

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

% **Pronounced on: 5th August, 2022**

+ **CRL.M.C. 3074/2022, CRL.M.A.12945/2022 (for stay)**

SUNIL KUMAR ALIAS TITU Petitioner
Through: Dr. Malkit Singh Jandiala, Advocate
versus

STATE OF UT OF CHANDIGARH Respondent
Through: Mr.Charanjit Singh Bakhshi, APP,
UT of Chandigarh

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

O R D E R

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, “Cr. P. C.”) by one of the accused persons in FIR No.194/2017, registered under Sections 409/420/120B IPC and Sections 8/9/13(1)(d)/13(2) of the Prevention of Corruption Act, at Police Station Sector 3, Chandigarh.
2. The case relates to the leaking of the question paper set for “Haryana Civil Services (Judicial) (Preliminary) Examination-2017”. The FIR has been registered on the directions of the High Court of Punjab and Haryana. The Special Investigating Team (for short, “SIT”) was also constituted for investigating into the case. The accused persons were arrested, and vide orders dated 12th October, 2018, the High Court of Punjab and Haryana granted interim bail to the accused, including the present petitioner. By means of various petitions, some of the accused approached the Supreme

Court seeking transfer of the matters from Chandigarh to Delhi. These petitions were allowed vide orders dated 5th February, 2021 and the cases were transferred to Delhi, where the trial is presently pending.

3. After the cases were transferred to Delhi, the petitioner sought directions from the learned Special Judge to the police not to compel the petitioner to give his voice sample. Vide order dated 2nd July, 2022, the Principal District & Sessions Judge-cum-Special Judge (PC Act) (CBI), Rouse Avenue District Court, New Delhi (hereinafter referred to as the "**Special Judge**") declined to issue any such directions observing that assuming that the High Court of Punjab and Haryana had granted liberty to the petitioner to file a fresh petition before the High Court of Delhi, the petitioner had not done so till that date, and in any case, the time granted by the High Court of Punjab and Haryana also stood expired and thus, directed the petitioner, being accused No.5, to give his voice sample in terms of the previous order dated 26th September, 2018, also fixing the date for the purpose as 11th July, 2022 at CFSL, Sector-36, Chandigarh.

4. The instant petition has been filed by the petitioner seeking the quashing of the orders dated 26th September, 2018, passed by the learned Additional Sessions Judge, Chandigarh and the consequential orders dated 2nd July, 2022 passed by the learned Special Judge. The order dated 26th September, 2018 permitted the SIT to obtain the voice sample of the petitioner. On 22nd November, 2018, the petitioner moved the learned Trial Court at Chandigarh to issue appropriate directions to the police not to compel the petitioner to give his voice sample. The plea taken was that he was in judicial custody on 31st August, 2018 and was not in a proper state of mind due to acute mental depression and had, therefore, suffered the

statement, agreeing to furnish his voice sample to the SIT. Since the learned Trial Court dismissed that application vide orders dated 8th January, 2019, the petitioner approached the High Court of Punjab and Haryana by moving CRM-M No. 2606 of 2019 under Section 482 Cr.P.C. for quashing of the said order dated 8th January, 2019, passed by the learned Trial Court, Chandigarh. It is the contention of Dr. Malkit Singh Jandiala, learned counsel for petitioner, that the instant petition has been filed in the light of the orders passed by the Supreme Court on 22nd February, 2021 granting such a liberty to the petitioner, which has also been recorded by the High Court of Punjab and Haryana in its order dated 29th April, 2022.

5. Learned counsel for the petitioner has forcefully urged that compelling the petitioner to give his voice sample to the SIT violated the petitioner's Fundamental Rights, particularly, under Article 20(3) of the Constitution of India. It was further submitted that the learned Trial Court at Chandigarh had perversely rejected the application of the petitioner which was filed claiming that his no objection to the taking of his voice sample on the basis of which the impugned order dated 26th September, 2018 was passed, had been given when he was under severe stress and mental depression and was therefore, not a free consent. His further contention is that the directions to give voice sample was for the purpose of investigation of a crime, as observed by the Supreme Court in ***Ritesh Sinha v. State of U.P.***, (2019) 8 SCC 1, and not after the completion of investigations. The learned counsel further contended that once the charge had been framed in the instant case, clearly the investigation had concluded and there was no scope left for the learned Trial Court at Delhi,

to, on 2nd July, 2022, direct the petitioner to give his voice sample on 11th July, 2022 at CFSL, Chandigarh. In the circumstances, learned counsel for the petitioner urged that the impugned orders be set aside.

