

**In the Court of Dig Vinay Singh, Special Judge (PC Act) (CBI)-09,
MPs/MLAs Cases, Rouse Avenue Courts, New Delhi.**

(IA No. 91/2025 & IA No. 96/2025 (Applicant/A-7 Sameer Mahandru))

(IA No.98/25 (Applicant/ A-5 Arun Ramachandran Pillai))

In,

CBI/56/2022

Central Bureau of Investigation (CBI) Vs. Kuldeep Singh & Ors.)

CNR No. DLCT11-000733-2022

FIR No. RC0032022A0053

PS CBI, ACB, New Delhi

U/s 120B IPC r/w Sections 7, 7A & 8 of the PC Act, 1988 (as amended in 2018) and substantive offences thereof.

02.08.2025

ORDER

1. An interesting yet complex question arises in this case. When two aspects of the same fundamental right conflict, it raises the issue of which one should take precedence and how to balance them. Here, an individual's right to privacy conflicts with another person's right to a fair trial, both of which are protected as fundamental rights under Article 21 of the Constitution of India.
2. This issue arises in the context of the Delhi Excise Policy Case, where final reports were filed along with relied-upon documents (RUD). Later, some lists of unrelayed-upon documents (URUDs) were submitted. According to established legal procedures in criminal trials, the accused exercised their right to inspect these URUDs. Among these were digital devices that accused no. 9, Amandeep Singh Dhall (A-9), wished to examine. However, the owners of these devices objected, including two accused individuals, a witness, and a third person who is neither an accused nor a witness.

3. This Court, by order dated 04.06.2025, allowed A-9 to inspect 20 mobile and digital devices that were not relied upon, as requested by him. Some of these belonged to co-accused individuals, such as Sameer Mahandru (A-7), Arun R. Pillai (A-5), and others (witnesses or other persons). The order explicitly noted that since inspecting digital devices could raise privacy concerns, the owners must be contacted, and A-9 must specify which section of the device he wishes to examine. If the owner does not object to that section, the inspection may proceed in their presence. The order also included safeguards to prevent data from being copied from the devices. It further emphasized that an accused cannot be granted unrestricted access to the entire device due to the right to privacy.
- 3.1. On the scheduled inspection date(s), A-7 Sameer Mahandru, Sunny Marwah (a PW), and Ashwani Bhatia (a third party) appeared before the court's Ahalmad and submitted objections in writing, citing privacy concerns. Similarly, although later, A-5 Arun also submitted a written objection to the CBI, objecting to his phone being inspected by A-9.
- 3.2. Subsequently, the devices belonging to other individuals could not be inspected, as A-9 chose to wait for this order on the privacy issue first.
4. After A-7 filed handwritten objections, he submitted detailed objections regarding the inspection of his device under IA No. 96 and also submitted an application seeking the release of his mobile and other documents under IA No. 91. Both of these IAs are being considered in this order along with the three handwritten objections filed by A-7, Sunny Marwah, and Ashwani Bhatia. An application filed by A-5 for the release of his phone and other documents under IA No. 98, after the arguments on IA No. 91 and 96 were heard, is also being considered. Subsequently, on 30.07.2025, arguments were also heard on the application IA No. 98 filed by A-5.

5. Arguments of the counsels for A-7, A-9, CBI, and Sunny Marwah were heard. The arguments of Sunny Marwah and Ashwani Bhatia, when objecting to the inspection of digital devices, align with those presented by A-7, as discussed above.
6. **In IA No. 98/2025**, A-5 requests the release of digital devices and documents seized from his residence by CBI on 19.08.2022, as well as certain documents produced by A-5 under the seizure memo dated 02.09.2022. It is admitted that those digital devices and documents A-5 seeks to have released are not relied upon by CBI.
7. **In IA No. 91/2025**, A-7 claims that on 19.08.2022, under a seizure memo, the CBI seized three categories of documents from his residence, including a mobile phone, certain handwritten notes related to the excise policy matter, and a box file. After investigation, the CBI retained these materials in URUDs dated 07.01.2025 and 31.01.2025, indicating that they classified these items as unrelieved documents in the current trial.
8. A-5 and A-7 request that, since the investigation is complete and these documents have been categorized as unrelieved, their continued custody by the investigating agency is unnecessary and unjustified. The mobile phones/digital devices contain confidential, personal, and third-party data, so they should be returned. They also claim that the mobile phones of A1 and A2 were released through orders dated 04.10.2024 and 19.10.2024, respectively. According to them, the continued possession of these unrelieved items by the investigating agency is unwarranted because not only is the investigation complete, but these materials are irrelevant to the current matter.
9. **In IA No. 96/2025**, citing detailed objections, A-7 argues that he was not served with the notice or a copy of the application or rejoinder filed by A-9, under which the inspection was sought. Therefore, A-7 claims

