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Ex-Goldman Banker Can't Inspect Recording Device, Feds Say

By **Elliot Weld**

Law360 (February 6, 2023, 5:08 PM EST) -- Manhattan federal prosecutors told a judge that a former Goldman Sachs banker accused of assisting in insider trading shouldn't be able to inspect the phone an alleged co-conspirator used to record their conversations.

Prosecutors on Friday objected to Brijesh Goel's request for an "audibility hearing" for the recordings, parts of which are inaudible, and to inspect the original recordings and the devices they were taken on. Goel's alleged co-conspirator, Akshay Niranjani, who entered into a non-prosecution agreement, isn't part of the prosecution team and the government has no control over his devices, prosecutors wrote.

"Here, because the government's discovery obligations extend only to materials in the possession of the prosecution team, and because cooperating witnesses and witnesses with non-prosecution agreements are not members of the prosecution team, the defendant's motion to compel the government to obtain Niranjani's unspecified 'electronic devices' is meritless," the government argued.

Goel is charged with securities fraud and obstruction of justice. The latter charge stems from the Niranjani recordings, when the two allegedly discussed deleting electronic communications related to their scheme. Prosecutors say Goel tipped Niranjani off at least seven times on deals that Goldman Sachs was involved in so Niranjani could trade call options with that knowledge, and that the two split the profits.

Goel said in his motion that the indictment relied heavily on the "largely unintelligible" recordings of two conversations in English and Hindi that were recorded by Niranjani, who worked at a different New York City investment firm. Niranjani recorded the first of the two conversations "of his own accord" and the second of the conversations at prosecutors' direction, the government said. Goel further contends that the government's transcripts of the conversations are inaccurately translated.

Prosecutors countered that criminal procedure rules on discovery don't entitle the defendant to inspect the device used to record him, which was Niranjani's wife's iPhone, because the device is not in the government's possession. Goel has not shown any evidence that his inspection of the devices would reveal some sort of tampering, which is the only valid reason he could give for an inspection, prosecutors said.

The government would not necessarily be required to enter the recording devices into evidence at trial to demonstrate the content of the recordings to a jury, the motion said. Prosecutors could instead do that by eliciting testimony about the recording process from Niranjani or the special agents that were involved.

The request for an audibility hearing is "premature and meritless," the government further argued.

"The recordings, for which the government has provided draft translations, are audible – and show the defendant engaging in obstruction of justice by deleting electronic messages – and the defendant can cross-examine Niranjani about them at trial, if he so chooses," the government's memorandum reads.

Prosecutors also pushed back on Goel's argument that the government should produce its non-

prosecution agreement with Niranjan as part of discovery, saying he hasn't shown how that agreement would help to "alter the quantum of proof in his favor."

Counsel for Goel did not immediately respond to requests for comment Monday. The Manhattan U.S. attorney's office declined to comment.

The government is represented by Joshua Ardití Naftalis and Samuel Philip Rothschild of the U.S. Attorney's Office for the Southern District of New York.

Brijesh Goel is represented by Adam C. Ford of Ford O'Brien Landy LLP and Reed Brodsky and Liesel Schapira of Gibson Dunn & Crutcher.

The case is USA v. Goel, case number 1:22-cr-00396 in the U.S. District Court for the Southern District of New York.

--Editing by Patrick Reagan.