

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION NO. 301 of 2021****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ILESH J. VORA****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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SANJIV RAJENDRA BHATT
Versus
STATE OF GUJARAT

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Appearance:

MR SAURIN A SHAH(791) for the Applicant(s) No. 1

MR MITESH AMIN, PUBLIC PROSECUTOR WITH MS KRINA CALLA, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**

Date : 04/10/2021**CAV JUDGMENT**

1. This revision is directed against the order dated 18.03.2021 passed by Special Court (NDPS), Palanpur, Dist. Banaskantha, in Special (NDPS) Case No.3/2018 rejecting the applications at Exhs:58 and 63 filed by the applicant under Section 91 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Code" for short) for summoning and production of documents which were not part of the chargesheet case papers.
2. The applicant is facing trial for the charges of Sections 120(b), 117, 167, 204, 343, 465, 471 read with Section 120(b) of

Indian Penal Code and Sections 17, 18, 21, 27(a), 29, 58(1) and 58(2) of the NDPS Act.

3. On 02.11.2018, chargesheet for the aforesaid offences being filed by the Investigating Officer and accordingly, case was registered as Special (NDPS) Case No.3/2018. The applicant preferred two applications at Exhs:58 and 63 for summoning and production of certain documents to defend his case, as according to him, the documents are relevant and necessary for the fair trial.
4. The trial Court vide its orders dated 18.03.2021, dismissed both the applications observing that, the applicant has not established that the documents sought are "necessary and desirable" for the just decision of the case. The Special Court further observed that it has been filed with a view to delay the trial proceedings. The trial Court further noted that pursuant to the order passed by the High Court of Gujarat, the documents sought were supplied to the applicant and further recorded that the documents sought have no relevance to the facts of the present case. However, the trial Court while dismissing both the applications observed that, the applicant has liberty to revive his claim at appropriate stage.
5. Aggrieved by the impugned orders dated 18.03.2021, the applicant has come up before this Court by way of present revision application.
6. Heard learned counsel Mr. Saurin Shah, for the applicant and learned Public Prosecutor Mr.Mitesh Amin, assisted by learned AGP Mrs. Krina Calla, for the respondent State.
7. Mr. Saurin Shah, learned counsel for the applicant, strenuously urged that the order impugned passed by the learned Special Judge is *de hors* the mandate of Section 91 of

the Code, which requires interference by this Court. Placing reliance on the decision of **V.K.Shasikala Vs. State [(2012) 9 SCC 771]**, it was submitted by learned counsel for the applicant that the accused has right to fair trial and entitled to all the documents, not relied upon by the Investigating Agency and not forming the part of the chargesheet. In this context, on the factual aspects, he would contend that the investigating officer while taking over investigation as per direction of Hon'ble High Court vide order dated 03.04.2018 had received investigation papers of "A" Summary Report vide Exh:11 to Exh:279 as well as case diary consisting pages 1 to 42, case diary consisting pages 1 to 29 and 16 documents attached with the said case diary; that the IO while submitting the chargesheet did not place majority of exhibits which were forming part of A Summary Report and same came to be produced in a sealed cover before the learned Special Judge and therefore, vide Exh:58 application was tendered claiming the documents. However, the learned Special Judge overlooked the facts of "A" Summary and observed that, the applicant had made similar demand by making application before the High Court and accordingly, documents were supplied to him. Thus, the findings are completely incorrect and contrary to record as the applicant did not have received any such documents as enumerated in the application; that while submitting the chargesheet, the IO has relied upon the FSL report of C.R.Nos.51/1996 and 54/1996 registered with Aagthala Police Station, however, he did not submit all the relevant documents of both the aforesaid crimes like copy of the FIR, relevant statements and panchnama and therefore, the applicant has prayed the documents vide Exh:69 pertaining to the Crimes registered at Aagthala Police Station; that the Investigating officer during the course of investigation recorded the statement of Sumersingh Rajpurohit on

04.09.2018, wherein, he has referred his application made to Human Rights Authority, for which on 02.08.1996, Shri Dhagal, DIG Bhuj Range, came for investigation. On this aspect, the applicant sought necessary documents with regard to inquiry and investigation held by Mr. Dhagal as according to the applicant, it would be helpful for the purpose of cross-examination of witness Shri Sumer Singh Rajpurohit and other witnesses. Thus, the learned trial Court ought to have considered this aspect while disposing the applications and therefore, the trial Court has committed an error while exercising its jurisdiction.

