* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on 13th August, 2025
Pronounced on: 28th October, 2025

\+ **CRL.M.C. 4711/2023 & CRL.M.A. 28694-28695/2023**

CENTRAL BUREAU OF INVESTIGATION .....Petitioner

Through: Mr. Rajesh Kumar, SPP for CBI.

versus

SH ABHISHEK VERMA & ORS. .....Respondents

Through: Mr. Maninder Singh, Senior Advocate with Mr. Dinhar Takiar, Ms. Sanjana Nair, Ms. Anurupita Kaur, Mr. Mudit Maruah and Mr. Karan Tomar, Advocates for R-1 and 2.
Mr. Sarim Naved and Mr. Zeeshan Ahmad, Advocates for R-3.
Mr. Harshvardhan Jha and Mr. Aman Pathak, Advocates for the Intervenor-C. Edmonds Allen.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973[1] (*pari materia* Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023[2]) assails the order dated 6th April, 2023 passed by the Special Judge, (PC Act) CBI-01, Rouse Avenue Court, New Delhi in CBI Case No. RCAC-1/2012/A0012. By the impugned order, the Trial

[1] "Cr.P.C."

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Court dismissed application filed by CBI seeking leave to examine Mr. C. Edmonds Allen as a prosecution witness through video-conferencing in connection with the said case.

2. The CBI Case was registered on 28th August, 2012 under Section 3 of the Official Secrets Act, 1923[3] read with Section 120-B of the Indian Penal Code, 1860[4], pursuant to a complaint from the Ministry of Defence. This was triggered by Mr. C. Edmonds Allen's letter dated 6th June, 2012 sent to then Defence Minister, containing information and enclosing documents relating to Indian defence matters. The documents were referred to the Ministry of Defence, which opined that several of these documents were classified and had been unauthorisedly communicated. On that basis, the FIR was registered alleging that Abhishek Verma (Respondent No. 1) and his associate Anca Maria Neacsu (Respondent No. 2) in conspiracy with others, had obtained and transmitted classified defence information to unauthorised persons, including Mr. Allen. Investigation culminated in a chargesheet dated 30th November, 2012, followed by supplementary chargesheets in 2015 and 2016.

3. Treating Mr. C. Edmonds Allen as a material witness (PW-46), the CBI filed an application dated 20th December, 2019 seeking his examination through video conferencing. While the CBI's application was pending, Mr Allen's own petition *(CRL.M.C. 400/2021)* came up before this Court and was allowed on 10th February 2021 on a concession by the CBI. However, as the Court was not apprised that the CBI's

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[2] "BNSS"
[3] "OSA"

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application was already pending before the Trial Court, the order was later recalled on that technical ground. No adjudication on merits was rendered and the Trial Court was directed to decide the CBI's pending application. By the impugned order, the same was dismissed as follows:

> *18. As per Rule 8.4 before examination of the witness the documents, if any, sought to be relied upon shall be transmitted to the witness, so that the witness acquires familiarity with the said documents and the applicant i.e. CBI herein will file the acknowledgement with the Court in that behalf. Meaning thereby that any documents pertaining to the witness Mr. C.Emonds AlIen have to be supplied to the witness in advance before his examination through video conferencing. Further as per Rule 8.5, if a person is examined concerning a particular document, then the summons to the witness must be a accompanied by certified photocopy of the documents and the original documents should be exhibited at the court point, as per deposition of the concerned person examined. As such before examination of Mr. C.Emonds Allen, he has to be supplied with all the documents relied upon by CBI including the classified documents, which will be in violation of the provisions of Official Secrets Act, 1923. Any leakage of said documents enroute cannot be ruled out especially When the documents have to be sent to the witness in USA.*
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> *19. It is pertinent to note that this case pertains to offences under Official Secrets Act, 1923 for alleged transmission of said documents to unauthorised person and for alleged dissemination of its contents and information to unauthorised persons. While as per above Video Conferencing Rules, 2020 before examining any witness through video conferencing, witness has to be supplied with copies of documents pertaining to said witness. In the instant case, since the classified documents are containing sensitive information concerning the sovereignty and integrity of India, adherence to said rules may involve violation of the provisions of the Official Secrets Act, 1923. For the exhibition of the documents, the contents of the certified copy available with the witness have to be a verified and checked from the original documents by showing the original documents on screen to the witness which will again give rise to the possibility of dissemination of information pertaining to said documents to some unauthorised person. This Court while sitting at court point in India cannot ensure in-camera proceedings at the remote point*

[4] "IPC"

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at US, where the witness has to be examined. Even otherwise, the possibility of said information being intercepted/infiltrated by some unauthorised person during transmission of said documents on screen through electronic means cannot be ruled out.

