

**IN THE COURT OF MS. SWARANA KANTA SHARMA,
SPECIAL JUDGE, CBI-05, PATIALA HOUSE COURTS,
NEW DELHI.**

C.C. NO. 11/12

RC no. 2A-2010-CBI-ACU-IX ND

**U/s 120 B IPC, 7, 8, 10 r/w 13 (2) and 13(1)(d) PC
Act.**

In re : State (CBI)
Vs.
Ketan Desai etc.

(Appearances)

Sh. B.P. Singh, Ld. Special PP assisted by Ms. Shashi Vishvakarma APP for CBI

IO Inspector V P S Maan.

Accused Ketan Desai alongwith Ld. Counsel Sh. Pawan Narang and Ld. Senior Counsel Sh. Mukul Rohtagi, Counsel & Sh. Vijender Singh.

Accused Sukhvinder Singh alongwith Sh. Hari Haran, Ld. counsel.

Accused Kamaljit Singh alongwith Sh. A.S. Bedi and Sh. Dinesh Kumar and, Sr. Counsel Sh. Siddharth Luthra.

Accused J.P. Singh alongwith Ld. Counsel Sh. H.S. Bhullar, Sr. Counsel. Sh. Atul Nanda & Sh. Manish Tiwari, Adv.

Accused N.S. Bhangoo with Counsel Sh. S P Kaushal & Sr. Counsel Sh. S.K. Rungta.

Accused K.A Paul alongwith Ld. Counsel Sh. Parshant Singh, Sr. Adv. Sh.S.K. Rungta.

Order on Charge

1. The instant case was registered against accused Dr. Ketan Desai, the then President of Medical Council of India, New Delhi (Accused no. 1) and others on the allegations that accused Dr. Ketan Desai had entered into a criminal conspiracy with accused J.P. Singh, accused Sukhvinder Singh, Vice Chairman, Gian Sagar Educational and Charitable Trust, Mohali, Punjab (accused no. 2) and others with object to show favour with regard to the recognition of the courses and grant of permission pertaining to Gian Sagar Medical College and Hospital, Patiala as mandated by MCI Act and Regulations for the admission into 4th Year MBBS course for the year 2010-11.
2. As per Charge Sheet filed by CBI the investigation

has revealed that Gian Sagar Medical College & Hospital, Patiala was established in the year 2007 under the aegis of Gian Sagar Educational & Charitable Trust, Mohali, Punjab as per minimum standard requirement for the Medical College for 100 admissions annually regulations, 1999.

3. Accused Sukhvinder Singh being the vice Chairman of Board of Trustees was responsible vide constitution of the trust for the custody of all records and properties of the Trust and do all acts, take actions and execute documents and papers, pass orders, recruit staff, endorse drafts, pronotes and all such documents which are required to be executed as such for and on behalf of Board of trustees and or the benefit of the trust.

4. Investigation further revealed that on the basis of reliable and specific information, CBI Special Unit, New Delhi had placed the following mobile phones under telephonic surveillance after obtaining due approval from the Competent Authority i.e. Union Home Secretary under Indian Penal Telegraphy Act,

1885 and interception of telephonic conversation was done with the Computer system i.e. call recording server with special voice check software being used for recording of intercepted telephonic communications of different cases simultaneously.

5. The above phones were placed under surveillance during the period when Medical Council of India received the application for renewal of permission for the admission into 4th Year MBBS course from Gian Sagar Medical College and Hospital.

6. The investigation has further revealed that criminal conspiracy to obtain favour in the form of recommendation for permission for admission into fourth year of MBBS course began after deficiencies were pointed out during first inception of Gian Sagar Medical College & Hospital, Banur (Patiala) on 21 & 22.02.2010. Accused Dr. Sukhvinder Singh had contacted accused J.P. Singh to obtain clearance for the college and accused J.P. Singh had assured him to help. The first inspection report of Gian Sagar Medical College & Hospital, Patiala, Punjab

was considered by the Executive Committee of MCI at its meeting held on 05.02.2010 and as per the Executive Committee of the Council, it was decided to recommend to the Central Government, not to renew the permission for admission of 4th batch of MBBS students for the Academic Session 2010-11, since a number of deficiencies were noted in the inspection report (11th & 12th January, 2010).

7. The investigation had further revealed that the decision was communicated to the Central Government vide MCI office letter dated 06.02.2010 alongwith a copy to the College authorities to submit compliance report on the deficiencies pointed out by the Council Inspectors.
8. It has been further revealed during investigation that accused Sukhvinder Singh and accused J.P. Singh had discussion regarding deficiencies found in the college during the Ist Inspection. They had also discussed about the ways to remove the same.
9. The investigation had revealed that accused Ketan

Desai on 04.02.2010 had informed accused J.P. Singh that “EK DO NAHI, DUS BARAH HAI”, while describing the number of deficiencies found in the college. During investigation it was further revealed that total 14 deficiencies were found in Gian Sagar Medical College and Hospital, Patiala during first inspection. Investigation also revealed that the meeting of the Executive Committee of MCI was held on 05.02.2010 under the Presidentship of accused Ketan Desai to discuss the deficiencies found in the Gian Sagar Medical College and Hospital. On the same day accused Ketan Desai had discussed with accused J.P. Singh about the deficiencies.

10. The investigation has further revealed that the authorities of Gian Sagar Medical College and Hospital, Patiala, Punjab submitted the compliance report vide their letter dated 27.02.2010.

11. The compliance report was considered to be satisfactory and proposed to be verified by way of inspection. Accordingly, a note was put up for

appointment of inspectors for compliance verification inspection on the direction of accused Ketan Desai, the then President, MCI and the inspectors were appointed for the compliance Verification inspection. The same was endorsed by accused Dr. Ketan Desai, the then President of Medical Council of India.

12. The investigation had further revealed that accused J.P. Singh was working as middleman between accused Dr. Ketan Desai and management of Gian Sagar Medical College and Hospital, Patiala. After coming to know from accused Sukhvinder Singh about the deficiencies in the college he had assured him to get his work done. After that he had contacted accused Ketan Desai.

13. The investigation also revealed that accused Sukhvinder Singh had arranged Rs. 2 crore as illegal gratification with the help of accused N.S. Bhangoo, father of Sh. Harvinder Singh, Chairman of Gian Sagar Educational and Charitable Trust, Mohali under whose aegis Gian Sagar Educational and

Charitable Trust, Mohali is run.

14. Investigation had further revealed that on 22.03.2010 Sh. Suresh S. Shah alongwith two Inspectors namely Dr. Savita C. and Dr. S.S. Minhas had visited the campus to conduct investigation. Investigation has also revealed that members of the Executive Committee of the Council had considered the Council Report of 22 nd March,2010 alongwith the earlier report of Council Inspectors dated 11th and 12th January, 2010 on 05.04.2010, which establishes that accused Ketan Desai and accused J.P. Singh were talking about Gian Sagar Medical College and Hospital, Patiala in the code words 'BADAL SAHIB'.

15. The investigation had further revealed that accused J.P. Singh had not only assured accused Sukhvinder Singh that his work will be done and the person who had inspected at the time of first inspection will only be doing the second inspection, but had also informed him that he has been told about the college as one of the favourites.

16. It is stated that there is evidence in the form of telephonic conversation between accused J.P. Singh and accused Ketan Desai regarding 'Badal Sahib' (college) in which accused Ketan Desai assured accused J.P. Singh on 15.03.2010 that he will discuss the issue regarding 'Badal Sahab' on Thursday.

17. The investigation had revealed that the favourable recommendation for permission for admission of 4th batch of MBBS students for the Academic Year 2010-2011 for Gian Sagar Medical College and Hospital, Patiala was approved by the Executive Committee of MCI headed by accused Ketan Desai and the recommendation was sent to the Central Government in this Executive Committee meeting presided over by accused Ketan Desai on 05.04.2010. After ensuring favourable recommendation accused J.P. Singh had started demanding illegal gratification for accused Ketan Desai which accused Sukhvinder Singh agreed to pay.

18. The investigation further revealed that during 1st Inspection conducted on 11/12.01.2010 by MCI Inspectors, 14 deficiencies were detected in which glaring deficiency pertained to non-existence of Auditorium. Prior to proceeding on 2nd Inspection, Dr. Ketan Desai had asked Dr. Suresh C. Shah, then Permanent Inspector, Medical Council of India, New Delhi to give a favourable report. Dr. Suresh C. Shah gave favourable report on the instruction of accused Ketan Desai inspite of the deficiency of auditorium still existing. On 05.04.2010, the day the Executive Committee recommended to the Government, the Auditorium did not exist. Thereafter, accused J.P. Singh on behalf of accused Ketan Desai had started demanding illegal gratification as the college was granted permission without an Auditorium.

19. During telephonic conversation dated 21.04.2010 at 13:33 hrs. accused K.A. Paul confirmed and fixed the time of next day i.e. 22.04.2010 for arranging money. On the same day at 19:11 hrs. accused Ketan Desai enquired from J.P. Singh whether he had

got or not. Accused J.P. Singh replied that it would reach by tomorrow and he (accused Ketan Desai) would get it in the morning.

20. The investigation had revealed that there is a conversation on 21.04.2010 on 13:34 hrs. between accused Sukhvinder Singh and accused J.P. Singh in which accused J.P. Singh tells accused Sukhvinder Singh that he would confirm "him" about tomorrow's transaction, to which accused Sukhvinder Singh says, confirm, confirm. Accused J.P. Singh further tells accused Sukhvinder Singh that somebody is calling him daily and he is facing difficulty. During this conversation, reference of somebody was meant for accused Ketan Desai as is clear from the conversations between accused J.P. Singh and accused Ketan Desai on 21.04.2010.

21. The investigation further revealed that on 22.04.2010, accused Kamaljeet Singh, Chief Executive Officer, Gian Sagar Medical College and Hospital, (accused no. 4) collected the amount of Rs. 2 Crore from accused K.A. Paul near Hanuman

Mandir at Karol Bagh and delivered it to accused J.P. Singh at his residence, which was recovered by the team of CBI from the residence of accused J.P. Singh after the delivery.

22. The investigation had further revealed that the above amount was brought in a vehicle, bearing registration no. CH-03X8514 to the residence of accused J.P. Singh at D-II-1/13, Vasant Vihar, New Delhi for onward delivery to accused Ketan Desai. The investigation has also revealed that accused J.P. Singh and accused Sukhvinder Singh were in contact since November, 2009. Subsequently in the month of February 2010, both had discussed the issue of recognition for preparation of favourable inspection report by Medical Council of India during the inspection to be conducted for the recognition to the 4th year of MBBS course and accused J.P. Singh obtained Rs. 2 crore for showing this favour with the help of accused ketan Desai to Gian Sagar Medical College and Hosptial, Patiala for the admission into 4th year of MBBS.

23. It is thus the case of CBI that during 2009-10 Accused Ketan Desai while functioning as President, MCI entered into a conspiracy with accused J.P. Singh, Sukhvinder Singh to recommend for permission for admission of 4th batch of students for the year 2010-11 in the Gyan Sagar Medical college for the central govt. by misusing his official position in lieu of illegal gratification. In pursuance of the conspiracy accused Ketan Desai pressurized Sh. Suresh C Shah to submit favourable report, on the basis of which, the Executive Committee recommended to give permission for admission of 4th batch students for 2010-11 to the central govt. accused J.P. Singh demanded 2 crores from accused Sukhvinder Singh of Gyan Sagar of Educational & Charitable Trust at the instance of accused Ketan Desai. Accused Sukhvinder Singh made a telephonic call to accused N.S. Bhangoo and accused N.S. Bhangoo asked accused Sukhvinder Singh to meet accused K.A. Paul on 21.04.2010. Accordingly, accused Kanwaljeet Singh, Chief Executive Officer of Gyan Sagar Medical College & Hospital collected the

amount of Rs. 2 crores from accused K.A. Paul as instructed by accused Sukhvinder Singh and delivered to accused J.P. Singh at his residence.

24. Charge Sheet was filed by CBI. After compliance of Section 207 Cr. P. C . , arguments on charge were heard.

25. I have heard arguments on behalf of Ld. Special PP for CBI and Ld. Counsels for all the accused persons and have gone through the case file.

26. After hearing arguments before discussing order on charge, I would like to observe that the intercepted conversation was played in the Court in the presence of all the Ld. Defence Lawyers and the accuseds since the intercepted conversation and the content thereof is very crucial to decide whether charge is made out against the accuseds or not. Having said so, to deal with the contentions on the point of Charge of all the accuseds, it will be appropriate to discuss the intercepted conversation amongst all the accused persons to meet the

arguments raised by Ld. Counsels for the accused persons as well as Ld. PP for CBI to pass an order on charge.

Intercepted Conversation

27. The first call is between accused J.P. Singh and accused Ketan Desai dated 28.10.2009 made at 06:18 pm as per D-39. This call is not relevant for the case.

28. The second call is between accused J.P. Singh and accused Sukhvinder Singh dated 11.11.2009 made at 07:00 pm as per D-39. This call reflects that accused J.P. Singh was telling Dr. Sukhvinder Singh that he has nine telephone connections. He has also advised accused Dr. Sukhvinder Singh on that day that accused Dr. Sukhvinder Singh should only give missed call and should not speak on that particular number.

29. The third call is between accused J.P. Singh and accused Sukhvinder Singh dated 02.02.2010

made at 02:41 pm as per D-39. It reflects that accused J.P. Singh is telling accused Sukhvinder Singh that he will be meeting "him in the evening and after speaking to him he will get back to him". Accused J.P. Singh also informs accused Dr. Sukhvinder Singh **“that there is some problem in infrastructure and tells him that there will be a second inspection”**. Accused Dr. Sukhvinder Singh requests him that he should ensure him that no second inspection takes place. Accused J.P. Singh says that **“only after speaking to him in the evening he will get back to him”**. He also tells accused Dr. Sukhvinder Singh as to **“why did they ask for a change over for inspection”**. Thus he was referring to the new rules of 2009 and old rules of 1999 as the Principal of Gyan Sagar Medical college had given an application on 12.01.2010 for being inspected by new rules of 2009.

30. **The fourth call is between accused J.P. Singh and accused Sukhvinder Singh dated 03.02.2010 made at 10:47 am as per D-39. This conversation reflects that in this conversation accused J.P. Singh**

tells accused Sukhvinder Singh that he can not help them with deficiency of infrastructure. Accused Dr. Sukhvinder Singh also informs him that he had changed the inspection by new rules on the asking of Dr. Shah. Accused J.P. Singh then says that “ **he will speak to him and will get back to him**”. In this conversation he also tells him that since it has been recorded by the team of Inspection the infrastructure problem has to be corrected. He also tells him that these days the Inspectors ask every college that as to whether they want to be inspected by old rules or new rules. He also tells accused Sukhvinder that the matter can go to the Vigilance Department also in case of complaint. Dr. Sukhvinder Singh in this conversation tell accused J.P. Singh that he will not be able to arrange a professor of Tuberculosis and also tells him that they are already short of "**Tin di agey hi shortage hai**". He also tells him that accused Ketan Desai was to meet him and will call him hundred percent.

