

IA No. 36/25
IA No. 37/25
SC no. 120/20
State vs Tahir Hussain & Ors.
FIR no. 65/2020
PS Dayal Pur

05.06.2025

Present: Sh. Madhukar Pandey, Id. Special PP for State
alongwith his associate Sh. Daksh Sachdeva.
Pairvi Officer/Insp. Priyanka in person and Insp.
Amleshwar are present.
Insp. Amit Prakash is present through VC.

Accused Tahir Hussain produced from J/C.

Accused Nazim and Kasim produced from J/C.

Accused Sameer Khan, Haseen @ Mullaji, Gulfam,
Anas, Firoz, Javed, Shoaib Alam and Muntazim @
Musa, in person on bail.

Mohd. Dilshad, Id. counsel for accused Javed.

Ms. Sabina Parveen, Ld. Counsel for accused
Sameer Khan.

Ms. Shavana, Ld counsel for accused Anas.

Sh. Abdul Gaffar, Ld. Counsel for accused Nazim,
Kasim, Haseen @ Mullaji, Muntazim @ Musa and
Firoz.

Reply, pursuant to the directions given vide order
dated 03.06.2025, has been received from DCP, NE Distt. Taken
on record.

Report with respect to production warrant of accused
Tahir Hussain, as sought vide order dated 03.06.2025, has been
filed by Jail Superintendent, CJ-03. Taken on record.

Summons issued to witness Mahender received back
unserved.

Witness Saira is present.

However, two separate applications have been moved on behalf of the State for dropping witnesses Mahender and Saira w/o Mukeem.

Considering the submissions made in the applications, witnesses Saira and Mahender are dropped from the list of witnesses.

Two applications u/s 349 BNSS, bearing IA No 36/25 and 37/25, seeking directions to obtain voice samples of PW58 Md. Nadeem and PW75 Faheem @ Chikna are stated to be pending.

Notice of application issued to PW75 Faheem @ Chikna received back unserved with the report that he was not found at the given address. The court has no other means of informing him of this application.

Witness PW58 Faheem @ Chikna has already been served with the notice of the application seeking to take his voice sample. He had chosen not to appear on 29.05.2025 and is also not present today.

It is submitted in these applications that witnesses PW58 Nadeem and PW75 Faheem @ Chikna, during their deposition, under the influence of accused Haseen @ Mullaji, had denied to identify their voice. Hence the present applications seeking directions to obtain voice samples at CFSL/FSL and for directing CFSL/FSL to conduct voice analysis tests.

I have heard ld. Spl. PP for State and ld. counsel for accused Haseen @ Mullaji and perused the record very carefully.

It has been contended by ld. Spl. PP for State that during the course of examination of these two witnesses, recordings of telephone calls between these witnesses and accused Haseen @ Mullaji had been played. However, these witnesses refused to identify their voice and had deliberately lied

in the court. The said recordings are crucial piece of evidence in this case and in order to bring truth before the court and to reach at a just decision, it is required to obtain the voice samples of these witnesses and have their voice analysis test.

Countering it, ld. counsel for accused Haseen @ Mullaji has contended that this is mere a ploy to fill up the lacuna and to delay the matter. He has further contended that once these witnesses have denied the recordings contained their voices, therefore, there is no requirement of sending their voice samples to CFSL. Even otherwise, they are not accused in this court and the court cannot pass any such directions.

In response, ld. Spl. PP for State has contended that the court has all the powers to pass such directions if the interest of justice so requires. In this regard, he has relied upon the judgment of Hon'ble Supreme Court in **Tarak Nath Gupta v State of Delhi, 2023 SCC Online Del 6475** and specifically relied on para 17 of the judgment.

I have considered the rival submissions.

In the present case, the recordings, which as per the prosecution, were found in the phone of accused Haseen @ Mullaji wherein as per the prosecution, he was talking to PW58 Md. Nadeem and PW75 Faheem @ Chikna, are a crucial piece of evidence and in order to reach the root of the matter and to find truth, the said evidence has to be appreciated in totality. These witnesses, on being confronted with their voices, had refused to identify their voices. The case in question is squarely covered by the judgment of **Tarak Nath Gupta (supra)**. Therefore, I deem it appropriate to allow these applications. Both these applications are accordingly allowed. IO is permitted to take voice samples of witnesses PW58 Md. Nadeem and PW75 Faheem @ Chikna. However, these samples shall be taken independently by the

expert at CFSL, CBI, CGO Complex, Lodhi Road, New Delhi or FSL, in a sanitized and secured environment. However, as per the directions of Hon'ble Supreme Court, as this case has to be decided at the earliest, Director concerned of the Forensic lab is directed to ensure that the report is submitted to the court within 20 days of the receipt of the samples. At the same time, copy of order be sent to Ld. Commissioner of Police who shall ensure that the samples are taken at the earliest so that the report is not delayed because of non availability of police and the report is received in the court before the next date of hearing. It shall also be ensured that while taking the voice samples, these witnesses shall not be asked to repeat the exact conversation as is in the questioned voice. IA no. 36/25 and 37/25 stand disposed.

Witness Kaushalendra Kumar is appearing through VC. He submits that presently he is posted in Patna, Bihar and summons were served to him only on 01.06.2025 and in such a short notice, he could not come due to unavailability of trains.

Ld. Spl. PP submits that the prosecution/ State shall send the confirmed train tickets to this witness so that this witness does not have this ground for non appearance.

IO is directed to have the train tickets of this witness booked for the next date of hearing and shall provide the same to witness Kaushalendra. Witness Kashalendra shall appear on the next date of hearing.

Put up for PE on 12.07.2025.

(Parveen Singh)
ASJ-03(NE)/KKD Courts/Delhi
05.06.2025