IN THE COURT OF SH. PARVEEN SINGH,
ADDL. SESSIONS JUDGE – 03 (NEW DELHI)
PATIALA HOUSE COURTS : NEW DELHI

CC No. 68/2021.

Dr. Jagdish Prasad.
Former Director General,
Health and Services,
Government of India,
R/o C-32, Anand Niketan,
New Delhi-110021. ....Complainant.

Versus

State,
Through Director,
National Investigation Agency,
NIA Building, JLN Stadium Marg,
Lodhi Road, New Delhi-110003. .....Respondent.

Date of Institution	:	04.08.2021.
Date of Arguments	:	04.08.2021.
Date of Pronouncement	:	07.08.2021.

ORDER

1. The present is an application u/s 156 (3) Cr.P.C r/w section 16 of NIA Act seeking directions for registration of FIR.

2. It is submitted in the application that the applicant/ complainant has national and international renown in the field of medicine with recognized expertise in cardiothoracic surgery. In this capacity, applicant has undertaken a thorough analysis of nature and origin of SARS-CoV-2 coronavirus which is the cause of devastating COVID-19 pandemic. The worldwide spread of COVID-19 pandemic has led to large scale disturbance in normal

life, lacs of deaths and loss of income and property for thousands of people in India as well. The origin of SARS-CoV-2 was in the city of Wuhan in Hubei Province China. As per the information available in public domain, this virus has genetic similarity to variants of the corona virus found in bats and the issue whether the virus was transmitted to human beings upon contact with bats, through an intermediary host, or was a result of incidental or intentional transmission from a lab at Wuhan Institute of Virology, has been a subject matter of inquiry at the national level in various countries. It is further submitted that considering the fact that lacs of citizens of India have succumbed to the virus, it is imperative that an investigation is conducted into the origins of virus and its transmission to human beings. Surprisingly, despite the fact that virus has undoubtedly originated in China, the number of COVID-19 cases, hospitalization and deaths in China has been miniscule. It is further submitted that two scientists British Professor Angus Dalgleish and Norwegian scientist Birger Sorensen have claimed that scientists at Wuhan took a natural Corona virus found in Chinese cave bats and spliced on to it a new spike turning it into deadly and highly transmissible COVID-19. The novel corona virus SARS-CoV-2 has no credible natural ancestor and was created by Chinese scientists who were working on a “Gain of function” project in the lab. The scientists found unique fingerprint in COVID-19 samples and are of the opinion that this can have arisen from manipulation in the laboratory. Both the scientists have claimed that Chinese scientists took the samples of COVID-19 virus and

retro engineered it so that it appears as a natural virus. Various journals were published in various newspapers. An Australian daily revealed that Chinese scientists were considering bio weapons, visualizing a World War III scenario. Therefore, it is clear that this virus has been deliberately and artificially created as a biological weapon and has been spread to cause substantial human and economic loss in India as well as in the World. It is further submitted that even though the intelligence agencies and agencies, responsible for oversight of immigration into the country, were aware of the risk associated with the virus, yet they did not issue any warnings, directions to control the spread of the virus in the early stages. It is further submitted that in view of the nefarious, terrorist, expansionist, aggressive and animus behaviour of China at the borders of North East region of India, it would be dangerous not to undertake a detailed investigation qua the origin and spread of the virus from China to India. Considering the nature of deliberate and malicious origin of the virus, offences u/s 16, 17, 18, 18A, 18B, 23 etc of UAPA and section 14 of Weapons of Mass Destruction and their Delivery System (Prohibition of Unlawful Activities) Act and sections 121/270/302/307/312/313/325/333/314 r/w sections 34/120B of IPC are made out. Due to the above facts, applicant had forwarded a complaint to the Director General, NIA for registration of appropriate report and for investigation into the offences. The applicant had forwarded a complaint to Ministry of Home Affairs. It is further submitted that Hon'ble Supreme Court in **Suresh Chand Jain v. State SC Apex Court 364, 1991** and in

Madhu Bala v. Suresh Kumar & Ors, SC 1997 has held that when a verbal or written complaint discloses a cognizable offence, the police officials are duty bound to register a case and investigate the matter thereafter. However, the respondent has not taken any action on the complaint for the applicant. It was also cited in the aforesaid judgments that when a complaint discloses a cognizable offence, the learned Magistrate is empowered to send the same to the concerned police station with the direction to register the case and investigate the same. Hence, the present complaint.