he had no opportunity to oppose A-9's request. A-7 states that it refused inspection on 10.06.2025 due to A-9's unreasonable demand for blanket access to its phone, including WhatsApp chats, without specifying and satisfying which parts were relevant or what A-9 was seeking. It is argued that A-7's phone contains highly sensitive business data such as confidential communications, trade secrets, proprietary information, emails governed by confidentiality agreements with partner companies, recipes and costing details of alcoholic beverages, business strategies and negotiations, information about other litigations which are irrelevant here, and sensitive financial data like bank withdrawals and credit limits, etc. A-7 contends that there is a threat of revealing this information to A-9, a business rival, which could cause irreparable damage, financial loss, and embarrassment, potentially leading to a competitive disadvantage in the liquor industry, loss of business opportunities, harassment, and privacy breaches. Additionally, A-7 fears breaches of family privacy and safety. Citing the fundamental rights under Article 19(1)(g) and Article 21 of the Constitution of India, as well as seeking protection against self-incrimination under Article 20(3) of the Constitution, A-7 requests that A-9's request to access his mobile phone be denied, especially because A-9 has not clarified what he is specifically seeking. The attention of the Court was also invited to A-9's reply to the present petitions, in which A-9 stated that he cannot definitively specify which section or information he is seeking in the digital devices of A-7 and others. A-7 further claims that, in a PMLA case arising from the present predicate offence, its company (*M/s Indospirit Distribution Limited*) requested the Court to protect its sensitive data from disclosure to the co-accused, and an interim order was granted in favour of A-7's company.

- 9.1. A-7 argues that when a person accesses someone's mobile, iPad, or other digital device, it is not that the person can access only that digital device, but data of the owner beyond that digital device can also be accessed through applications when the data is stored in the cloud or otherwise.
- 9.2. A-7 also argues that Sections 451 & 457 of Cr. P.C. cannot be put to any such kind of restriction as sought to be raised by A-9, claiming that a cloned copy should be prepared before the release of devices to the owners. A-7 also draws the attention of the Court towards Section 102(3) Cr.P.C as well as Clause 9.16 of CBI Manual as to the return of property which is not required.
- 9.3. A-7 also argues that Section 72 of the IT Act makes it punishable if any private data of a digital device owner is used unauthorisedly by anyone, including any authority. The case of *P. Gopal Krishnan @ Dileep Vs. State of Kerala and Anr. (2020) 9 SCC 161* is sought to be distinguished by its facts, by A-7.
- 9.4. In support of its case, A-7 relies upon interim relief/order granted by the Hon'ble Supreme Court in three different cases viz., Order dated 13.12.2024 in W.P.(Crl.) no. 515/2024 titled as *Future Gaming & Hotels Services Pvt. Ltd. Vs. DoE*; Order dated 09.12.2022 in W.P.(C.) no. 1081/2022 titled as *Amazon Seller Services Pvt. Ltd. Vs. DoE* and; Order dated 07.11.2023 in W.P.(Crl.) no. 395/2022 titled as *Foundation for Media Professionals Vs. Union of India*. In these interim orders, interim protection of the contents of mobile phones, e-mail dumps/laptops/privacy issues was addressed.
- 9.5. The law is well settled that interim orders do not operate as precedents.
- 9.6. A-7 also relies upon the case of *K. S. Puttaswamy & Anr. Vs. UoI & Ors. (2107) 10 SCC 1*, wherein the Hon'ble Supreme Court held that privacy is a fundamental right and the concerns expressed by a party

from the possibility of the State infringing the right to privacy can be met by the test suggested for limiting the discretion of the State, viz.:

