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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: September 22, 2020

Pronounced on: September 29, 2020

(1) + **Crl.M.A. 11718/2020 in CRL.L.P. 184/2018**

THE JOINT DIRECTOR,
DIRECTORATE OF ENFORCEMENT Petitioner

Through: Mr. Sanjay Jain, ASG with
Ms.Sonia Mathur & Mr.Naveen
Matta, Special Public Prosecutors
with Mr.Amit Mahajan, CGSC,
Mr. Padmesh Mishra, Mr. Arkaj
Kumar, Ms. Noor Rampal &
Ms. Mallika Hiremath, Advocates
with Mr. Sudhir Kumar, AD ED.

Versus

A.RAJA & ORS. Respondents

Through: Mr. Manu Sharma, Advocate for
respondent No.1.
Mr.Vijay Aggarwal, Mr.Mudit Jain,
Mr.Ashul Aggarwal, Mr. Shailesh
Pandey, Ms. Barkha Rastogi,
Mr.Hardik Sharma, Advocates for
respondents No. 2, 3, 4, 12, 15, 18
&19.
Mr. Mahesh Agarwal, Mr. Rishi
Agrawala, Ms. Niyati Kohli & Mr.
Pratham Vir Agarwal, Advocates
for respondent No.5.
Mr. Sandeep Kapur, Mr. Vir Inder
Pal Singh Sandhu, Mr.Abhimanshu
Dhyani, Mr. Sahil Modi, Advocates
for respondents No. 6 & 13.

Mr. Balaji Subramanian &
Ms. Ishani Banerjee, Advocates for
respondent No.7.

Mr. Sudershan Rajan,
Mr. Hitain Bajaj & Mr. Rohit
Kumar, Advocates for respondents
No. 8, 10 & 14.

Ms. Tarannum Cheema, &
Mr. Akshay Nagarajan, Advocates
for respondent No.9.

Mr. Varun Sharma, Advocate for
respondent No. 11.

(2) + **Crl.M.A. 11888/2020 in CRL.L.P. 185/2018**

CENTRAL BUREAU OF INVESTIGATION Petitioner

Through: Mr. Sanjay Jain ASG with
Ms. Sonia Mathur, Senior Advocate
with Mr. Ripu Daman Bhardwaj,
Special Public Prosecutor with
Mr. Rishi Raj Sharma,
Mr. Arkaj Kumar,
Mr. Padmesh Mishra &
Ms. Noor Rampal, Advocates &
Inspector Manoj, IO

Versus

A.RAJA & ORS.

.... Respondents

Through: Mr. Manu Sharma, Advocate for
respondent No.1
Mr. Vedanta Varma, Advocate for
respondent No. 2.
Mr. Vijay Aggarwal, Mr. Mudit Jain,
Mr. Ashul Aggarwal, Mr. Shailesh
Pandey, Ms. Barkha Rastogi,
Mr. Hardik Sharma, Advocates for
respondents No. 3,4,5, 13 & 14.

Mr. Mahesh Agarwal, Mr. Rishi Agrawala, Ms. Niyati Kohli & Mr. Pratham Veer Aggarwal, Advocates for respondent No.5.

Mr. Varun Sharma, Advocate for respondent No. 6.

Ms. Tarannum Cheema & Mr. Akshay Nagarajan, Advocates for respondent No.7.

Mr. D. P. Singh, Ms. Sonam Gupta & Ms. Ishita Jain, Advocates for respondent No.8-M/s Unitech Wireless.

Mr. Siddharth Aggarwal, Mr. Mohit Kumar Auluck, & Mr. Pramod Sharma, Advocates for respondent No. 9 & 11

Ms.Manali Singhal, Mr. Santosh Sachin, Mr. Deepak S.Rawat & Ms. Aanchal Kapoor, Advocates for respondent No.12-M/s Reliance Telecom Ltd.

Mr. Sandeep Kapur, Mr. Vir Inder Pal Singh Sandhu, Mr.Abhimanshu Dhyani & Mr. Sahil Modi, Advocates for respondents No.15.

Mr.Balaji Subramanian & Ms. Ishani Banerjee, Advocates for respondent No.16.

Dr. Joseph Aristotle S., Advocate for respondent No.17.

