

**IN THE COURT OF SPECIAL JUDGE FOR C.B.I.  
FOR GREATER BOMBAY AT MUMBAI**

**MISC. APPLICATION NO. \_\_\_\_\_ OF 2019**

*IN*

**CBI SPECIAL CASE NO. 83 OF 2003  
(RC4(E)/2002/CBI/BS & FC/MUMBAI)**

ANUP KUMAR GOND,  
Age 58 years, Occ.:Service,  
Resident of 116, Juhu Sagar, New D.N. Nagar,  
Andheri (West), Mumbai-400 053.

Applicant/  
Orig. Accd. No. 3

V/s.

THE CENTRAL BUREAU OF INVESTIGATION,  
BS & FC, Mumbai.

Respondent/  
Orig. Complainant

**CORAM : H.H. THE SPECIAL JUDGE,  
SHRI. JAYENDRA C. JAGDALE,  
(C. R. No. 51).**

**DATED : 21<sup>st</sup> December, 2020.**

Mr. J. G. Bhanushali, Ld. Adv. for the applicant/orig. accd. no. 3.  
Mr. S. A. Wankhede, Ld. PP for the CBI/Respdt.

**ORAL ORDER BELOW EX-280**

1 At the outset, I would like to clarify that the Hon'ble Bombay High Court has observed in the case of present applicant/accused i.e. Anup Kumar Gond v/s. Central Bureau of Investigation (R.C. No. 27(A)/2002-Mumbai) [Writ Petition No. 4306 of

**2014 with Criminal Revision Application No. 332 of 2013 with Criminal Revision Application No. 333 of 2013 dated 08/07/2019]**, wherein the present applicant/accused is the accused nos. 1 & 3 respectively that the Trial Court shall conclude both the cases i.e. CBI Special Case Nos. 83/2003 (present case) & 12/2006 expeditiously.

2 This is an application placed by the applicant/original accused no. 3 Anup Kumar Gond for grant of permanent exemption and permission to represent him through his advocate till such time as this Court deems fit.

3 Heard arguments advanced by Ld. Advocate for the applicant/accused and Ld. P.P for the Respondent/CBI. The Ld. Advocate for applicant/accused has reiterated the contents of application. The prosecution has strongly objected to grant prayer in the application. It has given say on the backside of application. I have perused the application and documents produced on behalf of the applicant/accused. I have also perused the reply given by the prosecution on record.

4 The applicant/accused has filed the present application for permanent exemption from attending the Court under exceptional circumstances and contended that he is charge-sheeted as an 'original accused no. 3' in the present case for the alleged offence punishable u/sec. 13(1)(d) of the Prevention of Corruption Act, 1988. Subsequently, the prosecution had filed another case being CBI Special Case No. 12/2006 for the alleged offence punishable u/sec. 13(1)(d) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 against the applicant/accused and others. It is the prosecution case that the

applicant/accused being a 'public servant' while working as the Commissioner of Semen's Provident Fund during February 1996 to April 2002, committed criminal misconduct and amassed assets disproportionate to his known sources of income to the tune of Rs. 2,89,89,128/- along with other accused with the aid of section 109 of the Indian Penal Code. According to the prosecution versions, heads legitimate income and investment are given in the charge-sheet and also disproportionate income calculated by the prosecution. Hence, it is not necessary to elaborate the same in this application and the same can be read at the time of oral submissions. Thus, the main case is the present case i.e. CBI Special Case No. 83/2003 and outshoot of the same is CBI Special Case No. 12/2006. On 04/04/1996 & 11/04/1996 under a Notification issued by the Government of India, Ministry of Surface Transport (Shipping Wing), the applicant/accused came to be appointed as Commissioner, Semen's Provident Fund, Mumbai on deputation with effect from 09/02/1996 for a period of 4 years, on which he continued till May 2002. By order dated 18/07/2002, the applicant/accused was repatriated to Railways by Order No. 96/E(O)II/6/1. The applicant/accused has preferred Discharge Application vide Ex-274 in the present case before this Court as the Prevention of Corruption Act, 1988 has been drastically amended vide the Prevention of Corruption (Amendment) Act, 2018 (16 of 2018), which was brought into force on 26/07/2018 after receiving the assent of President of India on 06/07/2018. This Court has ample power under the Code of Criminal Procedure to proceed with the trial in absence of the accused. Similarly, he has engaged an advocate/s, who will proceed with the trial. The applicant/accused gives undertaking that his advocate/s will remain present on all the future dates of hearing and will apply for exemption and will proceed with the case in the absence of applicant/accused. In

