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

CRIMINAL WRIT PETITION NO. 310 OF 2025

PETITIONERS : Rajesh S/o Krishnarayan Tripathi
Aged about 50 years, Occu. Business,
R/o Friends Colony, Katol Road,
Nagpur.

VERSUS

RESPONDENTS : 1] Central Bureau of Investigation,
through the Superintendent of Police,
AC-I, 8th Floor, 'B' wing, CGO Complex,
Lodhi Road, New Delhi.

2] The Superintendent of Police,
Central Bureau of Investigation,
Prevention of Corruption Branch,
CGO Complex, Seminary Hills,
Nagpur.

Mr. Sunil V. Manohar, Senior Advocate assisted by Mr. Rafique A. Akbani and Mr. S.S. Gandhi, Advocates for the petitioner.
Mr. P. K. Sathianathan, Special Counsel for respondent nos.1 & 2.

CORAM : M. W. CHANDWANI, J.
DATE : MAY 02, 2025

ORAL JUDGMENT

1. **RULE.** Rule made returnable forthwith. By consent of the learned counsel for the parties, the matter is taken up for final disposal.

2. This petition challenges the order dated 17.03.2025 passed by the learned Special Judge, CBI, Nagpur in Reference No. RC AC12017 A0001, thereby allowing the application filed by the respondents seeking permission to obtain voice sample of the petitioner.

3. Brief background of the case is necessary to dispose of the writ petition.

The respondent-CBI launched prosecution against the officials of CBI and some private persons including the petitioner for the offences punishable under Sections 193, 211 and 218 read with Sections 120-B of the Indian Penal Code and Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as “the Act of 1988” for short), alleging that the CBI officials namely, Pradip Lande, Jitendra Naikwad along with Shantilal Patil, Zuber Ali and the petitioner laid a false trap against Mr. V.R. Hanwate, who was working as Addl. Director, Central Board of Workers Education (CBWE), Nagpur on the complaint of Shantilal Chaitram Patil. The complainant and other persons including the petitioner were also charge-sheeted by the CBI. The petitioner and co-accused Zuber Ali Rahat Ali moved before the Division Bench of

this Court for quashing of the proceedings by filing Criminal Application (APL) Nos. 74/2017 and 281/2017, respectively. The Division Bench of this Court by order dated 29.08.2017 allowed both the applications and quashed the FIR against the petitioner and co-accused Zuber Ali. The said order was assailed by the respondent-CBI before the Hon'ble Supreme Court by preferring Special Leave Petition (Cri.) Nos. 3952 - 3953/2018. When the matters were listed on 20.11.2023 before the Hon'ble Supreme Court, the learned Addl. Solicitor General of India did not press the petitions and the petitions came to be dismissed with liberty to proceed against the petitioner and co-accused Zuber Ali, if any material pointing out their involvement is found.

4. On 07.03.2025, the CBI filed an application under Section 349 of the Bhartiya Nagarik Suraksha Sanhita, 2023 seeking permission to obtain voice sample of the petitioner contending that as per the conversation amongst the accused persons including the petitioner, there are sufficient grounds to get the voice sample of the petitioner confirmed through Forensic voice experts for fair investigation. The application before the Special Court was pressed in view of the liberty given by the Hon'ble Supreme Court in the order

dated 20.11.2023 ; the statement made by co-accused recently and also on the basis of the decision in ***Ritesh Sinha .vs. State of Uttar Pradesh***[1]. The contention before the Special Court was to identify the unknown voice in the conversation, the voice sample of the petitioner is necessary. The Learned Judge of the Special Court by the impugned order allowed the application and granted permission to the CBI to obtain the voice sample of the petitioner by following due procedure of law. Feeling aggrieved by the said order, the petitioner is before this Court.

5. Mr. Sunil V. Manohar, learned Senior Advocate appearing on behalf of the petitioner submitted that despite the finding by the Division Bench of this Court that the petitioner has nothing to do with regard to the conversation at the time of verification of the alleged demand by Mr. Hanwate, the order has been passed by the learned Special Judge, CBI on flimsy grounds. There is no material against the petitioner showing his involvement in the crime. Learned Special Judge also relied on the statement made by the co-accused after more than 13 years wherein he has stated to the CBI that the present petitioner was present at the MOIL guest

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house at Nagpur. According to him, the verification of demand has been done at the CBWE building and not at the MOIL guest house. The learned Special Judge has relied upon irrelevant material and has given reasons which are vague in nature, on which the impugned order came to be passed. According to him, in spite of the Division Bench of this Court giving clean chit to the petitioner, a contrary finding has been recorded by the learned Special Judge.

