

Item-
39. 10-01-2024

MAT 37 of 2024
CAN 1 of 2024
CAN 2 of 2024

sg Ct. 8

Shri Sujay Krishna Bhadra
Versus
Ramesh Malik & Ors.

Mr. Jishnu Saha, Sr. Adv.
Mr. Jishnu Choudhury, Adv.
Mr. Soumen Mohanty, Adv.
Mr. Ayan Poddar, Adv.
Mr. Piyush Kumar Ray, Adv.
Mr. Agnish Basu, Adv.

...for the petitioner

Mr. Bikash Ranajan Bhattacharyya, Sr. Adv.
Mr. Sudipta Dasgupta, Adv.
Mr. Bikram Banerjee, Adv.
Mr. Arkadeb Biswas, Adv.
Mr. Arka Nandi, Adv.

...for the writ petitioner/respondent

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Firdous Samim, Adv.
Ms. Gopa Biswas, Adv.
Ms. Payel Shome, Adv.
Ms. Sampriti Saha, Adv.
Ms. Mohona Das, Adv.

...for the respondent no.13

Mr. Sirsanya Bandyopadhyay, Adv.
Mr. Arka Kr. Nag, Adv.

...for the respondent no.14

Mr. Dhiraj Trivedi, DSGI

...for ED

Mr. Billwadal Bhattacharyya, Adv.
Mr. Arijit Majumdar, Adv.

...for the CBI

1. The application for leave to prefer an appeal is heard in presence of the parties. The petitioner is aggrieved by an order passed by the learned Single Judge on 3rd January, 2023 directing the Enforcement Directorate to collect voice sample of the applicant and thereafter by an subsequent order dated 4th January, 2024, the ED was given liberty to take necessary consequential steps.
2. Mr. Jishnu Saha, learned Senior Counsel appearing on behalf

of the applicant has submitted that since the proceeding was held in camera, the learned Single Judge was not possibly apprised of an order passed by a coordinate Bench on 20th July, 2023 in which a direction was issued upon the learned Special Court to take steps for the purpose of collection of voice sample of the applicant by the Enforcement Directorate. Since the applicant was not allowed access at the time of hearing, the applicant could not place reliance on the said order.

3. Mr. Dhiraj Trivedi, learned Deputy Solicitor General of India appearing on behalf of the ED, has submitted that he cannot definitely recollect whether the order of Justice Tirthankar Ghosh was brought to the notice of Justice Amrita Sinha.
4. Mr. Bikash Ranjan Bhattacharyya, learned Senior Counsel appearing on behalf of the writ petitioner, however, submits that possibly the said order was not placed.
5. It appears that the order passed by the learned Special Court for collection of sample was directly and substantially at issue in CRR 2626 of 2023 and there is already an existing order passed by Justice Ghosh by which the enforcement Directorate was given liberty to collect sample.
6. It would have been more appropriate for the ED to approach Justice Ghosh in the event ED was faced with any difficulty for the purpose of collection of sample as the comity of Court requires such matter to be decided by the Bench in seisin over the matter and in any event in the matter of discretion in another proceeding, due regard should have to the proceeding in which the said issue was raised and

pending for adjudication.

7. However, it seems that the Enforcement Directorate has already collected the sample. The order passed by Justice Sinha is not in conflict with the order passed by Justice Ghosh.
8. Mr. Saha has raised an issue that the sample so collected, cannot be used for the purpose of investigation in view of the order passed by Justice Ghosh.
9. However, we do not find any such observation in the order passed by Justice Ghosh as His Lordship has stated that “ as the revisional application will be heard out at length after the complaint is filed, whether such voice sample can be used in evidence at the trial would be considered by this Court at the final stage of arguments of the present revisional application”.
10. The necessary consequential steps for investigation to be taken by the Enforcement Directorate is not the subject matter of challenge and cannot be considered by this Court. It appears that in the criminal revision there is no order restraining the ED to use the voice sample for the purpose of investigation. Whenever the issue of voice sample comes in the pending matter judicious discretion needs to be applied upon consideration of the order passed by Justice Ghosh in CRR 2626 of 2023 so as to ensure that there is no conflict between the two orders. The nature of the present proceeding should also be a relevant factor.
11. With these observations, the appeal and the applications stand disposed of. However, there shall be no order as to

costs.

12. Urgent photostat certified copy of this order, if applied for,
be supplied to the parties upon compliance of all requisite
formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)