8. Placing reliance on the case of **P.Gopalakrishnan @ Dileep Vs. State of Kerala [(2020) 9 SCC 161]**, he would submit that, as per Sections 173(6) and Section 207 of the Code, the IO can exclude any part of statement which is not relevant to the subject matter of the proceedings or that its disclosure to the accused is not essential in the interest of justice. However, as regard to the “documents”, the IO has no option except to forward “all the documents” to the Magistrate along with the police report.
9. In view of the aforesaid contentions, it is prayed that the impugned orders passed below Exhs:58 and 63 are contrary to the law, arbitrary and capricious, which warrants interference by this Court.
10. On the other hand, Mr. Mitesh Amin, learned Public Prosecutor vehemently opposed the application and submitted that, the applications invoking Section 91 of the Code having been filed only to prolong the trial proceedings. Reiterating the observations made by the trial Court, Mr. Amin would submit that, the offence in question is of the year 1996 and only because of various dilatory tactics of the applicant, the

investigation could not start and it was possible only after a coordinate bench of this Court passed a detailed order dated 03.04.2018 and the same was also challenged by the present applicant by filing Special Leave Petition (SLP), which came to be dismissed by the Apex Court. In this background, he would submit that, the documents sought to be produced are not forming part of the chargesheet, as there is complete compliance of Section 207 of the Code by the prosecution. He would further urge that, the case diary is not part of the chargesheet and the referred FIR registered with Aagthala Police Station is a public document. So far the alleged inquiry made by Mr. Dhagal in respect of alleged violation of human rights of the witness Sumersingh is concerned, he would urge that, Mr. Dhagal has not been cited as a witness by the Investigating Agency and as such, there is no any record like statements and other proceedings as claimed by the applicant. On the issue of offence registered with Pali Police Station, at Rajasthan, he would submit that, the offence registered with Palanpur Police Station and Pali Police Station are distinct and separate offence and this issue being finally settled by the High Court of Rajasthan.

11. In view of the above contentions, Mr. Amin, learned Public Prosecutor would urge that the trial Court has properly applied its mind and has rightly come to a conclusion that the documents sought to be summoned, are not necessary or desirable for the purpose of fair trial and therefore, the applications invoking Section 91 of the Code are in utter abuse of process of law and being filed with a view to delay the trial and therefore, the trial Court has rightly rejected the applications.
12. In the facts of the present case, it is not in dispute that, on receipt of police report i.e. chargesheet, accompanying

statements and documents, the trial Court has furnished copies of each of the statements and documents to the accused and therefore, there is total compliance of mandatory provisions as provided under Section 207 of the Code.

13. In the facts of present case, the applicant accused claiming following documents :-

(i) Investigation papers of "A" Summary report vide Exh:18 to 279 as well as case diary consisting pages 1 to 42, case diary consisting pages 1 to 29 and 16 documents attached with the case diary;

(ii) copies of the FIR being C.R. No.51/1996 and 54/1996 registered at Agthala Police Station;

(iii) Pursuant to the application filed by the witness Sumersingh Rajpurohit, the then DIG, Bhuj Range, Mr. Dhagal came for investigation at Palanpur Police Station and carried out investigation with respect to the application made under the provisions of Human Rights, therefore, all the relevant documents pertaining to said inquiry conducted by Mr. Dhagal.

14. Now, the issue is whether the aforesaid documents claimed by the applicant under Section 91 of the Code are necessary and desirable for fair trial and proper defence of the accused applicant or not ?

15. I have considered the submissions raised by the respective parties and perused the material on record as well as the impugned order.

16. Before adverting to the issue raised by the respective parties, it is necessary to state the brief facts of the prosecution case, which are as under:-

(i) In the year 1996, when the applicant was posted as District Superintendent of Police, Banaskantha at Palanpur, he and other co-accused have hatched the conspiracy to frame one Sumer Singh Rajpurohit, resident of Pali, Rajasthan State, in a false case of opium, punishable under the provisions of the NDPS Act. It is further alleged that, the applicant being a District Superintendent of Police by influencing his subordinate officer had involved them in the alleged criminal conspiracy. As a part of conspiracy, a false verdhi was being transmitted to control room on 30.04.1996 inter alia stating that, information received by the control room that, at about 06:10 a.m, Sumer Singh Rajpurohit is doing business of Opium and yesterday he brought 5 kgs opium and stayed at Hotel Lajvanti, Palanpur and delivery of the opium has to be given in Palanpur. It is alleged that, prior to the alleged verdhi, the applicant had knowledge that, the verdhi was bogus and false and had made conversation with his subordinate officer i.e. Mr. I.B.Vyas, Police Inspector, Local Crime Branch that, case of NDPS is required to be investigated. It is alleged that, Mr. Sanjeev Bhatt i.e applicant herein directed the concerned to send the verdhi to LCB office and directed Mr. Vyas to investigate the case. Mr. Vyas had raided the Hotel Lajvanti and seized the contraband opium of 1.15 Kgs. from Room No.305 of the Hotel which was booked in the name of Sumer Singh in the register maintained by the hotel. It is alleged that, after seizure of the opium and upon further inquiry, it was found that, Sumer Singh had left the hotel without informing anybody. Mr. Vyas being a complainant lodged the FIR being Prohibition C.R.No.216/1996 at Palanpur Police Station and investigation was entrusted to Mr. Vyas and during the course of investigation, he had arrested Sumer Singh and produced before the Court and sought his remand.