31. The fifth call is between accused Ketan Desai and accused J.P. Singh dated 04.02.2010 made at

3:36 pm as per D-39. This conversation reflects that in this conversation between accused Ketan Desai and accused J.P. Singh, accused J.P. Singh asked him as to whether “ **Chota Badal**” has been saved. Accused Ketan Desai tells him that “**nahi wo lurkega mai bata raha hu aapko**”. Accused Ketan Desai also informs him that “**kafi chizo me usne garbari ki hai**”. Accused Dr. Ketan Desai also told him that “ **ek do nahi dus barah Hai**”. Accused Dr. Ketan Desai also told him that he is in Delhi in connection with conference of MCI and will be free by tomorrow.

32. The sixth call is between accused J.P. Singh and accused Sukhvinder Singh dated 04.02.2010 made at 5:27 p.m as per D-39. This conversation reflects that in this conversation between accused J.P. Singh and accused Sukhvinder Singh. Accused J.P. Singh informs accused Sukhvinder Singh that there are deficiencies in the infrastructure and the second inspection can not be stopped. He also tells him that they have to be in full strength for one week and thereafter they can relax. In this

conversation he also tells accused Sukhvinder that they should have second inspection done by the inspecting team. He also says that "**Das raya si darzan de aas pass hangiya. Baaki kenda si ki aapko mai mil ke bata dunga**". He also tells him that "**oda hi phone aa raya hai duji line tey.... mai karda ha twano phone dubara**".

33. **The seventh call is between accused Ketan Desai and accused J.P. Singh dated 04.02.2010 made at 5:32 pm as per D-39.** This conversation reflects that in this conversation between accused Ketan Desai and accused J.P. Singh, accused J.P. Singh had asked as to whether Dr. Desai can meet him at Hotel Vasant Continental however, Dr. Desai says that since he is at India Habitat Centre, due to traffic jam and due to his conference he will not be able to reach there. However, he promise him to call him at 10 p.m t he same day and to meet him next morning.

34. **The Eighth call is between accused J.P. Singh and Accused Sukhvinder Singh dated 04.02.2010**

made at 3:46 pm as per D-39. This conversation reflects that in this conversation between accused J.P. Singh and accused Sukhvinder Singh accused J.P. Singh informs accused Sukhvinder that "**hone bade door hagey si assi dono. Matlab ek ghanta traffic chay he fasey rehendey. Mai hanga Vasant Kunj odar apna India Habitat Centre.**" Oh keh raya hai phir saverey he mildey hai. Tey kal discuss kar langa. Twano sufficient time milega twadey puchey bina koi nai aan wala."

35. Call number 9 is not relevant.

36. The tenth call is between accused J.P. Singh and accused Ketan Desai dated 05.02.2010 made at 8:26 am as per D-39. In this conversation accused J.P. Singh is informed by accused Ketan Desai that "there is EC meeting today". He also says that " vo to aapne tai kar hi diya ki uska to becharey ka dabba band hi hai". Dr. Ketan Desai tells him that " ha nahi kafi garbar hai or ye garbar kya hai ki sari ki sari cement or steel mai hai". Then Ketan Desai tells him that he will tell him

when they meet.

37. **The eleventh call is between accused Sukhvinder Singh and accused J.P. Singh dated 08.02.2010 made at 1:13 pm as per D-39.** This conversation reflects that in this conversation between accused Sukhvinder Singh and accused J.P. Singh, accused Sukhvinder Singh informs accused J.P. Singh that they have received the report of MCI regarding rejections. Accused J.P. Singh tells accused Sukhvinder Singh that "**jado oo change over hoye ta change over te ander aay ta chija aapa nu cover karniya paygiya**"

38. Next call no. 12 on 09.02.2010 at about 07:40 pm between Sukhvinder Singh and J.P. Singh when Sukhvinder Singh tells J.P. Singh he is coming to Delhi next day. Accused Sukhvinder Singh says that one who had come was not a good person. Accused J.P. Singh tells him that he is a good man. It will not be out place to mention here that Dr. Shah had conducted the first and the second inspection and accused Sukhvinder was referring to

him as he had inspected the college. Accused Sukhvinder Singh tells accused J.P. Singh as to whether he is at home upon confirmation he tells accused J.P. Singh that he is reaching his place.

39. **Next day on 11.02.2010 at about 03:45 pm there is conversation between accused J.P. Singh and accused Ketan Desai**, Ketan Desai tells that he will be leaving Delhi tomorrow, but he will return to Delhi on 15.02.2010. Ketan Desai also confirms to meet J.P. Singh on Monday Evening. On 14.02.2010 as promised at about 12:19 pm J.P. Singh and Ketan Desai speak to each other that he is in Delhi.
40. **On 15.02.2010 at about 08:15 am vide call no. 17 there is conversation between Sukhvinder Singh and J.P. Singh**, J.P. Singh informs him that 25 AC are mandatory requirement. He also tells him **“he was telling him two more points”**. J.P. Singh again tells Sukhvinder Singh that the same person who had come during the first inspection will come for the second inspection and also gives him guarantee that he will be no problem and also tells

him that “meri kal gal ho gayi hai detail andar”.

41. On 14.02.2010, Sunday Ketan Desai also promised him to meet in the evening on 15.02.2010, Monday. It is thus clear from this conversation that Ketan Desai had met J.P. Singh on 14.02.2010, Sunday in the evening as promised and on 15.02.2010, Monday at about 08:15 am J.P. Singh had informed Sukhvinder Singh that “he had met him” and told him “few points of mandatory requirement” and also informed Sukhvinder Singh that the same person will conduct inspection who had conducted first inspection. J.P. Singh also tells Sukhvinder Singh that there is actually problem of infrastructure as has been told to him by Ketan Desai “kenda ne ki o dekh ke apna kar de”. J.P. Singh also tells him that he will fixed the date which is convenient to the college for the inspection. J.P. Singh further tells Sukhvinder Singh that he “will tell him” since he had not finalized anything with Sukhvinder Singh he had not further told “him” anything.

42. On 16.02.2010 at about 06:30 in call no 18 J.P. Singh speaks to Ketan Desai about some personal thing on 03.03.2010, at about 11:23 am vide call no. 19 J.P. Singh is told by Sukhvinder that he had already written that after 7th they can come in time. J.P. Singh says that “I will speak and tell him”. On 03.03.2010 at about 11:24 am J.P. Singh again speaks to Sukhvinder Singh “that he will speak in one or two days” and “will confirm in the evening or tomorrow”. On 03.03.2010 at about 05:00 pm J.P. Singh speaks to Ketan Desai and says that he will meet him in the evening in half an hour. So, therefore, this can be connected with the last call between J.P. Singh and Sukhvinder Singh when J.P. Singh tells Sukhvinder Singh “that he will speak to him and confirm in the evening”.

43. On 03.03.2010 at about 06:20 pm there is call no. 22 between Sukhvinder Singh and J.P. Singh. J.P. Singh tells that Sukhvinder Singh has submitted papers very late and also tells him that “ta o ke reya hai ke isi ta honi hagi hai agley mahiney pehle hafte”. He also advise him that

should he should call the deficient staff. In this call he tells Sukhvinder Singh that “aena de upar puri watch chal rahi hai dikat aye hagi hai”. He also tells him that he had told him that “tomorrow nobody should raise this question and therefore, they should have filed the compliance earlier”. Thereafter, Sukhvinder Singh tells J.P. Singh as to how he is going to arrange deficient staff. He also tells that “he is sitting on the other side”. So, therefore, “if they will confirm he will speak to him”. He also tells him that since 30-40 inspections have to take place in the next week, therefore, since they have submitted their papers late it will be little odd to get their inspection in between. J.P. Singh tells him that they should get it done 23-27. In the next call 03.03.2010 between J.P. Singh and Sukhvinder Singh, Sukhvinder Singh confirms that hey are ready for inspection between 23 to 27 and nobody will come before that but he tells him that he should confirm the date after 2 days and must not announce it as yet.

44. The call no. Twenty three is between accused J.P. Singh and accused Sukhvinder Singh dated 03.03.2010 made at 6:32 pm as per D-39. This conversation reflects that Dr. Sukhvinder agrees to getting inspection done between 23.03.2010 to 27.03.2010 but request accused J.P. Singh that nobody should come for inspection before that. However, J.P. Singh tells him that "aje tusi announce na karna ek do din baad dubara confirm kar langey"

45. The call no. Twenty four is between accused Ketan Desai and accused J.P. Singh dated 04.02.2010 made at 3:56 pm as per D-39. In this conversation between accused Ketan Desai and accused J.P. Singh, accused J.P. Singh asks accused Ketan Desai "vo badal sahib wala to 22 nd ko hi hai na". Accused Ketan Desai tells him that they will speak about it only when they meet.

46. Call no. 25 is not relevant.

47. The call no. Twenty six is between accused

Ketan Desai and accused J.P. Singh dated 15.03.2010 made at 12:52 pm as per D-39. In this conversation between accused Ketan Desai and accused J.P. Singh, accused J.P. Singh asks accused Ketan Desai about "badal sahib matter". Ketan Desai tells him that he will speak to him on Thursday when they meet. However he indicates that "it is the same which he had told him earlier".

48. The call no. Twenty seven on 17.03.2010 at about 8 p.m. between accused J.P. Singh and accused sukhvinder Singh, he tells him that whosoever will come on Monday he will do the work.

49. Call no. twenty eight is not relevant.

50. The call no. Twenty nine is between accused J.P. Singh and accused Sukhvinder Singh dated 24.03.2010 at 9:40 pm as per D-39. In this conversation accused J.P. Singh informed accused Sukhvinder Singh that "oh aaye hi kal hange na, ona ne check nahi kit per twano pata lag hi gya hona".

This is with reference to the second inspection and accused Sukhvinder Singh tells him that the team of Inspectors had co-operated with him. He also tells him that there was income tax raid but the doctor himself had spoken to the income tax team. Accused Sukhvinder Singh also tells accused J.P. Singh that one of the Inspector of the team had told the income tax Inspector that if they will not let him carry on the inspection the college will be closed next year so where will he conduct the raid. It is therefore clear that this conversation is regard to Dr. Shah. Since as per record inspection team of MCI had reached the college and simultaneously a raid by income tax officers was also conducted on Gyan Sagar Medical college. This is clear from statement of Ms. Savitha (PW-) and Dr. Minhas (PW-). Accused Sukhvinder Singh also tells accused J.P. Singh that one of the doctors of the team of Inspectors had also advised him as to what should be written by the college. He also told him that **“Une kaha eda eda likh diya mai phir kar denga”**. Therefore it is the undertaking taken by Dr. Shah regarding auditorium.

51. The call no. 30 is between accused J.P. Singh and accused sukhvinder Singh dated 30.03.2010 made at 8:11 pm as per D-39. In this conversation accused J.P. Singh inform accused Sukhvinder Singh that a Chartered Accountant was doing some loose talk in the EC Meeting. He also tells him that he should be very careful about speaking to anybody since raids are conducted on these people also and he should not create any misunderstanding. Accused J.P. Singh also informs accused Sukhvinder Singh that EC meeting of MCI is on Monday. Accused J.P. Singh assures him that there will be no problem and everything will be alright. It will not be out of place to mention that this conversation is taking place on 30.03.2010 when accused J.P. Singh tells accused Sukhvinder Singh that EC meeting is on Monday and as per calender of 2010 the Monday after 30.03.2010 falls on 05.04.2010.

52. The call no. thirty one is between accused Ketan Desai and accused J.P. Singh dated

05.04.2010 made at 4:23 pm as per D-39. In this conversation between accused Ketan Desai and accused J.P. Singh, after EC meeting had taken place accused ketan Desai tells accused J.P. Singh that “vo badal sahib ka rishtedar aaya tha uska ek kaam kar diay hai”. He also says that " There was no need for surgery but only requirement was stunt". He tells him that the work has been done. The work being referred to in veiled manner is Gyan Sagar medical college since in the EC Meeting dated 05.04.2010 the only deficiency which was the lack of auditorium had been taken care of by the EC headed by accused Dr. Ketan Desai. Therefore the reference by accused ketan Desai to “Uska ek kaam kar Diya Hai”.

53. The call no. thirty two is between accused Ketan Desai and accused J.P. Singh dated 05.04.2010 at 7 pm as per D-39. In this conversation accused Ketan Desai tells accused JP Singh that “ to badal sahib ko aage jane ke jaroorat nahi hai” He also tells him that “Unke do to maine bola hamara ek”. This can be veiled

reference to Rs. 2 crore.

54. **The call no. thirty three is between accused J.P. Singh and accused Sukhvinder Singh dated 16.04.2010 at 1:32 pm as per D-39. Accused Sukhvinder Singh says that he will coming to Delhi tomorrow.**

55. **The call no. thirty four is between accused J.P. Singh and accused Sukhvinder Singh dated 17.04.2010 at 1:26 pm as per D-39. In this conversation accused Sukhvinder Singh says that he has just reached Delhi and he confirm the plan for today. He also tells him that “jake dasda ha, jey karke nikal gya hoga tey aaj hi hoyega”.**

56. **The call no. thirty five is between accused J.P. Singh and accused Sukhvinder Singh dated 17.04.2010 at 4:26 pm as per D-39. In this conversation accused Sukhvinder Singh tells accused J.P. Singh that either the work will be done on Monday or Tuesday. Accused J.P. Singh further says that let it be on Tuesday. Accused Sukhvinder**

Singh confirms that the work will be done on Tuesday. He also says that " **ta pher tuesday hi bol denda hai una nu**".

57. The calls no. thirty six and thirty seven are not relevant.

58. The call no. thirty eight is between accused J.P. Singh and accused Sukhvinder Singh dated 19.04.2010 at 9:21 pm as per D-39. In this conversation accused Sukhvinder Singh tells accused J.P. Singh that he will confirm the plan on 20.04.2010 at about 10:30 a.m. Accused J.P. Singh tells him in annoyance that "**Choro savere das dena menu phir**". Accused J.P. Singh also tell accused Sukhvinder Singh that " kyonki kal mai bol dita si una nu". Accused Sukhvinder Singh reply that "**tusi una nu bolna aaj kal thori thori observation lagi hoyi hai**"

59. Calls no. 39, 40 and 41 are not relevant.

60. The call no. forty two is between accused J.P.

Singh and accused Ketan Desai dated 20.04.2010 at 05:00 pm as per D-39 between accused J.P. Singh and accused ketan Desai they decide to meet each other at Oberoi Hotel at about 07:30 pm.

