

20.09.2021

Ct No. 35

D/L 16

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C.R.R. 1673 of 2021
(Via Video Conference)

Re: An application under Sections 483 read with Section 482 of the Code of Criminal Procedure, 1973.

In re : **Rakesh Singh @ Rakesh Kumar Singh,**
... Petitioner

Mr. Rajedeeep Majumder,
Mr. Mayukh Mukherjee,
Mr. Sarthak Mondal

... for the petitioner

Mr. Saswata Gopal Mukherjee, LD. PP,
Mr. Sabir Ahmed,
Mr. Ranadep Sengupta,

... for the State

The investigating agency in connection with New Alipore Police Station Case no. 65 of 2021 under Sections 21(b)/27A/29/30/58(2) of the Narcotic Drugs and Psychotropic Substances Act, 1985, made a prayer on April 19, 2021, before the learned Additional Sessions Judge, 4th Court, Alipore, *inter alia*, for collecting voice sample of the petitioner, who is an accused in the said case.

Before the disposal of the said application, the charge sheet was filed on May 3, 2021, by the investigating agency. The application for collection of the voice sample was, however, disposed of subsequently by the order impugned dated August 7, 2021 by allowing the prayer.

The petitioner has challenged the said order of the learned Additional Sessions Judge before this Court in this revisional application.

It has been submitted for the petitioner that the investigating agency has not acted in a fair manner in making the application for collection of the voice sample, since there is nothing in the charge sheet to show that the voice sample of the petitioner is contained in any of the seized mobile phones. It has, further, been submitted by the learned advocate for the petitioner that from the prayer made before the learned Judge in the Court below it is absolutely clear that the investigating agency was not in possession of the voice sample of the petitioner. It has, further, been submitted that the investigating agency could not mention in their application that which voice sample they intend to match with the collected voice sample of the petitioner.

In this regard ambiguity in the prayer made by the investigating agency, before the learned Judge, for the collection of voice sample has also been pointed out.

To clarify the position, an affidavit by the investigating agency was directed to be filed before this Court and accordingly, an affidavit has been filed, *inter alia*, to the following effect:

“ After her arrest, Pamela Goswami’s phone which was used by her was duly seized as per seizure list. She divulged, that her mobile phone contains voice clips containing her voice and an unknown male voice claiming himself to be Rakesh Kumar Singh, threatening her to frame her in false case, which she identified to be the voice of Rakesh Kumar Singh. Collection of the voice sample of Rakesh Kumar Singh is only for the purpose of comparing the same with the voice clips and unearthing the truth behind the instant case. The

case against the petitioner is one of a conspirator, who financed the procurement of drugs and subsequently harbouring the accused Amrit Raj Singh who planted the same in Pamela's car. Furnishing the voice sample may only lead to matching of the voice of Rakesh Kumar Singh with the unknown male voice in the voice clips contain in the mobile phone of Pamel Goswami and the same may facilitate the investigation in unearthing the truth."

The State submits that the statement of Pamela Goswami recorded on February 22, 2021. A copy of the said recorded statement has been produced before this Court.

Therefore it is now clear that the investigating agency, through Central Forensic Science Laboratory at Bhopal sought to match the voice sample of the petitioner with voice clips allegedly contained in mobile phone of Pamela Goswami seized in the course of the investigation.

The law with regard to the collection of voice sample has been authoritatively decided by the Supreme Court in a judgment reported ***at (2019) 8 SCC 1 (Ritesh Sinha -vs- State of Uttar Pradesh)***. In the said case, the following two issues were referred to a three Judges Bench of the Supreme Court:

"3.1. Whether Article 20(3) of the Constitution of India, which protects a person accused of an offence from being compelled to be a witness against himself, extends to protecting such an accused from being compelled to give his voice sample during the course of investigation into an offence?

3.2. Assuming that there is no violation of Article 20(3) of the Constitution of India, whether *in the absence of any provision in the Code*, can a Magistrate authorise the investigating agency to record the voice sample of the person accused of an offence?"

The first issue was answered in negative in paragraph nos. 6 to 9 of the said Judgment. The Supreme Court noticed that there was no dispute with regard to the aforesaid proposition and followed the view of the judgment reported at **AIR 1961 SC 1808 (State of Bombay –vs- Kathi Kalu Oghad)**.

The second issue has been answered by the Supreme Court in paragraph 27, which runs as follows:-

“In the light of the above discussions, we unhesitatingly take the view that until explicit provisions are engrafted in the Code of Criminal Procedure by Parliament, a Judicial Magistrate must be conceded the power to order a person to give a sample of his voice for the purpose of investigation of a crime. Such power has to be conferred on a Magistrate by a process of judicial interpretation and in exercise of jurisdiction vested in this Court under Article 142 of the Constitution of India. We order accordingly and consequently dispose of the appeals in terms of the above.”

In view of the aforesaid authoritative decision of the Supreme Court, no further deliberation is required on the proposition that no prohibition can be read in Article 20(3) of the Constitution of India to prevent a Court from directing an accused to give his voice sample.

It is submitted by Mr. Majumder, learned advocate for the petitioner, that the statement of Pamela Goswami has been allegedly recorded on February 22, 2021, by the investigating agency but the same was not made a part of the charge sheet filed on May 3, 2021, and the petitioner is in complete dark as to the recording of such statement.

Mr. Saswata Gopal Mukherjee, learned Public Prosecutor has submitted before this Court that pursuant to the leave granted

by the learned Judge in the Court below, a further investigation is being carried out and the investigating agency shall decide whether to rely upon such statement of Pamela Goswami or not after the report is received from the Central Forensic Science Laboratory. If the investigating agency wants to rely upon such statement at the time of filing the supplementary charge sheet, the same will be served upon the petitioner.

In that view of the matter, no interference is called for with the impugned order.

The revisional application being **C.R.R. 1673 of 2021** is, accordingly, dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with all necessary formalities.

(Kausik Chanda, J.)