any event, the identity of applicant/accused is not in dispute and he is represented through his advocate. The applicant/accused has deep roots in the society and will not take any undue advantage of the order, as he has bonafide intention to defend his case on merits. Similarly, in case the presence of applicant/accused is required during the trial, he will come immediately if directed by this Court to remain present. The applicant/accused undertakes to attend this Court as and when directed by this Court. Thus, at any rate the absence of applicant/accused will not stall the proceeding. The applicant/accused is aged 58 years and he is suffering from type two diabetes and related conditions. He is also suffering from poor eyesight due to Retinitis Pigmentosa. He has extremely limited mobility due to poor eyesight and he is unable to walk long distance without assistance. He has been strictly advised not to walk without assistance to avoid any fall and risk of fracture. He has submitted a copy of medical certificate along with the application. In the event, exemption is not granted to him, it would cause a grave physical hardship to him on account of his incapacity to move due to medical reasons. In the result, the applicant/accused has prayed that considering his medical condition, he may be permanently exempted from his personal presence before the Court during proceeding.

5           The prosecution has contended in its reply that the offences levelled against the present applicant/accused are serious in nature. The present applicant/accused is the main beneficiary in this case. On one and the other count, he is trying to delay the matter. The charge is not yet framed. Hence, there is every possibility that he may tamper the prosecution witness. The matter is already fixed for framing of charge, therefore the present application is pre-mature. Moreover, it is pertinent to mention here that there are directions of the Hon'ble

Bombay High Court to conclude the trial of CBI Special Case Nos. 83/2003 (present case) & 12/2006, therefore under such circumstances, the prosecution has prayed that the application be kindly rejected in the interest of justice.

6 It appears that the CBI has raised strong objection in its reply regarding the claim of applicant/accused. Herein, it is pertinent to point out that the present matter is 14 years old matter. The Hon'ble Bombay High Court has directed to expedite the present case vide order passed in the case of present applicant/accused i.e. **Anup Kumar Gond v/s. Central Bureau of Investigation (R.C. No. 27(A)/2002-Mumbai [Writ Petition No. 4306 of 2014 with Criminal Revision Application No. 332 of 2013 with Criminal Revision Application No. 333 of 2013 dated 08/07/2019]**, wherein the Hon'ble Lordship has observed that the Trial Court shall conclude both the cases expeditiously. At present the matter is fixed for framing of 'charge' against the accused. However, due to "Corona Pandemic Situation" the 'charge' could not have been framed. But, soon said 'charge' will be framed against the present applicant/accused along with co-accused. Thereafter the contentions raised by the applicant/accused will be considered. In the result, in the interest of justice, I proceed to pass the following order :-

### **ORDER**

1 Misc. Application at Ex-280 in CBI Special Case No. 83/2003 is hereby disposed of.

:6:

Misc. Appl. at Ex-280

2 The applicant/original accused no. 3 ANUP KUMAR GOND is at liberty to file fresh application on the same grounds after framing of 'charge'.

(Order dictated and pronounced in open court.)

**(Jayendra C. Jagdale)**  
The Special Judge for CBI,  
City Civil & Sessions Court,  
Gr. Bombay.

Dated : 21/12/2020

Dictated on : 21/12/2020  
Transcribed on : 21/12/2020  
Signed on : 21/12/2020  
Delivered to Certified :  
Copy Section on

:7:

Misc. Appl. at Ex-280

“Certified to be true and correct copy of the original signed judgment/order”.

Upload Date & Time : 21/12/2020 at 4.05 p.m.

Smt. G. K. Kotawadekar

Name of the Stenographer

H.H.J. SHRI. JAYENDRA C. JAGDALE (C. R. No. 51)

Date of pronouncement of judgment/order :-21/12/2020

Judgment/order signed by the P.O. on :-21/12/2020

Judgment/order uploaded on :-21/12/2020