61. **Call no. 43 to 45** are not relevant to the case.

62. **The call no. forty six is between accused J.P. Singh and accused Ketan Desai dated 21.04.2010 at 10:29 am as per D-39 between accused J.P. Singh and accused Ketan Desai in this conversation they have speaking about the mending jacket. Accused J.P. Singh told him to sent the same to him.**

63. **The call no. forty seven is between accused J.P. Singh and accused Sukhvinder Singh dated 21.04.2010 at 01:30 pm as per D-39, accused J.P. Singh asks accused Sukhvinder Singh about the programme. Accused Sukhvinder Singh tells him that he will tell him in a while.**

64. **The call no. forty eight is between accused**

Sukhvinder Singh and accused N.S. Bhangoo dated 19.04.2010 at 01:20 pm as per D-39, immediately after accused Sukhvinder Singh had taken time to confirm the plan, accused Dr. Sukhvinder Singh had called up accused N.S. Bhangoo when they have spoken to each other about "do wala kaam" and accused N.S. Bhangoo tells accused Sukhvinder Singh to talk to accused K.A. Paul. The calls thereafter between accused K.A. Paul and Sukhvinder Singh are regarding "do wala kaam" and delivery of the same to accused Kamaljeet Singh.

65. The call no. forty nine is between accused K.A. Paul and accused Sukhvinder Singh dated 21.04.2010 at 01:33 pm as per D-39 in this conversation K.A. Paul is asked by Sukhvinder Singh that he must have been told about some work and the time for delivery is fixed for next day 11:00 am.

66. The call no. fifty is between accused J.P. Singh and accused Sukhvinder Singh dated 21.04.2010 at 01:34 pm as per D-39 immediately

after confirmation of delivery of money from K.A. Paul accused Sukhvinder Singh confirms to accused J.P. Singh that the plan is fixed for tomorrow 12 noon. J.P. Singh also tells that he must not change the programme as a call is embarrassment to him.

67. The call no. fifty one is between accused J.P. Singh and accused Ketan Desai dated 21.04.2010 at 07:11 pm as per D-39 who were talking in code language about certain things and decide to meet at Ashoka Hotel.

68. The call no. fifty two is between at about 09:47 am is between accused Sukhvinder Singh and Kanwaljeet Singh wherein Accused Kanwaljeet has informed accused Sukhvinder Singh that he has reached Delhi, Accused Sukhvinder Singh asked him as to whether he has contacted accused K.A. Paul . Accused Sukhvinder Singh tells accused Kanwaljeet that he should call accused K.A. Paul and thereafter, he will also call accused K.A. Paul.

69. Immediately, thereafter, a call no. fifty three

is made within 2 minutes by Accused Sukhvinder Singh and accused Kanwaljeet Singh at 09:51 am on 22.04.2010, where accused Kanwaljeet Singh is informed by accused Sukhvinder Singh that he has spoken to accused K.A. Paul who had asked him to come to Karol Bagh, thereafter at about 10:00 am, accused Sukhvinder Singh again calls accused Kanwaljeet when accused Kanwaljeet informs that he has reached Pritam Pura and informs, accused Sukhvinder to speak to accused K.A. Paul as he has not been able to speak him. In this call Dr. Kanwaljeet informs to Sukhvinder Singh that he has been asked come to Karol Bagh by K.A. Paul and tells him that he has a new driver.

70. Call no. 54 on 22.04.2010 at 10:55 am between accused Kanwaljeet Singh and accused Sukhvinder Singh wherein Dr. Kanwaljeet informs to Sukhvinder Singh that he has reached Pritam Pura and therefore asks him to accordingly inform K.A. Paul.

71. **In call no. 55 accused Sukhvinder Singh**

speaks to accused K.A. Paul at 10:06 am and asks him that as to whether accused Kanwaljeet Singh has contacted him. Accused Sukhvinder Singh says that accused Kanwaljeet has new driver, Accused Sukhvinder Singh also informs accused K.A. Paul during these conversations that delivery ultimately is to be given at Vasant Vihar.

72. **Call no. 56 is not relevant.**

73. **In conversation no. 57 at about 11:27 am accused Kanwaljeet Singh informs accused Sukhvinder Singh “Ha ho gaya, tey udhar dasya”.**

74. Accused Sukhvinder Singh tells Accused Kanwaljeet Singh **“dus denda ha udhar”**

75. Accused Kanwaljeet Singh recalls **“han ji ... udhar das deyo tey ... fir mein keha mein ude bad udhar chala janda”**

76. This clearly indicates that accused Kanwaljeet Singh confirms to accused Sukhvinder Singh that he

has received the money from accused Kanwaljeet Singh and tells him to inform accused J.P. Singh (where it is to be delivered). He also says that when he informs him he will go there.

77. **Within 2 minutes of this conversation there is a conversation no. 58 on 22.04.2010 at 11:29 am when accused Sukhvinder Singh informs accused J.P. Singh whether he is at home and tells him that “bas fir aa raha hai” which indicates that he had informed accused J.P. Singh that accused Kanwaljeet Singh will be reaching his place.**

78. **Shortly within 1 minute of this conversation another call is between accused Kanwaljeet and accused Sukhvinder Singh call no. 59 at 11:30 am where accused Sukhvinder informs accused Kanwaljeet Singh that accused J.P. Singh is waiting at home and asks as to whether he knows the address. Accused Kanwaljeet Singh informs that driver Lakhvinder Singh knew that it is 1, 3 D-4.**

79. Same day on call no. 60 on 22.04.2010 at 11:41 am, there is call no. 60 between accused Sukhvinder Singh and accused J.P. Singh made by accused J.P. Singh where Accused J.P. Singh has asked accused Sukhvinder Singh as to how much time he will take to reach there. Accused Sukhvinder Singh informs him that he has left Karol Bagh and asked him to wait for accused Kanwaljeet Singh. Accused J.P. Singh asks as to whether he should call "Dr. Sahab".

80. In call no. 61 at about 11:45 am between accused Sukhvinder Singh and Accused Kanwaljeet Singh, accused Kanwaljeet Singh informs accused Sukhvinder Singh that he is still on his way.

81. At 12:30 noon in call no. 62 on 22.04.2010 between accused Sukhvinder Singh asks accused J.P. Singh as to whether he has received and accused J.P. Singh replies he has received. This can be correlated to the factum of delivery of the money recovered at about 12:30 noon by accused J.P. Singh.

CHARGE AGAINST ACCUSED KETAN DESAI.

82. Sh. Mukul Rohtagi Ld. Sr. Counsel and Sh. Pawan Narang, Ld. Counsel for accused no. 1 Ketan Desai have addressed arguments on charge and have stated that there is no evidence against accused since in the entire intercepted conversation (D-39) accused Ketan Desai has neither referred to Gian Sagar Medical College nor he has demanded or accepted illegal gratification for showing any favour to Gian Sagar Medical College. He further states that in the entire intercepted conversation there is no reference to the deficiencies which were pointed out by the team of inspectors who had conducted first inspection on 11th & 12th Jan 2010 at Gian Sagar Medical College. He states that the deficiencies pointed out in conversation dated 03.02.2010 at 10:47:59 for 287 seconds between accused no. 4 J.P. Singh and accused no. 1 Ketan Desai, do not indicate that they are referring to deficiencies pertaining to Gian Sagar Medical College.

83. He has drawn my attention to D-12 & D-13 and states that during the same period when inspection was conducted at Gian Sagar Medical College, inspection was carried out at various other Medical Colleges also and same number of deficiencies were pointed out in the other colleges also. He, therefore, states that the deficiencies being referred to in the intercepted conversation may have pertained to some other medical college i.e. other than Gian Sagar Medical College.

84. Ld. Counsel for accused no. 1 Ketan Desai has also drawn my attention to D-1 i.e. RC and states that the contents of the Charge Sheet & RC do not match each other. He has also drawn my attention to letter [D-10(11)] i.e. permission granted for surveillance of telephone of accused no. 4 J.P. Singh and states that as per the said order, the information received pertaining to telephone number 9953205833 which was put under surveillance on 26.10.2009, telephone number 9811798686 which was put under surveillance on 25.01.2010 and telephone number 9711709130 which was put

under surveillance on 23.03.2012, could have been made only to Director, CBI and not to Investigating Officer and since the RC has been registered on 22.04.2010, therefore, the Investigating Officer was not in knowledge regarding any conversation between the accused persons before 22.04.2010.

85. It is further argued that as per the same order, the surveillance of the telephone number of accused J.P. Singh was allowed only for two months. There is no further order for renewal of the permission or review of the permission granted as per law.

86. He has also stated that the entire intercepted conversation was illegal for which legal sanction was not taken by the CBI authorities and therefore, the intercepted conversation be not read as evidence even at the stage of charge.

87. Ld. Counsel also states that the Court cannot consider the statement of the approver Dr. Shah recorded under Section 164 Cr.PC. since in the FIR dated 22.04.2010 Dr. Shah is not shown as an

accused. Dr. Shah has not said anything against himself and if his statement is seen in totality, the contents of his statement are contradictory to the documents which have been placed on record by Dr. Shah himself and by prosecution.

88. It is also stated that in fact statement of Approver has not been recorded as per law, and the statement mentions, it is statement of a witness.

89. My attention has been drawn to the application moved by IO for recording statement U/Sec. 164 Cr.P.C. where, it is mentioned that Dr. Shah is witness which has been moved by the IO. The statement was recorded on 03.05.2010 by Ld. MM. Thereafter, pardon was granted to Dr. Shah as a witness or accused is not clear. It is therefore, stated that for this reason also this statement cannot be considered as statement of the approver & be discarded.

90. He has also argued that though the approver may have stated that the report was changed at the

instance of accused no. 1 Ketan Desai but the other members of the team of inspectors i.e PW- 38 Dr. Suresh C. Shah, PW-7 Dr. C. Savitha and PW-5 Dr. S.S. Minhas have not stated so in their statements U/Sec. 161 Cr.PC. He also states that accused Ketan Desai was speaking to accused no. 4 J.P. Singh only as a friend and there was no question of any conspiracy at any point of time amongst the accused persons.

91. He also states that the need for an auditorium at the time of fourth renewal was not mandatory as per new rules or old rules. He states that since there was no need for any auditorium having capacity of 500 persons where is the question of illegal gratification being paid to anyone on the basis of absence of an auditorium with the capacity of 500 persons.

92. Ld. Counsel for accused no. 1 also states that grant of permission was not the sole prerogative of accused Ketan Desai since the other members of the Executive team who are highly qualified and come

from divergent background have to give their nod to the rectification qua the deficiencies pointed out in the inspection report.

93. Having heard the contentions of ld. counsel for accused Ketan Desai I am of the opinion that From the conversation mentioned and discussed above in detail amongst accused Ketan Desai and accused J.P. Singh it becomes clear that accused Ketan Desai used to impart information regarding Executive Council meeting and the deficiencies pertaining to Gyan Sagar Medical College and also used to advice accused J.P. Singh as to what he should inform to the management of Gyan Sagar Medical College. From the conversation no. 24 it is clear that in veiled manner and in code words inspection pertaining to Gyan Sagar Medical College was discussed with accused J.P. Singh. Further from the perusal of the conversation of accused J.P. Singh with accused Sukhvinder Singh it is further clarified that in each conversation after meeting accused Ketan Desai he conveys to accused Sukhvinder Singh that he **“had met him”** and thereafter, he conveys relevant

information. The accused Sukhvinder Singh also tells accused Sukhvinder Singh that the **“MCI people are under scanner”** and is, therefore, aware that these conversations might be under surveillance. Accused Ketan Desai also tells accused J.P. Singh in many conversations that he will discuss the **“baadal wala matter with him when they meet each other”**. It is pertinent to mention here that each time accused Ketan Desai and accused J.P. Singh decided to meet as is clear from the conversation; immediately thereafter, accused J.P. Singh conveys the information and gives assurance to accused Sukhvinder Singh that he need not worry about the inspection etc. Moreover, the statement of Dr. Shah which I will discuss in detail hereinafter under a separate head can not be discarded, at this stage, clearly points out that he has stated categorically that **“we carried out the inspection jointly on 22.03.2010 of the said college. We gave a inspection report dated 22.03.2010 whereby we pointed out that the said college has met all the deficiency, however, all this was done contrary to factual situation at the instruction of**

accused Ketan Desai, who asked us to help the college. The college still did not have an auditorium ready but at the instruction of accused Ketan Desai, we were forced to give an ok report about the said college at the insistence of accused Ketan Desai”.

94. Therefore, a strong suspicion arises at this stage against accused Ketan Desai towards Commission of the offence as it is clear that Gyan Sagar Medical college was to be governed by 2009 rules which mandated an auditorium with the capacity of 500, at time of admission of 4th batch which was still not ready as per undertaking given by the college authorities that it will be made ready on 29.03.2010 and despite non fulfillment of that deficiency without verifying that the said deficiencies had been removed when the EC meeting was conducted on 05.04.2010 recommendation was made to the concerned Ministry for granting renewal to Gyan Sagar Medical College. This is corroborated by statement of Dr. Shah.

95. As far as contention of ld. counsel is concerned that there is no demand of the bribe amount, I am of the view that at this stage, grave suspicion towards Commission of offence will suffice to frame charge against accused persons. At the cost of repetition let me reiterate that accused Ketan Desai and J.P. Singh were always conscious of about what they were speaking on the telephone. Their conversations reflect that they are conscious when they speak to each other that the vigilance is very strong these days. Even otherwise, accused Ketan Desai says in many conversations **“that they may talk about the matter when they meet”** points out that they were conscious of the fact that their phones may be under surveillance.

96. **In one of the conversations between accused J.P. Singh and accused Sukhvinder Singh** he is talking regarding confirmation of the plan which ultimately led to delivery and recovery of Rs. 2 crores vide a chain of events disclosed in the conversations discussed above. It becomes clear that the reference was to Rs. 2 crores when accused J.P.

Singh tells accused Sukhvinder Singh that he must tell a fixed date otherwise, it causes embarrassment to him and he also tells accused Sukhvinder Singh that if he is confirming the date then whether he should tell "Dr. Sahib" about the date of delivery. These conversations alongwith ultimate recovery of Rs. 2 crore from residence of accused J.P. Singh give rise to grave suspicion towards the fact that accused J.P. Singh had taken illegal gratification for further payment to accused Ketan Desai for recommending the renewal ignoring deficiency of an auditorium. This view is further strengthened by the conversations discussed in para 69 of this order.