3. I have heard Sh. Mehmood Pracha, ld. Counsel for complainant/ applicant.

4. Sh. Mehmood Pracha has contended that it was a widespread conspiracy to carry out terrorist act by a biological weapon throughout the world and it has its effects on India also. He has further contended that as per section 15 (1) (a) of UAPA, 1967, an act committed by using substances whether biological radioactive, nuclear of a hazardous nature or by any other means to cause death, injury to any person or persons is a terrorist act. He has further contended that the virus created in the lab was a biological substance which has resulted in loss of lives and thus a terrorist act has been committed. He has further contended that as per Section 16 (1) of NIA Act, 2008, this court has powers to take cognizance of the offence and thus, it becomes a court of original jurisdiction and hence, the present application u/s 156 (3) Cr.P.C is maintainable before this court. He has further contended that National Investigation Agency is acting as police station and

therefore, in view of various judgments of Hon'ble Supreme Court including the judgments in **Suresh Chand Jain (supra)** as well as **Lalita Kumar v. State of UP, 2014 SCC**, once a written complaint has been made disclosing commission of cognizable offence, it was the duty of NIA to register an FIR and proceed with the investigation. He has further contended that the complaint (Annexure C-5) had been sent to Director General of NIA through mail on 07.07.2021 but despite passage of more than one month, no action has been taken by NIA and FIR has not been registered. He has further contended that the complainant had also sent a complaint (Annexure C-6) to the Ministry of Home Affairs vide mail dated 16.04.2021 still no action is taken. He has further contended that the N.I.A. Act, 2008, while permitting the investigation of offences by the local police/ investigating agency of the state, leaves the final determination of whether a Scheduled Offence has been committed or not with the Central Government/N.I.A. Thus, directions under section 156 (3) for investigation of Scheduled Offences cannot be given to the local police, unlike for offences under the 1988 Act i.e. Prevention of Corruption Act, 1988.

5. During the course of arguments, ld. Counsel for applicant has further drawn the attention of the court to Section 6 of NIA Act and has submitted that section 6(3) provides that Central Government on receipt of a report from the State Government shall determine on the basis of information made available by the State Government or received from any other source within 15 days of the receipt of the report, whether the

offence is a Scheduled offence or nor and whether having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency. He has further contended that the aforesaid section clearly provides that in case Central Government receives information from any other source apart from the State Government, a duty cast upon the Central Government to evaluate that information and make a decision within 15 days whether, the offence is a Scheduled Offence or not and to evaluate the gravity of the offence and to decide whether the matter is to be investigated by NIA. The Central Government was informed through mail on 16.07.2021, which was sent to Ministry of Home Affairs, which is a nodal Ministry and supervising Ministry of NIA. Still despite passage of 15 days, no decision has been taken or communicated to the applicant by Ministry of Home Affairs. Thus, the applicant has left with no option but to approach before this court considering the seriousness and gravity of the offence.

6. I have considered the submissions and perused the record very carefully.

7. At the very outset, I find that it is appropriate to reproduce section 6 of NIA Act, which provides for investigation by the NIA.