It is alleged that, during investigation, the applicant Mr. Bhatt had directed Mr. Vyas to inquire about the rented shop of Sumer Singh and Mr. Bhatt had also made conversation with Sumer Singh about his shop and threatened him to vacate the same. It is alleged that at the instance of the applicant Mr. Bhatt, report under Section 169 of the Code had been filed by the respondent No.2 Mr. I.B.Vyas, *inter alia*, stating that, the person occupying the room at hotel was not Sumer Singh and accordingly, Sumer Singh was discharged by the Court and finally, 'A' summary report was filed.

(ii) Two petitions were filed before the Gujarat High Court for further investigation by the State CBI in the matter and this Court vide order dated 03.04.2018 directed the State to form a special investigation team and accordingly, SIT was constituted and investigation was entrusted to Mr. Virendrasinh Yadav, who had recorded the statements of the witnesses, collected the material evidence, arrested the applicant and Mr. Vyas, PI of Local Crime Branch under the charges as referred to above and finally, on 02.11.2018, chargesheet came to be filed before the Special Court and charges came to be framed by the Special Court on 18.09.2019 at Exh:59 under Sections 120(b), 117, 167, 204, 343, 465, 471 read with Section 120(b) and Sections 17, 18, 21, 27(a), 29, 58(1) and 58(2) of the NDPS Act alleging that, the applicant and co-accused have hatched conspiracy to frame Sumer Singh in the alleged offence under the provisions of the NDPS Act. It is also alleged that, in order to achieve the object of conspiracy, the applicant financed to procure the opium, fabricated the contents of verdhi, allegedly forged the entry in the hotel register, conspired to plant the opium as alleged, for which, the applicant and respondent No.2 are facing the trial for the offence as referred to above.

17. In the background of the present case, Section Section 91 of the Code would be relevant to refer which is quote hereinbelow :-

"Section 91- Summons to produce document or other thing.

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed
(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or
(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority. "

18. In **Debendra Nath Padhi (State of Orissa Vs. Debendra Nath Padhi [2005 (1) SCC 568]**, the Hon'ble Supreme Court while considering the provisions of Section 91 of the Code, observed as under :-

"25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is 'necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code'. The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking [Section 91](#) at the initial stage of framing of a charge would not arise

since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the Court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. In so far as the accused is concerned, his entitlement to seek order under [Section 91](#) would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it whether police or accused. If under [Section 227](#) what is necessary and relevant is only the record produced in terms of [Section 173](#) of the Code, the accused cannot at that stage invoke [Section 91](#) to seek production of any document to show his innocence. Under [Section 91](#) summons for production of document can be issued by Court and under a written order an officer in charge of police station can also direct production thereof. [Section 91](#) does not confer any right on the accused to produce document in his possession to prove his defence. [Section 91](#) presupposes that when the document is not produced process may be initiated to compel production thereof. “

19. It is not in dispute that, pursuant to the FIR being C.R.No.216/1996 registered at Palanpur City Police Station, for the offence under Section 17 of the NDPS Act, the Investigating Officer of the case submitted a report before the learned Special Judge, Palanpur, to add Section 58(2) of the NDPS Act and thereafter, on 14.05.1996, he had submitted report under Section 169 of the Code. Learned Special Judge accepted the report and discharged the accused Sumersingh Rajpurohit. On 28.02.2000, after thorough investigation of the case, the Investigating Agency finally submitted a report (“A” Summary) before the learned Special Judge, Palanpur. On 03.04.2018, this Court disposed of the Special Criminal Application Nos.1079/1998 and Special Criminal Application No.680/1999 with a direction that FIR being Prohibition C.R.No.216/1996 be conducted by Special Investigating Team and accordingly, it came to be formed, as a result of which, the Investigating Officer Mr. Yadav vide letter dated

01.08.2018 addressed to S.P.Palanpur, requested him to handover all the papers pertaining to the Prohibition C.R.No.216/1996. Pursuant to the aforesaid letter, S.P., Palanpur obtained A summary i.e. Summary No.5/2000 from Sessions Court and handed over to Investigating Officer Mr. Yadav vide letter dated 04.08.2018. During the course of investigation, Mr. Yadav had recorded statement of the witnesses, arrested the present applicant accused and co-accused Mr. Vyas and finally chargesheet came to be filed.