97. Regarding fact as to why the money was paid on 22.04.2010 since recommendation was given on 05.04.2010 is concerned, the recommendation was signed by the Health Minister on 21.04.2010. Therefore, the entire circumstances of the case and intercepted conversation and the recovery of Rs. 2 crores pursuant to conversation amongst accused Ketan Desai and accused Sukhvinder Singh and accused J.P. Singh lead to grave suspicion against

accused Ketan Desai. Therefore, I am of the opinion that prima facie charge under section 120 B IPC r/w Section 7, 8, 12 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 and individual charge under Section 7 r/w 13(2) r/w 13(1)(d) Prevention of Corruption Act is made out against accused no. 1 Ketan Desai.

98. The judges while deciding cases can not lose sight of the fact that in cases filed by CBI especially trap cases which are based on intercepted conversation based on source information of CBI do not have a complainant. In such cases the parties talking to each other are themselves accused of different offences under Prevention of Corruption Act. Therefore, in such cases since there is no complainant the courts find themselves in a situation where circumstantial evidence may lead to grave suspicion on the basis of material produced by CBI. The present case is one such case and since at the stage of framing of charge as per law meticulous sifting of evidence particularly holding a mini trial is not allowed, a grave suspicion against the accused is

enough to frame charge. I therefore, find it a fit case where prima facie charge is made out against accused Ketan Desai.

99. As far as the contention regarding illegal interception order, accused being part of conspiracy, validity of statement of Dr. Shah under Section 164 Cr.P.C., whether sanction under Section 197 Cr.P.C. was required qua Accused Ketan Desai, law on charge, whether auditorium was required at all as mandatory requirement in the present case are concerned, I have dealt with them in detail in the order under separate heads since, these arguments are common arguments addressed by counsels for all the accused persons.

CHARGE AGAINST ACCUSED SUKHVINDER SINGH

100. Counsel for accused Sukhvinder Singh has stated that from the entire conversation it can not be made out that accused Sukhvinder Singh was offering any illegal gratification or was trying to

procure any favourable order from accused Ketan Desai through accused J.P. Singh.

101. I, however, do not agree with this contention since as I have already discussed the intercepted conversation in the preceding paras where accused Sukhvinder Singh in call no. 4 has specifically discussed with accused J.P. Singh that **“there is shortage of doctors”** and has specifically requested accused J.P. Singh that it is very difficult to **“arrange deficient staff again and again as one of the doctor is to be brought from America since he is suffering from cancer”**, he has also discussed with accused J.P. Singh that doctor of **“ Tuberculosis ”** is not available throughout India and therefore, it will be difficult to arrange him if second inspection is carried out. It clearly points out that accused Sukhvinder Singh was trying to obtain a favourable report by two ways first either by ensuring that no second inspection is carried out and hence, he tells accused J.P. Singh **“dubara hun na karwai”, “kida vi rukwa”**. He also tells accused J.P. Singh that the inspector who came during first inspection was not

good when he was referring to Dr. Shah. J.P. Singh tells him that Dr. Shah is a good man and during the second inspection when he will come he will do their work. As a perusal of the second inspection will show that report Dr. Shah had again inspected the college for second time and had co-operated with the college as is clear from their conversation as accused Sukhvinder Singh tells accused J.P. Singh in call no. 29 dated 24.03.2010 that the team members of the second inspection team including Dr. Shah were very good and had even told them as to what should be written by them in compliance which was clear reference to undertaking regarding auditorium for procuring a favourable report.

102. Therefore, the aim of accused Dr. Sukhvinder Singh was either to ensure that the second inspection does not take place and if at all the second inspection takes place the team of inspectors are manipulated or are given a hint about giving favourable report in the second inspection.

103. The conversations discussed above clearly point out that accused J.P. Singh had spoken to accused Ketan Desai about the college and inspection as is clear from the chain of conversations discussed above. Thereafter, conversation dated 21.04.2010 between accused Sukhvinder Singh and accused N.S. Bhangoo, accused Sukhvinder Singh and K.A. Paul, accused Sukhvinder Singh and accused Kanwaljeet Singh and the last few calls with accused J.P. Singh clearly point out that accused J.P. Singh and accused Sukhvinder Singh were planning to meet for the “Kaam”. Accused Sukhvinder Singh had promised he will come for the “kaam” and had, promised to accused J.P. Singh as to when it will be done the confirmation was given by accused Sukhvinder Singh about “do waala kaam” to accused J.P. Singh after speaking to accused N.S. Bhangoo who tells him to speak to accused K.A. Paul for “do waala kaam”. Accused Sukhvinder Singh gets in touch with accused Kanwaljeet Singh and asks him to contact accused K.A. Paul. Accused K.A. Paul confirms that accused N.S. Bhangoo had told about “do wala kaam” and will give delivery in the

morning. PW3 Lakhvinder Singh confirms that delivery of the carton boxes had been given by accused K.A. Paul to accused Kanwaljeet Singh. Accused Sukhvinder Singh then confirms thereafter to accused J.P. Singh that “he will reach him in a while as” accused Kanwaljeet Singh has left Karol Bagh. “Karol Bagh” is the point where delivery of the money in the carton boxes had been given by accused K.A. Paul to Dr. Kanwaljeet Singh and thereafter, accused Kanwaljeet Singh had reached the residence of accused J.P. Singh. This fact is confirmed by PW 3 who says that two carton boxes which were handed over by accused K.A. Paul to accused Kanwaljeet Singh were taken inside the house of accused J.P. Singh and when accused Kanwaljeet Singh was confronted by CBI team thereafter, in presence of two independent witnesses accused Kanwaljeet Singh had pointed out to the carton boxes which were opened and the recovery proceedings were videographed which were found to contain on opening Rs. 2 crores. This clear chain of events points out to the fact that Rs. 2 crores were paid in furtherance of common intention as part of

criminal conspiracy amongst the accused persons of which accused Sukhvinder Singh was playing an important role. The dates and the events match contents of conversation amongst accused persons which thereby prima facie charge u/s. 120 B IPC r/w Section 7, 8, 12 and 13(1)(d) r/w 13(2), and individual charge under Section 12 of Prevention of Corruption Act, 1988 is made out against him.

CHARGE AGAINST ACCUSED KANWALJEET SINGH

104. Ld. Counsel for accused Kanwaljeet Singh stated that no disclosure statement has been filed on record and hence that fact of recovery itself is illegal in eyes of law and no credence can be given to the same.

105. The video of recovery is also clearly doctored and fabricated as can be seen that at the crucial point before opening of the door wherein allegedly the recovery is shown at 17:18:54, there is a skip of almost four minutes and the video starts at 17:22:31. Yet again the same editing takes place at

17:32:31 and skips to 17:35:34. No explanation was given in the rebuttal as to why the video was edited at such crucial points by the prosecution.

106. There is neither any oral or documentary evidence during the said period which could directly or indirectly connect the accused in question with the alleged conspiracy or any other offence under PC Act.

107. It is submitted that the prosecution has not recorded the statement of Accused Dr. Kamaljeet Singh in the form of information/disclosure leading to alleged recovery of Rs. 2 crore at the residence of Accused Sh. J.P. Singh.

108. No test identification parade was conducted either for identification of Accused Sh. K.A. Paul or identification of the carton seized from the office of Accused Sh. J.P. Singh allegedly containing the money recovered. This being so, accused no. 6 who allegedly provided the carton to the accused no. 3 could not be connected even with the said recovery

of money in the absence of the said identification prayed in terms of Section 9 of Indian Evidence Act and also in the absence of any witness to the actual delivery of money by accused Sh. K.A. Paul, the same could not be connected with the accused.

109. After hearing ld. counsels for the accused I am of the opinion that as far as contention of ld. counsel Accused Kanwaljeet Singh that no disclosure statement has been filed on record and, therefore, the alleged recovery of Rs. 2 crores from the residence of accused J.P. Singh cannot be given credence is concerned I find no merit in the same since when the video cassette pertaining to alleged recovery has been seen in the court in the presence of all the Ld. Counsels and the accused persons, it was clear in the video recording that accused Kanwaljeet had pointed out towards the card board carton boxes to the IO which were opened at the instance of accused Kanwaljeet Singh which were found to contain Rs. 2 crores. Moreover, the recovery had been made at the instance of accused Kanwaljeet Singh in the presence of two

independent witnesses. Their statements have been recorded under Section 161 Cr.Pc. PW 24 Abhijeet Ghosh and PW25 G K Kapoor have clearly stated in their statements under Section 161 Cr.PC that recovery had been made at the instance of accused Kanwaljeet Singh. PW3 Lakhwinder Singh has also stated in his statement under Section 161 Cr.PC. that the card board boxes were taken out from the car in which accused Kanwaljeet was travelling and had been taken inside the house of accused J.P. Singh. Therefore, at this stage, there is prima facie evidence which raises strong suspicion against the accused regarding recovery of Rs. 2 crores being made at his instance and towards the fact that those carton boxes which were opened at his instance found to be containing Rs. 2 crores were carried by him after taking from accused K.A. Paul in his car to the residence of accused J.P. Singh from where they were carried inside home of accused J.P. Singh.

110. As far as contention of the ld. counsel for accused Kanwaljeet Singh concerned is that the video of recovery is doctored and fabricated since

there is a skip of almost 4 minutes and 2 minutes at 2 places has not been explained by the prosecution, I find no merit in this contention since the authenticity of the video will be gone into only at the stage of trial when the concerned witnesses will appear in the witness box and will be able to explain the same.

111. As far as contention of Id. counsel for accused Kanwaljeet Singh is concerned that he cannot be termed as conspirator who can be connected with the alleged offence since he was only an employee of the Gyan Sagar Medical College, I do not find any merit in the same since, conversations 52, 53, 54, 56, 57, 59, 61 dated 22.04.2010 discussed below point out to the contrary.

112. **In the call no. 52 is between at about 09:47 am is between accused Sukhvinder Singh and Kanwaljeet Singh** wherein Accused Kanwaljeet has informed accused Sukhvinder Singh that he has reached Delhi, Accused Sukhvinder Singh asked him as to whether he has contacted accused K.A. Paul .

Accused Sukhvinder Singh tells accused Kanwaljeet that he should call accused K.A. Paul and thereafter, he will also call accused K.A. Paul.

113. Immediately, thereafter, a call is made within 2 minutes at 09:51 am on 22.04.2010, where accused Kanwaljeet Singh is informed by accused Sukhvinder Singh that he has spoken to accused K.A. Paul who had asked him to come to Karol Bagh, thereafter at about 10:00 am, accused Sukhvinder Singh again calls accused Kanwaljeet when accused Kanwaljeet informs that he has reached Pritam Pura and informs, accused Sukhvinder to speak to accused K.A. Paul as he has not been able to speak him.

114. In call no. 55 accused Sukhvinder Singh speaks to accused K.A. Paul at 10:06 am and asks him that as to whether accused Kanwaljeet Singh has contacted him. Accused Sukhvinder Singh says that accused Kanwaljeet has new driver, Accused Sukhvinder Singh also informs accused K.A. Paul during these conversations that delivery ultimately is

to be given at Vasant Vihar.

115. In conversation no. 57 at about 11:27 am accused Kanwaljeet Singh informs accused Sukhvinder Singh “Ha ho gaya, tey udhar dasya”.
116. Accused Sukhvinder Singh tells Accused Kanwaljeet Singh “dus denda ha udhar”
117. Accused Kanwaljeet Singh recalls “han ji ... udhar das deyo tey ... fir mein keha mein ude bad udhar chala janda”
118. This clearly indicates that accused Kanwaljeet Singh confirms to accused Sukhvinder Singh that he has received the money from accused K.A. Paul and tells him to inform accused J.P. Singh (where it is to be delivered). He also says that when he informs him he will go there.
119. **Within 2 minutes of this conversation there is a conversation no. 58 on 22.04.2010 at 11:29 am when accused Sukhvinder Singh informs accused**

J.P. Singh whether he is at home and tells him that “bas fir aa raha hai” which indicates that he had informed accused J.P. Singh that accused Kanwaljeet Singh will be reaching his place. Shortly within 1 minute of this conversation another call is between accused Kanwaljeet and accused Sukhvinder Singh call no. 59 at 11:30 am where accused Sukhvinder informs accused Kanwaljeet Singh that accused J.P. Singh is waiting at home and asks as to whether he knows the address. Accused Kanwaljeet Singh informs that driver Lakhvinder Singh knew that it is 1, 3 D-4. In another conversation of the same day at about 11:45 am, there is call no. 60 between accused Sukhvinder Singh and accused J.P. Singh made by accused J.P. Singh where Accused J.P. Singh has asked accused Sukhvinder Singh as to how much time he will take to reach there. Accused Sukhvinder Singh informs him that he has left Karol Bagh and asks J.P. Singh to wait for accused Kanwaljeet Singh. Accused J.P. Singh asks as to whether he should call “ Dr. Sahab”.

120. In call no. 61 at about 11:45 am between

accused Sukhvinder Singh and Accused Kanwaljeet Singh, accused Kanwaljeet Singh informs accused Sukhvinder Singh that he is still on his way. At 12:30 noon in call no. 62 accused Sukhvinder Singh asks accused J.P. Singh as to whether he has received and accused J.P. Singh replies he has received. This can be co-related to the factum of delivery of the money recovered at about 12:30 noon by accused J.P. Singh.

121. This conversation clearly points out at this stage that accused Sukhvinder Singh being the Vice Chairman of the Gyan Sagar Medical College had remained in continuous conversation and contact with accused Kanwaljeet Singh, accused K.A. Paul, accused N.S. Bhangoo and accused J.P. Singh. Accused Kanwaljeet Singh and accused J.P. Singh not only knew that the card board box contained currency notes but he prima facie knew that the card board box contained Rs. 2 crores and the object of delivery of the same to, accused J.P. Singh. Since accused Kanwaljeet Singh was new in Delhi accused Sukhvinder Singh tells that he has a new driver. Dr.

Kanwaljeet seemed to be little hesitant to carry so much cash being accompanied by a new driver. Since I have also discussed about the recovery of the alleged bribe amount had been made at the instance of accused Kanwaljeet Singh he is covered under the definition of conspiracy and conspirator. Therefore, in my opinion prima facie there is evidence that there was meeting of minds which had shared information about delivery of money by illegal means for a common cause, therefore, prima facie charge u/s. 120 B IPC r/w Section 7, 8, 12 and 13(1)(d) r/w 13(2), and individual charge under Section 12 of Prevention of Corruption Act, 1988 is made out against him.

122. Charge under Section 12 PC Act is made out against accused Kanwaljeet Singh under Section 8 of Prevention of Corruption Act.