20. Furthermore, I agree with the contention raised from the side of accused that RC AC 1/2012 A0011 wherein, Hon'ble High Court vide order dated 27.03.2023 was pleased to allow the examination of Mr. C.Edmonds Allen through video conferencing, the offences are of different nature. Said RC AC 1/2012 A0011 is in respect of the offences under PC Act and the offences under IPC. Whereas, the present RC is pertaining to offences under Official Secrets Act, 1923 and the Act itself provides for the safeguards to be used by the Court to ensure the exclusion of public from trial of such offences so as to prevent leakage of any secret information pertaining to classified documents in the hands of any unauthorized person. Hence, in the facts and circumstances of the present case, the order dated 27.03.2023 passed by Hon'ble High Court in Crl.M.C 10/2021 is of no help to CBI as the nature of the present case is entirely different.

21. Even otherwise, as per Rule 5.3.11, the consent of the accused is mandatory before examination of any prosecution witness through video conferencing. Whereas, in the instant case, the accused has vehemently opposed the prayer of CBI for examination of Mr. C.Edmonds Allen through video conferencing. In the light of the fact that only the Hon'ble High Court by virtue of Rule 18 of Video Conferencing Rules, 2020, has the powers to relax the operation of any rule causing any undue hardship, the requirement of said Rule 5.3.11 cannot be dispensed with by this court, which has no such powers.

22. Having regard to aforementioned discussion, I am of the considered view that this is not a fit case for allowing examination of any prosecution witness through video conferencing. Hence, I do not find any merits in the application, the application is accordingly dismissed.

4. Mr. Rajesh Kumar, SPP for CBI, assails the impugned order on several grounds. His submissions are summarised as under:

4.1. This Court, in *CRL.M.C. 10/2021* in relation to RC AC-1/2012/A0011 had earlier permitted the examination of Mr. C. Edmonds Allen through video conferencing from the Indian Consulate, New York. That order was challenge by Respondent No. 1 by way of an SLP, which was later

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withdrawn, thereby leaving the order undisturbed. There is, in any event, no statutory prohibition under OSA against recording evidence through video conferencing, particularly where secrecy is preserved through in-camera proceedings and controlled handling protocols.

4.2. Documents are already within the witness's knowledge. The "secret MoD documents" to be put to PW-46 are the very documents he forwarded to the Defence Minister on 6th June, 2012, which triggered the instant FIR. The Trial Court's inference that showing those documents to him would compromise national security is misplaced; his familiarity is historical and intrinsic to the prosecution case.

4.3. PW-46 is essential to prove the chain of custody and the specific emails/accounts through which documents were received. Denial of video conferencing, given the age and health risks and credible security concerns, risks permanent non-availability of material evidence, causing serious prejudice to the prosecution and thwarting a just adjudication.

4.4. Mr. Allen is 79, with serious cardiac and orthopaedic conditions; he has been advised against long-haul flights and has faced threats allegedly from the Respondents. Video conferencing is therefore the only viable means to secure his evidence without compromising his safety or health.

4.5. The defence has moved Section 319 Cr.P.C. applications to summon Mr. Allen as an accused; the same is opposed as dilatory tactics. In any case, the mere pendency of Section 319 pleas cannot forestall the recording of material prosecution evidence. The Trial Court can decide any such application on its merits at the proper stage.

5. Opposing the petition, Mr. Maninder Singh, Senior Advocate for Respondents No. 1 and 2, and Mr. Samir Naved, counsel for Respondent

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No. 3, submit as follows:

5.1. The petition under Section 482 of Cr.P.C. is misconceived, rests on suppression/misstatement of material facts, and merits dismissal in limine. The Trial Court has exercised a discretion grounded in binding Rules (Delhi High Court Video Conferencing Rules, 2020) and the scheme of OSA; no case for supervisory correction is made out.

5.2. Mr. Allen is Director and major shareholder of Respondent No. 4 (M/s Ganton India Pvt. Ltd.) and was involved in its day-to-day affairs; on the prosecution's own showing, his role is that of a participant. He ought to be arrayed as an accused, not projected as a prosecution witness in SC No. 12/2019.

5.3. Mr Allen's statement was never recorded under Section 161 of Cr.P.C., nor was he cited in the chargesheet; his testimony was never treated as essential by the CBI. The belated attempt to examine him is an afterthought.

