

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CRIMINAL PETITION NO.7019 OF 2020

BETWEEN:

SRI NAVEEN KUMAR
S/O BOJACHAR
AGED ABOUT 25 YEARS
BOMMANAYAKANAHALLI
KASABA HOBLI
HASSAN TALUK
HASSAN DISTRICT - 573 201

... PETITIONER

(BY SRI PRATHEEP K.C, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
REPRESENTED BY THE
HASSAN EXTENTION POLICE STATION
HASSAN DISTRICT
REP. BY SPP
HIGH COURT BUILDING
HIGH COURT OF KARNATAKA
BENGALURU-01

2. RAMAKRISHNA
S/O VENKATEGOWDA
MAJOR
BOMMANAYAKANAHALLI
KASABA HOBLI
HASSAN TALUK
HASSAN DISTRICT - 573 201

... RESPONDENTS

(BY SMT.NAMITHA MAHESH B.G., HCGP FOR R1)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE ORDER DATED 30.12.2019 AND FURTHER CONSEQUENTIAL PROCEEDINGS IN S.C.NO.68/2016 ON THE FILE OF THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, AT HASSAN.

THIS CRIMINAL PETITION COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. This Court, having come across several petitions filed by the accused-petitioners seeking for quashing of the proceedings on account of the delayed receipt of DNA Report and or for deferment of trial until the DNA Test Report and or similar Reports are received from the Forensic Science Laboratories had vide its order dated 25.11.2020, directed the learned HCGP to make enquiry and submit a report upon various aspects detailed in the said order, more particularly as regards the following:

- 1.1. The number of Samples category wise pending examination by the Forensic Science Laboratory/ies.
- 1.2. The Number of cases which are pending adjudication – classified by nature of offences, on account of the non-receipt of the reports from the Forensic Science Laboratory/ies.
- 1.3. The nature of samples pending examination by the Forensic Science Laboratory/ies, cross referenced to the number of cases pending adjudication in relation thereto.
- 1.4. The average time taken for the sample to reach the Forensic Science Laboratory/ies from the time the sample is taken.
- 1.5. The average time taken by the Forensic Science Laboratory/ies to process different kinds of samples.
- 1.6. If there are any guidelines laid down as regards the timelines to be followed by each of the stakeholders during the above process.

- 1.7. Action if any taken against errant officials for delay.
 - 1.8. If there is any monitoring system established to monitor the passage of the sample from the time it was collected to the date of submission of the report in Court.
2. Today, a memo along with a report has been filed, insofar as the petitioner is concerned, it is stated that the DNA report is ready and has been handed over to the Investigating Officer who would produce the before the Trial Court and evidence would be led. In view thereof the present petition in so far as the petitioner is concerned would not survive for consideration. It is however noted that it is only on account of the directions issued by this Court that the DNA report was made available, if not the said matter would probably have continued to languish, for a long time to come.

3. In the report as regards the number of Samples category wise pending examination by the Forensic Science Laboratory/ies it is stated that as on 30.11.2020, nearly 6,994 cases are pending on account of the delay in the analysis. The said table is extracted hereinbelow for easy reference:

Sl. No.	Section	Pending for analysis	
		No. of cases	No. of Articles
1	Biology	676	5338
2	Chemistry	595	
3	Narcotics	1119	6868
4	Computer Forensics	866	3024
5	Mobile Forensics		
6	Audio-Video Forensics		
7	DNA	1171	3968
8	Fire Arms	114	1003
9	Physics	365	1182
10	Photography	00	00
11	Forensic Psychology	00	00
12	Questioned Documents	1017	9958
13	Toxicology	1071	4397
	Total	6994	35738

4. The break up of the number of cases which are pending adjudication - classified by nature of offences, on account of the non-receipt of the reports from the Forensic Science Laboratory/ies is also provided in the said report, which is extracted herein below:

Sl. No.	Major Head	No. of Cases
1	Murder	471
2	Arms Act	63
3	Attempt to murder	228
4	Cheating	451
5	Communal nature	96
6	Protection of Consumer act	49
7	Criminal breach of trust	40
8	Criminal intimidation	42
9	Cyber Crime	114
10	Dowry deaths	79
11	Explosives	66
12	Forgery	115
13	State local acts	151
14	NDPS Act	774
15	POCSO Act	130
16	Rape	95
17	SC & ST POA Act	100
18	Suicide	252
19	Unnatural death (Cr.P.C. Sec 174/174c/176)	700
20	Other heads	516
	Total	4532

5. The nature of samples pending examination by the Forensic Science Laboratory/ies, cross-referenced to the number of cases pending adjudication in relation thereto is as below:

Sl. No.	Section	Pending for analysis	
		No. of cases	No. of Articles
1	Biological samples	2918	13703
2	Chemical samples	1714	6868
3	Physical samples	479	2185
4	Digital samples	866	3024
5	Documents	1017	9958
	Total	6994	35738

6. It is stated that once the sample is seized or taken, it reaches the Forensic Science Laboratory within 15 days and thereafter, the different examination or analysis is done on the basis of available resources in the Forensic Science Laboratory, the completion time for analysing different samples is extracted below:

Sl. No.	Section	Average time taken
1	Biology	1 month
2	Chemistry	1 year
3	Narcotics	1 year
4	Computer Forensics	1 and a half year
5	Mobile Forensics	1 and a half year
6	Audio-Video Forensics	1 and a half year
7	DNA	1 and a half year
8	Fire Arms	4 months
9	Physics	1 year
10	Photography	15 days
11	Forensic Psychology	15 days
12	Questioned Documents	1 and a half year
13	Toxicology	3 months

7. On enquiry it is submitted that there are no specific guidelines laid down as regards the timelines to be followed by each of the stakeholders during the above process nor is there any monitoring system established to monitor the passage of the sample

from the time it was collected to the date of submission of the report in Court.

8. It is stated that it is due to the large number of samples which are received, there being limited resources available for the Forensic Science Laboratory, that there is a delay in submitting the examination reports and the same is not intentional and therefore, Smt. Namitha Mahesh, learned HCGP would submit that the Forensic Science Laboratory has acted in the best possible manner with the limited resources, there are no errant officials as such no action is required to be taken, she further submits that all officers of FSL are working overtime to submit their reports.

9. It is further stated that the organisational set up of Forensic Science Laboratory in the State is that there is an apex State Forensic Science Laboratory (**SFSL**) located in Bengaluru where 13 different Sections are functioning.

10. The State has also established five Regional Forensic Science Laboratory (**RFSL**) in five Police Range headquarters viz Mysuru, Mangaluru, Davanagere, Belagavi and Kalaburgi, however, out of 13 Sections a maximum of only two sections are functioning in as such, all the samples as regards the remaining 11 other Sections are required to be sent to the SFSL for examination, the details are as under:

Sl. No.	Section	SFSL Bengaluru	RFSL Davanagere	RFSL Mysuru	RFSL Mangaluru	RFSL Belagavi	RFSL Kalaburagi
1	Biology	F	F	F	F	F	F
2	DNA	F	-	-	-	-	-
3	Chemical	F	S	S	S	S	S
4	Narcotics	F	-	-	-	-	-
5	Toxicology	F	F	F	F	F	F
6	Physical	F	-	-	-	-	-
7	Fire Arms	F	-	-	S	-	-
8	Computer Forensics	F	-	-	-	-	-
9	Mobile Forensics	F	-	-	-	-	-
10	Audio Video Forensics	F	-	-	-	-	-
11	Questioned Documents	F	S	S	S	S	S
12	Photography	F	S	S	S	S	S
13	Forensic Psychology	F	S	S	S	S	S

Note: F-Functional; S-Sanctioned but not functional

11. As regards the human resources available, it is stated as under:

Sl. No	Sections	Director			Joint Director			Deputy Director		
		Sanctioned	Actual	Vacant	Sanctioned	Actual	Vacant	Sanctioned	Actual	Vacant
1	SFSL	1	1	0	3	0	3	10	3	7
2	RFSL	0	0	0	0	0	0	5	2	3
Total		1	1	0	3	0	3	15	5	10

