



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF JULY, 2023

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

WRIT PETITION NO. 7956 OF 2023 (GM-RES)

Between:

Mohammed Shiyab
S/o. Mohammed Sajid
Aged about 32 years,
R/at No. 7-109/1
Navoor House, Sullia Taluk
Dakshina Kannada-574 314

...Petitioner

(By Sri Mohammed Tahir, Advocate)

And:

National Investigating Agency
Ministry of Home Affairs, (GOI)
Rep. by its Standing Counsel
Sri Prasanna Kumar
Office at High Court Complex,
Opp. Vidhana Souda,
Bengaluru-560 001

...Respondent

(By Sri P.Prasanna Kumar, Spl.P.P.)

This Writ Petition is filed under Articles 226 and 227 of constitution of India r/w Section 482 of Criminal Procedure Code, praying to set aside the order dated 13.03.2023 present at Annexure-F passed by the Hon'ble 49th Additional City Civil and Session Judge (Special Court for trial of NIA cases) at Bengaluru in Spl.C.No.123/2023 and consequently appreciate the application filed by the petitioner under section 91 of





Cr.P.C., at Annexure-D and direct the respondent agency to produce the CCTV footage of Madiwala FSL office dated 06.11.2022 and NIA office between 07.11.2022 to 14.11.2022 before the Hon'ble court, direct NIA officials i.e. Shri Shanmugan, Shri Mahesh and Shri Manjunath and concerned advocate to provide details of their official and personal mobile number with their service provider, which they were using between 07.11.2022 till the filing of charge sheet consequently it may directed to concerned service provider to extract and furnish the CDRs of given number of above mentioned persons to trial court and etc.

This Writ Petition, coming on for **preliminary hearing**, this day, **Sreenivas Harish Kumar J.**, made the following:

ORDER

This writ petition under Articles 226 and 227 of the Constitution of India read with Section 482 of Cr.P.C., is filed by accused No.1 in Spl.C.C.No.123/2023 on the file of the XLIX Additional City Civil and Sessions Judge (Special Court for trial of NIA cases), CCH-50, Bengaluru, ('Special Court' for short) challenging the order dated 13.03.2023.

2. The writ petition has the factual background that the petitioner and other accused are being tried in relation to an offence of



homicidal death of Praveen Nettaru on 26.07.2022 at Bellare, Puttur Taluk, Dakshina Kannada-Mangaluru. The first information was lodged by Madhukumar and FIR was registered in Crime No.63/2022 for the offence punishable under Section 302 of IPC. Later on, the investigation was taken over by the National Investigating Agency by virtue of the order passed by the Ministry of Home Affairs, Government of India on 03.08.2022 and the case was registered as RC 36/2022/NIA/DLI for the offences punishable under Sections 16, 18 and 20 of Unlawful Activities (Prevention) Act, 1967 ('UAP Act' for short) and Sections 120B and 302 read with Section 34 of IPC. NIA filed charge sheet against 20 accused persons after investigation.

3. When the investigation was in progress, one accused by name Mohammed Jabir was arrested and produced before the court on



07.11.2022 and remanded to police custody till 14.11.2022. While he was in police custody, he expressed his desire to give a confession statement under Section 164 of Cr.P.C., and therefore the NIA filed an application before the Special Court for recording the confession statement of Mohammed Jabir, who is accused No.18. The Special Court directed the Chief Judicial Magistrate to record the confession statement and it was recorded also. When Mohammed Jabir was produced before the court on 07.02.2023 from judicial custody, he made a submission before the Special Court about ill-treatment given to him by the NIA officers on 06.11.2022 and from 07.11.2022 to 14.11.2022 for compelling him to give statement in the way they wanted. When accused No.18 made such a submission before the Special Court, the petitioner who is accused No.1 got filed an application on 17.02.2023 under Section 91 of Cr.P.C., seeking a



direction to NIA to produce the CCTV footages dated 06.11.2022 at Madiwala FSL office and CCTV footages of NIA office for the period from 07.11.2022 to 14.11.2022, and also to direct the NIA officials Sri Shanmugam, Mahesh and Manjunath and the concerned advocate to provide details of their official and personal mobile numbers with their service providers and their call detail recordings (CDRs) for the period from 07.11.2022 to the date of filing of charge sheet. The Special Court dismissed the said application by the impugned order and hence this writ petition.