5.4. Rule 5.3.11 of the Delhi High Court Video Conferencing Rules, 2020 mandates that before directing examination of a witness *via* video conference, the Court "*will obtain the consent of the accused*." The Respondents have expressly withheld their consent. The Trial Court lacks the authority to dispense with this requirement; only the High Court, under Rule 18, may relax the operation of a Rule, and no such relaxation has been sought or granted in the present case.

5.5. The prosecution case arises under OSA and classified documents are in sealed cover; transmission or exhibition of those materials to a person in the USA, even for familiarisation, poses a real risk of unauthorised communication or dissemination contrary to Section 14 of OSA and the

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careful in-camera regime prescribed for such trials.

5.6. The Video Conferencing Rules (particularly Rules 5.7, 5.8 and 8.4) expressly contemplate the *transmission* of non-editable scanned or certified copies of documents to the Remote Point or the witness in advance; in an OSA case, compliance with those requirements either exposes sensitive material or demands exceptional diplomatic/secure custody measures which the Trial Court rightly considered as a valid ground to decline the request.

5.7. This Court's order allowing video conferencing of Mr. Allen in *CRL. M.C. 10/2021* was concerning a case (RC AC-1/2012/A0011) under the Prevention of Corruption Act, 1988 and IPC; that decision cannot govern the present OSA prosecution, which involves distinct secrecy obligations; the Trial Court's caution was, therefore, justified.

5.8. Despite repeated summons, Mr Allen has not appeared; his conduct shows an intent to delay and to fish for sensitive material rather than assist the Court. He is not a "star" or indispensable witness.

Analysis

6. Section 482 of Cr.P.C. preserves this Court's inherent jurisdiction to secure the ends of justice and prevent abuse of process. The Delhi High Court Video Conferencing Rules, 2020 are facilitative in character, intended to enable the recording of evidence by electronic means. Pertinently, Rule 18 vests this Court with the authority to relax or dispense with the requirements of any Rule, whose rigid application would occasion undue hardship or impede the just administration of the proceedings. Although the Trial Court correctly observed that it lacked that power; however, it proceeded to treat the consent requirement in Rule 5.3.11 as an absolute bar and, on that footing, declined the request instead of employing measures

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within its own remit (Section 14 of OSA read with Section 327 of Cr.P.C.) for in-camera conduct proceedings. The Trial Court's approach effectively converts a safeguard into a barrier.

7. The governing law admits of no doubt. In ***State of Maharashtra v. Dr Praful B. Desai***[5], the Supreme Court held that evidence recorded by video conferencing satisfies Section 273 of Cr.P.C and the confrontation and cross-examination remain fully effective when proper conditions are imposed. ***Manju Devi v. State of Rajasthan***[6] reaffirms that in situations where securing the personal attendance of a witness would cause unreasonable delay, expense, or inconvenience, the Court should consider recording such evidence through video-conferencing or by issuing a commission under Sections 284 and 285 of Cr.P.C. The Trial Court adopted prohibition in place of safeguards, which cannot be sustained.

8. Read purposively, Rule 5.3.11 is a fairness provision: it ensures that the accused's fair-trial rights are kept in view before resort is taken to video conferencing. It does not confer a substantive veto over the prosecution's ability to lead material evidence. In any event, this is a fit case for relaxation. We therefore invoke Rule 18 and relax the operation of Rule 5.3.11 for PW-46, while preserving the accused's rights through contemporaneous viewing and full cross-examination on a secure, court-controlled feed.

9. While the apprehension recorded by the Trial Court, that the use of video conferencing may occasion leakage of classified material, cannot be dismissed as fanciful, yet the answer in law is not prohibition but regulation

[5] (2003) 4 SCC 601.
[6] (2019) 6 SCC 203.

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in a just and equitable manner through adequate safeguards. OSA does not interdict the conduct of trials; it prescribes the manner in which sensitive proceedings are to be held. Section 14 of OSA, read with Section 327 of Cr.P.C., authorises the Court to insulate the process from public gaze and to impose conditions that preserve secrecy. The proper judicial response is therefore to manage risk, while preserving the integrity of the proceeding.

10. That objective of the stringent OSA provisions is achievable through calibrated safeguards, including conducting the examination from a secured State-controlled facility, ensuring an in-camera regime, restricting devices, and controlling the display and movement of documents. The law demands reasonable containment of risk. On that touchstone, a safeguarded video examination is the apposite course.