- *i) the action must be sanctioned by law;*
- *ii) the proposed action must be necessary in a democratic society for a legitimate aim;*
- *iii) the extent of such interference must be proportionate to the need for such interference;*
- *iv) there must be procedural guarantees against abuse of such interference.*

- 9.7.** A-7 also relies on the decision of a Coordinate Bench rendered on 29.10.2022 in the case titled *CBI vs. Mahesh Kumar Sharma*, in CBI Case No. 31/2021, which admittedly is under challenge before the Hon'ble High Court. However, there is no stay of decision from the Hon'ble High Court. In the last-mentioned case, it was held that CBI cannot seek an accused's password/user ID.
- 9.8.** A-7 also relies on the bail order dated 18.12.2023, passed by the Hon'ble Delhi High Court in the case of *Sanket Bhadresh Modi vs. CBI & Anr.*, in bail application no. 3754/2023, wherein the court, while granting bail to an accused, observed that an individual protected under Article 20(3) of the Constitution of India cannot be compelled to disclose passwords or similar details, given the protection guaranteed under the Constitution.
- 9.9.** A-7 also distinguishes the reliance placed by A-9 on the Confidentiality Club Scheme framed by the Hon'ble Delhi High Court claiming that those rules & regulations flows out of Order XI CPC, particularly qua Commercial disputes, which is a dispute inter se between two individuals/corporates, and it has no bearing on a criminal case which has altogether different ramifications.
- 9.10.** During arguments, counsel for A-7 also drew attention of this Court towards a statement U/s 50 of PMLA of none other than A-9, which PMLA matter arises out of the present predicate offence, and in which

statement A-9 disclosed that he received the Excise Policy document from one Ajay Malhotra or a WhatsApp group involving Naresh Goel sometime in the end of May 2021. It is claimed that the allegations against A-9 include the assertion that A-9 had a WhatsApp PDF copy of the Excise Policy more than one month before the policy was published and that A-9 had forwarded it to one Manoj Rai on 31.05.2021 at 10.49 AM.

- 9.11.** Manoj Rai is a witness in this case, and according to the investigating agency, as many as five different persons forwarded the policy document, either in a PDF file or a Word file, to Manoj Rai. From amongst them, A-9 is alleged to have forwarded Word file of the Excise Policy at 10.49 AM on 31.05.2021, followed by PDF WhatsApp by one Kartik Mohindra at 10.57 AM, followed by Word file WhatsApp by one Anil Singh at 11.58 AM, followed by PDF file by A-7 at 12.35 PM and lastly followed by a Word file sent by Benoy Babu at 3.52 PM.
- 9.12.** A-7 argues that A-9 is required to address the allegation regarding how he obtained and sent the Policy to Manoj Rai on 31.05.2021 at 10:49 AM, whereas the Policy was published for the public on the Excise Department's website on 05.07.2021 only. A-7 argues that precisely that has to be defended by A-9, and in his quest to present that defence, A-9 cannot look into the device of a co-accused to present an argument as to what was done by the co-accused at the corresponding time. The endeavour by A-9 seeking to inspect the device of A-7 and others is claimed to be nothing but entering into a roving inquiry.
- 9.13.** During arguments, counsel for A-7 pointed out that two mobile devices belonging to A-7 were recovered, one of which is relied upon by the investigating agency, while the second one is not. The second device was used by A-7 for a very brief period, well after the alleged offense. A-7 claims he used the mobile device under inspection from 31.07.2022

to 19.08.2022 for 20 days, whereas the alleged Excise Policy leak occurred in May 2021. Therefore, the request to inspect A-7's phone is unjustified.

