

FIR No. 96/21

PS : Kotwali (investigated by Crime Branch)

State Vs. Sandeep Singh Sidhu @ Deep Sidhu, S/o Late Sh. Surjit Singh

22.04.2021

Vide Office Order No.256/RG/DHC/2021 dated 08.04.2021 of Hon'ble High Court of Delhi, the cases are being taken up through Video Conferencing today.

Joined through Video conferencing.

An application regarding production of accused Sandeep Singh Sidhu @ Deep Sidhu for obtaining his voice sample at FSL.

Present : Sh. Rajiv Kamboj, Ld. APP for the State.

Sh. Jaspreet Singh Rai and Sh. Jasdeep Dhillon, Ld. Counsels for accused.

Accused produced from J/C.

Sl. Sh. Santosh Kumar on behalf of IO Sh. Pankaj Arora assisting Ld. APP for the state has submitted before the Court that on 26.01.2021, during Republic Day celebration, farmers during the protest & tractor rally against newly enacted and enforced Farmer Act, reached Red Fort, where they indulged in rioters' activities causing irreparable loss to this world heritage site apart from assaulting the policemen guarding the site and performing law and order duty, thereby causing serious injuries and casualties. That during investigation accused Sandeep Singh Sidhu @ Deep Sidhu was arrested in the present case on 09.02.2021. That during investigation it came to the notice that accused was live on Facebook page and also made various posts on the date of incident. These video clips/Facebook live have been taken on record which contain the voice of accused Sandeep Singh Sidhu @ Deep Sidhu. In order to authenticate the voice of accused Sandeep Singh Sidhu @ Deep Sidhu in all of these videos, it is necessary that his voice is matched with the voice in these video clippings.

Reply to the application of the IO has been filed. Ld. Counsel for the Accused have vehemently opposed the present application submitting that the I.O/Prosecution has failed to cite under which provision of law has the present application been moved. That the application is very vague and lacks any concrete details of the videos for which the voice sample is required and these videos ought to also have been placed on record with the proper transcript. That the present application is an infringement of the fundamental rights of the Accused and more specifically the same is violative of Articles 20 and 21 of the Constitution of India. Further it is submitted that for there to be any ground for taking a voice sample of the accused the prosecution has to disclose that the voice sample is necessitated

for matching the voice in the video and the said video on its own is to be such that if proved to be genuine it would disclose the commission of an offence as per law. But, from a bare perusal of the present application under reply it is apparent that no such allegation has been made by the I.O/Prosecution that the said videos disclose commission of any offences. Further it is submitted that the Judgment of the Hon'ble Supreme Court in the case of **Ritesh Sinha vs State of Uttar Pradesh, in Criminal Appeal No 2003 of 2021**, is also distinguishable on facts as well since in the said case the taking of the voice sample was necessary for disclosing the commission of an offence since if the voice of the accused matched that in the recording found in the phone of the accused it would prove the illegal racket of collection of money against offering of jobs to innocent people, in which the said accused was engaged in. However in the present case there are no such allegations against the accused nor has the I.O/Prosecution placed any such incriminating video on record for the substantiation of which the present application has been necessitated.

Submissions heard.

The Court is of opinion that the submission of Ld. counsel of the accused as to application being vague lacking any concrete details of the videos for which the voice sample is required is premature as the manner in which investigation is to be done is the prerogative of the investigating agency. Also, at the stage of investigation, one cannot assume that by obtaining the voice sample, false evidence by tampering with the video clips could be imputed against the accused. The admissibility and quality of evidence is a question to be determined during the trial and not at the stage of investigation.

Also, in light of the decision of Hon'ble Supreme Court of India in '**Ritesh Sinha Vs State of Uttar Pradesh (2019) 8 SCC 1**' wherein Hon'ble Supreme Court held that "fundamental rights to privacy of the accused cannot be construed to be as absolute right and he must bow down to compelling public interest". The Hon'ble Apex court went on to hold that "unhesitatingly take the view that until explicit provisions are engrafted in the Code 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."

In light of above observation, the application of the IO is hereby allowed. The accused Sandeep Singh Sidhu @ Deep Sidhu was, in FIR No. 98/21, remanded to 14 days in Judicial Custody. Production warrant be issued against the accused with direction to Jail Superintendent to produce the accused at FSL, at a convenient time allocated by FSL, under more favourable conditions for the purpose of recording his voice sample in the presence of

his counsel\

Accordingly, the present application is disposed off.

One copy of the order be uploaded on Delhi District Court Website. Copy of order be also sent to the e-mail of jail superintendent and SHO PS Kotwali and Ld. Counsel for the accused. The printout of the application, reply and order be kept for records and be tagged with the final report.

(Sahil Gupta)
Reliever MM (Central)/THC/Delhi
22.04.2021