Sl. No	Unit	Assistant Director			Senior Scientific Officer			Scientific Officer		
		Sanctioned	Actual	Vacant	Sanctioned	Actual	Vacant	Sanctioned	Actual	Vacant
1	Biology	3	5	3	11	6	5	22	10	12
2	DNA	3	2	1	6	5	1	12	1	11
3	Toxicology	14	6	8	17	13	4	34	9	25
4	Narcotics	1	1	0	4	3	1	8	1	7
5	Chemistry	6	0	6	9	6	3	18	3	15
6	Physics	1	1	0	4	3	1	10	2	8
7	Fire Arms	2	0	2	5	4	1	12	1	11
8	Questioned Document	6	1	5	9	5	4	18	3	15
9	Photography	1	1	0	1	1	0	8	6	2
10	Computer Forensics	1	0	1	5	0	5	10	1	9
11	Mobile Forensic	1	0	1	5	0	5	10	1	9
12	Audio Video	1	0	1	5	0	5	10	1	9
13	Psychology	1	1	0	7	7	0	14	9	5
Total		46	18	28	88	53	35	186	48	138

12. Apart from the above, it is stated that the officers of the Forensic Science laboratories are also

required to travel to courts to depose as regards the reports authored by him or her.

Years	2018	2019
Approx. number of man-days spent in traveling	1135	1222

13. An examination and or cursory analysis of the above data would give rise to the following in regards whereof the following recommendations and directions are being issued:

13.1. There are 6994 cases which are pending trial, on account of the reports from the FSL not having been received.

13.2. There are more than 35738 samples pending examination.

13.3. The shocking and unacceptable aspect is the time taken for submission of reports – a Narcotic matter takes 1 year,

Computer/mobile/audio-video forensics takes about 1 and half year, a DNA test takes 1 and haf years, these being average time, as can be seen from the present case itself, it has taken 4 years for the report to be submitted.

13.4. If the accused is in custody, the delay would result in a large number of undertrials being kept in jail during the pendency of the above report. On account of the delay in receipt of the aforesaid scientific reports, there is a high social cost.

13.5. If the report is received belatedly and the same does not support the case of the prosecution, many a time it could result in innocent persons being incarcerated.

13.6. The other side of the coin is that the victim or victim's family also suffers on account of

such delay, not knowing what will happen and when.

13.7. Each accused has a right of speedy trial. The victim or the victim's family also has a right to a speedy trial.

13.8. An Accused has a right to an expeditious trial, more so when he/she is in judicial custody. The said custody cannot be extended merely on the ground that the FSL is unable to furnish the reports in time and/or the number of FSL are lesser than that required. Such a delay infringes on the right to life of an accused under Article 21 of the constitution of India.

13.9. Delay by the FSL in providing a report whatever the reason may be is resulting in a situation which cannot be countenanced under law.

13.10. In the case of an accused on bail, he/she continues to evade prosecution due to the delay in receipt of these reports.

13.11. The effect of the delay in furnishing the reports not only delays the trial in a matter, it is also possible that due to the said delay the sample may degrade or get contaminated, thus negating the very purpose of forensic examination.

13.12. The details of samples being degraded or contaminated have not been provided. However, this would also be required to be looked into.

13.13. It is needless to say that Forensic Evidence like DNA reports, chemical analysis reports, bioanalysis reports play a critical role in the investigation of serious crimes, like Murder,

sexual assault cases, forgery etc.,. The delay in submitting forensic reports by FSL necessarily hampers the proceedings in a case. One of the biggest impediment to a speedy trial is the delay in the filing of FSL reports. Cases are adjourned for years due to non-receipt of these reports. Some cases are not even committed to the sessions court or special Court as the case may be due to non-receipt of the reports.

13.14. For a state like Karnataka, which is stated to be the front runner in Information Technology with Bangalore being the Silicon Valley of the east, it is rather anomalous and unacceptable that there is only one FSL which has 13 sections functioning, the RFSL have only 2 sections functioning. It is but required that all the RFSL's have all the sections functioning since offences requiring

forensic examination by all sections occur in all regions.

13.15. It is required that the remaining 11 sections at the RFSL are made operational at the earliest so as to distribute work load between the SFSL and RFSL so as to get the results at the earliest. In view thereof the State is directed to make all sections, in the RFSL's operational within a period of twelve months from date of receipt of the copy of this order.