4. We have heard the arguments of Sri Mohammed Tahir, learned counsel for the petitioner and Sri P.Prasanna Kumar, learned Standing counsel for the respondent-NIA.

5. It was the argument of Sri Mohammed Tahir that accused No.18 Mohammed Jabir was tortured by NIA officials while he was in police



custody to give a statement under Section 164(1) Cr.P.C., in the way they wanted and this made him to give such a statement. Subsequently, he was made to become an approver and an application under Section 306 of Cr.P.C., was filed. But accused No.18 stated that he would not become an approver and retracted from having given statement under Section 164(1) Cr.P.C., voluntarily. He complained of ill-treatment by the NIA officers. He also complained that the NIA officials themselves arranged an advocate for him. All these happenings would show that the investigation was not fair and proper. Innocent persons have been implicated in the case. CCTV cameras are installed in the building of FSL and also in the office of NIA. If the footages dated 06.11.2022 and from 07.11.2022 to 14.11.2022 are collected, the truth will come out. In the same way if the telephonic conversations of the NIA officials are also collected, the truth will come out.



The entire investigation was not fair and was done in violation of Article 21 of the Constitution of India. Though the petitioner is accused No.1 and that he did not give statement under Section 164 of Cr.P.C., he is entitled to seek production of the CCTV footages and call recordings to demonstrate that entire investigation is biased and illegal. The trial court has failed to appreciate the significance of the application made under Section 91 of Cr.P.C., and dismissed it erroneously. Therefore he prayed for allowing the writ petition.

6. Sri Prasanna Kumar submitted that the petitioner who is accused No.1 has no *locus-standi* to file application under Section 91 of Cr.P.C., as his statement under Section 164 of Cr.P.C., was not obtained before the Magistrate. If at all details of the recordings in CCTV are necessary, accused No.18 should have made the application to substantiate the allegations made by him before



the Court. It is quite surprising that accused No.1 comes before the court with an application. He further submitted that even if there are recordings in the CCTV, the storage capacity of the CCTV is for a limited time and by the time the application under Section 91 of Cr.P.C., was filed, the footages were not available and for this reason no direction can be given for production of footages. Accused No.18 was never subjected to ill-treatment and the Special Court has clearly recorded the submissions made by accused No.18, when he was produced before the court. False allegations are made by the petitioner against the NIA officers.

6.1.Sri Prasanna Kumar argued that the telephonic conversation between the NIA officers cannot be ordered to be produced as they may contain official communications in respect of which confidentiality and secrecy has to be maintained.



Such a communication cannot be disclosed in accordance with Section 124 of the Indian Evidence Act. Even the conversation between the advocate and the client is a privileged communication which cannot be disclosed according to Section 126 of the Indian Evidence Act. This being the factual and legal aspect, the Special Court has rightly dismissed the application and the writ petition therefore requires to be dismissed.

7. After considering the arguments of the learned counsel, we think it proper to extract here the reasons ascribed by the Special Court for dismissing the application under Section 91 of Cr.P.C.

22. A perusal of the order sheet dated 07.02.2023, accused No.18 Mohammed Jabir alleged that he was taken to technical center Adugodi on 07.11.2022 and ill-treated by CIO Sri Shanmugam and other NIA officials. In



this regard, the learned counsel for accused No.1 argued before the Court that the approver accused made allegations against the CIO of this case as well as other NIA officials regarding ill-treatment. Therefore, it is the duty of the Court to summon the CCTV footage and CDRs of mobile numbers of the concerned officers to cross verify the truthfulness of the allegations made against the NIA officials.

23. It is pertinent to note that accused - Mohammad Jabir was produced before this Court on 08.11.2022 and he did not make any allegations of ill-treatment as against CIO and other NIA officials when this Court enquired him about the same. If he had really been assaulted and ill-treated by the NIA Police as alleged by him, he could have told the same before this Court when this court specifically asked in this regard and there was hurdle for him to inform the said facts. Further, the said accused - Mohammad Jabir was medically examined by the Doctor before producing him before this Court and a certificate has been issued to that effect. The said medical certificate does not disclose any injuries on the person of the accused - Mohammad Jabir.



