

ITEM NO.20

COURT NO.14

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 4693/2023

(Arising out of impugned final judgment and order dated 23-12-2022 in CRRA No. 157/2021 passed by the High Court Of Gujarat At Ahmedabad)

PRAVINSINH NRUPATSINH CHAUHAN

Petitioner(s)

VERSUS

STATE OF GUJARAT

Respondent(s)

(IA No.75353/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 15-05-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. Shamik Shirishbhai Sanjanwala, AOR
Mr. Tejas Barot, Adv. (V.C.)

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Heard Mr. Tejas Barot, learned counsel appearing for the petitioner. The primary grievance of the petitioner is that his voice sample is ordered to be collected for the purpose of comparison with the incriminatory voice sample available with the police. According to the counsel, unless rules are framed and appropriate standard operating

system is notified under the provisions of the Criminal Procedure (Identification) Act, 2022 read with the Rules 2022, the collection of voice sample would impeach on the right of privacy of the accused.

2. In the above context, we have the benefit of reading the ratio in '*Ritesh Sinha Vs. State of Uttar Pradesh*' reported in (2019) 8 SCC 1 where in the context of voice sample collected for the purpose of investigation, the three Judges Bench of this Court had held :-

"26. 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 v. State of M.P.*, *Gobind v. State of M. P.* and another and the nine Judge's Bench of this Court in *K.S. Puttaswamy(Privacy 9) v. Union of India* 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.

27. 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."

3. The above would indicate that the Magistrate is given the power to order for collection of voice sample for the purpose of investigation of a crime until explicit provisions are engrafted in the CrPC by the Parliament. Such direction was issued by invoking powers under Article 142 of the Constitution of India.

4. Supported by the above ratio, we see no infirmity with the impugned judgment of the High Court as also of the Special Court ordering the accused to give his voice sample to facilitate investigation of the crime.

5. The special leave petition accordingly, stands dismissed. Pending application(s), if any, shall stand disposed of.

(SONIA BHASIN)
COURT MASTER (SH)

(KAMLESH RAWAT)
ASSISTANT REGISTRAR