(3) + **Crl.M.A. 11890/2020 in CRL.L.P. 257/2018**

CENTRAL BUREAU OF INVESTIGATION Petitioner

Through: Mr.Sanjay Jain ASG with Ms. Sonia Mathur, Senior Advocate

with Mr. Ripu Daman Bhardwaj,
Special Public Prosecutor with
Mr. Rishi Raj Sharma, Mr. Arkaj
Kumar, Mr. Padmesh Mishra &
Ms. Noor Rampal, Advocates &
Inspector Manoj, IO

Versus

RAVI KANT RUIA & ORS.

.... Respondents

Through: Mr. Mahesh Agarwal, Ms. Neha
Nagpal & Mr. Vishvendra Tomar,
Advocates for respondents No. 1, 2
& 8.

Mr. Dayan Krishnan, Senior
Advocate with Mr. Arshdeep Singh
& Mr. Hitesh Rai, Advocates for
respondents No. 3, 4 and 6.

Mr. Sanjay Abot, Advocate for
respondent No.5.

CORAM:
HON'BLE MR. JUSTICE BRIJESH SETHI

ORDER

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Crl.M.A. 11718/2020 in CRL.L.P. 184/2018

Crl.M.A. 11888/2020 in CRL.L.P. 185/2018

Crl.M.A. 11890/2020 in CRL.L.P. 257/2018

1. Vide these applications, petitioners Central Bureau of Investigation (CBI) and Directorate of Enforcement (ED) are seeking early hearing of the criminal leave petitions. These petitions have been filed seeking 'leave to appeal' against the judgment dated 21st December, 2017 passed by

learned Special Judge acquitting all the respondents for the offences charged against them, which are as under:-

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|-------------------------|---|
| I. In CrI.L.P.184/2018 | u/s 3 of PMLA and punishable under Section 4 of PMLA |
| II. In CrI.L.P.185/2018 | sections 420/409/468/471/193 IPC r/w section 120 B IPC r/w sections 7/11/12/13 (2) r/w section 13(1) (d) of the Prevention of Corruption Act, 1988. |
| III. CrI.L.P.257/2018 | Section 420 IPC r/w section 120B IPC |

2. It is averred in the applications that all the three petitions arise out of common FIR and have similar set of facts and, therefore, upon the directions of the Hon'ble Supreme Court, these petitions have always been heard together. It is submitted that facts in CrI.L.P. 185/2018 are connected to that in CrI.L.P. 184/2018 and acquittal of respondents in CrI.L.P. 185/2018 has resulted in acquittal of respondents in CrI.L.P.184/2018 and release of attached properties as well, which involved trial of the 'Scheduled Offence'. It is stated that arguments in CrI.L.P.184/2018 would invariably flow from the arguments in the CBI matter.

3. At the time of hearing, Mr. Sanjay Jain, learned ASG appearing for petitioners submitted that while passing the impugned judgment dated 21st December, 2017, the learned Special Court has failed to appreciate clinching evidence available on record and has not appreciated it in the correct perspective. It was submitted that the impugned acquittal order has

adversely affected the interest of the Government of India and public exchequer in other related proceedings. Learned ASG pointed out that in CrI.L.P.185/2018, arguments on grant of 'leave to appeal' have already been concluded by the petitioner-CBI and the matter is now 'part heard' before this Bench. Learned ASG submitted that on 5th March, 2020, this Court had fixed the date of hearing for 24th, 25th and 26th March, 2020 but due to Covid 19, physical hearing in Courts stood suspended and hearing could not take place and now the matter is listed for hearing in October, 2020. It is stated that since March, 2020 the matter has not been heard at all and, therefore, these applications deserve to be allowed and these petitions be heard expeditiously. Learned ASG submitted that the instant petitions have great public importance involving issues of integrity amongst the government functioning, which has placed Union of India in a vulnerable position not only in India but globally, and therefore, these petitions be heard and decided early to unearth the truth so that the guilty persons be punished under the law of the land to maintain deterrent effect on the society.

4. Learned ASG further submitted that since this Court is to demit the office on 30th November, 2020 and if arguments remain inconclusive, the petitioners will have to address the arguments afresh.

5. Replies to the applications have been filed on behalf of respondent No.4 in CrI.L.P.184/2018; respondents No.3 & 11 in CrI.L.P.185/2018 and respondents No.6 & 8 in CrI.L.P.257/2018. Lengthy arguments have been addressed by learned counsels for the parties on these applications for two consecutive days.

