

**IN THE COURT OF SH. AMITABH RAWAT,  
ADDITIONAL SESSIONS JUDGE-03,  
(SHAHDARA), KARKARDOOMA COURT, DELHI**

**I.A. No. 110-2021 (Meeran Haider )**

FIR No. 59/2020

PS : Crime Branch (being investigated by Special Cell)

U/S. 13/16/17/18 UA (P)Act, 120B read with Section 109/114/124A/147/148/149/153A/186/201/212/295/302/307/341/353/395/419/420/427/435/436/452/454/468/471/34 IPC & Section 3 & 4 Prevention of Damage to Public Property Act,1984 and Section 25/27 Arms Act

**State vs. Tahir Hussain & Ors.**

Dated :- 11.02.2022

In view of the Office Order No. 207-230/Judl./SHD/2022 dated 14.01.2022 of the Ld. Principal District & Session Judge, Shahdara District, Karkardooma Courts, Delhi pursuant to the directions of the Hon'ble High Court of Delhi, proceedings in all the matters are being conducted through video conferencing using CISCO Webex App.

Present : None.

**ORDER**

1. Vide this order, I shall dispose off the application moved by the Investigating Officer of the present case seeking permission to take voice sample of the accused Meeran Haider, who is an accused in the present FIR and is in judicial custody.

2. Arguments were heard on behalf of prosecution by Sh. Amit Prasad, Ld. Special Public Prosecutor and on behalf of accused by Sh. Faraz Maqbool, Ld. Counsel for accused Meeran Haider. I have perused the record.

3. (i) It was submitted by the IO that the present case was registered on 06.03.2020 on the basis of a source information received in the Crime Branch and transferred to Special Cell for further investigation.

(ii) It was further submitted that on 16.09.2020, the charge-sheet was filed against 18 accused persons and on 17.09.2020 cognizance of the offences was taken. On 22.11.2020, the first supplementary charge-sheet was filed against three accused persons while second supplementary charge-sheet was also filed on 24.02.2021.

(iii) It was further submitted that during the investigation accused Meeran Haider S/o Sahabul Hasan, R/o 1-15/16, Abul Fazal Enclave, Part-I, Delhi was arrested in the present case on 01.04.2020. Mobile phone of the co-accused Asif Iqbal Tanha was seized and sent to CERT-In for examination. Data retrieved by the CERT-In was examined and some incriminating audio call recordings have been found. In audio call recordings found in the recovered data, accused Meeran Haider is in conversation with co-accused Asif Iqbal Tanha. The voice sample of accused is relevant, necessary and desirable to identify and match/compare the voice in audio call recordings.

(iv) It was further submitted that vide order dated 15.12.2020, the Hon'ble Court had allowed the application filed by the investigating officer for seeking voice sample of co-accused namely Asif Iqbal Tanha and in compliance of the said order, the voice sample of co-accused Asif Iqbal Tanha was obtained.

It is prayed that permission may be granted to take the voice sample of the accused Meeran Haider.

4. Reply to the present application has been filed by Ld. Defence Counsel on behalf of accused Meeran Haider.

It was submitted that accused has always been cooperating in the entire investigation. It was further submitted that they have no objection to the said application provided that the safeguards contained in the order. He has referred to the judgment of Hon'ble Supreme Court of India in 'Sudhir Chaudhary vs. State' reported as (2016) 8 SCC 307, and has also referred to the order of this Court passed qua co-accused Asif Iqbal Tanha.

5. (a) The law relating to the voice sample of accused has been dealt with by the Hon'ble Supreme Court of India in "*State of Bombay v. Kathi Kalu Oghad*" (1961 AIR 1808) and "*Ritesh Sinha v. State of U.P.*", [Criminal Appeal no. 2003 of 2012, decided on 02/08/2019].

It has been held that there is no infringement of Article 20 (3) of the Constitution by compelling an accused person to give a specimen, handwriting or impressions of his fingers palm or foot to the investigating officer or under orders of the Court for the purposes of comparison.

