

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

C.R.R. 105 of 2025

**Subhash Chandra Balasaria
v/s.
The State of West Bengal**

For the Petitioner:	Sr. Adv.,Sudipta Moitra, Adv. Subhamoy Bhattacharya, Adv. Nibedia pal, Adv. Ananda Gopal Mukherjee, Adv. Shankar Bhattacharya,
For the Opposite Party No. 2:	Adv. Ankit Agarwal, Adv. Nialy Sengupta, Adv. Sujit Banerjee, Adv. Subhajit Manna,
For the State:	Adv. Saryati Dutta, Adv. Sreemoyi Roy

Judgment delivered on: 03-03-2025

SUVRA GHOSH, J. :-

1. The petitioner is aggrieved by an order passed by the Learned Chief Judicial Magistrate, Alipore on 4th November, 2024 in CGR 2040 of 2021 allowing the prayer of the investigating officer and directing him to act in compliance with section 349 of the Bharatiya Nagarik Suraksha Sanhita (in short the BNSS).
2. Learned counsel for the petitioner has submitted that in view of section 531(2)(a) of the BNSS, the proceeding shall be governed by the Code of

Criminal Procedure (hereinafter referred to as the Cr.P.C.) and the provisions laid down in the BNSS including section 349 cannot be invoked. There is no provision under the Code of Criminal Procedure which enables recording of voice sample of any person in course of investigation of a case. The authority relied upon by the private opposite party/defacto complainant is with regard to the power of the Hon'ble Supreme Court under Article 142 of the Constitution of India and is not applicable to any other Court.

3. Learned counsel has placed reliance on the authorities in Mukul Roy v/s.State of West Bengal reported in 2019 Supreme Court Cases OnLine Cal 4341, Sudhir Chaudhary and Others v/s. State (NCT of Delhi) reported in (2016) 8 Supreme Court Cases 307, Smt. Sukhdev Kaur (Grewal) v/s. Ravinder Singh Grewal reported in 1996 Supreme Court Cases OnLine Cal 238, Food Corporation of India v/s. Anurag Properties Pvt. Ltd. Anr. reported in 2006 Supreme Court Cases OnLine Cal 417, Delhi Development Authority v/s. Skipper Construction Co. (P) Ltd. and Another reported in (1996) 4 Supreme Court Cases 622, State of U.P. and Another v/s. Johri Mal reported in (2004) 4 Supreme Court Cases 714, Indian Bank v/s. ABS Marine Products (P) Ltd. reported in (2006) 5 Supreme Court Cases 72, and Ritesh Sinha v/s. State of Uttar Pradesh and Another reported in (2019) 8 Supreme Court Cases 1 in support of his contention.
4. In opposing the prayer of the petitioner, learned counsel for the private opposite party/defacto complainant has submitted that the learned trial Court, in dealing with applications filed under section 173(8) of the

Cr.P.C. and application for cancellation of bail, has observed in the order dated 12th May, 2023 that the investigating officer did not attempt to collect the voice samples of Subhash Balasaria and Siddharth Manot during investigation to establish their culpability. The order further records that the voice recording contained in the mobile phone of the witness Sanjay Jain which has been seized by the investigating officer has not matched with his voice samples for identification of the voice recorded in the conversations. The petitioner is one of the witnesses in the proceeding.

5. Referring to the order passed by the Hon'ble Supreme Court in *Pravinsinh Nrupatsinh Chauhan v/s. State of Gujarat* in Special Leave to Appeal (Crl.) No(s). 4693 of 2023 and the authority in *Tarak Nath Gupta and Another v/s. State of Delhi* and *Another* reported in 2023 Supreme Court Cases OnLine Del 6475, learned counsel has submitted that under Article 142 of the Constitution, the Hon'ble Supreme Court has directed that the Magistrate is empowered to collect voice sample for the purpose of investigation of the crime. No prejudice shall be caused to the petitioner in the event his voice sample is recorded by the learned Magistrate.
6. Learned counsel for the State has referred to the authority in *State of Bombay v/s. Kathi Kalu Oghad* reported in AIR 1961 Supreme Court 1808 and has submitted that the Hon'ble Supreme Court contemplated by a majority view that Article 20 (3) of the Constitution is invoked only in case of testimony of the accused which is self-incriminatory or of a character which has the tendency of incriminating the accused himself. In the judgment in *Ritesh Sinha* (supra), the Hon'ble Supreme Court has