6. Mr. Manu Sharma, learned counsel appearing for respondent No.1 in CrI.L.P.184/2018 and CrI.L.P.185/2018 opposed the early hearing applications by stating that during Covid 19 pandemic, physical hearing of the cases is not possible and through video conferencing, only urgent matters are being taken up and petitioners have not approached this Court giving any cogent reason as to why preference for hearing should be given to these leave petitions over those petitions/appeals where parties are in custody. Learned counsel also submitted that the provisions of Section 13(1) (d) of Prevention of Corruption Act, 1988 have transformed after introduction of Prevention of Corruption (Amendment) Act, 2018 and whether the new enactment applies to these leave petitions is a question of law which is required to be answered and since this Court has to demit office on 30th November, 2020, it is short of time to do so. Learned counsel also stated that no urgency has been established by the petitioners to hear these petitions out of turn and further the record of these cases is quite voluminous and it will not be possible to advert to the entire evidence and documents through video conferencing and in these circumstances, the applications deserve dismissal.

7. Mr. Vedanta Varma, Advocate for respondent No. 2 in CrI.L.P.185/2018; Mr. Varun Sharma, Advocate for respondent No.11 in CrI.L.P.184/2018 and respondent No.6 in CrI.L.P.185/2018; Mr. D. P. Singh, Advocate for respondent No.8 in CrI.L.P.185/2018; Mr. Siddharth Aggarwal, Advocate for respondents No.9 & 11 in CrI.P.185/2018; Ms. Manali Singhal, Advocate for respondent No.12 in CrI.L.P.185/2018; Mr. Sahil Modi, Advocate for respondents No.6 & 13 in CrI.L.P. 184/2018

and respondent No.15 in CrI.L.P.185/2018; Ms. Tarannum Cheema, Advocate for respondent No.9 in CrI.L.P.184/2018 and respondent No.7 in CrI.L.P.185/2018; Mr. Balaji Subramanian, Advocate for respondent No.7 in CrI.L.P.184/2018 and respondent No.16 in CrI.L.P.185/2018; Dr. Joseph Aristotle S., Advocate for respondent No.17 in CrI.L.P.185/2018 submitted that filing of the application for early hearing by petitioner is only a counter blast to the applications filed by respondents No. 15 & 17 in CrI.L.P. 184/2018 seeking release of their attached properties, otherwise, petitioners were sleeping over these petitions since March, 2020, though courts were functioning through video conferencing and since petitioners have failed to establish the urgency as to why petitions be taken up for hearing out of turn, these applications deserve dismissal.

8. Reply on behalf of respondent No.11 in CrI.L.P.185/2018 has also come on record. The stand taken by respondent No.11 in reply to this application is that from March, 2020 onwards, the nation has been in the grip of Covid 19 pandemic and the Hon'ble Supreme Court and this Court have taken measures to ensure the safety and health of litigants, lawyers, court staff. It is averred that recently vide Notification No. 418/RG/DHC/2020, dated 27th August, 2020, this Court has extended suspension of functioning up to 30th September, 2020, subject to resumption of physical hearings with effect from 1st September, 2020 onwards only in urgent matters, non-urgent matters filed during the lock-down and regular matters where the consent for final hearing has been received from both the sides.

9. At the hearing, Mr. Siddharth Aggarwal, learned counsel appearing

for respondent No.11 stated that CrI.L.P. 185/2018 has voluminous record and it is not feasible for counsel for the respondents to make any effective references to record during submissions *via* video-conferencing. It was submitted that it is because of these difficulties/shortcomings of the video conferencing system that this Court has adjourned the hearing of all routine, pending matters (especially lengthy matters) during its suspended functioning. It was stated that the respondent ought not be relegated to an ineffectual opportunity of hearing in a matter that can have significant adverse consequences for him. Learned counsel also stated that these three leave petitions are not related to each other because three trials have taken place and three different judgments have been passed by the learned trial court. Learned counsel further submitted that due to Covid-19 pandemic, hearing in all criminal matters, where a large number of under trials and convicts are waiting, has been deferred and on misconceived grounds of importance, petitioners cannot be permitted to seek early hearing of these petitions. Learned counsel also stated that the averments made in the application for early hearing are denied and during Covid-19, it is difficult for the counsel to prepare the arguments because of the voluminous record and hence, hearing of these petitions in restricted environment would cause great prejudice to the respondent.