10. The **CBI filed a brief reply** to the petitions of A-5 and A-7, leaving the matter to the Court's discretion to issue appropriate orders regarding the release of devices and documents, as well as the scope and manner of inspection.
11. **On the other hand, A-9 filed a comprehensive reply** to both petitions of A-7, asserting the right to inspect the unrelayed documents, claiming the right to a fair trial. As per him, this right flows from the directions of the Hon'ble Supreme Court in the case of *Manish Sisodia Vs. DoE (2024) SCC OnLine SC 1920*, and *Sarla Gupta Vs. DoE (2025:INSC:645)*. The return of devices to the co-accused and others, without ensuring the availability of cloned data, is opposed, allegedly violating the rights of A-9 and other accused. He submits that CBI must be asked to clarify whether clones of the already returned devices were created and are available for inspection.
- 11.1. It is claimed that A-7's phone may contain relevant correspondence related to the leak of the 'Excise Policy' in question and its implementation, which has now been scrapped, directly affecting A-9's defense.
- 11.2. In the reply, it is stated that a preliminary list of items to be inspected will be presented to this Court, indicating A-9's focus and bona fide approach. A-9 fears that serving advance notice of the sought material may lead to tampering or deletion of data via iCloud backups or other means, defeating the very purpose of inspection. A-9 also asserts that he does not seek access to or obtain any private or irrelevant data from A-7's device or others.

- 11.3. Regarding privacy concerns raised by A-7, A-9 suggests adopting a framework similar to the **Delhi High Court (Original Side) Rules, 2018**, where the Confidentiality Club Scheme protects sensitive data, and he is willing to abide by such a structure to safeguard privacy. It is claimed that this approach would uphold his legal rights without infringing on A-7's or others' privacy rights.
- 11.4. A-9 argues that his inspection rights cannot be limited to a predefined list or specific data because, given the nature of digital evidence and the CBI's investigation, a rigid requirement to pre-identify data sections is not feasible or healthy. If A-7 had communications relevant to the Excise Policy with third parties, the only way for A-9 to trace this information is through directed inspection based on reasonable suspicion and contextual clues, not exact knowledge. It is claimed that a meaningful inspection of A-7's device and others is essential for a fair trial and effective defence of A-9, and denying this would be discriminatory and prejudicial because the CBI accessed the devices without any objections being raised. He states that, while an investigating agency may claim unfettered access, objecting to a co-accused's legitimate request for inspection would be unfair. The fact that the CBI did not rely on the device should not be a ground to deny A-9's inspection as sometimes, crucial defence evidence exists in unrelayed material that can counter the prosecution's claims, so A-9 must be permitted to inspect the digital devices. Therefore, IA No. 96 should be dismissed, and after examining the devices by A-9, IA No. 91 should be disposed of appropriately.
- 11.5. It is claimed that under the Confidentiality Club Scheme under the Delhi High Court (Original Sides) Rules, 2018, Rule No. 17 provides a mechanism to protect sensitive data, which includes inspection under court supervision in which only nominated advocates or experts are

allowed access; no copying or recording is permitted without permission, and the data remains confidential and sealed when not under inspection. According to A-9, this would strike a balance between the right to a fair trial and the protection of privacy.

11.6. A-9 submitted a limited illustrative list to the court exclusively, detailing what A-9 seeks to inspect in A-7's device. To safeguard A-9's interests, this list was not shared with A-7 and remains confidential with the court. A-9 claims that the list demonstrates that the accusation of a roving inquiry is unfounded and that A-9 intends only to inspect the relevant data. The list includes WhatsApp chats, emails, notes, and other digital records related to the alleged Excise Policy leak.

11.7. Citing Sections 451 & 457 of Cr.P.C., A-9 argues that even under those provisions, copies can be retained.

12. After their arguments, since A-5 also preferred a similar application seeking the release of his unrelayed documents, including the digital device, arguments were heard on that application as well, as advanced by A-5, A-9, and the CBI. The other accused persons chose not to object to any of the above applications.

12.1. The arguments of A-5, when objecting to the inspection of digital devices, also align with those presented by A-7, as discussed above.

