

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 8692 of 2021**

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MOHAMMED SUHEL MOHIYUDDIN TIRMIZI

Versus

STATE OF GUJARAT

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Appearance:

MR MEET G RAVAL(10630) for the Applicant(s) No. 1,2,3

for the Respondent(s) No. 2,3,4,5

PUBLIC PROSECUTOR(2) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA****Date : 28/09/2021****ORAL ORDER**

1. Heard Mr. Yogesh Lakhani, learned Senior Counsel assisted by Mr. Meet Raval, learned counsel for the Petitioners and Mr. Mitesh Amin, learned Public Prosecutor assisted by Mrs. Krina Calla, learned APP for the Respondent State.

2. Pursuant to the FIR being C.R.No.11191036200654 of 2020 registered at Navrangpura Police Station, Ahmedabad City, for the offence under Sections 336, 337, 338 and 304A of Indian Penal Code, 1860, the investigating agency has submitted chargesheet against the owner of Shrey Hospital, Ahmedabad. Being aggrieved by the investigation, the Petitioners herein have preferred present petition for further investigation of the case and pray for the following main reliefs:-

“(A) Your Lordships be pleased to direct order further investigation under CBI or CID (Crimes) or Special Investigation Team forming of experienced officer from fire department and electrical engineer as well as IPS officer and further be pleased to direct to complete the investigation within a period of four months in the interest of justice.

(B) Your Lordships be pleased to order the further investigation and further procure the mobile locations and

details of the mobiles mentioned in para 17 in this petition and submit the same to this Hon'ble Court in a sealed cover in the interest of justice.

(C) Your Lordships be pleased to restrain the Respondent Nos.2 to 4 from destroying the mobile call details and records of the mobile numbers mentioned in para 17 of this petition and submit the same to this Hon'ble Court in a sealed cover pending admission and or final disposal of this petition in the interest of justice.

(D) Your Lordships be pleased to seek explanation from the police with regard to the lapse of investigation and mobile locations which the police could have obtained from the mobile numbers mentioned in the representations.

(E) Your Lordships be pleased to stay the trial of the criminal case No.75687/2020 pending before the learned Chief Metropolitan Magistrate, Ahmedabad, in the interest of justice."

3. Learned Senior Counsel for the Petitioners submits that the Investigating Agency has filed chargesheet mechanically without considering the broad aspects of the issue raised in the present petition. He further submits that, mobiles of the deceased were taken away well in advance, so that no one can able to call the patient and therefore, call details of the mobile phones of the deceased need to be investigated thoroughly, for which direction be issued for preservation and retention of data maintained by the mobile companies - respondent Nos. 2 to 5 herein.

4. It would be appropriate to refer the decision of the Apex Court in the case of **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal & Ors. [(2020) 7 SCC 1]**, wherein, in para 64, the Apex Court issued general directions to be followed by the courts while dealing with the electronic evidence to ensure their preservation and production of certificate at the appropriate stage, which reads as under:-

"64. To obviate this, general directions are issued to cellular companies and internet service providers to maintain CDRs and other relevant records for the

concerned period (in tune with [Section 39](#) of the Evidence Act) in a segregated and secure manner if a particular CDR or other record is seized during investigation in the said period. Concerned parties can then summon such records at the stage of defence evidence, or in the event such data is required to cross-examine a particular witness.

This direction shall be applied, in criminal trials, till appropriate directions are issued under relevant terms of the applicable licenses, or under [Section 67C](#) of the Information Technology Act, which reads as follows:

“67C. Preservation and retention of information by intermediaries.- (1) Intermediary shall preserve and retain such information as may be specified for such duration and in such manner and format as the Central Government may prescribe.

(2) any intermediary who intentionally or knowingly contravenes the provisions of sub-section (1) shall be punished with an imprisonment for a term which may extend to three years and also be liable to fine.”

5. In this background facts of the case, matter requires consideration. Let **Notice** be issued, returnable on **06.10.2021**. Learned APP waives Notice for the Respondent State.

(ILESH J. VORA,J)

SUCHIT