10. In addition, Mr. Siddharth Aggarwal, learned counsel also submitted that as per the Roster, this Bench is sitting in Division Bench and hearing of these leave petitions may not be feasible. However, learned counsel submitted that in case this Court deems it fit to hear these petitions, he is ready to assist the Court.

11. Mr. Vijay Aggarwal, learned counsel appearing on behalf of respondents No. 2, 3, 4, 5, 12, 15, 18 & 19 in CrI.L.P.184/2018 and for respondents No. 3, 4, 5, 13 & 14 in CrI.L.P.185/2018 at the outset sought dismissal of the applications on the ground that petitioner/CBI while moving applications seeking early hearing, has suppressed the fact that similar application was filed in CrI.L.P.185/2018 and the same was dismissed by a Coordinate Bench of this Court. Learned counsel submitted that petitioners- CBI/ED have not explained as to why they be given preference over appeals in which accused persons are in jails. Mr. Vijay Aggarwal, learned counsel next submitted that a large number of criminal appeals are pending for years which should be heard and decided first and these petitions, which are not even three years old, should take a back seat. It was also stated that the grounds taken by the petitioners in CrI.L.P.185/2018 that it being 'part-heard' and that this Court has to demit the office on 30th November, 2020, are wholly misconceived and frivolous.

12. Mr. Vijay Aggarwal, learned counsel also submitted that in CrI.L.P.185/2018, applications CrI.M.A. 1731/2020 and CrI.M.A. 1820/2020 were filed by different respondents stating that amendment in Section 13 of Prevention of Corruption Act, 1988 is directly relevant for the adjudication of the present leave to appeal and this issue regarding applicability of Prevention of Corruption (Amendment) Act, 2018 is yet to be adjudicated by the Division Bench of this Court and the applications are required to be decided first.

13. At this stage, learned ASG, however, submitted that the reference

may have been made by some Single Benches of this Court to the Hon'ble Division Bench but since no decision has yet come in this regard, there is no impediment in hearing the leave to appeal petitions. Learned ASG further submitted that so far as pendency of applications of respondents is concerned, it is only a part of the submissions to be made by the respondents in the petitions for grant of leave.

14. Learned counsel also submitted that other matters [Crl.Rev.P.381/2017; Crl.Rev.P.370/2017 and Crl.Rev.P.57/ 2017] arising out of "2 G Spectrum case" which resulted in discharge, were also challenged by CBI and ED and are pending before different Benches of this Court and no reason is forthcoming as to why only these leave petitions should be heard on priority and not other petitions.

15. It was next averred by learned counsel that by the order of Hon'ble the Chief Justice, only urgent matters are taken up through video conferencing as per the Roster and non-urgent matters shall be taken up by the Roster Benches on resumption of regular hearings. It was stated that non-urgent matter cannot be converted into urgent matter and even otherwise it has been directed that final hearing matters shall be taken up chronologically, so that old matters can be given priority in disposal and these petitions are not even 3 years old, and therefore, criminal leave petitions against acquittal should not be given precedence over the appeals against conviction. It was also stated that petitioner has extensively argued the matter from 24th October, 2019 till 15th January, 2020 i.e. for about three months and even if it is assumed that the Court is taking up these matters on day to day basis, then also all the respondents will not get

ample time to argue their case, especially when voluminous record is involved.

16. Mr. Vijay Aggarwal, learned counsel also submitted that the plea of ASG that CrI.L.P.185/2018 has bearing on CrI.L.P.184/2018 and CrI.L.P.257/2018 is misplaced, as petitioner/ED had pleaded before the learned trial court that these cases be tried separately and vide order dated 31st October, 2014 different charges were framed by the learned trial court. Learned counsel submitted that this Court vide order dated 17th December, 2019 has clarified that CrI.L.P.184/2018 is not “part heard” and arguments in CrI.L.P.185/2018 have only been heard in part and no ground of urgency has been shown by the petitioner to hear this leave petition out of turn, and therefore, this application be dismissed.