6. *Per contra*, Mr. Charanjit Singh Bakhshi, learned Additional Public Prosecutor appearing for the UT of Chandigarh, submitted that the present petition was not maintainable as the High Court of Punjab and Haryana had dealt with a similar challenge to the orders of the learned Trial Court, Chandigarh, by way of CRM-M No. 2606 of 2019, which was disposed of by the High Court of Punjab and Haryana on 10th January, 2020. According to learned APP, in fact, no liberty had been given to the petitioner to move this court for a similar relief. It was further submitted that the petitioner had voluntarily suffered a statement on 31st August, 2018 to the effect that he had no objection if the application for obtaining his voice sample was allowed. A co-accused Ayushi had, on the other hand, on 14th September, 2018, expressed that she did not wish to give her voice sample. Despite her disinclination, the learned Trial Court on 26th September, 2018, directed her too to give her voice sample. She approached the High Court of Punjab and Haryana to challenge the said order which was dismissed. She has in any case already given her voice sample in compliance of these orders, but the petitioner has not done so.

7. It was also submitted by the learned APP that as the accused persons were moving several applications, one after the other, the High Court of Punjab and Haryana vide orders dated 10th January, 2020, directed the learned Trial Court to frame charges in accordance with law, within three weeks and decide all the pending applications. That order was challenged by the present petitioner before the Supreme Court. The Supreme Court

disposed that petition along with others granting liberty to him to withdraw the pending application before the High Court of Punjab and Haryana and seek remedies permissible under law before the competent courts in Delhi. According to the learned APP, liberty was given to the petitioner to agitate contentions raised challenging the order dated 10th January, 2020 of the High Court of Punjab and Haryana and none other. It was pointed out that he had made a statement before the High Court of Punjab and Haryana, that the UT Administration was not pressing the petitions being CRL.M.C.3242/2021 and CRL.M.C.19946/2021, reserving the liberty to challenge the same before the High Court of Delhi. However, the petitioner had made no such statement. All the petitions/applications pending before the High Court of Punjab and Haryana were disposed of as infructuous. The only specific liberty granted was in respect of a right to seek confirmation of bail before the courts of competent jurisdiction at Delhi. Thus, according to the learned APP, the petition deserved to be dismissed at the threshold.

8. I have heard the contentions of the learned counsel for the parties, and I have perused the record and the cited judgments. This Court is not inclined to explore an answer to the question as to whether or not the petitioner had been granted liberty to move the present petition. No doubt, before the Supreme Court, the petitioner had challenged the order dated 10th January, 2020 of the High Court of Punjab and Haryana. That petition was disposed of with liberty to the petitioner to “*agitate all aspects/contentions, as may be permissible in law before the High Court in the pending proceedings*”, which were to be decided on their own merits and in accordance with law. The Supreme Court also noted in the said

order dated 22nd February, 2021, that since the case had been transferred to Delhi, it would be open to the petitioner to withdraw the application filed by him before the High Court of Punjab and Haryana and take recourse to appropriate remedy, as may be permissible in law.

9. Now, the application that was before the High Court of Punjab and Haryana was CRM-M No.2606 of 2019 challenging the order of the learned Trial Court, Chandigarh, issuing directions for obtaining his voice sample; CRM-M No.8538 of 2020 challenging the order dismissing his application for supply of documents, transcripts and CD conversations; and, CRM-M No.8541 of 2020, against the orders of the learned Trial Court declining supply of copies of various challans to him. Since the orders dated 10th January, 2020 of the High Court of Punjab and Haryana could not have been challenged by him before the same High Court, it stands to reason that the Supreme Court in its orders dated 22nd February, 2021 permitting withdrawal with liberty meant the afore-mentioned three applications. The Supreme Court had given an opportunity to the petitioner to withdraw the application(s) filed by him before the High Court of Punjab and Haryana, as may be permissible in law.

10. But, as rightly pointed out by the learned APP, the order dated 29th April, 2022 of the High Court of Punjab and Haryana does not record a specific statement of the petitioner or on his behalf, by his counsel, that he was exercising the option given to him by the Supreme Court with liberty to approach the Delhi courts. The following observations have been made by the High Court of Punjab and Haryana in its order dated 29th April, 2022, which are reproduced hereinbelow:

“Keeping in view the above background and in view of

the fact that the matter stands transferred to the Court at Delhi at the instance of one of the accused namely Sunil Kumar @ Titu and since the Apex Court has already given him liberty to withdraw his application before this Court and take remedies as permissible in law vide order dated 22.02.2021, which has already been reproduced above, we are of the considered opinion that it would not be appropriate for this Court to further proceed in the matter regarding the other accused/petitioners. Even otherwise, since the FIR has been lodged, investigation is complete and charge has been framed. Consequently, the purpose of monitoring the proceedings has now been rendered infructuous. Similarly, as noticed above, one of the accused has also approached the High Court of Delhi for his legal remedies.

In such circumstances, we dispose of all the petitions bearing CRM-9439, 16106, 29789, 35204, 45761, 45861, 52887, 53510 & 54526-2018 as having been rendered infructuous.

Liberty is granted to the applicants to seek confirmation of the bail before the Courts of Competent Jurisdiction at Delhi as interim orders have been operating in favour of the accused for a period of over 3 years. The same are extended for a period of 2 months to enable the petitioners to seek their redressal before the Courts of Competent Jurisdiction at Delhi.

