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

+ **CRL.M.C. 5130/2024**

STATE NCT OF DELHI

.....Petitioner

Through: **Mr. Yudhvair Singh Chauhan, APP for
State with**

versus

ANUJ MISHRA

.....Respondent

Through: **Mr. N. Hariharan, Sr. Advocate with
Mr. Siddharth S. Yadav, Mr. Rahul
Sambher, Mr. Mukesh Mittal,
Mr. Sheesh Pal Singh Shokeen,
Mr. Sanjay Kapur, Mr. Rahul Yadav,
Ms. Sneha Bakshi, Mr. Punya Rekha
Angara, Mr. R. Ashok and
Mr. Sharian Mukherjee, Advocates.**

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

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10.07.2024

CRL.M.A. 19562/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

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1. Petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of petitioner against orders dated 04.06.2024 and 27.06.2024 passed by learned MM, South-West District, Dwarka Court, New Delhi in FIR No. 0567/2023, under Sections 3A/4(3)/5/6/23/25 of Pre-Conception & Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and Section 34 of NMC Act, 2019, registered at PS: Dwarka North, thereby releasing the ultrasound machine

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seized during course of investigation.

2. Learned counsel for the respondent appears on advance notice and accepts notice.

3. In brief, as per the case of prosecution, a secret information was received on 17.09.2023 with respect to sex determination of an unborn child, whereupon, raid was conducted and FIR was registered under Sections 3A/4(3)/5/6/23/25 of PC & PNDT Act, 1994 and Section 34 of NMC Act, 2019. During the course of investigation, ultrasound machine alleged to be used for the purpose of sex determination was seized on 18.09.2023.

4. Vide detailed order dated 04.06.2024, application preferred on behalf of the respondent for release of machine was allowed, subject to conditions listed in para 10 as under :

“10. The sole ground for opposing the application by the IO as well as the appropriate authority is that if released, chances of accused misusing the machine or tampering with the evidence in the hard disk cannot be ruled out. Other than this, IO as well as Ld. counsel for respondent have not putforth any ground to justify that machine be kept sealed and unused in the malkhana and in the absence of the same, the plea taken by the respondents seems untenable. Considering that investigation qua the machine has been completed and the main charge-sheet in the present matter has already been filed, as such, in opinion of this court, no prejudice would be caused on final determination of the case or to either party in case present application is allowed and machine kept in malkhana is released to the applicant as chances of tampering of evidence in the hard disk can be ruled out by imposing suitable conditions. Accordingly, present application is hereby allowed subject to following conditions:

(i) District Appropriate Authority as well as IO are directed to desal the machine in presence of



applicant subject to availability of all interested parties in malkhana of PS Dwarka North.

(ii) District Appropriate Authority as well as the IO shall be at liberty to make an effort to retrieve the data from the hard disk, or, in case same is not feasible without removing the hard disk, to remove the hard disk from the machine before handing over the physical possession of the machine to the applicant by taking assistance of duly qualified engineer/representative from the manufacturer i.e. Wipro G.E. Healthcare Pvt. Ltd, failing which, they shall have no right to raise objection on point of tampering of evidence contained in the hard disk. Efforts to retrieve the data must be made by the IO within 07 working days from the date of receipt of this order, however, the aforesaid time is not inclusive of the time needed by engineer from the manufacturer company to retrieve the data from the hard disk or to remove the hard disk in usual course.

(iii) Once the data is retrieved from the hard disk or hard disk itself is removed from the machine as per satisfaction of the investigating agency, the same shall be seized by the IO as per proper procedure/rules and be sent to FSL for examination. Once the data is retrieved from the hard disk or hard disk itself is removed from the machine as per satisfaction of the investigating agency or in case of failure of the investigating agency in making efforts to retrieve the data within 07 working days, the machine shall be released to the applicant subject to following conditions i.e.:

*a) subject to preparing detailed proper panchnama of above-mentioned machine against the indemnity bond of Rs.33,00,000/- **subject to proper identification and verification of documents.***



b) take photographs of above-mentioned machine from all possible angles including serial number and other identification marks, if any, and file the same along with supplementary charge sheet,

c) to get panchnama and photographs of above-mentioned machine attested and countersigned by applicant/affected party as well as by registered owner and IO.

(iv) The entire exercise must be videographed in presence of the parties involved.

(v) The counsel for the applicant as well as the appropriate authority are also at liberty to be present at the time of de-sealing exercise carried out by the appropriate authority/IO.”

5. Learned counsel for petitioner submits that though the data in the hard-disc of the machine has been retrieved, but the orders of release have been challenged since there is an apprehension of machine being misused.

6. On the other hand, learned counsel for respondent opposes the petition and vehemently submits that machine is no longer required for investigation and the data has been retrieved from the hard-disc. He further submits that since original certificate of the registration has been seized, there is no possibility of misusing the same. He further points out that the machine, if left in malkhana, is likely to be damaged, since it requires servicing.

7. Admittedly, the data from hard-disc of the ultrasound machine already stands retrieved. The identity of the machine is not disputed and an undertaking has already been submitted before the learned Trial Court. The contentions raised on behalf of petitioner that machine is likely to be



misused if released, appears to be without any merit, since the machine cannot be operated by the petitioner in absence of original licence. Detailed conditions for release have already been considered and imposed by learned Trial Court.

8. For the aforesaid reasons, there is no infirmity in the impugned order. Petition is accordingly dismissed. Pending applications, if any, also stand disposed of.

ANOOP KUMAR MENDIRATTA, J.

JULY 10, 2024/R