17. Learned counsel next submitted that petitioners-CBI and ED were sleeping for last seven months and it is only after one of the respondent, namely M/s Conwood Construction Pvt. Ltd., moved an application [CrI.M.A. 10885/2020 in CrI.L.P. 184/2020] seeking release of the attached properties that the petitioners have woken up to seek early hearing in these petitions and thus, the application is filed with the *mala fide* intention to delay the relief claimed by the respondent in that application.

18. Learned counsel further submitted that the learned trial court had examined 155 witnesses and their evidence ran into more than 5000 pages and the judgment of learned trial court itself ran into hundreds of pages and to argue the leave petition would require appreciation of the voluminous record and if these petitions are heard in hurry, respondents

will not get adequate opportunity to present their case at best.

19. Another objection raised by Mr. Vijay Aggarwal, learned counsel was that during Covid 19 it will not be possible to seek instructions from clients/ assisting counsels, who are placed in various parts of India for arguing the appeal. It was stated that the plea of petitioners that these are high profile cases and acquittal order is also likely to adversely affect the interest of the Government of India and public exchequer in other related proceedings, is an untenable ground as claims against Government of India stand dismissed.

20. Learned counsel submitted that during restricted court hearings via video conference non urgent matters like criminal leave to appeal against acquittal, are not being taken up for hearing and therefore, moving such an application by petitioners is utter wastage of time of the Hon'ble Court. Hence, dismissal of this application is sought.

21. Ms. Tarannum Cheema, Advocate for respondent No.7 in CrI.L.P.185/2018 submitted that respondent No.7 is in custody in some other matter and that extensive arguments have already been made by Mr. Vijay Aggarwal, learned Advocate and other learned counsels for the respondents and she adopts the same on behalf of respondent No.7 as well.

22. Mr. Dayan Krishnan, learned Senior Counsel appearing for respondents No. 3, 4 & 6 in CrI.L.P.257/2018 at the outset submitted that the application for early hearing filed by the petitioners is bereft of merit, untenable and misleading. It was stated that the plea of petitioners that the three petitions flow from one another is misleading as separate trials were

conducted, which were not based on same set of facts. It was stated that accused in these petitions are different and in the instant petition (Crl.L.P.257/2018), charge under Section 420/120 B IPC was framed. The evidence was led separately and resultantly, separate judgments were passed by the learned trial court. Learned senior counsel averred that vide order dated 15th January, 2020 this Court has clarified that arguments only in Crl.L.P. 185/2018 have been heard in part and not in the instant leave petition. Learned counsel pointed out that arguments in this case on the point of grant of 'leave to appeal' have not even commenced and during Covid 19 pandemic, it is not possible for the parties to physically appear before the Court with a team of associates to refer to the voluminous records, where extensive evidence is required to be adverted to. Learned senior counsel further stated that if this Court allows these applications and proceeds to hear the leave petition through video conferencing, then also arguments in Crl.L.P.257/2018 should be heard only after arguments in Crl.L.P.185/2018 are concluded. Learned senior counsel, however, very fairly stated that he is ready to assist this Court in the hearing when his turn comes up.

23. Ms. Neha Nagpal, learned counsel appearing for respondent No.8 in Crl.L.P.257/2018 submitted that this application seeking early hearing of the leave petitions is untenable, misleading and frivolous. Learned counsel stated that she adopts the arguments made by Mr. Dayan Krishan, learned Senior Counsel appearing for other respondents in this case. She also stated that the averments made in the application for early hearing are largely denied and reply to this application has already been filed.

24. Mr. Sanjay Abot, learned counsel appearing for respondent No.5 in CrI.L.P.257/2018 submitted that by and large, Mr. Dayan Krishnan, learned Senior Counsel appearing for other respondents in this case has already covered the stand of respondent No.5 in this application and submitted that it, however, needs to be clarified that arguments in CrI.L.P.257/2018 will commence only after conclusion of arguments in other leave petitions.

25. At this stage, it is clarified by this Court that arguments in CrI.L.P. 257/2018 will be heard only after conclusion of arguments in other petitions.