12.2. The arguments of A-9 were also similar to those made regarding the applications preferred by A-7. There is no need to revisit those arguments here, as they have been discussed above. It is sufficient to note that, to clarify what exactly A-9 is seeking in A-5's mobile device, the Court was directed to supplementary complaint no.3 filed by DoE, which arose from the same predicate offense as mentioned earlier.

12.3. The attention of this Court was drawn by A-9 to paragraph 4.2 of the third supplementary complaint, which details five digital devices

belonging to A-5. It is claimed that the digital device listed at serial no. 2 in column no. 2 (in table no. 10, part of paragraph 4.2), was used by A-5 from 21.06.2022 until the date of seizure. Therefore, this device may contain information relevant to A-9. A-9 asserts that, since even the DoE claimed that A-5 had either destroyed, changed, formatted the phones, or deleted incriminating material, there is little chance of private data remaining on A-5's mobile. Additionally, A-9 points out to this Court a portion of A-5's statement dated 18.09.2022, recorded by the DoE, as well as parts of statements dated 23.02.2023 and 28.02.2023 from co-accused Buchi Babu, to justify the reasonableness of inspecting A-5's unrelayed phone.

13. The argument of A-9 that since DoE claimed that A-5 either changed his five mobiles, formatted them, or deleted the relevant files, therefore there are either no chances or negligible chances of finding any private data, has to be rejected outright. Admittedly, the phone belonging to A-5 was seized by DoE via a seizure memo dated 19.08.2022, along with other digital devices and documents. If this digital device of A-5 was used by him from 21.06.2022 until 19.08.2022, it can still contain private data and personal details of A-5.
14. After the conclusion of oral arguments, just one day before the scheduled order date, A-9 also submitted written arguments. The core of A-9's arguments is that the purpose of inspecting the digital devices is not to access privileged, personal, or business information but rather to support A-9's defence by highlighting the CBI's selective prosecution policy. The investigation is described as biased, incomplete, and selective. It is argued that since the CBI had full access to the digital devices of A-5, A-7, and others, without any claim of privacy or confidentiality, A-9 should also be allowed to examine the data accessed by the CBI. He contends that if CBI's access was not a privacy

violation, then seeking access under court supervision should not turn it into one. A-9 claims that the objections raised by the accused and others are merely artificial distinctions between digital devices and hard copies of unverified documents. He claims that A-9 is not part of any conspiracy and that crucial links in the alleged conspiracy have been deliberately ignored by the CBI. The CBI is accused of conducting a targeted and biased investigation rather than a neutral one. It is pointed out that the five charge sheets filed by the CBI reveal clear inconsistencies, contradictory positions regarding the conspiracy, suspicious timing of witness statements, and suppression of evidence etc. Relying on the case of *State of Madhya Pradesh vs. Sheetla Sahai (2009) 8 SCC 617*, it is argued that similarly situated individuals involved in decision-making related to the excise policy were either exonerated or not prosecuted, and that this should apply to others as well. Therefore, it is claimed that digital device inspections of these similarly placed individuals are necessary because the CBI examined their information but chose to ignore it, making such inspections crucial for the exoneration of the accused and others who are victims of selective prosecution. He points out that during an investigation by the DoE, there are references to discussions about zone bidding and offering stock in exchange for help from Sikander Maan and Virat Maan. However, CBI did not investigate these persons' roles in policy manipulation or cartel formation, instead they were made prosecution witnesses. Regarding the alleged leak of excise policy documents, A-9 claims that CBI made no inquiry into the originators or how persons like Naresh Goyal, Ajay Malhotra, and others received these documents. A-9 states that he previously informed CBI in 2022 about receiving the draft policy via WhatsApp from several individuals, including Ajay Malhotra, a major liquor wholesaler. Despite providing

