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# SDNY Judge Places Subpoena Restrictions On Prosecutors

By Tracey Read

Law360 (March 23, 2023, 2:21 PM EDT) -- A New York federal judge has ordered prosecutors to stop issuing trial subpoenas "untethered" to trials.

U.S. District Judge P. Kevin Castel's Wednesday ruling came in the case of Brijesh Goel, an ex-Goldman Sachs banker accused of insider trading, but applies across the Southern District of New York.

In the Southern District, a Rule 17 subpoena must be connected to a trial or else it's invalid, the judge said in his order.

"It is not proper to serve a Rule 17 subpoena without prior court approval when no trial or evidentiary hearing has been scheduled," he wrote.

According to the order, Goel learned that the government had subpoenaed the University of California, Berkeley, for certain records relating to his attendance as a student.

"The government subsequently disclosed that it had served 10 subpoenas untethered to a trial date," the judge said in the order.

Goel sought various forms of relief against the government because the government issued—without prior court approval and without a trial date yet scheduled—10 subpoenas for documents to be produced by third parties. The subpoenas have been withdrawn and the motion will be denied, Judge Castel wrote.

The college subpoena was dated July 28 and referred to an "appearance" time, date and place. No trial date had been set, and the "appearance date" was the date of a scheduled conference before the court. Because only documents were sought, no physical appearance was required, the order said.

The government told the court it had a good-faith belief that the defense would be seeking an early trial date at the upcoming conference but now concedes that "it would have been better practice to defer issuance of the subpoena until a trial date was set," the judge said.

The government later withdrew all 10 subpoenas and shared all produced documents with Goel, according to the order.

The judge now wants the government to submit — ex parte and under seal — copies of the 10 withdrawn subpoenas and any related correspondence before he rules on Goel's request to exclude the college records.

Meanwhile, the government has given Goel two options — that both sides agree to destroy all documents produced in response to the subpoenas or that both sides agree to retain their copies.

"The remedy that the government has offered is sufficient in this instance," the judge wrote, adding that Goel has one week to decide on which option he will take.

Goel is scheduled for trial June 12 on securities fraud and obstruction of justice charges for allegedly **tipping off** his business school friend and squash partner about deals Goldman was considering

financing. The friend then placed call options on acquisition targets and split his trading profits with Goel, according to the indictment.

Among other mergers, the government says Goel passed on information about Sprint Corp.'s acquisition by T-Mobile and Frontier Group's since-abandoned plans to buy Spirit Airlines. Prosecutors allege that the trades netted \$280,000 between 2017 and 2018.

Counsel for both sides 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.

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

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.

--Additional reporting by Rachel Scharf. Editing by Gemma Horowitz.

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