26. In rebuttal, Mr. Sanjay Jain, learned ASG submitted that three sets of trial have taken place and three judgments have been passed by the learned trial court but since these matters are inter connected, these leave petitions are required to be heard together. Learned ASG submitted that respondents' plea that no public interest is involved is without any basis, as every hearing puts a heavy burden on public exchequer and therefore 'leave to appeal' has to be heard and decided at the earliest, especially when precious judicial time has already been invested and it is a "part heard" matter and this Court is likely to demit office. Learned ASG also relied upon decision of the Hon'ble Apex Court in *State of Maharashtra Vs. Sujay Mangesh Poyarelar (2008) 9 SCC 475* to submit that while hearing leave to appeal under Section 378 of the Code, the High Court has to see whether a *prima facie* case has been made out on arguable points and not that whether the order of acquittal would or would not be set aside. Learned ASG has drawn attention of this Court to paras 19 to 21,

which run as under:

“19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal “shall be entertained except with the leave of the High Court”. It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.

20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be “perverse” and, hence, no leave should be granted.”

(emphasis supplied)

27. Mr. Vijay Aggarwal, learned counsel submitted that he also relies upon the aforesaid decision in *Sujay Mangesh Poyarelar (Supra)*, wherein the Hon’ble Apex Court in para-27 has observed that while granting leave

to appeal, the High Court must consider the relevant material on record and sworn testimonies of prosecution witnesses. The observations of the Hon'ble Supreme Court in para-24 are as under:-

“24. We may hasten to clarify that we may not be understood to have laid down an inviolable rule that no leave should be refused by the appellate court against an order of acquittal recorded by the trial court. We only state that in such cases, the appellate court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial court should not be disturbed. Where there is application of mind by the appellate court and reasons (may be in brief) in support of such view are recorded, the order of the court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and reappreciation, review or reconsideration of evidence, the appellate court must grant leave as sought and decide the appeal on merits. In the case on hand, the High Court, with respect, did neither. In the opinion of the High Court, the case did not require grant of leave. But it also failed to record reasons for refusal of such leave.”

(emphasis supplied)

28. At this stage, it may be pointed out by this Court that principles of law laid down by the Hon'ble Apex Court in the aforesaid judgment will, no doubt, guide this Court in deciding the petitions.

29. So far as submission of learned counsel for the respondents concerning Section 13(1) (d) of PC Act is concerned, learned ASG submitted that he will make his submissions on these applications, but these applications are only a part of the argument to be submitted by

learned counsels for the respondents as to why leave to appeal be not granted and are not required to be decided first.

30. Mr. Sanjay Jain, learned ASG submitted that various circulars issued with regard to functioning of this Court during Covid 19 are mere guidelines which are directory in nature and not mandatory and the Bench in its wisdom has to recognize the urgency of a case in the peculiar facts and circumstances of that case. So far as plea of all the learned counsels for respondents that they will not be able to represent their case to the best of their ability is concerned, learned ASG submitted that lengthy replies to these applications have been filed by a few respondents and they are being assisted by their colleagues while referring to various documents and, therefore, they can argue the petitions seeking leave to appeal.

31. With regard to query raised by learned counsels for respondents qua pendency of other matters in “2G cases”, Mr. Sanjay Jain, learned ASG submitted that pendency of those petitions has no reflection on the petitions in hand and therefore, this should not be a ground for dismissal of applications for early hearing.

32. This Court has considered the rival submissions and given its thoughts to the matter. The learned counsels for the respondents have vehemently opposed the applications. Detailed replies have been filed in CrI.L.P.184/2018 by respondent No.4 & in CrI.L.P.185/2018 by respondent No.3, running into 40 and 42 pages respectively, though along with annexures it comes to 140 pages. The applications have been heard at length for hours together.

33. The short question to be considered is whether the petitions for leave to appeal should be heard at an early date or not? It is an undisputed fact that detailed part arguments have already been heard in CrI.L.P.185/2018. In fact, the learned ASG for the petitioner has already completed his arguments and part arguments have also been addressed by the learned counsels for the respondents.

34. Perusal of the order sheets reveals that these petitions were first listed before this Court on 24th October, 2019 and part arguments were addressed on behalf of the petitioner in CrI.L.P.185/2018. Thereafter on 1st, 5th and 27th November, 2019 also extensive arguments were heard on behalf of the petitioner. On 9th December, 2019, the matter stood adjourned at the request of learned counsel for the petitioner and thereafter, further arguments on behalf of the petitioner were heard on 17th December, 2019, 15th, 16th and 27th January, 2020. On 31st January, 2020 arguments on behalf of respondents commenced and were also heard on 6th and 7th February, 2020. On 5th March, 2020, the cases were listed for 24th, 25th and 26th March, 2020 but due to Covid 19 pandemic, the work in Courts remained suspended and this matter could not be heard.

