

(2025) 12 DEL CK 1835

In the Delhi High Court

Case No : Writ Petition(Crl) No.4250 Of 2025

Sachin Bajpai

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 20-12-2025

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 94, 179, 180, 528
Bharatiya Nyaya Sanhita, 2023 — Section 43, 61(2), 318(4), 319
Information Technology Act 2000 — Section 66, 66B, 66C, 66D
Bharya Sakshya Adhiniyam 2023 — Section 63(4)(c), 132, 133, 134, 165

Citation : (2025) 12 DEL CK 1835

Hon'ble Judges : Dr. Swarana Kanta Sharma, J

Bench : Single Bench

Advocate : Mohit Mathur, Sandeep Sharma, Gaurav Bharadwaj, Nitesh Mehra, Ashish Sareen, Anurag Mishra, K.K. Mishra, Kumar Kshitij, Gautam Singh, Ayush Yadav, Ratnesh Mathur, Adarsh Singh, Divakar Kapil, Ripudaman Bharadwaj, Kushagra Kumar, Amit Kumar Rana

Final Decision : Allowed

Judgement

Dr. Swarana Kanta Sharma, J

CRL.M.A.38215/2025 (exemption)

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

W.P.(CRL.) 4250/2025

3. The present writ petition has been filed on behalf of the petitioner, who is an advocate by profession, seeking quashing of the impugned notice dated 19.12.2025 issued by respondent nos. 2 and 3 under Sections 94 and 179 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

4. Issue notice. The learned Special Public Prosecutor accepts notice on behalf of

respondent nos. 2 and 3. Let reply be filed by the respondents, with advance copy to the petitioner, before the next date of hearing.

5. The respondent no. 3 is directed to remain present in person on the next date of hearing before this Court.

6. List on 23.12.2025.

CRL.M.A. 38214/2025 (stay of impugned notice)

7. The case set out by the petitioner is that on 21.11.2025, the Central Bureau of Investigation (CBI) had registered an FIR bearing No. RC2212025E0016 against a company, namely Lord Mahavira Services India Private Limited and its directors, alleging misuse of SIM cards for cyber-criminal activities, some of which were alleged to have been issued by the said company.

8. The learned senior counsel appearing for the petitioner submits that on 05.12.2025, one of the directors of the accused company had approached the petitioner, who is an Advocate, seeking legal assistance in connection with the said FIR. It is contended that on 15.12.2025, in an effort to cooperate with the ongoing investigation, the accused company had deputed one of its staff members to the CBI office to submit certain documents. However, the Investigating Officer (I.O.) had allegedly refused to receive the documents and subjected the said staff member to harassment. Thereafter, the present petitioner, acting in his professional capacity of being an Advocate engaged on behalf of his client, had sent emails dated 15.12.2025 to respondent no. 3, who is the I.O. of the case enclosing some relevant documents pertaining to the investigation which had been sought from the accused.

9. It is further submitted by the learned senior counsel that on 17.12.2025, the petitioner had filed an application on behalf of one of the directors of the accused company before the learned Sessions Court, and the said director was granted interim protection on the same date. However, soon thereafter, respondent no. 3 had issued the impugned notice dated 19.12.2025 to the petitioner, who is an advocate of the accused against whom the present FIR has been registered, directing him to appear at the CBI office on 20.12.2025 along with the certified copies of the documents that had already been forwarded through the email dated 15.12.2025.

10. The learned SPP appearing for the CBI, on the other hand, submits that he may be granted time to file reply and that he will seek instructions in this regard as to why notice was issued to the petitioner.

11. This Court has heard arguments addressed on behalf of the petitioner as well as the respondents, and has perused the material placed on record.

12. This Court takes note of the emails sent by the petitioner to respondent no. 3 on 15.12.2025, wherein the petitioner had stated as under:

"Respected xxxx,

xx xxxx xxxxx Investigating Officer

In respect to the captioned matter, I on behalf of our Client M/s Lord Mahavira Services India Pvt. Ltd. would like to submit some information along with supporting documents with the only purpose of facilitating the investigation.