held that until explicit provision is engrafted in the Code of Criminal Procedure by the 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 the crime. Since the petitioner was served with a notice under Section 160 of the Code of Criminal Procedure and has been categorized as a witness in the case, the investigating agency has rightly asked for his voice sample as a vital piece of evidence to arrive at the right conclusion.

7. At the outset, it shall be useful to reproduce Section 531(1) and 2(a) of the BNSS.

“531. Repeal and savings-

(1) The Code of Criminal Procedure, 1973 (2 of 1974 is hereby repealed

(2) Notwithstanding such repeal-

(a) if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;”

8. Therefore Section 349 of the BNSS cannot be invoked in the proceeding before the learned Chief Judicial Magistrate, Alipore. The direction given by the Magistrate in the order impugned dated 4th November, 2024 upon

the investigating officer to act in compliance with Section 349 of the BNSS is not tenable in law.

9. 311-A of the Cr.P.C. empowers the Magistrate to order a person to give specimen signatures or handwriting. There is no explicit provision under the Cr.P.C. authorising recording of voice sample of a witness. In the authority in Ritesh Sinha (supra) the accused was directed to give his voice sample and in the said context, the Hon'ble Supreme Court held as hereunder:-

“The compulsion to give voice sample does in some way involve an invasion of the rights of the individual and to bring it within the ambit of the existing law would require more than reasonable bending and stretching of the principles of interpretation.

If the legislature, even while making amendments in the Criminal Procedure Code (Act 25 of 2005), is oblivious and despite express reminders chooses not to include voice sample either in the newly introduced Explanation to Section 53 or in Sections 53-A and 311-A CrPC, then it may even be contended that in the larger scheme of things the legislature is able to see something which perhaps the court is missing.”

10. It is also trite law that a person cannot be compelled to be a witness against himself. In the said judgment, the Hon'ble Supreme Court has observed 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 the Supreme Court under Article 142 of the Constitution.

11. An identical issue was dealt with by a coordinate Bench of this Court in an order passed on 12th December, 2019 in Mukul Roy v/s. State of West Bengal reported in 2019 SCC OnLine Cal 4341. The learned Court formulated three questions and referred the matter for decision by an appropriate larger Bench. The questions formulated are as hereunder:-

- a) *“Whether Section 311A read with Sections 53 and 53A of Cr.P.C. along with Section 5 of the Identification of Prisoners Act, 1920, empowers a Magistrate to compel a witness in course of investigation into an FIR, to give voice sample in the aid of such investigation.*
- b) *Can the principle laid down by the Hon’ble Supreme Court in the Ritesh Sinha v. State of U.P. (supra) be applied also to witnesses in course of investigation.*
- c) *Whether a witness even in course of an investigation can be compelled to give evidence, that could subsequently emerge as a ground for including him as an accused in the final investigation report.”*

12. This Court is informed that the reference is yet to be decided. The learned coordinate Bench directed recording of voice sample of the petitioner in the said case upon consent being given by him on condition that the said voice sample would be kept sealed and unopened and would abide by the result of the reference.

13. Under such circumstances, this Court is of the view that since the issue which has fallen for consideration before this Court has been referred to a larger Bench and is still pending, judicial propriety demands that the prayer of the petitioner herein should abide by the decision of the appropriate Bench.
14. As the order impugned dated 4th November, 2024 directing the investigating officer to act in terms of Section 349 of the BNSS is bad in law, the said order is quashed/set aside.
15. The prayer for recording the voice sample of the petitioner shall abide by the decision of the appropriate larger Bench.
16. The revisional application being CRR 105 of 2025 is accordingly disposed of.
17. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)