the exact date and time of transmission and that Naresh Goyal and others also possessed the draft information that could be verified through call records and devices, CBI failed to properly investigate. A-9 argues that if A-7 had access to the leaked draft from someone not being prosecuted, or had communication with Ajay Malhotra, it would support A-9's defence by demonstrating selective prosecution. Concerning A-5's phone, it is claimed that Buchi Babu's statement to DoE indicated that Vijay Nair sent messages about changes being made in the Group of ministers to Buchi Babu and A-5, which justifies inspecting A-5's device. Furthermore, A-9 claims that discussions among A-5 and others suggest liquor manufacturers' associations were consulted on policy, implying that a draft policy based on their recommendations could be with these individuals, yet CBI did not investigate this. Additionally, A-9 asserts that he informed the CBI that the 12% margin set by the Excise Department was maintained in his company's records. Therefore, inspecting digital devices is justified. It is further claimed that while the right to privacy is fundamental, it is not absolute and must yield to the right to a fair trial where such inspections are necessary and proportionate. In support, reference is made to the cases of *P. Gopal Krishnan (supra)*, *Puttaswami (supra)*, and the judgment by the *Madhya Pradesh High Court on 16.06.2025 in MP no. 3395/2023*.

15. In the case of *P. Gopal Krishnan (Supra)*, the Supreme Court explicitly held that when the prosecution relies on digital content like a memory card or pen drive, the accused is entitled to receive a cloned (mirror-image) copy of that electronic data, which would fall within the definition of a document. In that case, the facts were specifically different because the very video in question, which was intended to be used against the accused for trial, was not supplied to the accused. In

those circumstances, the Hon'ble Supreme Court ruled that the accused was entitled to a mirror copy of the video in question since it was being relied upon against the accused. Regarding privacy issues, it was held that the court may take adequate measures to redact other contents or allow the accused to inspect the video on which reliance is placed. It was not a case involving an un-relied digital device. The case of *Sheetla Sahai (supra)* is also distinguishable on specific facts and the stage.

16. As mentioned above, A-9 did present a brief note confidentially to this Court when this Court inquired from A-9 as to what exactly he was looking for in the mobile device of A-7 and others. Because of the concerns raised by A-9, that the disclosure of those queries may prejudice his case so much so that A-7 and others may delete the required data through iCloud or otherwise, this Court is refraining from discussing the said note given by A-9.
- 16.1. However, a bare perusal of the said note as well as the written submissions reveals that all that A-9 wishes to undertake is nothing but a parallel investigation/roving & fishing inquiry. Similarly, the oral submissions made by A-9 during the arguments regarding what he is looking for in the device of A-5 indicate that A-9 wishes to undertake a parallel investigation and nothing more. As mentioned above, in reply A-9, it was stated that it would be unfair to expect A-9 to disclose exactly what he is looking for in the digital devices, and that he cannot indicate with certainty which part of the device needs inspection or for what exact information.
- 16.2. It is apparent that A-9 seeks to build a defence that other accused persons at the relevant time did some acts of commission and omission, and then present an argument that the investigating agency has discriminated against A-9. What is contained in the mobile phone of A-5, A-7 or other witnesses/third parties as to the Excise Policy at or

around the relevant time, cannot help the defence of A-9 for the simple reason that there cannot be any legitimate convincing legal argument worth considering when an accused claims disparity committed by investigating agency between his case and the case of others, especially at the stage of charge. It cannot be worth an argument that 'A' claims discharge or acquittal on the ground that B, C, or D also had some or similar material in their devices, which the investigating agency might have ignored.

- 16.3. First of all, there is no legitimate reason for this Court to suspect that the investigating agency deliberately left incriminating material in the devices of A-5, A-7, or others. Even otherwise, assuming such incriminating material was intentionally ignored by CBI or otherwise, for that exact reason, A-5 and A-7, or any other accused, cannot be asked to disclose their passwords. They stand protected qua that disclosure in terms of Article 20(3) of the Constitution of India. It is now fairly evident that the Courts have taken the view that a person cannot be compelled to disclose passwords, etc., particularly when that person is an accused. When an accused cannot be forced to reveal a password, there is no reason why witnesses and others may be forced.
- 16.4. Had A-5, A-7, Sunny Marwah, or Ashwini Bhatia given No Objection to the inspection of their devices by A-9 or his counsel, there would not have been any difficulty. However, once they refused to permit such an inspection, citing privacy concerns, they cannot be forced to disclose their passwords or reveal the contents of their mobile or other devices to A-9. So also others cannot be compelled.
- 16.5. The argument of A-9 that when A-5, A-7, and others revealed their password to the investigating agency, they cannot claim protection against A-9 from the same disclosure has to be rejected. It cannot be argued that a person who gives up the right of privacy qua one person

