

23.07.2020 (At 12:00 PM)

1. Vide this order, I shall dispose off an application moved on behalf of CBI / Prosecution for Lie Detection / Polygraph Test of accused persons / suspects Sant Prasad Gupta, Sandeep Mathur @ T.T. @ Sandy, Amit Sharma and Dipu Kumar.

2. It is stated in the application that on the basis of written complaint dated 21.05.2018 of Sh. Sandeep Choudhary, Addl. Supdt. of Police, CBI, AC-1, New Delhi, the present case had been registered u/S. 120B, r/w 420 of IPC, Section 13(2) r/w 13(1)(d) of PC Act 1988 and Section 66 D of IT Act against Sachin Chouhan and others.

It is further stated that due to the detailed reasons mentioned in the application and in order to ascertain the veracity of the facts stated by the aforesaid persons in the whole crime and for logical conclusion of the investigations, it has been felt that the above mentioned accused persons / suspects i.e. Sant Prasad Gupta S/o. Sh. Vijay Kumar Gupta, Sandeep Mathur @ T.T. @Sandy S/o. Sh. Dharambir Singh, Amit Kumar @ Amit Sharma S/o. Sh. Jai Bhagwan and Dipu Kumar S/o. Sh. Birendra Kumar may be put to the Lie Detection / Polygraph Test to be conducted by experts of CBI, CFSL, New Delhi.

It is further stated that in view of the directions issued by the Hon'ble Supreme Court in *Criminal Appeal No. 1267 of 2004 Selvi & Others Vs. State of Karnataka (2010) 3 SCC (Cri.)*

consent of the persons to be subjected to the Polygraph examination is to be recorded before a judicial Magistrate

It is further stated that in view of the above directions by the Hon'ble Supreme Court, it is requested that the aforesaid persons may kindly be directed to appear before this Hon'ble Court for recording of their consent for Polygraph examination by CFSL, CBI, New Delhi. Therefore, in view of the above, it is prayed that willingness of above mentioned accused persons / suspects Sant Prasad Gupta, Sandeep Mathur @ T.T. @ Sandy, Amit Kumar @ Amit Sharma and Dipu Kumar may be recorded for polygraph / Lie detection test.

3. Common reply has been filed on behalf of accused persons / suspects Sandeep Mathur @ T.T. @ Sandy and Amit Sharma to the above application for conducting Lie Detection / Polygraph Test. It is stated that the applicants are innocent and have unnecessary been arrayed as suspects in the present matter. It is further stated that the applicants have already joined the investigations and are further ready to join investigations with CBI, whenever required in future too. It is further stated that the present application has been filed on the wrong premise that the applicants would not come up with the truth if the applicants join investigations in normal course. It is submitted that the allegations against the applicants are without any basis and the applicants have no connection with the alleged offence(s), the applicants are being made to go through the gruesome tests, despite the fact that the same cannot be admitted in evidence. It is further stated that the entire exercise is futile exercise and would eventually



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delay the investigation.

In support of their contentions, Ld. Counsel for the accused persons / suspects has relied upon the judgment *Selvi @ Ors. Vs. State of Karnataka & Anr. Criminal Appeal No. 1267 of 2004*. Therefore, it is stated that the applicants do not wish to undergo for Lie Detection / Polygraph examination and the application moved by CBI is liable to be dismissed.

4. Separate reply has been filed on behalf of accused / suspect Dipu Kumar wherein it is stated that he was called by CBI to join investigation on at least more than 10 occasions and he volunteered to join the investigation and fully co-operated in the investigation, further nothing incriminating was found or discovered during the interrogation of applicant / suspect Dipu Kumar because he had no involvement in the commission of the alleged offence and in these circumstances, no purpose will be served by carrying out the Lie Detection Test on the applicant / suspect Dipu Kumar. It is further stated that the said suspect does not want to give his consent for Lie Detection Test, as he had not concealed anything during his interrogation.

5. I have gone through the rival contentions.

6. Vide order(s) dated 05.03.2020, the accused / suspect Sant Prasad Gupta in the presence of his Ld. Counsel has already made a statement regarding his consent for Lie Detection Test / Polygraph Test upon him and accordingly liberty was given to the IO to start the process for the said test qua him, as per law.

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7. In the judgment **Selvi @ Ors. Vs. State of Karnataka & Anr. (supra)**, relied upon by the applicants / suspects Sandeep Mathur @ T.T. @ Sandy and Amit Sharma, it has been held as under :

That forcing an individual to undergo any of the impugned techniques violates the standard of 'substantive due process' which is required for restraining personal liberty. Such a violation will occur irrespective of whether these techniques are forcibly administered during the course of an investigation or for any other purpose since the test results could also expose a person to adverse consequences of a non-penal nature.

Further it was concluded that no individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty. However, we do leave room for the voluntary administration of the impugned techniques in the context of criminal justice, provided that certain safeguards are in place. Even when the subject has given consent to undergo any of these tests, the test results by themselves cannot be admitted as evidence because the subject does not exercise conscious control over the responses during the administration of the test. However, any information or material that is subsequently discovered with the help of voluntarily administered test results can be admitted, in accordance with Section 27 of the Evidence Act, 1872. The National Human Rights Commission had published 'Guidelines for the Administration of Polygraph Test (Lie Detector Test) on an Accused' in 2000. These guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the 'Narcoanalysis technique' and the 'Brain Electrical Activation Profile' test. The text of these guidelines has been reproduced below:

(i) No Lie Detector Tests should be administered except on the basis of consent of the accused. An

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option should be given to the accused whether he wishes to avail such test.

(ii) If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.

(iii) The consent should be recorded before a Judicial Magistrate.

8. Since all the suspects have stated that they have already joined the investigations on various occasions as and when they were called and they have fully cooperated in the same and they are further ready to join the investigations, if required in future as well, therefore, no purpose shall be served by carrying out the Lie Detection Test on them, thereby they have all not consented to undergo lie detection test / polygraph test.

9. In view of the law laid down by the Hon'ble Supreme Court in the above judgment ***Selvi @ Ors. Vs. State of Karnataka & Anr. (supra)***, since the above applicants / suspects have not consented to undergo lie detection test / polygraph test, which is mandatory and without their consent, no Lie Detection Test / Polygraph Test can be carried out, therefore, the above application of the prosecution dated 13.01.2020 qua accused persons / suspects Sandeep Mathur @ T.T. @ Sandy, Amit Sharma and Dipu Kumar stands dismissed.

Nothing observed herein above shall have any bearing on the merits of the case.

The e-mail copy / signed scanned copy of this order be sent to the Computer Branch, RADC by the Reader for uploading



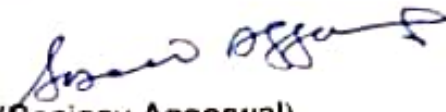
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on the official website.

This signed order sheet be retained on the record to be put on the judicial file as and when the normal court working stand resumed.

The present order has been dictated to Sh. Amit Makhija, Sr. PA attached with the undersigned.

Announced in the Open Court
on this 23rd day of July, 2020
through CISCO Webex Platform/
Video Conferencing.


(Sanjeev Aggarwal)
Special Judge(PC Act)(CBI)-02
Rouse Avenue District Court
New Delhi/23.07.2020