8. Section 6 of NIA Act is reproduced as under:-

> 6 Investigation of Scheduled Offences. -
> (1) On receipt of information and recording thereof under section 154 of the Code relating to any Scheduled Offence the officer-in-charge of the police station shall forward the report to the State Government forthwith.
> (2) On receipt of the report under sub-section

(1), the State Government shall forward the report to the Central Government as expeditiously as possible.
(3) On receipt of report from the State Government, the Central Government shall determine on the basis of information made available by the State Government or received from other sources, within fifteen days from the date of receipt of the report, whether the offence is a Scheduled Offence or not and also whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency.
(4) Where the Central Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence.
(5) Notwithstanding anything contained in this section, if the Central Government is of the opinion that a Scheduled Offence has been committed which is required to be investigated under this Act, it may, suo motu, direct the Agency to investigate the said offence.
(6) Where any direction has been given under sub-section (4) or sub-section (5), the State Government and any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency.
(7) For the removal of doubts, it is hereby declared that till the Agency takes up the investigation of the case, it shall be the duty of the officer-in-charge of the police station to continue the investigation.

9. A bare perusal of Section 6 of NIA Act reflects that there are two modes by which an investigation by NIA can be set into motion. One is where an offence is reported and registered with local PS in a State and the State forwards the report to Central Government for its consideration, as is provided u/s 6(3) NIA Act. Thereafter, after considering the said report, the Central

Government shall take a decision whether the matter is to be investigated by NIA or not. The second is, that the Central Government, as provided u/s 6(5) NIA Act, can suo moto and without any report of the State Government can direct the NIA to take over the investigation.

10. Ld. Counsel for complainant/ applicant in order to support his claim, that even a private citizen can make a complaint or provide information to the NIA or to the Central Government whereupon the Central Government is bound to take the decision, has interpreted Section 6(3) NIA Act to demonstrate this.

11. However, with all due respect, I do not agree with the interpretation made by ld. Counsel for complainant / applicant that the words "or received from any other source" imply that if the Central Government receives information from any other source, it is still duty bound to act as provided u/s 6(3) NIA Act and take decision within 15 days. If read holistically, section 6(3) NIA Act opens with words "On receipt of report from the State Government". So as far as section 6(3) NIA Act is concerned, the process is only set in motion when the Central Government receives a report from the State Government. The words "or received from any other source" are preceded by the words "the Central Government shall determine on the basis of information made available by the State Government". Meaning thereby, while evaluating the report of the State Government to decide whether the offence is a Scheduled Offence or not and whether, the gravity of offence is such which would make it a fit

case to be investigated by NIA, the Central Government on receipt of report from the State Government can not only use the information made available by the State but also use information received from any other source. So the words "from any other source" have been used with respect to material which the Central Government can utilize to decide whether from the report of the State, Scheduled Offences are made out or not and whether the offence is fit to be investigated by NIA. Thus, section 6(3) NIA Act only applies to the cases where a report has been sent by the State Government and does not apply to the cases where information has been given by some individual and thus, Central Government is not bound to act upon this information within 15 days or to revert back to said individual. Thus, it is very clear that an investigation by the NIA can only be taken up on the recommendation of the Central Government which the Central Government either gives suo moto or which it gives on the report of the State Government. Therefore, section 156 (3) Cr.P.C will have no applicability in such cases and this court would not have any power to order the registration of FIR into the present complaint or investigation of the offences as alleged in the present complaint.

12. Even otherwise, a bare reading of the present complaint reflects that this complaint is based upon media reports, opinions, conjectures, surmises, probabilities and possibilities. There are no categorical facts which have been alleged and only the possibilities that SARS-CoV-2 might have been genetically modified at Wuhan Laboratories have been

raised and that too not on the basis of facts but on the basis of view of experts. Opinions can never substitute facts and for creation of an offence, certain facts constituting the offence need to be disclosed and not the mere possibilities as has been done in the present case. Therefore, even on merits, the complaint does not call for any investigation as is it based on theories which have been propounded by individuals on assumptions and analysis raised by them, which in no manner can be said to be an established fact. I accordingly find no merits in the present complaint. The same is accordingly dismissed. File be consigned to record room.

Announced in open court
today on 07.08.2021.
(This order contains 10 pages
and each page bears my signatures.)

(Parveen Singh)
ASJ-03, New Delhi Distt.,
Patiala House Court, Delhi.