must give it up qua all others. Merely because A-5, A-7, and others voluntarily disclosed their passwords to the investigating agency, they cannot be asked to reveal them again for A-9 or anyone else. By forgoing the right to privacy to the investigating agency, a person does not lose their fundamental right to privacy concerning others. Such an interpretation as sought by A-9 would be utterly destructive of the Fundamental Right to Privacy.

- 16.6. Similarly, the claim of A-9 that, in terms of the Confidentiality Club Scheme framed by the High Court, adequate measures can be taken to safeguard the privacy of A-5, A-7, and others has to be rejected. This is a criminal case, whereas those rules pertain to Civil Disputes of a Commercial nature. Even otherwise, under Order XI of CPC, if a party chooses not to abide by the order of discoveries passed by a Court, consequences of dismissal of suit or rejection of defence, as the case may be, can only follow, and even in those cases, parties cannot be compelled to disclose their passwords. A civil dispute typically remains a dispute between two or more individuals or companies. Article 20(3) applies in a criminal matter so far as an accused is concerned. Thus, neither A-5, A-7, nor others can be compelled to disclose their passwords.
- 16.7. Not only does Article 20(3) of the Constitution, but also Sections 162 and 313 of Cr.P.C. extend protection to an accused. If an accused voluntarily discloses information and provides testimonial disclosures, that is acceptable, but they cannot be compelled to do so. Disclosing a password would be equivalent to a testimonial disclosure by an accused.
- 16.8. Although A-9 claimed that he was willing to provide an undertaking that he would not present any argument against A-5, A-7, or others after inspecting their devices, this argument does not inspire confidence. The reason A-9 inspects others' devices is to find something that he can use

to build his defence. If he isn't planning to use any content from those devices, then why does he need to see them? The purpose of inspecting the devices is to find evidence that can be used to support his defence, which poses a serious risk to A-5, A-7, and others. If any incriminating material is found in their devices, appropriate action may be taken against them if it comes to the knowledge of this court. Can this Court ignore any such material relevant to the trial, when brought to the notice of this court by A-9 or anyone else, which the CBI may have overlooked, in their devices? The answer has to be no. If such evidence comes to light at any stage, the Court must pass appropriate orders. Therefore, expecting A-9 to merely inspect the devices and then refrain from using any incriminating material against A-7, A-5, or others is unacceptable.

- 16.9. Looking at it from another perspective, this exercise by A-9 should not be permitted because it seems that A-9 is attempting to conduct a parallel investigation or inquiry to argue that the CBI did not thoroughly investigate or deliberately failed to collect all evidence, or intentionally ignored many things in others' devices. No such parallel investigation should be allowed by any accused, as this would otherwise lead to an endless cycle of such proceedings. After all, every accused in a criminal trial claims that he was prejudiced by an unfair investigation concerning him and by the omission of facts that may have favoured him.
- 16.10. In a criminal trial, if an accused believes that some strong defence exists, he would most likely know where that piece of material is and what it would be. An accused cannot claim that he does not know what might exist that could help his defence, and then request the court for permission to inspect the device, which may or may not be relied upon.
- 16.11. The courts have to be especially cautious when digital devices containing sensitive, private, or personal data are examined. If certain

parts of such digital content are unrelated to the prosecution's case, the person requesting inspection must clearly specify what is expected from the inspection. When such inspection could violate privacy or third-party rights, it cannot be considered an unfettered right. The irrelevant or protected content must have some value to the accused seeking inspection, and only then can a court strike a balance. Requesting inspection without a specific or justified reason, or simply hoping to find something useful, amounts to a fishing expedition. Such a broad, unfocused search without clear limits or scope amounts to a roving inquiry. It not only wastes the court's time but also risks violating privacy rights and could amount to harassment or oppression of the device owners. Therefore, before the accused requests inspection of a digital device containing private or third-party data opposed by the owners, the accused must demonstrate specific and concrete relevance. Vague or broad searches should not be permitted.