Moreover, it has also been held 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.

At this stage, it is pertinent to mention here that the present case is under Unlawful Activities (Prevention) Act being deal with by this designated court.

(b) The issue of voice sample of an accused was also considered by the Hon'ble Supreme Court of India in "***Sudhir Chaudhary Etc. v. State NCT of Delhi***", (2016)8 Supreme Court Cases 307 and certain guidelines/precautions were considered.

It was inter-alia held :

*“The Appellants expressly consented to a voice sample being drawn, in their response to the application that was filed by the Investigating officer before the Court of Metropolitan Magistrate. This was reiterated before the High Court. In the submissions which have been urged in these proceedings, learned counsel has specifically stated that the Appellants would abide by the consent which they had furnished to their voice samples being drawn. That being the position, the only surviving issue for this Court is to ensure that the underlying process for drawing the voice samples is fair and reasonable, having due regard to the mandate of Article 21. On the one hand, it is not open to the accused to dictate the course of investigation. Hence, we do not find substance in the submission that the text which is to be read by the Appellants in the course of drawing their voice samples should contain no part of the inculpatory words which are a part of the disputed conversation. A commonality of words is necessary to facilitate a spectrographic examination.*

*By our order dated 17 November 2015, this Court allowed an adjournment to the Respondent to seek instructions from the expert concerned whether or not a sample of words in such number as the expert may suggest would suffice for the experts to give their opinion by scientific voice sampling methods. Accordingly, a brief note has been filed on the record stating that:*

*That the experts of the Central Forensic Science Laboratory (CFSL) have informed that two separate texts/scripts have been prepared in the laboratory from each Speaker/Accused, which are different from the received transcripts.*

*That the text/script prepared by the CFSL experts cannot be provided to the petitioners in advance as there is apprehension*

*that the petitioner may practice the texts/scripts thereby adversely affecting the voice sampling examination. Accordingly, it is submitted that the sample/modal text/script can only be supplied to the speakers/Accused if this Honble Court deems it appropriate.*

*By an Order of this Court dated 1 July 2016, the Investigating officer was directed to file a transcript of the disputed conversation in a sealed cover. The Director CFSL, CBI, was called upon to file in a sealed cover a proposed passage of a written text which the Appellants shall be required to read out for the purpose of giving their voice samples using words, but not the sentences, appearing in the disputed conversation in such number as the Director/Scientific Officer may consider necessary for the purpose of comparison.*

*We are of the view that the aforesaid directions which have been issued by this Court would allay the apprehension of the Appellants in regard to the fairness of the process involved in drawing the voice sample. Our directions ensure that the text which the Appellants would be called upon to read out for the purpose of drawing their voice samples will not have sentences from the inculpatory text. Similarly, permitting the text to contain words drawn from the disputed conversation would meet the legitimate concern of the investigating authorities for making a fair comparison.*

*In pursuance of the directions issued by this Court the Investigating officer has filed in sealed cover: (i) transcripts of the disputed conversations; and (ii) a proposed passage of a written text required to be read out by the Appellants for the purpose of giving their voice samples. The passage contains words but not the sentences appearing in the disputed conversation. Having perused the contents of the sealed covers, we are satisfied that the Investigating officer has complied with our directions. We order accordingly”.*

6. i) The present FIR relates to case of large scale and deep rooted conspiracy leading to the riots in Delhi.

ii) Accused Meeran Haider is already arrested in the present case and is in judicial custody. Further investigation is in progress.

iii) The prosecution has moved the present application for taking voice sample of the accused Meeran Haider so that certain data/incriminating audio files which were found retrieved by CERT-In from the mobile phone of co-accused Asif Iqbal Tanha, may be matched with the voice of the accused Meeran Haider. Consequent to the moving of such application, notice was issued to the accused Meeran Haider and the counsel for accused had appeared and filed the reply.

