

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 317 OF 2022

Shri Hiralal s/o Merchand Rathod,
 Age 60 years, Occupation – Retired, R/o
 Juna Ajispur Road, New Water Tank,
 Sagvan, Buldana, Tahsil and District
 Buldana.

... **PETITIONER**

VERSUS

State of Maharashtra,
 through Police Inspector/ I.O.,
 Anti Corruption Bureau,
 Buldana.

... **RESPONDENT**

Shri P.S. Sadavarte, Advocate for the petitioner.
 Shri S.M. Ukey, A.P.P. for respondent-State.

CORAM : **VINAY JOSHI, J.**
DATED. : **14.06.2022.**

JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of both the parties.

3. The challenge in this petition is to the order dated 02.05.2022 passed on Exhibit 82 by the Special Judge (ACB), Malkapur in Special Case No. 1 of 2013 for the offence punishable under Sections 7, 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988.

4. The petitioner (accused) is facing prosecution for aforesaid charges. Precisely, it was the prosecution case that the petitioner a public servant, working as an Assistant Sub Inspector has raised demand of Rs.5000/- as a bribe, which was reduced to the extent of Rs.4500/-. Trap was laid in which the accused was found accepting the bribe amount. After obtaining necessary sanction, charge-sheet has been filed. Charge is framed and the trial proceeded. The prosecution has examined all 7 witnesses and the statement of accused in terms of Section 313 of the Code of Criminal Procedure came to be partially recorded. At this juncture, the prosecution has moved an application (Exhibit 82) on 02.05.2022 seeking directions that accused shall be directed to provide his voice sample. The said application came to be allowed by the order dated 02.05.2022, which is under challenge.

5. Learned Counsel appearing for the accused primely canvassed that already petitioner's voice sample was obtained by the Investigating Agency on 11.01.2013 by drawing Panchanama. For this purpose, he took me through the copy of Panchnama to impress that

voice sample was already collected. He would submit that already the prosecution evidence is over and at this stage, the prosecution shall not be allowed to fill-up the lacuna or create evidence, which would be prejudicial to his interest. It is argued that the petitioner has cross-examined all 7 witnesses and thus he has opened his defence. In case of allowing prosecution to furnish additional evidence, the defence would be prejudiced.

6. On the other hand, learned A.P.P while supporting the impugned order would submit that there would be no prejudice to the petitioner in furnishing his fresh voice sample. He would submit that though earlier voice sample was collected, however, due to technical error, the sample could not be verified. He would submit that collection of voice sample does not amount to testimonial compulsion and therefore, the Trial Court was well justified in allowing the application.

7. Most of the facts are not in dispute. Particularly, on 11.01.2013, petitioner's voice sample was collected by drawing Panchanama. It is not disputed that prosecution evidence is over and the statement of accused under Section 313 is under way. The application to provide voice sample basically lacks on the point of inordinate delay. The matter can be looked from one another angle that it is not a case of mere delay, but the situation has changed as already

entire prosecution evidence is over and all the prosecution witnesses were cross-examined. Pertinent to note, that the Investigating Agency has received a letter from Forensic Science Laboratory, Mumbai on 01.08.2015 pointing the necessity of fresh specimen voice sample of the accused. In the situation, the prosecution ought to have moved to the Court earlier seeking necessary directions. However, for long 7 years, prosecution remained silent and allowed to proceed with the trial. Now, already the defence is open and entire prosecution evidence is over. At this stage, if the prosecution is allowed to submit an additional material then certainly it would cause great prejudice to the accused.

8. Having regard to the above peculiar facts, the impugned order does not sustain in the eyes of law. In view of that petition stands allowed. Impugned order dated 02.05.2022 passed by the Special Judge (ACB), Malkapur in Special Case No.1 of 2013 is hereby quashed and set aside. The application (Exhibit 82) seeking fresh voice sample of accused is hereby rejected.

9. The petition stands disposed of in the aforestated terms.

(VINAY JOSHI, J.)