It is relevant to mention that a person from our office visited the CBI Department to submit these documents physically, but the same was denied and not taken on record.

Accordingly, I on behalf of our client is submitting the attached documents, which may be taken on record.

For Lord Mahavira Services India Pvt. Ltd.”

(Emphasis added to original)

13. Thus, it was clearly mentioned by the petitioner that he was communicating on behalf of his ?client? and was forwarding documents on behalf of his client for the purpose of facilitating the investigation. At the end of the email, the name and details of the petitioner-advocate and his law office were also mentioned.

14. Nonetheless, the respondent no. 3 has sent the impugned notice dated 19.12.2025, directing the petitioner to appear at the CBI office on or before 11:00 am on 20.12.2025. The relevant contents of the impugned notice dated 19.12.2025 are set out below:

“To

Sh. Sachin Bajpai

Advocate

For Lord Mahavira Services India Pvt. Ltd

Sir,

This is to inform you that the case No RC2212025E0016 has been registered under section U/s 61 (2) r/w 318(4), 319 of BNS. 318(4). 319 of BNS 43 r/w 66 and 66B 66C and 66D of Information Technology Act 2000 (as amended in 2008) at CBI EO-III New Delhi. The investigation is being carried out by the undersigned

Whereas, it appeared that you as an Advocate for Lord Mahavira Services India Pvt. Ltd. have sent some emails dated 15.12.2025, vide which you have sent some information and documents related to Telecom invoices raised to enterprise entities for bulk SIM procurement and some email communications from Vodafone, Purchase Order for reference and bills from Vodafone. However the said documents are not certified under section 63 (4) (C) Bharya Sakshya

Adhiniyam 2023.

Hence, for the purpose of investigation you are directed to produce documents furnished by you vide email, with certification under section 63 (4) (C) of the person who is in possession of the said electronic evidences.

Hence you are hereby directed to produce the relevant certified documents to the undersigned on or before 20.12.2025, 11:00 AM at office of Superintendent of Police, CBI EO-III, CCID, 6th floor, 5B, CBI HO, CGO Complex, Lodhi Road, New Delhi 110003

Further, whereas, it appeared that you are acquainted with the facts / circumstances of the above cited case. Hence you are also hereby informed to appear before the undersigned on 20.12.2025, 10:30 AM at the aforesaid address of CBI, so that your statement may be recovered u/s 180 BNSS. "

15. A plain reading of the impugned notice makes it evident that the notice has been sent to the petitioner on two distinct counts – firstly, the petitioner has been directed to produce the certified documents, which were earlier forwarded by him through email dated 15.12.2025; and secondly, the petitioner has been summoned in his personal capacity to appear before the I.O. for the purpose of recording his statement under Section 180 of the BNSS, on the premise that he is allegedly acquainted with the facts and circumstances of the case.

16. Clearly, on the face of it, the issuance of the impugned notice to the petitioner is in teeth of, and contrary, to the principles laid down by the Hon^{ble} Supreme Court in case of Summoning Advocates who give legal opinion or represent parties during investigation of cases and related issues: 2025 SCC OnLine SC 2320. The Supreme Court has, inter alia, held as under:

"67. On a broad conspectus of the Client-Advocate privilege as codified in Section 132 to 134 of the BSA; though we are not persuaded to lay down any guidelines, which we believe are sufficiently available on an interpretation of the provisions itself, which also restrains us from constituting a committee of legal professionals, we issue the following directions; to ensure that the privilege is not impinged upon by valiant investigators or overzealous parties to a litigation, purely on the basis of the interpretation of the evidentiary rules codified:

1. Section 132 is a privilege conferred on the client, obliging an Advocate not to disclose any professional communications, made in confidence, which privilege, in the absence of the client can be invoked by the Advocate on behalf of the client.