35. The question which now arises for consideration is whether this court which has already heard CrI.L.P. 185/2018 in detail, should leave it inconclusive along with other matters for the new Bench to hear the arguments afresh or should it make endeavours to hear the petitions and try to decide the same expeditiously.

36. The interest of justice demands that so far as possible, part-heard matters should not be left inconclusive and if the Bench has the time to

hear further arguments, those should be heard and decided as expeditiously as possible.

37. Great pains have been taken by the learned counsels for the respondents to explain to this court that there are other matters which require the attention of this court. In some of the cases, convicts are languishing in jail and their appeals should be heard and decided first.

38. It is appreciable that learned counsels are not only concerned with their own cases but are also concerned about disposal of other pending cases in which accused are in jail. This court is conscious of its duty to hear those cases as well. The criminal appeals of those convicts who are languishing in jail, are being heard and decided by this Court while sitting in Division Bench at present.

39. It is good on the part of the learned counsels for the respondents to apprise this Court that how it should proceed with the cases pending in the court but let the learned counsels be also reminded of the fact that they being the officers of this Court, should assist in part-heard cases so that these are not left undecided and need not be heard afresh by a new Bench, thus, causing unnecessary loss to the public exchequer and wastage of judicial time. It is reiterated that this Court is conscious of its duty and welcomes the suggestions given by the learned counsels but at the same time, is of the opinion that it is in the interest of administration of justice that so far as possible, this Court should make all endeavours to conclude the part-heard matters before it demits the office.

40. The learned counsels for the respondents, especially Mr. Vijay Aggarwal and Mr. Siddharth Aggarwal have vehemently opposed the application for early hearing. Rest of the learned counsels have adopted

their arguments. Some of the learned counsels, including learned counsel Sh. Siddharth Aggarwal, have, however, submitted that if this Court deems it fit to hear these petitions, they will render all the assistance required in deciding the leave to appeal expeditiously.

41. Learned counsel Sh. Vijay Aggarwal has explained at length that the judgment rendered by the learned trial court runs into 105 pages in CrI.L.P.184/2018; 1552 pages in CrI.L.P.185/2018 and 526 pages in CrI.L.P. 257/2018. Learned counsel submitted that evidence in these matters runs into thousands of pages and the same needs to be examined in arriving at the truth and also to come to a conclusion whether the decision rendered by the learned trial court is perverse or not. According to him, because of the judgment of acquittal, presumption of innocence in favour of respondents stands fortified and this Court should, therefore, be slow to interfere in such kind of cases. He as well as some other learned counsels have expressed their apprehension that it will be difficult to connect with the clients and they will not be able to make effective submissions.

42. There is no quarrel with the proposition of law that innocence of respondents stands fortified by the order of acquittal passed by the learned trial court. This principle of law will, no doubt, be kept in mind and considered when it will be required to be applied at the appropriate stage. So far as concern expressed by learned counsels for the respondents regarding hearing through video conference is concerned, it may be pointed out that this court has been conducting hearing through video conference since 24th April, 2020 and cases which are voluminous in nature have also been decided. This ground should not, therefore, be an

excuse for this Court or for the learned counsels for not proceeding with the arguments. Moreover, in this age of advance technology, there are speedy and effective modes of communication through which people can easily connect, even though sitting at long distances. Since, the technology has advanced, it is difficult to accept the submissions that matter being voluminous in nature cannot be argued or heard by video conference.

43. It was further argued by learned counsels for the respondents that this court should not proceed with the matter as it is not urgent in nature. However, in the opinion of this court, when it has heard in detail the CrI.L.P.185/2018, though in part, it should not leave the said case and other cases inconclusive for the other Bench to hear the same afresh resulting into wastage of precious judicial time and putting unnecessary burden on public exchequer and that, in essence, is the urgency in this matter. The court should not shirk from its duty and at the same time, all the learned counsels are also expected to assist and cooperate with this Court in expeditious disposal of these petitions. No doubt, the documents are voluminous in nature and had the petitioners moved these applications two or three months earlier, it would have been easier to decide the petitions. However, even if it has not been done due to pandemic and restricted functioning of the Courts, as submitted by learned ASG, this court should not make it a ground for refusing early hearing and in fact, should make all endeavours to hear the petitions undaunted by the fact that the record is voluminous and the arguments are going to be in detail.

