



\$~14

\*

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

**Decided on: 22<sup>nd</sup> March, 2022**

+

**CRL.M.C. 651/2021****SHAHIRUKH**

..... Petitioner

Through: Mr.Shamim A. Khan, Advocate.

versus

**THE STATE NCT OF DELHI**

..... Respondent

Through: Mr.Mukesh Kumar, APP for the  
State with Insp. Govind Singh, SI  
Deepak, PS Uttam Nagar, Delhi.**CORAM:****HON'BLE MR. JUSTICE YOGESH KHANNA****YOGESH KHANNA, J.**

1. This petition is filed against the impugned order dated 07.11.2020 passed by learned Trial Court in case FIR No.615/2021 under Section 364A/120B/368/34 IPC registered at police station Uttam Nagar, Delhi.
2. The learned Trial Court per impugned order allowed the application moved by the Investigating Officer seeking permission to take the voice samples of the accused person, including the petitioner herein.
3. The petitioner herein is aggrieved of the delay in filing such application as the trial is at its fag end. It is alleged the FIR in question was registered on 08.05.2015. On 07.08.2015 the charge sheet was filed. The charges was framed and matter was listed for prosecution evidence for 26.08.2016. However, on 09.04.2018, the Investigating Officer moved an application for seeking voice sample of the accused persons,



which application was allowed vide the impugned order dated 07.11.2020.

4. Admittedly, the voice samples were taken on 07.12.2020 and the FSL report has now been received and was filed along with the supplementary charge sheet on 27.01.2021.

5. The grievance of the learned counsel for the petitioner is there is no procedure under the Cr P C to get the voice sample of the accused and as such the application ought to have been dismissed by the learned Trial Court.

6. In support of his submission, the learned counsel for the petitioner referred to *Amrutbhai Shambhubhai Patel vs Sumanbhai Kantibhai Patel and Others* Criminal Appeal No.1171/2016 decided on 02.02.2017 wherein the Court noted:-

*47. On an overall survey of the pronouncements of this Court on the scope and purport of Section 173(8) of the Code and the consistent trend of explication thereof, we are thus disposed to hold that though the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the Court thereof, before which it had submitted its report and obtaining its approval, no such power is available therefor to the learned Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and accused has entered appearance in response thereto. At that stage, neither the learned Magistrate suo motu nor on an application filed by the complainant/informant direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand.*



7. Further in *Ritesh Sinha vs State of Utter Pradesh & Anr* Criminal Appeal No.2003/2012 decided on 02.08.2019, the learned counsel for petitioner has referred to para No.32, which interalia notes:-

19. xxx xxx

*“(32) .....It has to be noticed that Article 20(3) of our Constitution does not say that an accused person shall not be compelled to be a witness. It says that such a person shall not be compelled to be a witness against himself. The question that arises therefore is: Is an accused person furnishing evidence against himself, when he gives his specimen handwriting, or impressions of his fingers, palm or foot? The answer to this must, in our opinion, be in the negative.*

8. However, I would also like to refer to the following paras of above decision, which interalia note:-

*24. Would a judicial order compelling a person to give a sample of his voice violate the fundamental right to privacy under Article 20(3) of the Constitution, is the next question. The issue is interesting and debatable but not having been argued before us it will suffice to note that in view of the opinion rendered by this Court in *Modern Dental College and Research Centre and others vs. State of Madhya Pradesh and others*<sup>11</sup>, *Gobind vs. State of Madhya Pradesh and another*<sup>12</sup> and the Nine Judge's Bench of this Court in *K.S. Puttaswamy and another vs. Union of India and others*<sup>13</sup> the fundamental right to privacy cannot be construed as absolute and but must bow down to compelling public interest. We refrain from any further discussion and consider it appropriate not to record any further observation on an issue not specifically raised before us. (2016) 7 SCC 353 (1975) 2 SCC 148 (2017) 10 SCC 1*

*25. 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 the appeals in terms of the above.*

9. Both the above decision rather support the respondent since in *Amrutbhai Shambhubhai Patel* (supra) the Court noted *such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial*, the life purpose of the adjudication in hand. Further, in *Ritesh Sinha* (supra) it is rather stated *fundamental right to privacy cannot be considered to be as absolute and but must bow down to compelling public interest*. Thus, there appear to be no doubt upon the power of the learned Trial Court to allow an application seeking permission to get the voice sample of accused.

10. I have been told *per* FSL report the voice sample has matched with the voice of the accused. Admittedly, the case is for ransom /kidnapping which entails maximum punishment, hence to seek the ends of justice, one cannot say the impugned order was wrong. Even otherwise, if one peruse the charge sheet *viz* page No.60 of the paperbook, one may find a noting that *the Samsung mobile phone was being sent to FSL for retrieval of the data* so that later the voice sample of the accused persons can be sent to have a comparison of the available recording. In application moved by the Investigating Officer it is rather claimed such data *has been retrieved* by the FSL, Rohini from the mobile phone and is provided in the DVD, hence the voice sample of accused be allowed to be taken for sending it to the FSL for comparison purpose.



11. In *Rakesh Bisht vs. Central Bureau of Investigation*, CRL REV P. No. 461/2006 decided on 03.01.2007 by this Court, it was held as under:-

17. xxx

*It is another matter if, after investigation, charges are framed and in the course of proceedings before the court, the court feels that voice samples ought to be taken for the purposes of establishing identity, then such a direction may be given provided the voice sample taken is only for the purposes of identification and does not contain any inculpatory statement so as to be hit by Article 20(3) of the Constitution of India. In this context, I am unable to agree with the decision of a learned single Judge of the Bombay High Court in the case of Abdul Karim Telgi (supra) because there the court directed the taking of voice samples even at the stage of investigation.*

12. In view of above, I find no fault in the impugned order passed by learned Trial Court. The petition being bereft of any merit, is hereby dismissed. Pending application, if any, also stands disposed of. No order as to costs.

**YOGESH KHANNA, J.**

**MARCH 22, 2022**

*DU*

न्यायमेव जयते