13.16. As observed earlier, it is not only at the State level or the regional level that Forensic Science Laboratory are required, there would be a requirement of District level Forensic Science Laboratory, the State is directed to consider and establish Districts Level Forensic Science Laboratory in all Districts of the State as per the requirement of thereof

within a period of 24 months from date of receipt of the certified copy of this order.

13.17. It is one thing to say that more Forensic Laboratories are required to be established, that is a matter of planning. However, if the existing laboratories are not functioning to their potential, it is unforgivable.

13.18. There is no Joint Director appointed all 3 posts (100%) are vacant, 7 out of 10 posts (70%) of Deputy Directors are vacant, 18 of 46 posts (40%) of Assistant Directors is vacant, 35 out 88 posts (40%) of senior scientific officers are vacant, 138 of 186 posts (75%) of scientific officers is vacant, with such vacancies, it can not be expected that the system works and performs well. It is but required that these posts are

immediately filed up with all earnestness at the command of the concerned.

13.19. In view thereof, it is required for the State to act expeditiously and fill the existing vacancies at SFSL and RFSL as expeditiously as possible at any rate within a period of six months from date of receipt of certified copy of this order.

13.20. It is also required that a proper scientific study be made as regards the number of samples to be examined, nature of examination, the qualification of person who is required for such examination etc.,

13.21. An action plan is required to be drawn up as regards the pending samples, the timelines within which reports regarding these samples would be filed before the concerned court.

13.22. Guidelines are required to be issued as regards the time period in which a particular kind of sample would be examined and report submitted to the concerned court, as regards future samples received.

13.23. A monitoring system is required to be established to monitor the passage of the sample from the time it was collected to the date of submission of the report in Court.

13.24. Apart from the above, a study as regards the latest equipment available, modernisation of the Laboratories, a process of the equipment to be updated from time to time is also to be put in place.

13.25. From the data provided, it is also seen that many of these scarce human resources spend unproductive man-days in travelling to the courts in far-flung places in Karnataka to

depose in the matter. Thus bringing about one more inefficiency in the system. In the year 2018, 1135 man-days were lost, and in 2019, 1222 man-days were lost. This being so, even though in terms of Section 293 of Cr.P.C. the report submitted by the Forensic Science Laboratory ought to be considered as evidence without the author being examined as held by Andhra Pradesh High Court in case of ***M/s Visakha Agro Chemicals (P) Ltd., and others Vs. Fertiliser Inspector-cum-Assistant Director of Agriculture (Regular) Visakhapatnam and another*** reported in ***1997(2) Crimes 648*** and the Madurai Bench of Madras High Court in ***Saravanan Vs. State and others*** in ***Crl.A.Nos.226, 246 and 324 of 2016 dated 20.02.2019 and several other cases.***

13.26. Even if the said officer of the FSI is required to appear and depose in a particular manner, it will also be advisable to permit the said evidence to be led through video conference facilitating. It is immediately required to connect the FSL's with the Courts in a similar manner as the jails are connected to the Court. This would save a large number of man-days lost on account of such unnecessary travel by the FSL officers.

13.27. The trial Courts to permit the examination and or cross-examination of the FSL officers through video conferencing.

13.28. The trial Court has to maintain a strict vigil on adjournments being granted for the production of FSL reports, the trial Court ought to insist on the reports being submitted at the earliest.

14. With the above observations, recommendations and directions the petition is disposed of.
15. This Court places on record its appreciation for the efforts put in by Smt. Namitha Mahesh, in coordinating, collecting the data and filing a comprehensive report in the short time frame provided.
16. The Registrar General is requested to communicate the above order to the Chief Secretary, Principal Secretary of Home, DGP and IGP of the State, heads of all five Police Range headquarters viz Mysuru, Mangaluru, Davanagere, Belagavi and Kalaburgi, all the heads of Commissionarates in the State of Karnataka as also the Director of the Forensic Science Laboratory requesting them to take necessary time bound action.

17. The Registrar General is also requested to place this order before the Hon'ble Chief Justice of this Court, for consideration and appropriate further directions.

**Sd/-
JUDGE**

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