1.1 The Investigating Officers in a criminal case or a Station House Officer conducting a preliminary inquiry in a cognizable offence shall not issue a summons to an Advocate who represents the accused to know the details of the case, unless it is covered under any of the exceptions under Section 132.

1.2 When a summons is so issued to an Advocate, under any of the exceptions, it shall explicitly specify the facts on which the exception is sought to be relied upon, which shall also be with the consent of the superior Officer not below the rank of a Superintendent of Police who shall record his satisfaction as to the exception in writing, before the summons is issued.

1.3 A summons so issued shall be subject to judicial review at the instance of the Advocate or the client under Section 528 of the BNSS.

1.4 The Advocate on whom there is an obligation of non-disclosure as per Section 132 of the BSA shall be one who is engaged in a litigation or in a non-litigious or a pre-litigation matter.

2. Production of documents in the possession of the Advocate or the client will not be covered under the privilege conferred by Section 132, either in a civil case or a criminal case.

2.1 In a criminal case, the production of a document directed by a Court or an officer shall be complied with by production before the Court under Section 94 of the BNSS; being regulated also by Section 165 of the BSA..."

(Emphasis added)

17. The issuance of the impugned notice therefore prima facie is in the teeth of the above decision of the Hon'ble Supreme Court, inasmuch it does not follow the specific directions and mandate of the said judgment, especially paragraph 67(1.2) extracted above.

18. Respondent no. 3 while issuing the impugned notice to the petitioner, who is an advocate representing the accused company, sought not only the documents from the advocate of the accused (petitioner), when the same material could have been sought directly from the accused company or its directors in accordance with law, but also directed the petitioner to appear before her for recording of his statement under Section 180 of the BNSS, on the premise that he is acquainted with the facts and circumstances of the case. It is also clear from the reading of impugned notice that respondent no. 3 was well-aware that the petitioner was Advocate of the accused company, as the I.O. writes in the impugned notice that "you as an Advocate for Lord Mahavira Services India Pvt. Ltd. have sent some emails". The emails or those documents were not sent to anyone else but to the I.O. only for the purpose of facilitating the investigation on instructions from the client and not in his individual capacity.

19. Therefore, the aforesaid directions, prima facie, proceeds on treating the petitioner as a witness in the investigation, merely because as the advocate of the accused, on the instructions of his accused client, he had sent the documents sought by the I.O. to facilitate investigation, notwithstanding the admitted position that his involvement with the matter arises solely from his professional engagement as an advocate for the accused company.

20. The role of an advocate in representing a client, communicating with the investigating agency on behalf of the client, and facilitating lawful cooperation with the investigation cannot be equated with that of a witness or any other person liable to be examined during investigation. If advocates are subjected to summons for recording of statements merely because they have addressed communications or forwarded documents to the I.O. in discharge of their professional duties, it would seriously prejudice the working of the advocates and the advocates sending communications on behalf of their clients.

21. Further, the relationship between an advocate and his client is such that the client discloses facts of his case to him, so that he can defend him. On that account, every advocate defending his client will have knowledge of the facts of the case. However, this cannot make every lawyer a witness in all the cases handled by him/her and this has been dealt with by the Hon^{ble} Supreme Court in the judgment afore-cited as to what protocol has to be followed and in which cases an advocate can be summoned.

22. Permitting such a course, as adopted in the present case, would have far-reaching consequences, and if allowed, such a practice would adversely affect the independence of the legal profession, as has already been held by the Hon^{ble} Supreme Court in Summoning Advocates who give legal opinion or represent parties during investigation of cases and related issues (supra).

23. In view of the foregoing discussion, it is directed that the impugned notice dated 19.12.2025 shall remain stayed during the pendency of the present petition.

24. Accordingly, the application for stay, being CRL.M.A. 38214/2025, is allowed and disposed of.

25. The judgment be uploaded on the website forthwith.