CHARGE AGAINST ACCUSED J.P. Singh

123. It is stated that since it is evident at this stage that two views are possible in relation to the above

conversations, the benefit of doubt should be given to the accused and he should be discharged.

124. In the same light, it is argued that it is the case of the prosecution that the accused used code language while talking to each other on telephone. However, this theory is far-fetched and very difficult to believe. There is no evidence to suggest that the accused had any idea that the conversation is being intercepted. The accused does not have prior criminal record and there is no reason for them, therefore, to speak in code language. In fact, in several conversations accused J.P. Singh specifically referred to Gyan Sagar Medical College and there is no reason for him to use code language in some conversations alone. Thus this theory of the prosecution does not even raise a reasonable suspicion for framing of charges.

125. The ld. counsel has also stated that Dr. Shah states that the entire inspection report was contrary to the factual situation. However, this is not even the case of the CBI that the entire report is false.

ii) He says that the entire inspecting team was forced to give an OK report. However, this is not supported by the statement of other members of the inspecting team namely PW-5 and PW-7.

iii) The report of the inspecting team states exactly what has been disclosed by the college itself, i.e. the auditorium was under construction. This is also evident in the video tape made by the CBI in its own inspection. Thus the report of the inspecting team is not false or any contrary to factual aspect.

126. In light of the above, there was no need or action for any force to be exerted on Dr. Shah to give a false inspection report.

127. It is further argued by Sh. Atul Nanda, Ld. Senior Counsel that the last aspect on which the prosecution relies is the alleged recovery of Rs. 2 crore from the residence of accused J.P. Singh. However, it has been the consistent stand of the accused that this money was accounted money of

the accused and not bribe money. There is not even an iota of evidence at this stage to suggest this money was in fact bribe money and the version of the accused cannot be disbelieved. In any event, as stated above if there was no illegality in the grant of permission to the college, there was no cause for any bribe to be paid or received and the entire theory of bribe being paid is false. It is also confirmed from this search list that CBI Officers had called SHO Vasant Vihar in connection with liquor bottles which were found at the house of J.P. Singh and had also called Income Tax Authorities as total amount of cash which was found was Rs. 2 crore, 17 lakhs and 75 thousands. That once the cash found was explained by the accused J.P. Singh to the Income Tax Authorities and CBI, CBI in order to make a case of recovery took amount of Rs. 2 crores from the said cash and it is clear from this search list that item no. 50 has been squeezed after preparing the same in order to show the recovery of Rs. 2 crore from the house of J.P. Singh at the later stage in spite of knowing the money was well-accounted and explained by J.P. Singh (i.e. the reason prosecution

has withheld the proceedings/search memos prepared by the police as well as Income Tax Authorities in this case.)

128. Having heard arguments on behalf of Ld. Defence Counsel I am of the view that as far as contention of Ld. counsel for accused J.P. Singh is concerned that the version of CBI can not be believed at this stage, as consistent stand of accused J.P. Singh has been that the alleged amount of Rs. 2 Crore recovered from his residence was accounted for and was receipt of sale of a plot is concerned. I do not find any merit in this contention, since if this is accounted for money belonging to accused J.P. Singh, the recovery proceedings duly video graphed point out to the contrary. In the video of recovery proceedings accused Kanwaljeet Singh has pointed out towards sealed cardboard boxes which are opened in the presence of witnesses i.e. PW 24 Sh. Abhijit Ghosh and PW 25 Sh. G.K. Kapoor. Even otherwise, if this is accounted for money the accused can produce the same witnesses and documents in his defence evidence at the later stage of trial.

129. It is also stated by ld. counsel for accused J.P. Singh that prosecution has not been able to decode as to what is the meaning of " **BADAL**", "**NAYA BADAL**", "**KALA BADAL**" is concerned and the argument that there was no need for accused J.P. Singh to use any code language in reference to Gyan Sagar Medical College since he has used the name Gyan Sagar Medical College in many conversation produced by CBI is concerned I am of the view that from the conversations amongst accused Dr. Ketan Desai, accused Sukhvinder Singh, accused J.P. Singh, it is clear that accused J.P. Singh knows very well that the phones can be under surveillance and therefore keeps warning everyone regarding the same. For example in one of the conversations between accused Sukhvinder Singh and J.P. Singh , J.P. Singh tells accused Sukhvinder Singh that these days the vigilance department is very active and even MCI Officials are under scanner. He therefore advises accused Sukhvinder Singh that though other things can be managed the deficiency of steel and cement can not be ignored even by MCI as there can

be complaint from the rival of the Gyan Sagar Medical College.

130. It is stated by Ld. Counsel for accused J.P.Singh that the video cassette (Sl. No.1 of List of Articles) pertaining to recovery proceedings clearly shows that liquor bottles were found at the spot. He states that the photographs of recovery proceedings D-41 also show that liquor bottles (Blue Lable) were also found at the spot, however, neither the seizure memo prepared by the IO of this case nor search memo prepared by IO of the case of FIR P.S. Vasant Vihar which was registered regarding recovery of liquor bottles reflects recovery of the same. He, therefore, states that it casts serious doubt on the recovery proceedings. He also states that at the time of recovery of alleged bribe amount of Rs.2 crores, another amount of Rs.17,75,000/- was also recovered from the premises of accused J.P.Singh, however, the said amount is not reflected in the search list (D-2) prepared by IO of this case which again casts a serious doubt on the recovery proceedings.

131. I however, do not agree with these contentions since when the IO of this case had prepared the search list (D-2) he has mentioned clearly that regarding recovery of liquor bottles he had informed SHO, P.S. Vasant Vihar and therefore, why those liquor bottles do not find mention in the seizure memo prepared by IO of the case registered U/Sec. 61 of Excise Act, P.S. Vasant Vihar, this can be answered by the IO of that case. IO of this case was not required to mention the no. of liquor bottles found at the spot since he had already informed SHO P.S. Vasant Vihar regarding the same and separate proceedings were being drawn by the concerned officer of that case.

132. As far as contention of Ld. Counsel is concerned that Rs. 17,75,000/- are not mentioned in the search list (D-2). I am of the opinion that IO has mentioned in his search list that Income Tax Authorities have been informed for **“taking further necessary action at their end”** which means that the information was only regarding 17,75,000/- Rs.

and could not have referred to Rs. 2 crores since it was alleged recovered bribe amount which was the case property in the trap case of CBI.

133. As far as contention of accused J.P. Singh is concerned that he had nowhere in the intercepted conversation produced before this court referred to demand of illegal gratification nor he has given any promise that he will be getting any favour for the Gyan Sagar Medical College from Dr. Ketan Desai is concerned I am of the opinion that the inference regarding the said fact has to be drawn from the entire conversations amongst all the accused persons. The conversation of accused J.P. Singh can not be read in isolation. It will be appropriate to discuss in brief few conversations amongst accused J.P. Singh and other co accused persons to dispel the theory put up by counsel for accused J.P. Singh that accused J.P. Singh was talking about the jacket in his conversation which is mended and which was to be handed over to accused Ketan Desai and not of Rs. 2 crores which have been recovered from the residence of accused J.P. Singh.

134. Accused J.P. Singh has told accused Sukhvinder Singh at about 03:27 pm on 04.02.2010 after speaking to accused Ketan Desai that he can not help them with any deficiency in infrastructure he also tells him that **“an international conference of these people”** is going on and **“he will meet him tomorrow or day after”**. He will be give him the entire note of the entire proceedings. He also tells accused Sukhvinder Singh **“that the second inspection should be over by April”**. Accused Sukhvinder discusses with him that he has problem regarding the staff. J.P. Singh says about Ketan Desai **“my relationship with him is such that his word is law for me, and my word is law for him”**. Thereafter, he tells accused Sukhvinder Singh that **“he is calling me on the other line”**. He also tells him that there are about a dozen deficiencies in their college **“as told by him”**. There is call no. 7 dated 04.02.2010 at 07:30 am that is immediately after the call of accused Sukhvinder Singh, which indicates that accused J.P. Singh was talking about accused Ketan Desai as Ketan Desai had called him

at about 05:32 pm "he is calling me on the other line". Accused Ketan Desai tells him that he cannot meet him today but he will meet him next day between 10-12 pm. He also tells him that he will speak to him at about 10:00 pm. Accused J.P. Singh gives call to accused Sukhvinder Singh informing him that "oh kal milega savered menu". He also tells him that he was stuck in "traffic jam" and "could not have reached from Indian Habitat Center before one hour" and therefore "he has told him that he will meet him in the morning". This has direct connection with call no. 7 at 05:32 pm between accused J.P. Singh and accused Ketan Desai in which accused Ketan Desai tells accused J.P. Singh that he is in Indian Habitat Center and due to traffic jam he will not be able to reach Hotel Vasant Continental and had promised accused J.P. Singh to meet him the next day. So, therefore, from this conversation this becomes clear that accused J.P. Singh refers to accused Ketan Desai as the conversation between the two matches with what accused J.P. Singh was informing accused Sukhvinder in this conversation dated

04.02.2010 at 05:46 pm. Accused J.P. Singh also promised accused Sukhvinder Singh that since **“he has told him that he will meet him tomorrow he will discuss everything with him”**.

135. Therefore, I am of the opinion that the conversation of accused J.P. Singh with Accused Sukhvinder Singh and accused Ketan Desai read together will point out that when accused J.P. Singh is talking about confirmation of the plan which ultimately lead to delivery and recovery of Rs. 2 crores, the chain of events is disclosed through the conversation discussed above. A perusal of phone calls between accused J.P. Singh and accused Sukhvinder Singh make it clear that when accused J.P. Singh tells accused Sukhvinder Singh that he must tell a fixed date as otherwise it causes him embarrassment, and that after conforming the date he asks accused Sukhvinder Singh whether he should tell Dr. Sahab. These conversations which ultimately lead to recovery of Rs. 2 crores from the residence of accused J.P. Singh give rise to grave suspicion that accused J.P. Singh had taken this

illegal gratification for further payment to accused Ketan Desai for recommending renewal for admission of 4th batch ignoring the deficiency of an auditorium having capacity of 500. The recommendation was made on 05.04.2010 to the concerned Health Ministry, however, the same was signed by the Health Minister on 21.04.2010. Therefore, the entire circumstances give rise to grave suspicion against accused J.P. Singh. I am of the opinion that prima facie charge u/s. 120 B IPC r/w Section 7, 8, 12 and 13(1)(d) r/w 13(2), and individual charge under Section 8 of Prevention of Corruption Act, 1988 is made out against him.

Common Contentions on behalf of accused no. 5 and 6 on point of charge

136. Ld. Senior Counsel for accused no. 5 N.S. Bhangoo and accused no. 6 K.A. Paul Sh. S K Runta has addressed arguments at length and has stated that accused K.A. Paul and N.S. Bhangoo can not be termed as conspirators since both K.A. Paul and N.S. Bhangoo neither had any interest in Gyan Sagar

Medical College nor had any pecuniary interest in the affairs of Gyan Sagar Medical College. It is stated that from the alleged intercepted conversation, it is not clear that the money was paid by K.A. Paul and N.S. Bhangoo. It is stated that it not known what was contained in the two carton boxes which were allegedly given by Sh. K.A. Paul to Dr. Kanwaljeet Singh. It is stated that CBI has not produced any evidence on record that any money had exchanged hands from accused N.S. Bhangoo to accused K.A. Paul for further delivery to accused Kanwaljeet Singh for the purpose of being given to Sh. J.P. Singh as bribe amount.

137. Sh. S K Rungta, Ld. Senior Advocate also states that there is no conversation except sole conversation dated 21.04.2012 at 13:20 Hours between accused Sukhvinder Singh and N.S. Bhangoo to even give rise to suspicion that accused accused N.S. Bhangoo was part of conspiracy if any amongst accused persons for giving illegal gratification to Dr. Ketan Desai. It is therefore, stated that the accused be discharged. It is further

stated by Sh. S K Rungta, Ld. Senior Counsel that as far as accused no. 6 K.A. Paul is concerned there are two conversations that is one dated 21.04.2012 at 13.33 Hours between accused Sukhvinder Singh and accused K.A. Paul and another call on 22.04.2010 at 10:06 am between accused Sukhvinder Singh and accused K.A. Paul.

138. It is further stated by counsel for accuseds that in this case clearance was given to the college by MCI on 05.04.2010 whereas these conversations are taking place allegedly on 21.04.2010 and 22.04.2010. It is stated that there is no proof that this conversation if at all is about giving illegal gratification in connection with the Gyan Sagar Medical College. It is also stated that conspiracy if any was over on 05.04.2010 when the permission was granted by MCI for renewal. Therefore, accused N.S. Bhangoo and accused K.A. Paul cannot be brought under ambit of definition of conspiracy.

CHARGE AGAINST ACCUSED N.S. Bhangoo

139. I have heard arguments on behalf of Ld. Counsel for the accused N.S. Bhangoo. Ld. Counsel has taken me through the conversation which has taken place between accused N.S. Bhangoo and accused Sukhwinder Singh which is part of charge sheet. Having heard arguments at length, I observe as under regarding my opinion on framing of charge against Accused no. 5.

140. Before proceeding to observe my opinion on point of framing of charge against accused N.S. Bhangoo it will be appropriate to go through the conversations which have taken place between Sh. N.S. Bhangoo and Dr. Sukhvinder Singh on 21.04.2010 and Accused Dr. Sukhvinder Singh and Sh. K.A. Paul on 21.04.2010 itself since CBI has placed their reliance on these conversations while filing charge sheet against them.

Conversations dated 21.04.2010 and 22.04.2010 amongst these accuseds are discussed as under:

**Intercepted conversation between N.S. Bhangoo
and Sukhvinder Singh.**

21.04.2010, 13.20 hrs Dr. Sukhvinder Singh & N.S. Bhangoo	B- Ha Dr. Sahab mile si Paul sahab uthe. S- Nahi Main Milya nahi mein tavade phone di wait karda seega ji. B- Kal na main unu ke dita siga. S- Thik Hai ji thik hai. B- Ha ji ji S- Main Main...kar lenda ha gal. B- Ha Gurmeet naal ve gal ho gai honi... Gurmeet actually busy si us din mein gal kiti si. S- Ha uda phone engage aa reha unha da milya hi nahi. B- Ha Ha Ha. S- Chalo thik hai main paul naal phir contact kar lenda ha. B- Ha bas Paul nu uthe das deyo vi koi..mein ka keha si do wala. S- Thik Hai Thik Hai. B- Ha... karo leyo. S- Or tavade Sehat.
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Intercepted conversation between Accused K.A. Paul and Accused Sukhvinder Singh

<p>21.04.2010 13.33 hrs</p>	<p>S- Haanji Paulji P- Haanji haanji Sir S- Paulji Bhangu Sahab ne tuwanu koi kaam kaha hona. P- Haji haji S- Kal kar daeya time fix. P- Haan kal – kal ke liye rakhen S- Haan kal da ji P- Aap – aap bhi miloge ji S- Main aaunga ya Dra. Kamaljeet aayenge. P- Achha – achha theek hai koi nai koi nahi aap mein se matlab dono mein se koi na koi to ayega S- theek hai P- Achha – achha theek hai to aap wahan kitne baje tak ayenge morning mein S- 11 baje pahunch jayenge P- morning mein hi kara dete hain subha – subha theek hai</p>
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Intercepted conversation between accused K.A.