11. In fact, the risk of leakage is being unduly magnified by the Respondents, relying particularly on Rules 5.8, 8.4-8.5 and 9.1-9.2 of the Delhi High Court Video Conferencing Rules. These provisions are facilitative and designed to ensure that a witness is sufficiently familiar with the record and that exhibits are properly proved. They do not mandate uncontrolled dissemination of sensitive material. Their conditions are met through a Court-controlled, view-only mode of exhibition and, where strictly necessary, sanitised certified copies can be transmitted through the Consulate.

12. It must be note that PW-46's communication to the Defence Minister set the process in motion by prompting the MoD referral and FIR. The prosecution seeks to prove his complaint, the very documents he forwarded, the electronic channels through which they were received, and allied Section 65-B certificates and the US-DOJ certification. His testimony bears directly

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on provenance, transmission, and authenticity of the documents. The absence of a prior statement under Section 161 of Cr.P.C. or his omission from the earliest witness list does not foreclose his examination. Section 311 of Cr.P.C. is designed precisely for such situations: the Court may summon any person at any stage if his evidence appears essential to a just decision.

13. Practicality also weighs in favour of permitting video conferencing. In *CRL. M.C. 10/2021*, this Court allowed the same witness to testify by video conferencing from the Indian Consulate, New York; the ensuing SLP was withdrawn unconditionally, leaving that order undisturbed. Nevertheless, since the present case involves OSA-protected material, it calls for stricter safeguards, not a different approach. The Indian Consulate VC mechanism has already been tested in many cases; it is workable, and therefore, can be suitably calibrated in the present case to address the confidentiality requirements under the OSA.

14. The defence's insistence that Mr. Allen ought to be arrayed as an accused does not, by itself, bar his examination as a witness though video conferencing. Any application under Section 319 of Cr.P.C. will be considered by the Trial Court on its own merits at the appropriate stage. This order merely secures the recording of material evidence; it does not prejudge, preclude or pre-empt the Trial Court's jurisdiction under Section 319.

15. Lastly, the equities of age, health and security are compelling. At 79, with documented cardiac ailment, compelling international travel may imperil both the witness and the progress of the trial. Recording of evidence by video conferencing from the Indian Consulate strikes the right balance: it advances the administration of justice while safeguarding the witness's

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health and safety and maintaining the integrity of the process.

16. For the reasons discussed, the impugned order, in the Court's opinion, is unsustainable and warrants interference.

17. The Petition is allowed in the following terms:

(i) The impugned order dated 6th April, 2023 is set aside.

(ii) In exercise of Rule 18 of the Delhi High Court Video Conferencing Rules, 2020, the requirement of obtaining the Respondents' consent under Rule 5.3.11 is relaxed for the limited purpose of recording the testimony of PW-46, Mr. C. Edmonds Allen.

(iii) The Trial Court shall record PW-46's evidence *via* video conferencing from the Indian Consulate, New York, in accordance with the Delhi High Court Video Conferencing Rules, 2020, together with the following additional safeguards necessitated by the sensitivity of OSA-protected material:

(a) Proceedings shall be conducted *in camera* as per Section 14 of OSA read with Section 327 of Cr.P.C;

(b) Original classified documents shall remain and be exhibited only at the Court Point. Where necessary for identification or familiarity, documents may be shown to the witness through view-only screen-share from the Court Point, bearing an appropriate watermark;

(c) If certified copies are indispensable, they shall be sanitised/redacted to the minimum essential content, transmitted only through official diplomatic channels to the Consulate, kept in locked custody there, and returned sealed immediately upon conclusion of the deposition;

(d) The examination shall take place on a court-approved, end-to-end encrypted VC platform, with no recording, download, save, print, copy, or

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screenshot functions enabled at the Remote Point;

(e) No departure from the foregoing safeguards shall be made without prior leave of the Trial Court, with brief reasons recorded;

(iv) The Trial Court shall, in coordination with the Indian Consulate, New York, fix suitable dates and endeavour to complete examination-in-chief and cross-examination within a consolidated block of hearings, keeping in view the IST/EST time difference and the witness's medical condition.

(v) All pending contentions of the parties, including any application under Section 319 of Cr.P.C., are left open to be considered and decided by the Trial Court on their own merits and in accordance with law.

(vi) The Registry shall transmit a copy of this order to the Indian Consulate, New York, to the Ministry of External Affairs, and to the Trial Court for necessary facilitation.

(vii) Upon conclusion, all exhibits, transcripts and the order sheet shall be kept sealed in secure custody, and any transcript served shall be sanitised/redacted under orders of the Trial Court.

18. Accordingly, the petition is disposed of along with any pending application(s).

SANJEEV NARULA, J

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