20. Now, let us examine the claim of the documents made by the applicant accused.

21. The claimed document i.e. A Summary report, which were not part of the chargesheet, but after completion of investigation, the IO forwarded it to the Special Court in a sealed cover. The stand of the prosecution is that, those papers are not part of the chargesheet, would not require to provide to the applicant accused. The learned counsel for the applicant Mr. Shah placing reliance on the case of **V.K.Sashikala Vs. State [(2012) 9 SCC 771]**, submits that, the Investigating Agency has left out some of the documents, which were parts of "A" Summary because it favours the accused, the court must concede a right in the accused to have an access to the said document.

22. In view of the aforesaid, this Court is of considered view that, the documents which were not part of the chargesheet, but seized by the investigating agency during the investigation of the offence, cannot be withheld by the prosecution merely on the ground that the documents sought to be summoned are not part of the chargesheet. Thus, Exhs:18 to 279 as well as Case Diary consisting pages 1 to 42, Case Diary consisting pages 1 to 29 and 16 documents attached to the case diary

are necessary for adjudication of trial as well as proper defence of the applicant accused. In the case of **Manu Sharma Vs. State (NCT of Delhi), [(2010) 6 SCC 1]**, the Apex Court held that, the right of accused with regard to disclosure of document is a limited right, but is codified and is the very foundation of fair investigation and trial. It is further held that, on such matters, the accused cannot claim an indefeasible legal right to claim every document, but certain rights of the accused flow from both the codified law as well as from equitable concepts of the constitutional jurisdiction. Referring to the case of **Manu Sharma (Supra)**, the Apex Court in the case of **V.K. Sashikala (Supra)** held that, the question arising would no longer be one of compliance or non-compliance with the provisions of Section 207 of the Code and would travel beyond the confines of the strict language of the provisions of Code of Criminal Procedure and touch upon the larger doctrine of a free and fair trial that has been painstakingly built up by the Courts on a purpose interpretation of Article 21 of the Constitution of India. It is not the stage of making of request; the efflux of time that has occurred or prior conduct of the accused that is material. What is significance is if in a given situation, the accused comes to the court contending that, some papers forwarded to the Court by the Investigating Agency have not been exhibited by the prosecution as the same favours the accused, the court must concede a right to the accused to have an access to the said documents.

23. The learned Trial court while dismissing the applications at Exh:58 recorded the findings that, the documents sought to be summoned have been provided to the applicant, as such on record, there is no compliance of the order in toto by the Investigating Agency. The trial Court has mainly relied on the

order passed by coordinate Bench of this Court dated 13.01.2020. This Court is of considered view that, the trial Court materially erred to come a conclusion that the A summary report as sought to be summoned have been provided. Trial Court while refusing to summon "A" summary report, did not properly consider the law laid down by the Apex Court in the case of **V.K.Sashikala (Supra)**. The "A" Summary report can be termed to be a part of the chargesheet, because investigating agency has collected some of the documents from "A" Summary report and made part of the chargesheet, whereas, some of the documents whether it favours the accused or not, left out from the part of the chargesheet and submitted again to the Special Court in a sealed cover. Thus, while rejecting the application, trial Court has not decided the issue judiciously and judicially and exercise of discretion is not in consonance with the scope and ambit of Section 91 of the Code.

24. The applicant accused made demand of copies of the FIR registered with Aagthala Police Station, Palanpur. The main reason for claiming these documents is that the Investigating Agency has relied and referred the FSL report, pertaining to the offence registered with Aagthala Police Station. In this context, the learned trial Court held that the documents sought to be summoned are public documents. This Court is of view that, the conclusion of the learned trial Court is improper. Trial court ought to have seen that pursuant to the FIR registered with Aagthala Police Station, the investigation was carried out and accordingly, Forensic Science Laboratory conducted analysis of the samples. Thus, though the copy of the FIR claimed by the applicant accused have no direct bearing on the present case, but when reference is made to the report of the FSL, the allegations made in the FIR are

necessary for proper defence of the applicant accused. If documents as sought provided to the applicant accused, then no harm would cause to the prosecution. Thus, the trial Court ought to have considered the broader aspect of the proposed defence claimed by the applicant accused.