24. Further, the said accused alleged that he was ill-treated by the Police from 07.11.2022 to 14.11.2022 and he was detained in a cell in NIA office from 07.11.2022 to 14.11.2022. The order sheet extracted above reveals that the said accused was produced before this Court on 08.11.2022. As he expressed his willingness to give statement before the court, he was produced before this court on 09.11.2022. Even on the aforesaid date, the said accused could have informed before this court about any ill- treatment caused by the NIA officials. But he did not make any such allegations against the CIO and other NIA officials. The said facts falsify the allegation that NIA officials detained the said accused from 07.11.2022 to 14.11.2022.

25. Further, the said accused was produced before this Court on 14.11.2022 from police custody. On the said date also, the said accused did not make any allegations regarding ill- treatment as against the CIO or other NIA officials when this court specifically asked about the same. Even the said accused was medically examined by the Doctor before producing him before this Court as directed by this Court at the time of remanding the said accused to the police custody. The



medical certificate issued by the Doctor does not disclose any injury on the person of the accused.

26. Further, the said accused was produced before this Court regularly on 17.11.2022, 15.12.2022 and 12.01.2023, but the said accused has not made any allegations in respect of ill- treatment as against the CIO or NIA officials.

27. It is further allegations against the NIA officials that one Sri Rajesh met accused No.18 in jail and handed over a chit to him and directed him to give the same facts in 164 statement. It appears from the records that accused No.18 was produced before this court on 09.11.2022 as the said accused expressed his willingness to give his statement before the court. When the said accused was produced before this Court, this Court made enquiry to clarify whether the said accused has come forward voluntarily to give his statement. Then, the said accused submitted before this Court that he has voluntarily come forward to give confession statement. Therefore, this Court requested the learned Chief Metropolitan Magistrate, Bengaluru to record the statement of the said



accused since the case is pending for trial before this Court. The said facts clearly goes to show that before handing over the alleged chit by the alleged Sri Rajesh, the said accused himself submitted before this court that he has voluntarily come forward to give his confession statement. The said facts falsify the allegations made by the said accused. Moreover, the confession statement was not recorded when the said accused was in police custody, but his statement was recorded when he was in judicial custody. It appears from the records that this court directed the jail authorities to produce the said accused before the learned Magistrate who recorded the statement of the said accused on the application of the investigating officer. Hence, there is no substance in the contention raised by the said accused.

28. It is pertinent to note that on 19.01.2023 the Chief Superintendent, Central Prison, Bengaluru submitted a requisition seeking permission to shift some of the accused persons to some other prison in the State of Karnataka on security reason and one of the accused filed an application before this Court to become approver and he expressed about



his safety as all the accused persons of this case were lodged along with him at Central Prison, Bengaluru. Upon considering the said requisition, this Court permitted the Chief Superintendent, Central Prison, Bengaluru to shift the accused persons to other Prisons in the State of Karnataka. Thereafter, the said accused - Mohammad Jabir made this kind of allegations as against the CIO and other officials of NIA. If the said allegations had been made when he was produced before this Court from the Police custody, this Court would have summoned the CDRs and CCTV footage as prayed in the application, but the said allegations were made after lapse of almost three months. This conduct of the accused - Mohammed Jabir is unnatural and contrary to the medical records placed before this Court. The materials available on record and the conduct of the accused - Mohammed Jabir clearly indicate that he made a baseless and false allegations against the CIO and other NIA officials. On the basis of this kind of baseless allegations, it is not just and proper to summon the documents as prayed in the application and the same is liable to be rejected.

29. xxx xxx xxx xxx xxxx



30. In the said decision, the Hon'ble High Court clearly held that the petitioner is not entitled to get the call details received by the Police Officer or the information regarding the calls received by the Police officer in his official mobile phone and that is likely to affect the safety of the persons as well. It is further held that certain information collected by the Police in receipt of the activities of any individual or institution in the course of discharge of their duties shall be kept in confidential except for the purpose of using such information for any official need alone. In this case. the Investigating Officer and other NIA officials are part of National Investigation Agency and they are involved in investigation of this case and other cases and also they might in touch with protected witnesses of this case as well as other cases. If the call details of the NIA officials is summoned, the confidential information received by the Investigating officer and other NIA officials is likely to be leaked. Since they are officials of the National Investigation Agency, they will be in receipt of confidential information in respect of security of the nation. The same will also be leaked if the call details of the NIA officials



are summoned on the application of accused No.1. Moreover, the same is not necessary or desirable for any purpose in this case. Hence, there is force in the contention raised by the learned Special Public Prosecutor and the application filed by accused No.1 is liable to be rejected on this ground as well.

