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

+ CRL.M.C. 1150/2017

SIDHU YADAV @ SIDDHARTH ..... Petitioner

Through : Mr. Siddarth Aggarwal, Mr. Aditya  
Wadhwa and Ms. Rupali Samuel,  
Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through : Dr. M. P. Singh, APP with SI Deepak  
Kumar PS Malviya Nagar.

**CORAM:**

**HON'BLE MR. JUSTICE A.K. PATHAK**

**ORDER**

% **21.03.2017**

**Crl. M.A.4747/2017 (Exemption)**

Allowed, subject to all just exceptions.

Application is disposed of.

**CRL.M.C. 1150/2017 & Crl.M.A.4746/2017 (Stay)**

FIR No.2228/2015 under Section 377/511 IPC and Section 6 of POCSO Act was registered at police station Malviya Nagar pursuant to the complaint dated 13<sup>th</sup> December, 2015 regarding sexual assault of a child made by Ms. Sweta Sen, Project Manager, Tara Boys and Tara Tots (NGO), on behalf of Tara Homes to the SHO PS Malviya Nagar. Investigation was conducted and thereafter, charge sheet was filed. During the investigation

statement of victim child under Section 164 Cr.P.C was recorded on 16<sup>th</sup> December, 2015 before the Metropolitan Magistrate wherein, the child stated that petitioner sexually assaulted him and he was penetrating his finger into his anus. Charge under Sections 377/511 IPC and Section 6 of POCSO Act have already been framed against the petitioner and trial is underway.

During the trial, petitioner filed application under Section 173 (8) of Cr.P.C., 1973 praying therein that investigating agency be directed to conduct a Polygraph/Narco Analysis/Brain Mapping Test on him. It was contended that investigation was done in a prejudiced manner, inasmuch as, Investigating Agency has failed to collect the evidence which could have exonerated the petitioner. At the time of the alleged offence, petitioner was using his mobile phone. Petitioner was falsely implicated. Mobile phone of petitioner was seized. No call/chat records were retrieved therefrom by the investigating agency.

Trial court has dismissed this application. Trial court has relied on Allahabad High Court's judgment titled as Shyama Charan Dubey Vs. State of UP, 1990 Cr.L.J. 456 wherein, it has been held that neither the prosecution, that is, informant nor the accused can claim as a matter of right,

a direction from the court commanding further investigation by an investigating officer under Section 173 (8) Cr.P.C. after a charge sheet had been filed. Reliance was also placed on order dated 16<sup>th</sup> April, 2011 passed by the Allahabad High Court in CrI.W.P. No.1200/2011 titled as Gajender Singh Vs. State of UP and Anr. It has been further noted that Delhi High Court in Rajender Prasad @ Pappu Vs. State, 1995 CrI.L.J.2878 has approved the view taken by the Allahabad High Court. Reliance has also been placed on Stephen Seniviratne Vs. The King, AIR 1936 PC 289 wherein it has been held that it is a wrong idea that the prosecution should discharge the functions both of prosecution and defence; if it does so, confusion is very apt to result.

Regarding conducting Narco Analysis Test at the instance of an accused, the Bombay High Court in its order dated 27<sup>th</sup> July, 2016 passed in CrI.W.P.2420/2016 titled as Yogesh @ Charu Ananda Chandane Vs. The State of Maharashtra, observed that the evidence recorded in the course of Narco Analysis Test or Polygraph Test is not an admissible evidence and it would be a hazardous situation to permit any/every accused to undergo Narco Analysis Test for proving his defence. It was further held that the evidence collected by the investigating agency during the course of

investigation would be material at the time of trial; and just as inculpatory statement of the accused cannot be made basis for conviction; in the same manner, exculpatory statement cannot be made basis for acquittal and it would be futile exercise to permit the accused to undergo such test.

Learned counsel for petitioner submits that purpose for filing the application for Narco test was to preserve the evidence, as with passage of time value of the test will be diminished. Reliance has been placed on Vinodbhai Gangadas Vanjani Vs. State of Gujarat, 2016 SCC OnLine Guj 302 and Dr. Purshottam Swaroopchand Soni Vs. The State of Gujarat, MANU/GJ/7056/2007. I find these judgments to be in context of different facts. I do not find any force in the contention of learned counsel in view of the observations made herein above.

I do not find any material illegality or irregularity in the impugned order.

Petition is dismissed. Miscellaneous application is disposed of as infructuous.

**MARCH 21, 2017/dk**

**A.K. PATHAK, J.**