whenever he visits India. This should be on record with CBI with SU.

9.12. Based on the evidences available, Manoj was arrested in the intervening night of 16th and 17th October at 00:50 hours and his sister (Mrs Suman) was informed.

9.13. In the morning of 17.10.2018, a call came from the DCP Special Cell of Delhi Police on the mobile of IO Shri AK Bassi, DSP, CBI AC-III who did not take call. Later another Inspector of Special Cell called up and sought to know if Manoj has been arrested. Enquiries revealed that the query had originated from Cabinet Secretariat.

9.14. Meanwhile the Special Unit had placed many a numbers on Technical Surveillance and was analysing the Call Data Records (CDRs). It was informed that immediately after the news broke out on arrest of Manoj Prasad in the late night on 16.10.2018 / early morning of 17.10.2018, Somesh made immediate calls to Shri Samant Goel, who made calls to Shri Rakesh Asthana. There were 4 calls between Somesh and Samant Goel and 4 calls between Samant Goel and Shri Rakesh Asthana by 17th afternoon. There was also a call between Dineshwar Prasad (father of Manoj and Somesh) with Samant Goel.

9.15. DIG/Deputy Director (Special Unit, CBI) also informed that the analysis of tower location of the Cell Phone used by Shri Somesh in India revealed that on 16.12.2017, tower location of mobile of Somesh was at Pandara Road, New Delhi during day time and evening hours and at the CGO Complex, New Delhi during very late evening hours. CGO complex is the same place where the offices of the CBI and R&AW is located.

9.16. Further, it was informed that even on 15th late evening, tower location of mobile of Shri Somesh was at CGO complex. It was also shared by DIG/DD SU, that Somesh was in frequent touch with Samant Goel during Somesh visit to Delhi on 15th, 16th and 17th December 2017.

9.17. Examination of Shri Sathish Sana had revealed that purportedly he was made to hear the voice of Shri Rakesh Asthana on 15th or 16th December 2017.

10. In view of the above, it is most respectfully submitted that the leads in the case actually came because of the untiring effort of the Special Unit. During this time many of the phone numbers were taken for interception. It was shared that Shri Somesh Prasad was freely talking with all including Samant Goel and the agency was getting important inputs pertaining to this case through the mobile of Somesh. The relevant inputs were shared but I do not

completely recall the inputs. I rely here on the affidavit of IO/Shri AK Bassi and place the inputs below, for sake of completeness:

- 10.1 Somesh tells to Sunil Mittal (Somesh's Father in law):
- a. "Asthana to Apna Aadmi Hai".
 - b. "Manoj has met Asthana 3 to 4 times"
 - c. "Samant bhai met Asthana after registration of the case".
 - d. "Samant bhai is very close to Asthana".

10.2 Samant Goel tell Somesh: "Do not come to India at any cost".

11. It was informed that on 17.10.2018, the Director CBI briefed NSA and informed him that Shri Rakesh Asthana's name is cited in the FIR. Subsequently on the same night, it was informed that the NSA has informed Shri Rakesh Asthana about registration of FIR. It was informed that Shri Rakesh Asthana reportedly made a request to NSA that he should not be arrested.

12. The telephonic conversation of Somesh with public servant practically stopped after evening of 18.10.2018 and the feed from the Special Unit (SU) also dried up. It was informed that Somesh and his relatives were frequently telling on phone and started cautioning that their phones are being tapped. DIG/Deputy Director

(Special Unit) informed that Somesh was telling someone (mostly his sister) that he is now exchanging Whatsapp Messages (permitted in Dubai) with Samant Bhaiya.

13. When the IO/Shri AK Bassi came to know that Shri Samant Goel / Shri Somesh had stopped talking and were exchanging Whatsapp Messages, he insisted that we need the cell phone sets of the public servants as the evidence is likely to be stored on the device and that a search be conducted. The Director CBI did not give immediate permission and reverted that the NSA has not permitted the same.
14. This oral request continued for 2/3 days. Ultimately, the proposal seeking permission to search was put on record by the IO on 22.10.2018. However, the same was not allowed and a query was raised by the Director as to why the searches are to be done.
15. Upon being queried, the Director/Petitioner herein replied that he was not getting clearance from the NSA/Shri Doval. It was then resolved, as a face saving measure, to take recourse to the Quashing Petition, filed by Shri Rakesh Asthana, pending before the Hon'ble Delhi High Court, which was coming up for hearing on 23.10.2018. That is why, during the hearing dated 23.10.2018, the CBI had insisted that the electronic devices such as the cell phone sets be preserved.