8. Perusal of the reasons given by the Special Court, it becomes clear that on 07.02.2023, accused No.18 complained of ill-treatment on him at Madiwala FSL office on 06.11.2022 and at NIA office from 07.11.2022 to 14.11.2022. The police custody ended on 14.11.2022 and later on extended till 15.11.2022 with certain conditions.

9. The Special Court has clearly observed that statement under Section 164 of Cr.P.C., was not recorded when accused No.18 was in police custody, but it was recorded when he was in judicial custody. If really accused No.18 was subjected to ill-treatment and torture on



06.11.2022 and from 07.11.2022 to 14.11.2022 (*supra*), nothing prevented him from disclosing the same before the Special Court on 08.11.2022 and on subsequent dates when he was produced before the court. The doctor who examined accused No.18 has also given a certificate that there were no injuries on the person of accused No.18. The proceedings recorded by the Special Court cannot be doubted.

10. Sri Prasanna Kumar submitted that the storage collection of the CCTV footages was for a limited period and therefore footages for the period 06.11.2022 and 07.11.2022 to 14.11.2022 are not available. But Sri Mohammed Tahir produced copy of the statement of objections filed by NIA in W.P.No.2686/2023 where it is stated that NIA of Branch Office, Bengaluru is equipped with *night vision cameras that has a storage capacity of upto 3 months*. Referring to this, he



submitted that the footages of the period sought must be available. We have perused the statement of objections and in para 11, it is stated so.

11. Although we concur with the reasons given by the Special Court for dismissing the application, if accused No.1 i.e., the petitioner carries an impression in him that the investigation was tainted and the production of the footages discloses the ill-treatment, if any, on accused No.18, we may consider the request to obviate the impression that he is carrying. Investigation must be fair and free from bias. Though accused No.18 has complained of ill-treatment, and for that reason he should have sought production of footages, we may state that since the statement made by accused No.18 under Section 164 of Cr.P.C., may affect the interest of accused No.1 i.e., the petitioner herein, we can consider the request. If the footages dated 06.11.2022 and



from 07.11.2022 to 14.11.2022 (*supra*) are still available, they can be collected/retrieved and produced before the Special Court. But we are of the opinion that instead of directing the NIA to produce the CCTV footages, we can direct the Central Project Coordinator (CPC) and his technical team of this court to visit the offices of FSL and NIA to inspect the storage capacity of the CCTV and if the data/footages of the dates 06.11.2022 and from 07.11.2022 to 14.11.2022 (*supra*) are available, they may be collected and submitted to the Special Court in a sealed cover. If the data/footages are not available, a report to that effect may be given.

12. The other prayer of the petitioner for production of call details is certainly hit by Section 124 and 126 of the Indian Evidence Act. They cannot be produced. The telephonic conversations between the NIA officers may contain official



communications about which secrecy and confidentiality are to be maintained and therefore this request is rightly rejected by the trial court and we also cannot consider the said request. Hence the following:

ORDER

Writ petition stands ***disposed of*** with the following observations:

- (i) The Central Project Coordinator and his technical team of this court shall visit the office of FSL where accused No.18 was interrogated and also the office of NIA and inspect the CCTV recordings/footages and their storage capacities;*
- (ii) If the footages dated 06.11.2022 at the office of FSL, Madiwala and from 07.11.2022 to 14.11.2022 at the office of NIA are still available, they may be collected or retrieved or copied to a portable device like pen-drive etc., and submit the same to the Special Court in a sealed cover for making use of the*



same, if necessary, at the appropriate stage, during trial.

(iii) If the footages are not available of the above period, a report to that effect shall be given to this court.

(iv) The writ petition as it relates to furnishing the call details recordings (CDRs) amongst the NIA officials and the advocate is dismissed.

(v) The Central Project Coordinator and his technical team of this court shall submit report in this regard on or before 27.07.2023.

List this matter on 27.07.2023.

**Sd/-
JUDGE**

**Sd/-
JUDGE**