Paul and accused Sukhvinder Singh

22.04.2010 at 10:06 Hrs	P- Hello S- Sir Morning Paul ji. P- Good Morning sir good morning S- H ji saade Kanwaljeet da phone aa gaya. P- Ha ji ha ji phone aa gaya sir. S- Ha uske paas na driver naya hai tey utey hi delivery de deni hai usne. P- Kaha Pe S- Udhar dena hai kya S- Ha naya driver karke problem aayegi unha nu. P- Hai S- Driver naya hai uske paas P- Acha waise koi dikat nahi usko, pata thodey hi na chalega kya le jaa raha hai. S- Ha, koi nahi thoro mori matter hai agey to ye aaya karanga pher ho jaavega. P- Ae S- Aye dono bande nave ne aaj P- nahi o sir to isse pehle bhi aa chuka hai mere paas S- Ha P- Sir to isse pehle bhi aaya hua hai. S- Kaun? Kanwaljeet P- Ha Ha maane Dr. Sahab isse pehle bhi aaya hua hai mere paas. S- Nahi unka jo driver naya hai na P- Aap befikr raho sir kuch nahi hoga koi dikat nahi hogi. Sir ho pata to hai location wagehra S- Acha chalo karo us ke saath baat - Me kar dunga aap tension free ho ke karwa dunga na aap kyu tension le rahe ho theek hai. S- Vasant Vihar hi karwa do theek hai. P- Wo jab aayenge to me karwa dunga.
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141. Having heard the intercepted conversation which had taken place between accused Sukhvinder Singh and N.S. Bhangoo, I am of the opinion that the contention of the Ld. Counsel that accused N.S. Bhangoo had nothing to do with Gyan Sagar Medical College and no where in the entire intercepted conversation it has come on record that he had tried to offer any illegal gratification or he was trying to influence anyone is devoid of merit.

142. In the charge sheet filed by CBI it is clearly mentioned that Sh. Harvinder Singh Son of accused N.S. Bhangoo was the Chairman of Gyan Sagar Medical College, whereas Smt. Prem Kaur, wife of N.S. Bhangoo and Ms. Sukhvinder, daughter of Accused N.S. Bhangoo, Ms. Jaspreet Kaur, wife of Sh. Harvinder Singh are trustees of Gyan Sagar Medical College. Accused Sukhvinder Singh being the Vice Chairman of Board of Trustee was responsible vide constitution of the trust for the custody of all records and properties of the Trust and do all acts, take action and execute documents and

papers, pass orders, recruit staff, endorse, negotiate, draw and accept all negotiable documents, cheques, draft, pronotes and all such documents which are required to be executed as such for and on behalf of Board of Trustee and for the benefit of trust. He had powers to receive and disbursed monies of the trust, operate bank account and deal with all such transactions which are necessary to run the trust smoothly. Therefore, to say that Sh. N.S. Bhangoo had nothing to do with Gyan Sagar Medical College will be wrong. As per the constitution of the trust under which Gyan Sagar Medical College and hospital, Patiala was being run by accused N.S. Bhangoo's son who was the Chairman of the college and three trustees of the college who are the immediate family members of Sh. N.S. Bhangoo, it cannot be said that Sh. N.S. Bhangoo was not interested in the welfare and affairs of Gyan Sagar Medical College being closely associated with other trustees, Chairman and the Vice Chairman.

143. The Second contention of the Ld. Counsel is that no other call has been intercepted between Sh. N.S.

Bhangoo and any other accused, therefore, nothing can be attributed to accused N.S. Bhangoo to prove that he was a conspirator. I do not find any merit in this contention also since the telephone of Sh. N.S. Bhangoo was not under surveillance and CBI would not have known in advance that at some point of time accused N.S. Bhangoo will arrange money for payment of illegal gratification in this case. Therefore, since the telephone of accused Sukhvinder Singh was under surveillance; during that conversation itself i.e. conversation of accused Sukhvinder Singh with accused N.S. Bhangoo it was revealed that accused N.S. Bhangoo had told accused Sukhvinder Singh that he had asked accused K.A. Paul about the work i.e. "Dau Waala Kaam". This intercepted conversation has to be read in connection with the other intercepted conversations amongst accused persons during the relevant time. The call between accused N.S. Bhangoo and accused Sukhvinder Singh can not be read in isolation from these calls. When the call between accused N.S. Bhangoo and accused Sukhvinder Singh is read alongwith other calls

amongst other accused persons the context and the meaning of the call becomes clear.

144. To further clarify in the call dated 19.04.2010 between accused J.P. Singh and accused Sukhvinder Singh, accused Sukhvinder Singh tells accused J.P. Singh that he will confirm the programme on 20.04.2010. Sukhvinder Singh further says “Kal or Parso”. Thereafter on 21.04.2010 Dr. Sukhvinder Singh calls up Sh. N.S. Bhangoo at 01:20 pm when he was told by Sh. N.S. Bhangoo that he has already told about “Do wala kaam” to Sh. K.A. Paul whom he should contact. Since on 19.04.2010 Dr. Sukhvinder Singh had already promised Sh. J.P. Singh that he will confirm to him about the payment in two days i.e. “kal ya parso”, therefore, immediately after speaking to Sh. N.S. Bhangoo at 01:20 pm a call is given by Dr. Sukhvinder Singh at 01:33 pm to Sh. K.A. Paul on 21.04.2010 where he says that accused N.S. Bhangoo must have told him some work and asked him when he can fix date for doing the “kaam”. Thereafter time of 11:00 am is fixed by accused K.A. Paul and he says that

“morning me hi kar dete hai subha”.

145. Immediately, thereafter within one minute a call is made to Sh. **J.P. Singh by Dr. Sukhvinder Singh** at **01:33 pm** where Dr. Sukhvinder Singh **confirms the time of delivery at 12’ o clock.** Therefore, when these four calls are heard and appreciated in a chain alongwith conversation of Dr. Kanwaljeet with K.A. Paul and the delivery of 2 crore to Sh. J.P. Singh and recovery thereafter at the instance of Dr. Kanwaljeet read with statement of the witness PW3 Lakhwinder Singh, Driver of esteem car; in which Dr. Kanwaljeet Singh was travelling who has confirmed handing over of sealed carton boxes to Dr. Kanwaljeet and thereafter by Dr. Kanwaljeet to Sh. J.P. Singh, the chain of events and context becomes clear. Therefore, the call between Dr. Sukhvinder and Dr. N.S. Bhangoo dated 21.04.2010 at 01:20 pm which ld. counsel for the accused wants to read in isolation, if read with the calls as discussed above gives rise to grave suspicion that Sh. N.S. Bhangoo had arranged Rs. 2 crores which was to be paid by Gyan Sagar Medical College as illegal gratification.

146. It will not be out of place to mention that as per CBI Sh. K.A. Paul was Manager, M/s PACL India Ltd., Cannought Circus where Sh. N.S. Bhangoo was Director from 03.06.1996 to 03.02.1998. He was also major shareholder of the company till 16.04.2010 i.e. of 4,20,000 shares. Therefore, to say that there was no link or there was no connection between Sh. N.S. Bhangoo and Sh. K.A. Paul will be without merit. Sh. K.A. Paul also knew Dr. Sukhvinder Singh and Dr. Kanwaljeet that they belong to Gyan Sagar Medical College as he refers to the same in his conversation with Dr. Sukhvinder Singh and Dr. Kanwaljeet.

147. Even otherwise, there is no explanation as to what for this money was being paid to Dr. Kanwaljeet to be delivered to accused J.P. Singh. These questions will only be answered during trial.

148. As per the statement of Sh. Gurvinder Singh PW 34 incharge of office of Registering and Licensing Authority, Chandigarh, he has mentioned that

vehicle bearing registration no. CH03 X 8514 Maruti Esteem is registered in the name of M/s PACL India Pvt. Ltd. Accused Kanwaljeet Singh was travelling in this car having registration no. CH03 X 8514 when he had collected Rs. 2 crores from Accused K.A. Paul and had delivered them at the residence of Accused J.P. Singh. As per the statement of PW33 Sh. Mathew Alexander PW3 Lakhvinder Singh was the employee who had been outsourced by Gyan Sagar Education and Charitable Trust from Pearl Staff Services Pvt. Ltd, Paschim Vihar, Delhi for doing various duties for the trust and for its association. Accused N.S. Bhangoo was one of the directors in this company from 03.06.1996 till 03.02.1998. However, he had remained major share holder of this company as he was holding 4,20,000/- shares in this company till 16.04.2010. It is, therefore, clear that the vehicle which was used for carrying the alleged bribe amount was also registered in the name of M/s PACL India Pvt. Ltd. which points out the involvement of Gyan Sagar Medical College and accused N.S. Bhangoo towards conspiracy.

149. It thus becomes clear that the nature of delivery of this money was chain within which Sh. N.S. Bhangoo became important in the chain of conspiracy and had arranged and had delivered the alleged bribe amount.

150. As far as the contention of ld. counsel is concerned that accused N.S. Bhangoo can not be considered a conspirator is concerned as I have already discussed above when accused N.S. Bhangoo is speaking to Sukhwinder Singh he refers to his previous call regarding this work and Sukhwinder Singh clearly mentions that he was waiting for his call before speaking to Accused K.A. Paul. I am, therefore, of the opinion that a grave suspicion arises in this case against accused N.S. Bhangoo. Therefore, prima facie charge u/s. 120 B IPC r/w Section 7, 8, 12 and 13(1)(d) r/w 13(2), and individual charge under Section 12 of Prevention of Corruption Act, 1988 is made out against him.

CHARGE AGAINST ACCUSED K.A. Paul

151. As far as accused K.A. Paul is concerned allegations against accused K.A. Paul are that he had abetted the offence in this case and had arranged the alleged bribe amount for further payment to Dr. Ketan Desai through Dr. Kanwaljeet Singh and accused J.P. Singh. It has been stated by Ld. Senior PP for CBI that he is also covered under the definition of conspirator since he had played an important role by arranging alleged bribe amount.

152. Ld. Counsel for accused no. 6 states that no knowledge can be imputed to accused K.A. Paul neither he was connected with Gyan Sagar Medical College and since he was only a manager in PACL India Ltd., he could not have owned this amount in his individual capacity without there being any instructions from his higher ups. I will discuss the law and the case law on conspiracy under separate heads. In view of section 120(b) IPC and the case law discussed under head of conspiracy, I am of the view that the conversation between accused K.A.

Paul and accused Sukhvinder Singh has remained limited to the fact that accused N.S. Bhangoo **“had told some work”** which at this stage, prima facie refers to arranging Rs. 2 crores as I have observed while deciding order on charge against accused N.S. Bhangoo. Thereafter, accused K.A. Paul has spoken to accused Dr. Sukhvinder Singh that he will arrange money for them in the morning. Nowhere in the conversation there is any reference or iota of evidence that accused K.A. Paul had any knowledge regarding the conspiracy. Even otherwise, K.A. Paul was only a Manager in PACL and could not have owned Rs. 2 crores which he has handed over to Dr. Kanwaljeet at the instance of accused N.S. Bhangoo. It is prima facie clear that he had handed over Rs. 2 crores to accused Kanwaljeet on the asking of accused N.S. Bhangoo, which he was asked to give as is clear in the conversation between accused N.S. Bhangoo and accused Sukhvinder Singh. K.A. Paul could not have handed over this huge amount of Rs. 2 crores without any instruction from his higher up, since he was only a Manager in PACL India Ltd in which N.S. Bhangoo was the major shareholder who

was holding shares of about 4,20,000/-. Therefore, prima facie it is clear that the cardboard cartons boxes which were handed over by accused K.A. Paul containing Rs. 2 crores which was allegedly recovered and taken out from the Maruti Esteem car in which Kanwaljeet Singh was travelling to the residence of J.P. Singh as per PW3 Lakhwinder Singh were handed over by accused K.A. Paul to Dr. Kanwaljeet at the instructions of accused N.S. Bhangoo. But, it does not reflect that accused K.A. Paul had knowledge of the conspiracy hatched amongst the other accused persons. He was merely an employee of PACL India Ltd. and, therefore, in my opinion his act is neither covered under Section 120B IPC nor under Section 12 of Prevention and Corruption Act. More so the act of handing over the carton boxes containing Rs. 2 crores cannot be termed as illegal Act as it was done at the asking of accused N.S. Bhangoo and there is no evidence that there was any meeting of mind to do any illegal act.

153. I, therefore, discharge accused K.A. Paul in this case.

COMMON CONTENTIONS OF ALL THE ACCUSEDs

154. While arguments on charge were heard, the following were the common contentions of the the ld. counsels for accused persons who taking me through the contents of FIR and the charge sheet, have urged

i) Whether the interception order to record mobile conversation amongst the accused persons was legally tenable?

ii) Assuming for the sake of convenience that it was so, whether the dialogues or the conversation amongst the accused persons make out any prima facie case of conspiracy against the accused persons; and

iii) Whether the evidence collected by the State (CBI) was legally admissible at all for framing charge against the accused persons and proceeding with trial?

iv) Whether the alleged statement of Dr. Shah recorded under Section 164 Cr.P.C. can be read in evidence even at this stage?

v) Whether the alleged recovery of bribe amount of Rs. 2 crores were legally carried out?

vi) Whether the auditorium was required at all as per rules? If at all it was required, the same was under construction and therefore, there was no deficiency even as per new Rules.

vii) Whether sanction under Section 197 Cr.P.C. was required to prosecute Dr. Ketan Desai?

viii) That CBI has not been able to decode the words “badal”, “naya badal”, “kala badal” and “do wala kaam”.

1. Whether the interception order to record mobile conversation amongst the accused persons was legally tenable?

155. It has been urged that as per Section 5(2) of the Indian Telegraph Act, the interception could only be ordered in case of “**public emergency**” or “**public safety**” and such was not the issue in the case in hand; that the impugned interception orders passed by the Home Secretary were passed without application of mind and without spelling out the reasons which prevailed in his mind to accord sanction for interception of the mobile conversation amongst the accused persons. It is also stated that the State (CBI) had no material for justifying the requisition for interception, and lastly that the State (CBI) assumed the role of the service provider and the taping was done at its end **without any control**, and therefore there is no guarantee that the tape recorded conversation relied upon is genuine.