iv) The Ld. Counsel for accused, in all fairness, had submitted that they do not want to interfere in the investigation but the directions may be given which are fair and reasonable and in compliance of the directions given in Sudhir Chaudhary Etc. v. State NCT of Delhi (supra).

v) The accused had also appeared through Webex and he was also apprised of the proceedings.

vi) The Court had asked for and received the transcript of the audio files of the accused in sealed cover which were opened and thereafter, again sealed.

vii). The aspect of taking voice sample of an accused is an aspect of investigation. As such, it does not make the accused witness against himself.

viii) Accordingly, in the interest of investigation the application, moved by the Investigating Officer of the present case seeking permission to take voice sample of the accused Meeran Haider, is allowed.

However, in order to protect the rights of the accused Meeran Haider and to consider the issues raised by the Ld. Counsel for accused, the following



directions are being issued :-

(i) The Investigating Officer shall coordinate with CFSL, CBI, Lodhi Colony, New Delhi and fix a time and date for obtaining voice samples of the accused Meeran Haider and inform the Court about the same so that production warrants of the said accused can be issued for CFSL, CBI Lodhi Colony, New Delhi for the said purpose.

(ii) The concerned Jail Superintendent shall ensure production of the accused on the time and date informed by the I.O as well as in accordance with the production warrants issued by this Court for the purposes of obtaining voice samples of the accused at CFSL, CBI, Lodhi Road, New Delhi.

(iii) The Jail Superintendent as also the Director, CFSL, CBI, Lodhi Road, New Delhi shall ensure due compliance of Covid protocol while ensuring the completion of process of voice sample.

(iv) The Director CFSL, CBI, Lodhi Colony, New Delhi shall get prepared a proposed transcript of the text to be read by the accused under his supervision or through a voice sample expert available at the CFSL or as he deems fit on the basis of the material supplied by the I.O of the present case, for the purposes of investigation and obtaining voice samples keeping in view the guidelines laid down by the Hon'ble Supreme Court of India in the case of Sudhir Chaudhary (supra).

(v) The Director CFSL, CBI, Lodhi Colony, New Delhi/IO shall file a copy of proposed transcript once it is prepared by the Director CFSL,

CBI, Lodhi Colony, New Delhi or under his supervision, in terms of the above directions, in a sealed envelope before this Court.

(vi) Sh. Alok Saxena, Ld. Counsel for the accused shall be duly intimated in advance about the date and time of production of accused at CFSL, CBI, Lodhi Colony, New Delhi for the purposes of obtaining voice samples of the accused. His mobile number for the purpose of coordination is 9811414931.

(vii) The Counsel for the accused may remain present at CFSL, CBI, Lodhi Colony, New Delhi at the time of obtaining voice samples of the accused on the date and time informed by the IO with the permission of Director CFSL/IO and have legal interview with the accused for 15 minutes only. Ld. Counsel for the accused shall not interfere/raise objections to the proceedings being conducted at CFSL, CBI, Lodhi Colony.

(viii) After the voice sample of the accused are taken at CFSL, CBI, Lodhi Colony, the copy of the transcript to be read by the accused at the time of obtaining voice samples as prepared by them in terms of the present directions shall be supplied to the Ld. Counsel for the accused.

(ix) The accused Meeran Haider shall give his voice sample on the day and time fixed by the I.O in consultation with Director, CFSL, CBI, Lodhi Colony, New Delhi, in terms of directions passed through this order.



The application under consideration, filed by the IO, is disposed off on the the aforesaid directions.

Copy of this order be e-mailed to the Ld. Counsel for the accused, Ld. Special Public Prosecutor and the Investigating Officer as also be sent to Director CFSL, CBI, Lodhi Colony, New Delhi as well as concerned Jail Superintendent for intimation and necessary compliance.

(Amitabh Rawat )  
Addl. Sessions Judge-03  
Shahdara District, Karkardooma Courts,  
Dated: 11.02.2022