25. In view of the aforesaid, this Court is of the view that, the investigating agency being a part and parcel of the State is legally required to be fair, just and reasonable. It is no doubt true that, since from his arrest in the alleged crime, the applicant had filed many applications either before this or trial Court under various provisions of the Code, as a result, trial could not commence. However, the Court being a guardian of fundamental rights enshrined under the Constitution of India, keeping the larger interest and rights of the fair trial and defence of the accused, should have decided the issue accordingly.
26. The applicant accused has claimed the case papers of Human Right inquiry conducted by the then DIG, Bhuj Range, Mr. Dhagal. The reason behind is that, while recording the statement of witness Summersingh by the IO, he made a reference with regard to his application filed with the Human Rights Commission. This Court is of the considered view that, Investigating Agency has not cited Mr. Dhagal as witness nor any documents with regard to alleged inquiry being collected during the course of investigation. The trial Court while dealing with this issue recorded that the documents of the inquiry are not necessary for adjudication of trial as well as to defend the case. The prosecution's stand is that no such papers are available with the authority and therefore, it cannot be provided as of right to the applicant. This Court is of considered view that, reference subject of Human Right Application and enquiry thereof are not necessary and

desirable for the adjudication of trial as well as right to defend the case. However, the trial Court granted liberty to the applicant to revive his claim at appropriate stage if need be arise. This Court is in complete agreement with the view taken by the trial Court and therefore, so far alleged enquiry made by the then DIG Mr. Dhagal is concerned, at this stage, the applicant is not entitled for the documents.

27. For the foregoing reasons, applications at Exhs:58 & 63 under Section 91 of the Code of Criminal Procedure deserve to be partly allowed. In the result, prosecution is hereby directed to produce and provide the copies of documents at Item No.8 of the application at Exh:58. The prosecution further directed to provide and produce the copies of documents at Item No.1 of the application at Exh:63. The prosecution shall comply the order within **15 days** from the date of receipt of this order.
28. It is required to be noted that since filing of the chargesheet and framing of the charge, the trial could not commence due to various applications filed by the applicant. Initially, he had objected against incorporation of some of the sections of NDPS Act in the draft charge and thereafter, he tendered application for discharge. Both the applications were rejected by the trial Court. The revision against the order of discharge was upheld by this Court. The applicant had challenged the order of pardon given to co-accused No.1 by the trial Court under Section 305/306 of the Code and the same was upheld by the High Court in the revision filed by the applicant. The applicant again filed an application under Section 216 of the Code for amend/alter the charge framed by the trial Court and the same was dismissed by the trial Court and on filing revision by the applicant against the order, this Court has upheld the order passed under Section 216 of the Code. The applicant had moved one Criminal Misc. Application

No.997/2020 before the High Court of Rajasthan, praying that the case registered with the Pali Police Station, Rajasthan and the present prosecution registered with Palanpur Police Station, Gujarat are same and therefore, the case of Palanpur Police Station would be stayed. The High Court of Rajasthan vide order dated 28.06.2020, dismissed the application holding that, both the offences are separate and distinct and same was upheld by the Apex Court vide order dated 27.01.2021 passed in Special Leave petition No.6340/2020.

29. In the aforesaid facts, it is relevant to take note of the facts that, there are large number of observations in the judgments/ order in several petitions repeatedly filed by the applicant to prolong the proceedings, depreciating the dilatory tactics and thwarting due process of law. It is a settled law that if the trial against the accused is not concluded within reasonable time, it amounts to a violation of right of speedy trial guaranteed under Article 21 of the constitution of India. If the prosecution is kept pending for a long time, the evidence may be obliterated by more lapse of time with the result that the evidence would not be available at the time of trial. In view of the totality of the facts and striking balance between the right of the prosecution as well as right of the applicant for speedy trial, I deem it appropriate to direct the Special Judge, NDPS Court at Palanpur, Dist. Banaskantha to expedite the trial proceedings and complete the same positively within a period of **9 (Nine) months** from the date of receipt of this order.
30. In view of the aforesaid terms and directions, present Revision Application is disposed of accordingly. Rule is made absolute to the aforesaid terms. Direct service is permitted.

Sd/-
(ILESH J. VORA,J)

SUCHIT