156. In their submissions, reference was made to the decision in People/s Union of Civil Liberties V. UOI, (1997) 1 SCC 301 and in particular reference was made to paras 29 to 30 besides para 35. it was vehemently urged that the interception order was not reviewed by the Competent Authority within the

stipulated time of 2 months as per Rule 419 of the Indian Telegraph Act, and therefore, the recorded calls by way of such interception are inadmissible in evidence. Distinguishing the observations to their lordships of the Apex Court in the case **Navjot Sandhu Vs. State, (2005) CrI. L.J. 3950**, it was urged that though evidence of illegal taping could be made admissible, the State (CBI) cannot be allowed to carry out interception with impunity and without any reasonable checks. Reference was made to decision in **KLD Nagasree. V. Govt. of India, 2006 Indlaw AP 2001**, wherein a similar order for interception was struck down.

157. In the light of the said proposition of law, when I advert to the legal submissions made that are common to all six accuseds, at the outset, I do not find any merit in the submissions that the impugned interception orders were non est in law for being dehor the ambit and scope of “public emergency” or “public safety”. As explained in para 28 of the cited judgment of PUCL v. UOI (Supra) “occurrence of any public emergency” or “in the interest of public

safety” are sine qua non in the application of the provisions of Section 5 (2) of the Indian Telegraph Act enabling the competent authority to pass an interception order. It was observed that unless a public emergency occurred or the interest of the public safety demand, the authority has no jurisdiction to exercise the powers under the said section. It was explained that public emergency would mean the prevailing or sudden condition or state of affairs affecting the people at large calling for immediate action. The **expression “public safety” means “the state for danger or risk for the people at large”**. To my mind, an occurrence that involves gross misuse of abuse of public property or largesses by public servants adopting corrupt means is an issue which could be brought within the realm of public safety. Indeed, in the case of KLD Nagasar (Supra) an interception order that had allowed telephonic conversation to be recorded as amongst the complainant and two accused persons, where bribe was demanded, was quashed by his lordship. However, ld. senior PP for the CBI has shown a copy of the Division Bench Decision by the Andhra

Pradesh High Court dated 23.01.2007 in CAMP No. 113/2007 in CAM no. 70/70 that the said order was assailed by CBI and operation of the same was stayed.

158. Assuming for the sake of convenience that the mobile conversation was tapped in an unlawful manner, the same still is admissible in evidence and reference in this regard can be made to decision in **State of (NCT of Delhi) v. Navjot Sandhu (Supra)**.

I am therefore, of the view that this contention of the ld. defence counsels is liable to be dismissed.

2. Assuming for the sake of convenience that it was so, whether the dialogues or the conversation amongst the accused persons make out any prima facie case of conspiracy against the accused persons?

1. The Ld. Counsels have urged that the calls vis-a-vis transcripts attributed to them do not make out any case that there was any criminal

conspiracy amongst the accused persons; that they never mentioned the name of Gyan Sagar Medical College or gave any indication that there was any intention to bribe Dr. Ketan Desai or that bribe amount was demanded by Dr. Ketan Desai or was meant for him.

159. All Ld. Counsels for all the accused persons took me through the statements under Section 161 Cr.P.C. of the witnesses and various documents as well as the intercepted conversation and it was vehemently urged that no evidence of criminal conspiracy has been unearthed by State (CBI).

160. It is urged that no evidence has been collected by State (CBI) as to what was the exact amount of bribe, if any, that was conspired to be paid to Dr. Ketan Desai. The Ld. Counsels took me through the tape recorded conversation and pointed out that not even a single call or conversation between accused persons bring out any role of any accused towards alleged conspiracy nor evidence is collected that they were acting in league with each other. Lastly, it

was urged that the offence against accuseds cannot be brought within the ambit of Section 7, 8, 9 and 12 of the P C Act, 120B IPC or Section 13 of PC Act.

161. Per contra ld. senior AAP urged to the contrary.

LAW ON CONSPIRACY

162. I have already discussed the specific role of each accused in detail above and also incriminating material on record which need not be referred to in detail again. However, to deal with the question of criminal conspiracy, existence of criminal conspiracy amongst the accused persons, I observe as under:-

163. In order to understand the law of conspiracy, it is instructive to quote an authority reported as **Firozuddin Basheeruddin and others Vs. State of Kerala, AIR 2001 SC 3488**, wherein while dealing with the question of conspiracy, Hon'ble Supreme Court observed in paragraphs 20 to 27 as under:

“20.
.....

..... The High Court concluded its judgment with the following observations/ findings: “Criminal Conspiracy invariably deliberate, plan and act in secret over a period of time. It is not necessary that each one of them must have actively participated in the commission of the offence or was involved in it from start to finish. What is important is that they were involved in the conspiracy or in other words, there is “combination by agreement, which may be express or implied and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made and the offence continues to be committed so long as the combination persists, that is, until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration”. The Court has to be satisfied that there is a reasonable ground to believe the

existence of the conspiracy and that is a matter for judicial inference from proved facts and circumstances. Once the existence of conspiracy is proved or held to exist, no doubt on relevant evidence, every act, declaration and writing of any one of the conspirators referable to the common intention will be relevant. Hearsay is not excluded if it could be brought within the parameters of Section 10 of the Evidence Act.....”

Section 120 A of the Indian Penal Code defines “Criminal Conspiracy” as follows:

“When two or more persons agree to do, or cause to be done,

(1) an illegal act,

an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement

except agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.”

Section 120 B, which prescribes in sub-section (1) the punishment for criminal conspiracy provides:

“Whoever is a party to a criminal conspiracy to commit an offence punishable with death, (imprisonment for life) or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in the Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.”

Like most crimes, conspiracy requires an act (actus reus) and an accompanying mental state (mens rea). The agreement constitutes that act, and the intention to achieve the unlawful objective of that agreement constitutes the required mental state. In the face of modern organized crim, complex business arrangements in restraint of trade, and subversive political activity, conspiracy law has witnessed expansion in many forms. Conspiracy criminalizes an agreement to commit a crime. All conspirators are liable for crimes committed in furtherance of the conspiracy by any member of the group, regardless of whether liability would be established by the law of complicity. To put it differently, the law punishes conduct that threatens to produce the harm, as well as conduct that has actually produced it. Contrary to the usual rule that an attempt to commit a crime merges with

the complete offence, conspirators may be tried and punished for both the conspiracy and the completed crime. The rationale of conspiracy is that the required objective manifestation of disposition to criminality is provided by the act of agreement. Conspiracy is a clandestine activity. Persons generally do not form illegal covenants openly. In the interests of security, a person may carry out his part of a conspiracy without even being informed of the identity of his co-conspirators. Since an agreement of this kind can rarely be shown by direct proof, it must be inferred from circumstantial evidence of co-operation between the accused. What people do is, of course, evidence of what lies in their minds. To convict a person of conspiracy, the prosecution must show that he agreed with others that together they would accomplish the unlawful object of conspiracy.

Another major problem which arises in connection with the requirement of an agreement is that of determining the scope of a conspiracy- who are the parties and what are their objectives. The determination is critical, since it defines the potential liability of each accused. The law has developed several different models with which to approach the question of scope. One such model is that of a chain, where each party performs a role that aids succeeding parties in accomplishing the criminal objectives of a conspiracy. No matter how diverse the goals of a large criminal organization, there is but one objective; to promote the furtherance of the enterprise. So far as the mental state is concerned, two elements required by the conspiracy are the intent to agree and the intent to promote the unlawful objective of the conspiracy. It is the intention to promote a crime that lends conspiracy its criminal cast.

Conspiracy is not only a substantive crime. It also serves as a basis for holding one person liable for the crimes of others in cases where application of the usual doctrines of complicity would render that person liable. Thus, one who enters into conspiratorial relationship is liable for every reasonably foreseeable crime committed by every other member of the conspiracy in furtherance of its objectives, whether or not he knew of the crimes or aided in their commission. The rationale is that criminal acts done in furtherance of a conspiracy may be sufficiently dependent upon the encouragement and support of the group as a whole to warrant treating each member as a causal agent to each act. Under this view, which of the conspirators committed the substantive offence would be less significant in determining the defendant's liability than the fact that the crime was

performed as a part of a larger division of labour to which the accused had also contributed his efforts.

Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial. Contrary to the usual rule, in conspiracy prosecutions any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecution. Explaining this rule, Judge Hand said:

“Such declarations are admitted upon no doctrine of the law of evidence, but of the substantive law of crime. When men enter into an agreement for an unlawful end, they become ad hoc agents for one another, and have made 'a partnership in crime.' What one does pursuant to their common purpose, all do, and as

declarations may be such acts, they are competent against all. (Van Riper V. United States 13 F, 2D 961, 967 (2D CIR, 1926).”

Thus conspirators are liable on an agency theory for statements of co-conspirators, just as they are for the overt acts and crimes committed by their conferrers
....
.....”

164. Similarly, in Sheetla Shahai (supra), while dealing with the law of conspiracy, particularly the help which each accused renders to the other in the achievement of objectives of conspiracy, Hon'ble Supreme Court observed in paragraph 52 as under:

“ Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which conspirators give to one another rendering

enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment

165. However, when the law of conspiracy is read in the light of facts and discussion made in detail above, the existence of the conspiracy and the accuseds being part of the conspiracy becomes prima facie clear. To make the things further clear, it is relevant to quote paragraphs 94 and 98 of Mir Nagvi Askari Vs. CBI (supra), which is extracted as under:

“94. Further it was noted in Kehar Singh (supra) that to establish the offence of criminal conspiracy 'It is not required that a single agreement should be entered into by all the conspirators at one time. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a

general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished.'

.....
.....
.....

We may however notice that this court most recently in Mohmed Amin @ Amin Choteli Rahim Miyan Shaikh and Anr. Vs. CBI through its Director, 2008 (1) SCALE 240 after taking recourse to law governing the field noted thus:

“ The principles which can be deducted from the above noted judgments are that for proving a charge of conspiracy, it is not necessary that all the conspirators know each and every details of the conspiracy so long as they are co-participators in the main object of conspiracy. It is also not necessary that all the conspirators should participate from the inception of conspiracy to its

end. If there is unity of object or purpose, all participating at different stages of the crime will be guilty of conspiracy.”

166. Bare perusal of aforesaid law makes it clear that a single agreement need not be entered into by all the conspirators. It is also not necessary that all conspirators should know each other. It is also not necessary that all conspirators should participate from inception of conspiracy to its end.

167. In case of **Hardev Singh v. State of Bihar AIR 2000 SC 2245** it was observed that “to frame charge on conspiracy some connecting link or connecting factors somewhere are good enough”. Their lordship observed:

“Some general evidence pertaining to the conspiracy would be sufficient to form part of the charge of conspiracy in the charge

sheet. As a matter of fact some connecting link framing of charge since framing of charge and to establish the charge of conspiracy cannot possibly be placed at par. To establish the charge of conspiracy there is required cogent evidence of meeting of two minds in the matter of commission of an offence – in the absence of which the charge cannot be sustained – this is, however not so, in the matter of framing of charge since the incidence of the offence shall have to be investigated”.

168. I may also refer to observations in State v. Nalini (1999) (5) SSC 253, wherein the law on

conspiracy in reference to section 10 of the Indian Evidence Act was discussed in detail and it was observed as under:

“In reaching the stage of meeting of minds, two or more persons share information about doing an illegal act or a legal act by illegal means. This is the first stage where each is said to have knowledge of a plan for committing an illegal act or a legal act by illegal means. Among those sharing the information some or all may form an intention to do an illegal act or a legal act by illegal means. Those who do form the

requisite intention would be parties to the agreement and would be conspirators but those who drop out cannot be roped in as collaborators on the basis of mere knowledge unless they commit acts or omissions from which a guilty common intention can be inferred. It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one

of them and some others may quit from the conspiracy. All of them cannot but be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offences.

169. "One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes

alongwith the other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime”.

170. Prima facie in reference to intercepted conversation mentioned in the preceding paras of this order qua each accused, I have already discussed as to how their common aim was procuring favourable inspection report for Gyan Sagar Medical College and payment of Rs. 2 crores. Therefore, they were prima facie acting in concert and were part of criminal conspiracy.

3. Whether the evidence collected by the State (CBI) was legally admissible at all for framing charge against the accused persons and proceeding with trial?

171. Since I have already discussed in detail the legality of the interception order the authenticity of the tape recorded conversation and other aspects of the evidence will be tested only during trial when

witnesses appear in the witness box.

172. When prima facie such evidence as that of recovery of alleged bribe amount and statement of approver is there, the number and duration of calls made as between the accused persons particularly between Ketan Desai, Sukhvinder Singh, Kanwaljeet Singh, J.P. Singh, N.S. Bhangoo, K.A. Paul prima facie assume some degree of corroborative nature. Merely because the conversation has been argued to be illegal it does not mean that the evidence on tape recorded conversation is all together washed out. It is only during the trial that it would be tested as to how or in what manner or if at all, the tape recorded conversations are authentic, genuine or not. The prosecution on its part has also cited witnesses who could identify the voices of the accuseds and that will be only be tested during the trial and not at this stage of the case. Further, the money had been arranged by accused Sukhvinder Singh and N.S. Bhangoo and sent through accused Kanwaljeet Singh and was ultimately recovered from home of J.P. Singh whether it was genuinely availed in

connection with some property transaction by Accused J.P. Singh can only be tested during the trial.

4. Whether the alleged statement of Dr. Shah recorded under Section 164 Cr.PC. can be read in evidence even at this stage?

173. It has been argued that statement of Dr. Shah had been recorded as a witness as per statement recorded by the Ld. Judge under Section 164 Cr.PC and therefore, it can not be termed as statement of an approver. I, however, do not agree with this contention that the statement has to be discarded at this stage of framing of charge since, as per the IO the statement of Dr. Shah had been recorded earlier where he had disclosed facts about this case and thereafter, upon pardon being granted by the Ld. Judge he had been made an approver. The legality of both will be decided alongwith evidentiory value of the statement only at the stage of trial after the witnesses are examined i.e. Dr. Shah and the concerned Magistrate and the IO.

174. As far as contention is concerned that Dr. Shah had not inculpated himself is concerned, I am of the view that Dr. Shah in his statement has clearly mentioned that he had changed the inspection report at the instance of Accused Ketan Desai. Prima facie, therefore, Dr. Shah also inculpates himself as being permanent Inspector of MCI he was to give factual report and therefore, he was also guilty of mis -conduct being a public servant.