16. On the forenoon of 20.10.2018, the Applicant herein interviewed the Complainant- Shri Sana at CBI HO. He stood by the contents of his complaint with respect to CBI officials. That apart, he also claimed that:-

16.1 Sometime in first fortnight of June 2018, a few crores of rupees was paid to Shri Haribhai Parthibhai Chaudhary, presently Minister of State for Coal and Mines in Government of India.

16.2 As per Shri Sana, Shri Haribhai had intervened with the Senior officers of CBI through the office of the Minister of Personnel, Public Grievances and Pension [“MOS (P)”], to whom, apparently, the Director – CBI reports to.

16.3 The money was paid through one Vipul of Ahmedabad. These facts were disclosed by Sana to me on 20.10.2018 in the forenoon. I immediately reported the matter to the Director and the AD (AK Sharma).

16.4 Discreet enquiries were conducted and a source informed that there are calls intercepted by another central agency in first fortnight of June, wherein there is talk between Shri K Laxma Reddy, MLA, Medchal, Hyderabad, and Shri Sana on money being sent to the tune of one or two crores.

16.5 It is most respectfully submitted that the Applicant is aware of the information only to the extent that the bribe money was allegedly paid to the Minister Shri Haribhai Chaudhary only and Applicant is not privy to any information whether any part of that bribe money was paid to any other higher-up in the CBI. However, the Applicant verily believes that if this lead is diligently pursued, the truth would eventually come to light.

16.6 Shri Sathish Babu Sana also disclosed that he met the CVC Shri KV Chowdhary alongwith one Gorantla Ramesh (close relative of CVC Shri KV Chowdhary and owner of Delhi Public School Hyderabad, as per Sana) somewhere in Delhi (exact date and location was not informed) and that they discussed Moin Qureshi's case. As per Sana, in the year 2011, Shri Gorantla Ramesh sold some land and gave around Rs 4 crores out of the said sale consideration to Shri Sana, in the same month, in which Shri Sana had given Rs 50 Lakhs to Moin Qureshi. Therefore, Shri Gorantla Ramesh was examined by CBI in the Moin Qureshi's case.

16.7 As per Shri Sana, subsequently, the CVC Shri KV Chowdhary called Shri Rakesh Asthana to his residence and made inquiries. Shri Rakesh Asthana informed to the CVC that there is not much in evidence against them.

There is no illegality in this, but the same is put on record

here for the sake of completeness. No verification was undertaken and the same is based on disclosure made by Sana.

16.8 Subsequently, the Applicant asked Sana as to why the payments were purportedly made to so many people. His reply was that there was no other choice but getting access to senior functionaries and paying bribe to “mange relief”, that he was “threatened” and was put in “fear”, that he had to “protect his business” wherein he is running 3 to 4 companies with 400 employees, that there was no option but to agree to demand and that this was pure extortion. He also lamented that he has to face all these difficulties though his is a zero debt company while many with thousands of Crores of debt are moving freely and happily.

16.9 The Applicant also asked Shri Sana for the reason why his complaint doesn't mention the name and role of the Minister Shri Hari Bhai. His answer was that he has given complaint to CVO of CBI on officials of CBI, so there was no point in including other aspects and that he acted as per guidance given by his lawyers.

17. That on the same day i.e., 20.10.2018, the IO recorded the 161 CrPC statement of the Complainant Shri Sathish Babu Sana at CBI Office, New Delhi. On the same day in the afternoon, statement of complainant Shri Sathish

Babu Sana was recorded under section 164 Cr. P.C. The IO reported that the complainant had corroborated the complaint in all material facts in his 161 and 164 CrPC statements.