All pending applications for impleadment and directions also stand disposed of. All other cases are also disposed of as having been rendered infructuous.”

11. In the circumstances, this Court is inclined to consider the instant petition on merits.
12. On 26th September, 2018, the learned Trial Court at Chandigarh,

being Sh.Rajeev Goyal, ASJ, recorded that the petitioner had suffered a statement on 31st August, 2018 to the effect that he had no objection if the application for obtaining his voice sample was allowed. On 26th September, 2018 also, a contrary stand was not taken by the accused, Sunil Kumar @ Titu. It was much later i.e., on 22nd November, 2018, that he moved an application before the learned Trial Court for issuance of directions to the police not to compel him to give his voice sample on the ground that he was in judicial custody and was not in proper state of mind due to acute mental depression, and by which time, the petitioner was out on interim bail. The learned Trial Court i.e., Sh. Rajeev Goyal, considered the grounds taken by the petitioner and has made the following observations:

“Application for obtaining voice sample of accused Ayushi and Sunil Kumar @ Titu was filed by the prosecution which by the order dated 26.09.2018 was allowed and in that view of things, police is seeking to obtain voice sample of the applicant-accused. For said purpose, notice u/s 160 Cr.P.C. has been issued to him and hence, there is nothing on the record to show that police is pressurizing or using any other illegal method to obtain voice sample of applicant/accused. On 31.08.2018, when statement regarding voice sample was suffered by applicant-accused, he was specifically asked by the court if he was going to make his statement voluntarily and on application accused having given his willingness to suffer a statement the same was recorded without any force, coercion or pressure from any side. Hence, the mere fact that the accused was in judicial custody is no ground to say that he was in state of mental depression and hence, on the basis of statement so suffered by him, his voice sample

cannot be taken. Moreover, if prayer made by way of present application is granted, then that would be amount to recalling the order dated 26.09.2018, which cannot be done. Hence application being without is hereby dismissed.”

13. The same judge had recorded the statement of the petitioner and was able to record that the court had specifically asked the petitioner if he was making his statement voluntarily. It is also noteworthy that it was on an application that the petitioner had given his willingness to suffer a statement and the statement was thus recorded without any force, coercion or pressure from any side. These observations cannot be rejected lightly, on the mere whims of the petitioner. In fact, it is noted that the learned Trial Court had assured itself on the voluntary nature of the statement suffered by the petitioner in respect of the giving of his voice sample. The application to wriggle out of that consent was rightly dismissed. In the light of this order dated 8th January, 2019, clearly, there is no ground made out for quashing the order dated 26th September, 2018, as being improper or perverse.

14. It may be noted here that whereas CRM-M No.2606 of 2019 was against the orders dated 8th January, 2018, the present petition does not seek any relief qua that order.

15. Coming to the second order under challenge, namely, the order dated 2nd July, 2022, passed by the learned Special Judge, no error or perversity is evident in the same. Admittedly, no petition challenging the order dated 26th September, 2018, or for that matter the order dated 8th January, 2019, was pending before this court, when the impugned order

dated 2nd July, 2022 was passed. Thus, before that court, the order dated 26th September, 2018 was a final order and directing compliance of the same was proper.

16. The argument of the learned counsel for petitioner that a voice sample could be given only during investigation does not appeal. In fact, this argument is not available to the petitioner even if such was the position in law. The directions for providing voice sample were issued during the pendency of the investigations, but the petitioner, by moving various applications, as noticed hereinabove, in addition to other applications, successfully avoided complying with that order. Today, the position is that pursuant to the directions of the High Court of Punjab and Haryana, charges have been framed, but that cannot defeat the right of the prosecution to obtain an expert opinion on voice samples that it had been permitted to take, also from the petitioner.

17. A Full Bench of the Supreme Court in *Ritesh Sinha (supra)* has reaffirmed that a judicial order compelling a person to give a sample of his voice did not violate his Fundamental Right to Privacy, including under Article 20(3) of the Constitution of India. It also held that a Judicial Magistrate must be conceded the powers to order a person to give a sample of his voice for the purposes of investigation of a crime, and ordered the vesting of such a power under Article 142 of the Constitution of India. The purpose of taking a voice sample is to investigate a crime, but it would be incorrect to interpret this as meaning that the voice sample would have to be taken only within the time the charge-sheet is filed and not thereafter, as a clever accused, like the present petitioner, would be able to defeat the right of the investigating agencies to obtain a voice sample, even though

the court had authorized the same. The orders of the court cannot be rendered nugatory in this fashion.

18. In the light of the foregoing discussion, this Court finds no merit in the present petition. The orders under challenge dated 26th September, 2018 and 2nd July, 2022 are neither erroneous nor perverse nor have resulted in grave miscarriage of justice, which would have justified interference with the same.

19. The petition, being devoid of merits, is accordingly dismissed along with the pending application.

20. The learned Special Judge may fix a date when the petitioner shall appear before the CFSL, Sector 36, Chandigarh, for giving his voice sample.

21. The order be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

AUGUST 05, 2022

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