175. Moreover, the said approver can be cross examined by Id. counsel for the accuseds when he appears in the witness box when the prosecution leads its evidence and only then it can be decided whether his testimony put to test of cross-examination will be enough to convict accused or not.

5. Whether the alleged recovery of bribe amount of Rs. 2 crores was legally carried out?

176. The recovery proceedings have been carried out in the presence of two independent witnesses PW 24

and PW 25. It is clearly visible in the video which was seen in the court in the presence of all the ld. defence counsels that Accused Kanwaljeet Singh had pointed out towards the carton boxes which were opened in the presence of two independent witnesses PW24 and PW25. The money was counted with the help of the machine and the proceedings are well reflected in the video recording. After counting of the money the same was kept back in the carton boxes by the independent witnesses. Therefore, at this stage, prima facie no illegality can be seen in the recovery proceedings.

177. As far as the video skipping by 4 minutes and 2 minutes is concerned the same can be found out only when the IO is examined during trial.

6. Whether the auditorium was required at all as per rules? If at all it was required, the same was under construction and therefore, there was no deficiency even as per new Rules.

178. As far as the contention of the Ld. Counsels for

all the accused persons is concerned that the rules of 2009, were not applicable to the college the Learned APP for CBI has stated that college had himself given an option on 12.01.2010 for being inspected by the new Rules of the year 2009. Therefore, as per the new Rules which have been filed by CBI (vide D-45) college authorities were required to have an auditorium having capacity of 500 at the time of inspection for 4th year renewal. Counsel for accuseds state that since this college was established in the year 2007, therefore, it was not governed by Rules of 2009 but by the Rules of 1999.

179. Having heard all the learned counsels for the accused persons on this point, I am of the view that Dr. Suresh C. Shah had advised the principal of Gian Sagar Medical College & Hospital, Patiala as to

whether they want to be inspected by the old Rules or by the new Rules. In specific response to this query and on the advice of Dr. Suresh C. Shah the principal of Gian Sagar Medical College & Hospital had himself opted for inspection to be carried out by Inspectors of MCI by the new Rules of year 2009. It, therefore, further gets clarified from the statement of PW17 A S Sekhon under Section 161 Cr.PC that they had opted for inspection by new Rules on the advice of Dr. Suresh C. Shah who has been made an accused in this case but who has turned approver, after he was granted pardon by the concerned Court.

180. A Perusal of D45 which are the new Rules of year 2009, clearly mention that the colleges were required to have an auditorium of capacity of 500 for the 3rd renewal or admission of 4th year batch.

181. Therefore, it may be possible that the college was advised to be inspected by 2009 Rules since it was in the knowledge of Dr. Suresh C. Shah that an auditorium was not available with the college but as per the new Rules was required to have an auditorium of capacity of 500. I am therefore of the opinion that at this stage, in view of the statement of the principal of the college i.e. PW17 A S Sekhon since the college authorities themselves wanted to be governed by the 2009 Rules, 2009 Rules will be considered to be applicable for carrying out inspection and requirement for the 3rd renewal. My attention was also drawn by CBI to a letter dated 29th October, 2009 Page No. 34 of D-37 whereby MCI themselves had informed the Gian Sagar Medical College & Hospital, Patiala that new Rules

of 2009 have come into existence for yearly renewals and establishment of new Medical Colleges. It is not the case of the defence that Gian Sagar Medical College & Hospital, Patiala had come up with any request for permission of establishment of new Medical College for which MCI has sent this letter to them.

182. Further the conversation discussed above between accuseds J.P. Singh and Sukhvinder Singh also discloses that accused J.P. Singh himself tells Sukhvinder Singh “As to why they had opted for inspection by new Rules”? And “as per new Rules there are different requirements” and “some requirements change with the Rules” also point out that even accused J.P. Singh and accused Sukhvinder Singh were aware that inspection is as

per requirements of new Rules of 2009 according to which having auditorium with capacity of 500 was a mandatory requirement.

183. In the presence of all the Ld. defence counsels the video regarding the inspection conducted by the CBI Authorities was played. In the entire video recording of the inspection by CBI the auditorium is not found in existence. Ld. counsel for accused persons have stated that in the video it can be seen clearly that some construction is taking place in the premises of Gyan Sagar Medical College which clearly points out that the same was under construction as per undertaking given by them to the team of inspection who had carried out the second inspection.

184. I do not agree with this contention since even if the construction of auditorium was underway the college authorities should have taken the photographs or video of the same. CBI's Inspection

team should have been asked to take the photographs and video of the construction of auditorium. However, neither any photograph nor any video shows any construction of auditorium in the Gyan Sagar Medical college. However, a perusal of the record shows that the college had given an undertaking that the auditorium will be ready by 29th March, 2010. Moreover, when the inspection was carried out by the CBI authorities, the auditorium was still not ready. Therefore, it points out to the fact put up by the CBI that auditorium which was required as per new rules (D-45) was not ready by the date of undertaking given by Gyan Sagar Medical College and despite absence of auditorium in the EC meeting of MCI under Presidentship of accused Dr. Ketan Desai he had recommended the renewal of the college.

7. Whether sanction under Section 197 Cr.P.C. was required to prosecute Dr. Ketan Desai?

185. It is also stated by Ld. Counsel for accused Ketan Desai that Sanction U/Sec. 197 Cr.PC was not

obtained by the CBI for prosecuting accused Ketan Desai therefore, the entire proceedings are bad in law.

186. There is merit in the contention of the learned counsel for the CBI that the sanction under section 197 Cr.P.C is actually not required when the offences committed are under the PCA. It is submitted that a criminal conspiracy to commit an offence under the PCA can not be cloaked with any immunity by requiring prior sanction to be obtained under Section 197 Cr.P.C for prosecuting a public servant accused for such offences. In H.H.B. Gill v. the King AIR (35) 1948 Privy Council 128, it was observed in para 30 as under : “30.A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus a Judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgment which he delivers may be such an act: nor does a Government medical officer act or purport to act as a public servant, if challenged, can reasonably claim that, what he does, he does in

virtue of his office. Applying such a test to the present case, it seems clear that Gill could not justify the acts to respect of which he was charged as acts done by him by virtue of the office that he held. Without further examination of the authorities their Lordships, findings themselves in general agreement with the opinion of the Federal court in the case cited think it sufficient to say that in their opinion no sanction under s.197, Criminal P.C., was needed.”

187. Likewise in Harihar Prasad v. State of Bihar (1972) 3 SCC 89 it was held in para 66 as under :

188. “ As far as the offence of Criminal conspiracy punishable under section 120-B read with section 409, Indian Penal Code is concerned and also section 5(2) of the Prevention of corruption Act, are concerned they can not be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of Sanction

under Section 197 of the Code of Criminal Procedure is, therefore, no bar.”

189. The matter can be looked at from another angle as well. The accused has been charged with the offence of criminal conspiracy under Section 120B IPC. Under Section 3 PCA, the Special Judge is empowered to try not only “any offence punishable under this Code” but under Section 3(1)(b) “ any conspiracy to commit or attempt to commit or any abetment of the offences specified in clause (1).”

190. Under Section 40 IPC, it has been mentioned that in Chapter VA and in Sections 109, 110 IPC the word “offence” denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.” Under Section 41 IPC, a special law has been defined as “a law applicable to a particular subject.” Therefore, in terms of Sections 40 and 41 IPC, the PCA would be a special law. The offence under section 120B in Chapter VA IPC would therefore also become punishable under the PCA which is a special enactment for that purpose.

Therefore, there is no need to obtain a separate sanction under Section 197 Cr.PC for prosecuting the accused for the offence under Section 120B IPC.

191. Let me respectfully consider if **State of MP Vs. Sheetla Sahai (supra)** and **C.P. Thakur Vs. CBI (supra)** are applicable to the facts of the instant case. The question is : Whether the alleged acts of accused no. 1 Ketan Desai were part of his duty as a public servant?

192. It is alleged against accused no. 1 Ketan Desai that he in conspiracy with other accused persons had demanded illegal gratification in the sum of Rs.2 crores for preparation of a favourable inspection report and thereafter recommending yearly renewal ignoring deficiency present in the college which by no stretch of imagination can be part of his official duties.

193. In view of these allegations and evidence on record, the authorities of **Sheetla Sahai (Supra)** and **C.P. Thakur (Supra)** are not applicable to the

facts of this case. There is prima facie incriminating material on the record against the accused.

194. No separate sanction U/s. 197 Cr.P.C. was required in the instant case, as the alleged acts of the accused persons do not fall within the four corners of his official duties. The accused does not suffer any prejudice at all.

viii) That CBI has not been able to decode the words “badal”, “naya badal”, “kala badal” and “do wala kaam”.

195. The following conversations are relevant to decided this point. In conversation of accused Sukhvinder Singh with accused N.S. Bhangoo they talk of “do wala kaam”. In continuity, accused Sukhvinder Singh speaks to accused J.P. Singh, accused K.A. Paul and accused Kanwaljeet Singh as discussed in preceding paras.

196. On 21.04.2010 at about 7:11 p.m between accused Ketan Desai and accused J.P. Singh,

accused J.P. Singh tells accused Ketan Desai to meet him at Ashoka Hotel when accused J.P. Singh tells him as to how he will deliver it to him. On 22.04.2010 the delivery of the money is made that is again two crore of rupees to accused J.P. Singh the conversation prima facie shows that the discussion amongst accused Sukhvinder Singh, J.P. Singh and Ketan Desai on day to day basis is regarding inspection at Gyan Sagar Medical College. Moreover it is not the case of the defence that accused Sukhvinder Singh was interested in any other medical college or inspection. The date, events, date of EC Meeting match with the conversation amongst accused persons regarding this College only. The conversation between the accused K.A. Paul, Sukhvinder Singh, N.S. Bhangoo and J.P. Singh clearly points out to the "do wala kaam" which ultimately results into recovery of Rs. 2 crores which may be connected with the conversation of accused Ketan Desai and accused J.P. Singh who was imparting information to him.

197. and as per Dr. Shah's statement he was asked to overlook the deficiency of an auditorium to grant

permission for renewal for the purpose of admission of the 4th batch. Referring to the conversation between accused J.P. Singh and accused Ketan Desai. Accused Ketan Desai says to accused J.P. Singh "to maine kaha unka do to hamara ek". Thus I am of the opinion that CBI has been able to connect the code word "Badal" and "Do wala" when read in context with the intercepted conversations and ultimate recovery of Rs. 2 crores from the residence of accused J.P. Singh.

LAW ON FRAMING OF CHARGE.

198. In the case of Union of India Vs. Prafulla Kumar Samal 1979 SSC (3) 609, their lordship laid down the parameters that must weigh in the mind of the Court while considering the issue on charge. It was observed as under:

(i) That the Judge while considering the question of framing of charges under Section 227 of the Code has the undoubted power to shift and weigh the evidence for the

limited purpose of finding out whether or not a prima facie case against the accused has been made out;

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully

within his right to discharge the accused.

(iv) That in exercising his jurisdiction u/s.227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

199. Further, I must indicate that on the point of charge Mr. , ld. defence counsel referred to **Century Spinning Manufacturing Ltd. v. State of**

Maharashtra, AIR 1972 SC 545, wherein it was observed that the meaning of expressing “charges must be considered to be groundless means the same thing as showing that there are no ground for framing of charge which necessarily depends on facts and circumstances of each case. Reference was made to case of **Madhavrap Jiwaji Rao scindia V. Sambhji Rao Angre, AIR 1988SC 709**, wherein the legal position was reiterated that “when a prosecution at the initial stage is whether the uncontroverted allegations has prima facie established the offence”. The case of **Yogesh @ Sachin Jagdish Joshi V. State of Maharashtra (2009) 1 SCC (Crl) 51** was also cited wherein reiterating the principles laid down in **Prafulla Kumar Samal (Supra)** it was observed as under:

200. It is trite that the words “not sufficient ground for proceedings against the accused” appearing in the section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing

this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the fact of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonably possible.

201. Having thus dealt with submissions of Id. counsels, law on charge, law on conspiracy intercepted conversation amongst the accused persons and the other overt acts and other submissions raised by them in my opinion in the final analysis it is cumulative effect of the entire

facts and circumstances that are brought out by the State (CBI) that must be seen by the Court at the stage of framing of charge. The material so far as gathered by the prosecution, even if remaining un rebutted or uncontroverted does not lead to inference that the accused persons would be acquitted or cannot be convicted.

202. Charge u/s. 120 B IPC r/w Section 7, 8, 12 and 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 and individual charge under Section 7 r/w 13(2) r/w 13(1)(d) Prevention of Corruption Act is made out against accused no. 1 Ketan Desai.

203. In view thereof prima facie charge u/s. 120 B IPC r/w Section 7, 8, 12 and 13(1)(d) r/w 13(2), and individual charge under Section 12 of Prevention of Corruption Act, 1988 is made out against accused Sukhvinder Singh.

204. In view thereof prima facie charge u/s. 120 B IPC r/w Section 7, 8, 12 and 13(1)(d) r/w 13(2), and individual charge under Section 12 of

Prevention of Corruption Act, 1988 is made out against accused Kanwaljeet Singh.

205. In view thereof prima facie charge u/s. 120 B IPC r/w Section 7, 8, 12 and 13(1)(d) r/w 13(2), and individual charge under Section 8 of Prevention of Corruption Act, 1988 is made out against accused J.P. Singh.

206. In view thereof prima facie charge u/s. 120 B IPC r/w Section 7, 8, 12 and 13(1)(d) r/w 13(2), and individual charge under Section 12 of Prevention of Corruption Act, 1988 is made out against accused N.S. Bhangoo.

207. Let charges be framed accordingly.

208. Since accused K.A. Paul has been discharged in this case. His bail bond is cancelled and his surety stands discharged. The endorsement on the documents of the surety be canceled and his passport be returned to him on proper receipt.

209. Before parting with this case let me place on record my appreciation for all the ld. defence counsels and the ld. APP for CBI Sh. B.P Singh very ably assisted by Ms. Shashi Vishvakarma APP for CBI for their able assistance. While arguments on charge were being heard, they have taken me through the voluminous record with patience and have read the case law and the law under different Acts. Arguments continued for about one month and thereafter written arguments were also filed on behalf of all accuseds and, therefore, though the order on charge should be brief but since there were six accuseds on behalf of whom six senior counsels appeared and all the accuseds wanted that each submission made by them be discussed in detail, therefore, it has resulted into a lengthy order.

**Announced in the open court on
1st June, 2012.**

**(SWARANA KANTA SHARMA)
SPECIAL JUDGE (CBI-05),
NEW DELHI / 01.06.2012**