18. That in the afternoon of 20.10.2018, searches were also conducted at the residence and the office of Shri Devender Kumar, DySP, CBI who was investigating the Moin Qureshi case. The reason for the search was based on certain inputs provided by Special Unit, based on legal interception.
19. While the search was on, a phone call was received from Director CBI instructing to stop the search. At that time, the Applicant herein was sitting in the BS & FC office and asked the Director, to which the Director replied that this instruction has come from NSA Shri Doval.
20. The Applicant herein was specifically told that there are some important messages in one of the mobile phones of Shri Devender Kumar, though not pertaining to this case and that the mobile should not be seized.
21. Meanwhile, in his residence, Shri Devender Kumar was adamant that the mobiles belong to his kids / relatives and that the same should not be seized. It was this confusion which led to the situation wherein only one mobile was seized and the remaining 6 or 7 mobiles were not seized

on that day and has now become subject matter of controversy. However, the search was continued on the insistence of the applicant herein.

22. Meanwhile, on 21.10.2018, the Investigating officer reported a certain link between the summons issued to the Complainant, money delivered to Manoj / Somesh and relief provided to Shri Sathish Babu Sana. This is explained in the following table as it is relevant to the context (excerpted from the IOs affidavit filed in this court):

Repeat Summons on dates mentioned	12.10.2017, 23.10.2017, 01.11.2017 and 30.11.2017	This leads to an agreement for payment of Rs.5 Crores to avoid further harassment.
Illegal gratification amounted to Rs.3 Crores is given on	10 th and 13 th December 2017	Summons stops. However, there is pressure to pay remaining Rs.2 Crores. This is evidenced in the Whatsapp Messages.
Notice is received again on 19.02.2018. However, Mr. Sana went to Dubai to meet Mr. Manoj Prasad		
Repeat summons again on 01.10.2018, 03.10.2018 and 09.10.2018. Mr. Sana contacts Mr. Manoj Prasad once again and seeks relief against further summons for payment of Rs.2 Crores. Rs.25 lacs is paid on 10.10.2018 and there were no further summons till date.		

Shri Manoj Prasad comes to India to take the remaining payment.

23. That Shri **Devender Kumar, DSP was arrested on 22.10.2018.** The reason for his arrest was that there is a statement recorded under section 161 CrPC of Shri Sana dated 26.09.2018. However, apparently Shri Sana did not visit Delhi on 26th Sept 2018.
24. That in the morning of 23.10.2018, DOP informed that Shri **Pradeep Koneru, another witness in Moin Qureshi case, had given Rs 50 Lakhs to the IO Shri Devender Kumar to escape harassment.** The Director of Prosecution had informed the Applicant herein of the same on coming to know of Devender's arrest. This matter is in the know of all senior officers including the Director and Additional Director and also the SP and IO. The new investigating team was also informed.
25. **In the meanwhile, DIG/DD SU had reported that Somesh uses Singapore, Dubai and London phone numbers and frequently visits India.** He further reported that Manoj had huge money in the bank accounts which he was trying to clear after his arrest. This was communicated to IO who made a full list of the account numbers etc and prepared letter to be written to Banks etc or may be wrote also. **Meanwhile, the team was shunted out and I am not aware**

about the subsequent developments. Investigation, if conducted, may lead to heavy money trail.

26. DIG/DD SU shared that the technical inputs received by CBI were solely because Shri Somesh was talking very freely on normal mobile channel which is vulnerable to interception and that Samant Goel was one of the person talking freely to Somesh on mobile. It was discussed that this may imperil and hurt our national security interest.

27. On 23.10.2018, during evening hours, the Deputy Director (Special Unit) provided certain information. Some of the information, which I am able to recall, is as follows:

26.1 Shri Somesh told his father Shri Dineshwar Prasad that Shri Manoj got some work done during which there was exchange of money and possibly in that context Shri Manoj took name of Shri Asthana.

26.2 Shri Somesh told his father in law Shri Sunil Mittal that he (Shri Sathish Sana) told some work to Bhaiya (Manoj) who told him (Shri Somesh) to get it looked into - basically to get date extended as CBI was harassing – so he discussed with Samant Bhaiya etc.