- 16.12.** When the Right of Privacy and the Right to a fair trial, both of which form part of the same Fundamental Right under Article 21 of the Constitution, the Court has to strike a balance. Had A-9 been able to at least prima facie show as to in what manner inspection of the device of A-7 or A-5 could have some defence existing in his favour, this Court still could have examined the particular section of the device. However, what A-9 desires is nothing but a roving inquiry with the expectation of finding or stumbling upon something, which cannot be permitted, as it may raise serious privacy issues and have serious repercussions for the device owner.
- 16.13.** Let it be noted here that it is not even the case of A-9 that he communicated in any manner through WhatsApp, e-mail, or otherwise on the device of A-5 or A-7, or other objecting parties during the relevant time, or similarly with Sunny Marwah and Ashwani Bhatia.

Therefore, his request to inspect their devices seems to be for the purpose of conducting a roving and fishing inquiry only.

- 16.14. When the CBI investigated the matter for a long time, it must be accepted prima facie that it thoroughly examined all these digital devices. Since the CBI could not find anything related to the dispute in those devices, allowing a parallel inquiry would be equivalent to conducting a separate trial for each device, which could be extremely risky for a criminal court to undertake. No such pre-trial inquiry should be permitted.
- 16.15. The argument of A-9 that since a conspiracy has been alleged against him along with other accused persons, therefore, even if he can demonstrate from the mobiles of A-5, A-7 and others that he was not in communication or conversation with them at the relevant time, he would succeed in arguing a lack of material to suggest conspiracy, has to be rejected. For that purpose, he cannot access the privacy-protected devices of others. After all, in a criminal trial, the onus or burden is on the prosecution to prove its case, and it is not for the accused to disprove the prosecution's case, unless the law establishes any specific presumption.
- 16.16. The argument by A-9 that he wants to see A-7's mobile to find out from whom A-7 and others received the policy document before it was sent to Manoj Rai on 31.05.2021, is nothing but an attempt to conduct a parallel investigation. The same applies to the desire of A-9 to inspect A-5's device. A-9 may have to answer who he received it from, rather than focusing on who the other accused and witnesses received it from. Moreover, regarding witnesses, A-9 can always cross-examine them if needed to find out from whom they received the policy before its publication. Should any such co-accused step into the witness box in defence, A-9 may exercise his right to cross-examine them too. A-9 can

also summon such persons as a defence witness if he so desires at the appropriate stage, should a charge be framed against him. A-9 cannot be allowed to pursue such a parallel investigation otherwise.

16.17. For those privacy reasons the request of A-9 to clone the digital devices before release cannot be agreed to.

17. As a result, it is ordered that the objections raised by A-5, A-7, Sunny Marwah, and Ashwani Bhatia are upheld. Due to their objections, A-9 is not permitted to inspect their digital devices.

17.1. IA No. 96/2025 is thus disposed of.

17.2. IA No. 91/2025 preferred by A-7, and IA No. 98/2025 preferred by A-5, are also disposed of with a direction that the mobile phone and other items belonging to A-7 & A-5, which were not relied upon and were seized vide seizure memo dated 19.08.2022 and 02.09.2022, be returned to A-7 & A-5. However, to ensure fairness to A-9, it is ordered that the release of these items will occur only after 30 days from the date of this Order, allowing A-9 the opportunity to seek legal remedies by approaching the Appellate Court, should he so desire or be legally advised. Any orders from the Appellate Court will determine the release of these items. **IA No. 91/2025 & 98/2025 are disposed of accordingly.**

A digitally signed copy of this order be given to both sides.

***Announced in open court
On the 02nd day of August 2025.***

**Dig Vinay Singh
Special Judge (PC Act) (CBI)-09,
MPs/MLAs Cases, RADC,
New Delhi/02.08.2025 (r)**