44. Learned counsel Mr. Vijay Aggarwal has also argued that the petitioner has suppressed the fact that it had earlier also moved an

application for early hearing before a Coordinate Bench of this Court, but the same was dismissed with the observation that the case be heard on the date fixed i.e. 24th October, 2019. In the opinion of this Court, there is no concealment by the petitioner for the reason that the petitions were at that time at a different stage i.e. arguments had not yet started, whereas the matter now stands on different footing i.e. arguments on behalf of the petitioner in CrI.L.P.185/2018 stands concluded and respondents have also addressed part arguments.

45. This Court is of the opinion that with the assistance and cooperation of learned counsels, all endeavours should be made to hear the matter as early as possible. Though this Court has limited time, yet no one should carry an impression that he will not get a fair opportunity of hearing. This Court assures that everyone will be given an effective hearing. However, at the same time it goes without saying that irrelevant and repetitive arguments need to be avoided.

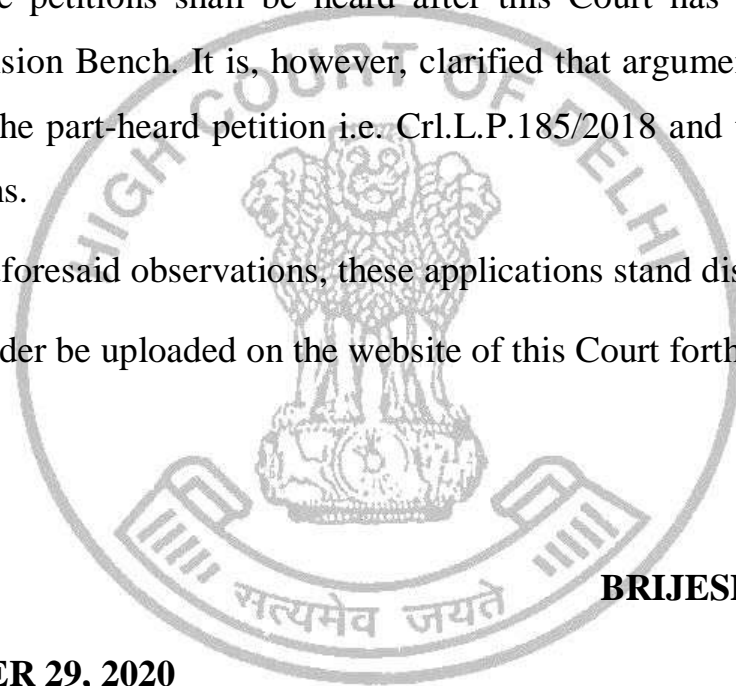
46. In the end, this Court has only one thing to say that no doubt there may be delay in filing the applications for early hearing; no doubt the documents are voluminous in nature; no doubt the evidence runs into thousands of pages; no doubt one of the judgment also runs into 1552 pages, but that does not mean that this should deter this court in hearing the criminal leave petitions. The judicial discipline demands that the Judge should do his duty and must not succumb to pessimism and it is not expected from him to sit leisurely with his pen down and to say that he will not hear the cases because the record is voluminous and the time at his disposal is limited. It will be a folly not to make an attempt and to sit idle abdicating one's duty. It is advisable to perform one's duty

irrespective of the fact whatever conclusion the petitions reach. This Court, therefore, will not fail in its duty and expects all the learned counsels to cooperate and assist this Court in deciding the matters expeditiously.

47. In view of the above discussion, the applications moved for early hearing of the leave petitions are allowed. Let the petitions be listed on 5th October, 2020 at 02:30 P.M. for hearing on day to day basis till further orders. These petitions shall be heard after this Court has finished the work of Division Bench. It is, however, clarified that arguments will first be heard in the part-heard petition i.e. CrI.L.P.185/2018 and thereafter in other petitions.

48. With aforesaid observations, these applications stand disposed of.

49. The order be uploaded on the website of this Court forthwith.



BRIJESH SETHI, J

SEPTEMBER 29, 2020

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