28. On 23.10.2018, the Applicant herein was informed by DIG/DD (SU) that someone spoke to Samant Goel (who

was at Chandigarh at that time) and asked to help him to which Samant Goel replied that things have been managed with PMO and everything is fine. The same night the entire investigating team was shifted.

29. Additionally, the Applicant became aware that while the proceedings were going on in the CVC against the Petitioner herein - Shri Alok Verma, the Union Law Secretary Shri Suresh Chandra waded in to the issue. On 8.11.2018, the office of Shri Sana was repeatedly approached by one Ms. Rekha Rani, IAS officer of Andhra Pradesh Cadre, claiming that the Union Law Secretary, who is in London, wants to speak to Shri Sana. The London number of the Union Law Secretary was communicated.

30. Shri Sana spoke to him on Whatsapp on the evening of 08.11.2018. The Union Law Secretary Shri Suresh Chandra said that he was in London for some work related to Nirav Modi case, that he was trying to contact him for last 4/5 days in order to convey message of Cabinet Secretary Shri PK Sinha that the Union Government will offer full protection to him, that there will be a drastic change on Tuesday (13th) and that he (Sana) should meet him (Suresh Chandra) on Wednesday(14th), that even IB is not able to track his (Sana) movement, that he also tried to communicate the message through one

Chamundeshwarnath with whom he met in his London hotel. The call was ended by Sana promising to call him again later in the night.

31. Once again Suresh Chandra enquired with Ms Rekha Rani on 13th November and asked her on presence of Sana. It appears that Shri Suresh Chandra was more forthcoming this time and requested Ms Rekha Rani to ensure that Sana be helpful, that all his future problems will be taken care of and that he should be brought to Delhi on Thursday or Friday i.e., 15/16.11.2018. This last (previous) sentence is as disclosed to Sana by Ms Rekha Rani.

32. Shri Sana informed the Applicant herein and sought to know what action is to be taken. The Applicant had questioned Shri Sana on why Ms Rekha Rani was given the task of contacting him. He responded that the office of one of his companies has its office at a premises which are rented by Ms. Rekha Rani and that this detail is also available with Ministry of Corporate Affairs. He was worried but the Applicant told him that he is no longer supervising this case and that he should talk to present DIG and gave his official number.

33. The *la affaire Sana* is symptomatic of a larger deep-rooted malaise in the country's premier investigation agency – the CBI. The Applicant is troubled by the contents of Shri

Sana's allegations, which if proved to be true, reflect very poorly on our criminal justice delivery system in general and the CBI in particular.

34. The Moin Qureshi case can be taken as an example – the said case was registered sometime in Jan/Feb 2017 and is still under investigation, even after more than one and half years. Shri Sana himself was called on multiple occasions by CBI and Enforcement Directorate (“ED”). The ED did not charge sheet him but made him a witness. This indicates that he may not be the central player in the Moin Qureshi case. However such open ended investigations give ample scope to unscrupulous elements to indulge in illegal or undesirable activities. There is a pressing need to fix a timeline for investigation of such cases so that premier investigating agencies such as Central Bureau of Investigation doesn't becomes “Centre for Bogus Investigation” and Enforcement Directorate doesn't becomes “Extortion Directorate”.
35. That it is likely that Shri Sana would not have given this complaint also and would have continued to get extorted, but for two reasons:
 - 35.1 That he was stopped from going abroad on 25th night at Hyderabad Airport in presence of his family which hurt his sense of self-respect.

35.2 That he was assaulted by the IO Shri Devender Kumar on 1st Oct and 3rd Oct at CBI Head office (as disclosed by Shri Sana).

36. Most of the Submissions made herein are from the Applicant's memory and close association with the said FIR. In any case, majority of the averments made herein are specific and can be verified based on record available with CBI and corroborative/circumstantial evidence can be easily found to substantiate.

37. The aforementioned averments would clearly reveal the following :-

36.1 That the erstwhile investigation team, including the Applicant herein, was merely doing duty, diligently and conscientiously.

36.2 That the Applicant herein had no concern with the FIR till the said FIR was entrusted for investigation.

36.3 That it is stated that the applicant herein had no interest / motives / any ulterior links with the investigation of the said case and whatever applicant herein did in the said case was purely part of his official and lawful duties regarding investigation of this case.