6. Next, Mr. Manohar, would submit that taking voice sample of a person amounts to invasion of the right to privacy of an individual and only in rare cases, that too when there is concrete material against a person, permission to obtain voice sample is required to be granted. Section 349 of the BNSS provides that the voice sample of an accused who has been arrested can be permitted to be taken, but permission to take voice sample of a person who has not been arrested, can be granted only after giving special reasons. According to the learned Senior counsel, there is no special reason assigned by the learned Special Judge. The order of the Hon'ble Supreme Court has been misinterpreted by the learned Judge. The CBI, under the guise of the liberty given by the Hon'ble Supreme Court to proceed against the petitioner wants to anyhow arrest the

petitioner and implicate him in the crime. Lastly, Mr. Manohar submitted that the impugned order which affects the right to privacy of the petitioner, cannot be sustained and is required to be set aside.

7. Mr. Sathianathan, learned special counsel appearing for the CBI vehemently submitted that the Hon'ble Supreme Court in its order dated 20.11.2023 has granted liberty to proceed against the petitioner if any material is found against him. According to him, the voice of some unknown person came to be heard in the conversation recorded at the time of verification of demand in the complaint filed against CBWE Director Shri Hanwate. The said voice is required to be identified and therefore, permission to take the voice sample of the petitioner was sought from the Special Court. Moreover, the statement of co-accused Naikwad, which was recorded in January-2025 reveals the presence of the petitioner at the MOIL guest house. Therefore, to verify whether there is material against the petitioner, the voice sample of the petitioner is required. According to him, permission has been granted to the CBI to proceed against the petitioner and the co-accused in case any additional material is found which points towards their involvement. In order to ascertain involvement of the petitioner, his voice sample is necessary. He

supported the order passed by the learned Special Judge and sought rejection of the petition.

8. A complaint was made by the Inspector of Police, CBI AC-1, New Delhi against the officials of CBI ACB, Nagpur namely Pradeep R. Lande, J.R. Naikwad along with some private persons including the petitioner and co-accused Zuber Ali alleging that the CBI officials in connivance with Shantilal Chaitram Patil, and Sanjay Sinha laid a false trap against Mr. Hanwate. Therefore, the aforesaid offence came to be registered against them. The petitioner and Zuber Ali approached this Court for quashing of the FIR under Section 482 of the Cr.P.C. The material against the present petitioner had been relied by the CBI was the CFL report revealing that the voice recording at the time of verification was not done in a mobile phone but it was recorded in some other device/computer and thereafter it was copied into the mobile phone by editing the file name, this Court opined that it is not the case of the CBI that there was some data in item no.1 'ScanDisk 4 GB Micro SD card' and item no.2 'Maxx' mobile phone to which the applicant could be connected. The Division Bench of this Court found no material against the petitioner and Zuber Ali and accordingly, quashed the proceedings qua the petitioner and

Zuber Ali. The order was confirmed by the Supreme Court by dismissing Special Leave Petition (Cri.) Nos. 3952 – 3953/2018 filed by the CBI.

9. Taking the voice sample of an accused of a crime was a debatable issue before a Two Judges bench of the Hon'ble Supreme Court in the decision in case of ***Ritesh Sinha*** (supra). Despite of unanimity amongst Their Lordships on the fact that taking specimen of voice in itself is no testimony at all but it only acts as material for comparison in order to lend an assurance to the Court that its inference based on other pieces of evidence is reliable ; the difference of opinion occurred with regard to the absence of legislative authority in the form of a statute authorizing a Magistrate to permit the prosecution to take voice sample of an accused arrested in a crime. The matter was referred to the Larger Bench and the said controversy was put to rest by a Three Judges bench of the Hon'ble Supreme Court in ***Ritesh Sinha*** (supra). The Hon'ble Supreme Court by exercising the jurisdiction vested in it under Article 142 of the Constitution of India, conferred power on the Magistrate to order a person to give a sample of his voice for the purpose of the investigation of a crime, till the law is enacted in this regard.

10. By virtue of the BNSS, particularly Section 349, the power of a Magistrate to direct a person to give the specimen of his voice got legislative authority. Section 349 of the BNSS empowers the Magistrate to direct/order a person to give the specimen signature or handwriting or voice sample. For the purpose of convenience, Section 349 is reproduced hereunder :

> *"349 – Power of Magistrate to order person to give specimen signatures of handwriting etc.*
> *If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Sanhita, it is expedient to direct any person, including an accused person, to give specimen signatures, finger impressions, handwriting, or a voice sample, he may make an order to that effect.*
> *In that case, the person to whom the order relates shall be produced or shall attend at the time of place specified in such order and shall give his specimen signatures, finger impressions, handwriting, or voice sample.*
> ***Provided that** no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.*
> ***Provided further that** the Magistrate may, for reasons recorded in writing, order any person to give such specimen or sample without them being arrested."*

11. Thus, if the Magistrate is satisfied that for the purpose of any investigation or proceeding, voice sample of a person is necessary, he may direct any person including an accused of a crime arrested in connection with such investigation or proceeding, to give his voice

sample. Proviso to Section 349 also empowers the Magistrate for the reasons to be recorded in writing, to order any person to give such specimen or sample without him being arrested. Thus, the Proviso contemplates that the order shall not be made against a person who has not been arrested and if such an order is to be passed, then the reasons for passing such order have to be recorded. The object of putting this rider in the Section is that the order directing a person to give his voice sample should not be passed routinely against a person who has not been arrested, just because it has been sought by the investigating agency. Therefore, a distinction is to be made between the cases in which a person is arrested and the cases in which a person other than the one who is arrested is shown as a suspect. The permission to direct a person who has not been arrested can be granted by a Magistrate only by way of an exception for reasons to be recorded in writing, categorically spelling out a departure from the general rule after satisfying himself that the circumstances were exceptionally occasioned for one reason or another. In the present case, the CBI is making roving inquiry about the involvement of the petitioner, against whom this Court quashed the FIR in the same crime on an earlier occasion. In that scenario the Special Judge just has to satisfy himself that there is some material with regard to the

involvement of the petitioner in the crime. Thus, to exercise the power conferred under the Proviso to Section 349 of the BNSS which is an exception, in these peculiar facts of the case the learned Magistrate himself has to come to the conclusion that some material is there against the petitioner.

12. Permission to take voice sample of the petitioner is sought on the premise that there is an unidentified voice in the conversation with Mr. Hanwate at the time of verification of demand and the statement of the co-accused revealed that the petitioner was present at MOIL guest house where trap proceedings were conducted. Perusal of the FIR reveals that at the time of verification in the earlier case, nobody accompanied the complainant during verification as well as at the time of the trap proceeding and the panchas were asked to wait outside the building of CBWE during the verification proceeding, When nobody accompanied the complainant at the time of verification, then how the voice of the petitioner could have been heard in the conversation at the time of verification? Further, as per CBI, the verification of demand with Shri Hanwate was done at CBWE office whereas the statement of the co-accused reveals the presence of the petitioner at the MOIL guest house. In such a case, how the

presence of the petitioner at the MOIL guest house would connect him with the unidentified voice in conversation which took place at CBWE office at the time of verification ? Even nothing has been produced before the learned Magistrate to show that the unidentified voice is an incriminating material against the petitioner so as to warrant him to direct the petitioner to give his voice sample. There is nothing on record to show what words were uttered by the unidentified person so as to identify whether any incriminating words were uttered showing his involvement in the trap led against Mr. Hanwate.

13. Notably, the conversation at the time of verification of demand was already with the CBI when this Court quashed the proceeding against the accused holding involvement of the petitioner which is palpable from the discussion made by the Division Bench of this Court and the CBI had relied on the FSL report in respect of the conversation recorded at the time of verification of the demand and trap. A specific observation was made by the Division Bench of this Court wherein, it has been observed that the CBI has not come up with a case that there is some data in the two items i.e. ScanDisk Micro SD card' and 'Maxx' mobile phone with which the petitioner could be connected. Thus while quashing the proceeding against the

petitioner, the Division Bench of this Court has observed that the Micro SD card and the Maxx mobile phone containing the conversation at the time of verification of the demand do not connect the petitioner with the case. However, relying on the same material, the learned Magistrate makes out an exception under the proviso to Section 349 of the BNSS and grants permission to the CBI to obtain voice sample of the petitioner. Therefore, I agree with the submissions of Mr. Manohar that the learned Special Judge by relying on the same material which has already been considered by the Division Bench of this Court while quashing the FIR against the petitioner, which was confirmed by the Hon'ble Supreme Court by dismissing the Special Leave Petitions, permitted the CBI to take voice sample of the petitioner.

14. Another reason given by the Special Court is that the Supreme Court by its order dated 23.11.2023 had granted liberty to the CBI to proceed against the petitioner if any new material is found. I find force in the argument of Mr. Manohar that the liberty that was granted to proceed against the petitioner should not be treated as liberty to find out new material and cannot be used to obtain voice sample of the petitioner in order to implicate him or making fishing

inquiry. The CBI may act independently but it has to make out a case on the touch stone of the decision in the case of ***Ritesh Sinha*** *(supra)* i.e. the voice sample is required to lend assurance of the material against the accused. Here, to see whether there is material against the petitioner, the voice sample is being sought for fishing and roving inquiry against the petitioner when this Court has already opined that there is no material against him. The Special Court did not interpret the order of the decision of the Hon'ble Supreme Court dated 23.11.2023 in proper perspective and erroneously relied on it for permitting the CBI to obtain voice sample.

15. In view of the discussion above, the impugned order passed by the learned Special Judge is erroneous and requires interference. The writ petition deserves to be allowed.

16. Accordingly, the criminal writ petition is allowed.

17. The order passed by the learned Special Judge, CBI, Nagpur, dated 17.03.2025 in Reference No. RC AC1 2017 A0001, is quashed and set aside.

18. Rule is made absolute. The petition stands disposed of.

(M.W.Chandwani, J.)

Diwale

Signed by: DIWALE
Designation: PS To Honourable Judge
Date: 07/05/2025 19:25:12