36.4 The circumstances and the manner in which the Applicant was overnight removed from supervision of this case and transferred to a distant place thousand of kilometres away and the fact that the case involved interest of some of the most powerful persons of the establishment, the present investigating officer of the said FIR may not be able to conduct a fair and impartial investigation, neither can one rule out the potent probability of the present or any subsequent IO being influenced or pressurised by the high and mighty who have been named in this application and in this case, thereby necessitating a court monitored SIT investigation to bring out the truth.

36.5 Therefore it is extremely imperative that the investigation of instant FIR be handed over to a Special Investigation Team (“**SIT**”) monitored by this Hon’ble Court.

36.6 This Hon’ble Court may also graciously consider it expedient to lay down guidelines which would/can prevent victimization/penalisation of honest conscientious officers in the CBI, who are merely performing their duties, in a diligent and lawful manner.

36.7 The Applicant once again affirms that he does not hold brief for either Shri Rakesh Asthana or Shri Alok Verma. The averments made in this application are from personal information of the Applicant, in good faith, and it is once again submitted that there are several averments in this

application that urgently need further investigation to discover their veracity and authenticity.

36.8 The investigation team has been penalised/victimised because of its impartiality and diligence. IO AK Bassi has been packed off to Port Blair, SP Shri SS Gurm to Jabalpur and the Applicant to Nagpur. The manner, timing and the speed with which overnight, in a single stroke, the investigation team was disbanded without assigning any formal reason, and all the main team members of the team were thrown out to remote places in a punitive and stigmatic manner, itself portends very ominous signals, not only for the professional career of investigating officers but also the investigation of the entire case. It further reflects that how levers of CBI is controlled by powerful persons just to fit it into their personal objectives of exonerating or implicating certain individuals, irrespective of the merit of the case.

38. The facts and circumstances mentioned as above will reveal that investigating this case was a Herculean task. It is beyond the capability of any agency to do a fair and just work in this case under the present circumstances unless benevolent protection of Hon'ble Court is extended. Investigation was not allowed to take its course and pace. The efforts of the agency to get evidences through secret operations were negated. The persons involved were cautioned. Crucial evidence could not be secured.

Investigation, going forward, is certainly a daunting and an uphill task. In fact, the investigation of this case appears derailed and doomed unless this Hon'ble Court proactively intervenes.

39. The Applicant has taken this decision to file the instant application at great personal and professional risk. His intentions are genuine and bonafide. The applicant apart from being an IPS officer is also a responsible and dutiful citizen of this country and whatever averments have been made by him in the above paras are both as part of his duties as responsible public servant and a dutiful citizen, in accordance with requirements of fundamental duties of citizen as enshrined in the article 51 A of the Constitution of India, as the issues involved are inextricably linked to future, well being and security of our country and citizens.

40. The Applicant has made every effort to recount the details with exactitude and certainty. However if any discrepancy or error has crept in, the Applicant humbly applies for the same and prays that he be pardoned on account of anything stated herein that may incur the displeasure of this Hon'ble Court.

41. The Applicant has not preferred any application before any court on this issue/topic. The instant application deserves to be adjudicated and allowed by this Hon'ble Court.

PRAYER

IN THE PREMISES STATED ABOVE, IT IS, THEREFORE, RESPECTFULLY PRAYED, THAT THIS HON'BLE COURT MAY BE PLEASED TO:

- (A) Allow the present application and quash / set aside the transfer order dated 24.10.2018 qua the applicant herein;
- (B) Call for the records of the instant FIR ie. RC No. 13(A)/2018/AC-III/New Delhi dated 15.10.2018 and ensure that the same is safe and not tampered with;
- (C) Direct that the said FIR be investigated by a Special Investigation Team (“SIT”) under monitoring and supervision of this Hon’ble Court;
- (D) Pass directions/orders to protect officers like the Applicant herein who have discharged their duties conscientiously and diligently and are in the nature of ‘whistle-blower’ and;
- (E) Pass any other Order/Direction has this Hon'ble Court may deem fit in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS THE INTERVENER AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN & FILED BY

[SUNIL FERNANDES]
Advocate for Applicant/ Intervener

NEW DELHI
FILED ON: