



2026:DHC:8090



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**# **CNR No. DLHC010156032026**+ **CRL.M.C. 2843/2026 and CRL.M.A. 11566/2026, CRL.M.A. 11567/2026**Date of decision: **17.09.2026****IN THE MATTER OF:-****PAPPU SINGH**

.....Petitioner

Through: Mr. Shivsahay and Mr. Mukesh,
Advocates for petitioner/complainant.

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Mr. Naresh Kumar Chahar, APP with
Ms. Khusbu Pandey, Advocate for
State.
SI Kajal, Crime.**CORAM:****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****J U D G E M E N T****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. The present petition, filed under Article 227 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), seeks the following reliefs:

"a) Set-aside the impugned order dated 23.03.2026 passed by Hon'ble Court of Sh. Akash Jain, ASJ-04, East District Karkardooma Court, Delhi in Criminal Revision no. 39/2026;

b) Call the records of the Ld. Trial Court as well as Ld. ASJ in the above noted case and examine the legality of the impugned order dated 23.03.2026 and 08.1.2026."



2. The petition, assails the order dated 23.03.2026 passed by the Additional Sessions Judge-04, East District, Karkardooma Courts, Delhi (“ASJ”) in Cr. Rev. No. 39/2026, whereby the revision petition preferred by the petitioner was dismissed, thereby affirming the order dated 08.01.2026 passed by the Additional Chief Metropolitan Magistrate, Karkardooma Courts, Delhi (“Trial Court”) in Misc. CrI. No. 2507/2025, dismissing the petitioner’s application seeking a direction for conducting the Narco Analysis Test upon the accused persons.

3. Briefly stated, the petitioner is the father of the deceased victim, Ms. Yogesh Kumari, aged 21 years, in connection with whose death FIR No. 691/2017, dated 17.11.2017, under Sections 365/302/174A/34 of the Indian Penal Code, 1860, was registered at P.S. New Ashok Nagar, Delhi. As per the status report placed on record, the victim had gone missing on 16.11.2017 while stepping out to buy vegetables, following which a missing report and, subsequently, the aforesaid FIR came to be registered on the suspicion voiced by the petitioner against two persons, namely, Arjun and Jaspal @ Tinku, who were residing as tenants in the same locality.

4. Being dissatisfied with the progress of investigation, the petitioner, not the Investigating Officer, moved an application before the Trial Court seeking a direction for the Narco Analysis Test of the four accused persons named above, and for a status report from the Investigating Officer. Notice of the said application was issued to the accused persons.

5. It is on record that accused Jaspal @ Tinku and Vivek Kumar @ Monu, through their counsel, recorded separate statements before the Trial Court that they did not wish to undergo the Narco Test. The Trial Court, *vide* order dated 08.01.2026, proceeded on the footing that “all the three



respondent[s] have refused to get their Narco Test conducted” and, holding that the same “cannot be enforced upon them”, dismissed the application.

6. This Court cannot but observe that while the Trial Court’s order of 08.01.2026 records, in terms, only the statements of accused Jaspal @ Tinku and Vivek Kumar @ Monu declining the test, its operative finding proceeds on the basis that all three surviving accused persons had refused.

7. Aggrieved thereby, the petitioner preferred revision before the ASJ. It was urged on behalf of the petitioner that the view taken by the revisional Court is erroneous and based on conjectures and surmises, that grave prejudice would be caused to the petitioner if the same is not set aside, and that despite the incident dating back to 2017, the Investigating Officer had, despite the lapse of substantial time, failed to file the chargesheet.

8. The ASJ, upon consideration of the rival submissions, dismissed the revision petition, holding, firstly, that the application seeking a direction for the Narco Test ought to have been moved by the Investigating Officer, in whom the responsibility of investigation primarily vests, and not by the complainant; and, secondly, relying upon **Selvi & Ors. v. State of Karnataka & Anr.**,¹ that compulsory administration of scientific techniques, including the Narco Analysis test and polygraph test, violates the fundamental right of an accused against self-incrimination under Article 20(3) of the Constitution, amounts to a violation of the standard of “substantive due process”, and constitutes an unwarranted intrusion upon personal liberty. Since all three surviving accused persons had categorically refused to undergo the test, the ASJ found no infirmity in the order of the Trial Court and dismissed the revision petition as devoid of merit.



9. Learned counsel for the petitioner submits that the ASJ failed to appreciate that the present case turns on its own peculiar facts and circumstances. It is submitted that since the murder was committed within the confines of a room, the possibility of eyewitnesses is virtually non-existent, and every scientific tool of investigation, including the Narco Test, ought therefore to be resorted to in the interest of unearthing the truth. It is further submitted that the consent of accused persons for such tests are irrelevant and immaterial given the gravity of the offence.

10. In support of the proposition that the victim, too, possesses an enforceable right to a fair trial and investigation under Article 21, learned counsel places reliance on the observations of the Supreme Court in **Zahira Habibulla H. Sheikh v. State of Gujarat**,² to the following effect:-

“The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in [a] seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning [a] Nelson’s eye[s] to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. ... The failure to hear material witnesses is certainly denial of fair trial.”

11. Reliance is also placed on **Pooja Pal v. Union of India**,³ wherein it was, as extracted in the petition, observed as under:

¹(2010) 7 SCC 263.

²(2004) 4 SCC 158.

³(2016) 3 SCC 135.



“79. A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the basis thereof. Jurisprudentially, under Article 21 the guarantee embraces both the life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at large and therefore cannot be alienated from each other with levity. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. ... [I]f the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the courts, if considered necessary, to order further investigation or reinvestigation ... to discover the truth so as to prevent [a] miscarriage of justice.”

12. *Per contra*, it was submitted on behalf of the State that the revision petition was an abuse of the process of law, that due process had been followed by the Trial Court, and that since the accused persons had refused to undergo the test, the Trial Court was justified in dismissing the application.

13. It is submitted that the law on the subject stands settled by the three-Judge Bench decision of the Supreme Court in **Selvi** (supra), which has been consistently followed, including most recently in **Amlesh Kumar v. State of Bihar**,⁴ and that the involuntary administration of the Narco Analysis test upon an unwilling accused, irrespective of the gravity of the offence alleged, is constitutionally impermissible.

14. It is further submitted that the application itself was not maintainable in the form in which it was moved, inasmuch as it was moved by the complainant rather than the Investigating Officer, upon whom the primary responsibility of investigation vests, and that the impugned order does not suffer from any illegality or perversity warranting interference under Article 227 of the Constitution.

⁴2025 INSC 810.



15. Aggrieved by the concurrent dismissal of his application and revision, the petitioner has approached this Court by way of the present petition.

16. Having heard learned counsel for the parties and having perused the record, including the impugned orders, the petition, and the status report, the questions that fall for consideration before this Court are: **firstly**, whether the accused persons, having categorically declined to consent thereto, can nonetheless be directed to undergo the Narco Analysis Test at the instance of the complainant/petitioner; and, **secondly**, whether the victim's right to a fair investigation and trial under Article 21 of the Constitution, can operate so as to override the nonderogable protection available to an accused person under Articles 20(3) and 21 of the Constitution.

17. The law on the first question stands authoritatively settled by the three-Judge Bench of the Supreme Court in **Selvi** (supra), wherein the Supreme Court, dealing with the constitutionality of the involuntary administration of narco-analysis, polygraph examination and the Brain Electrical Activation Profile ("BEAP") test, held as under:

"263. We are also of the view 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. The impugned techniques cannot be read into the statutory provisions which enable medical examination during investigation in criminal cases i.e. the Explanation to Sections 53, 53-A and 54 of the Code of Criminal Procedure, 1973. ... We have also elaborated how the compulsory administration of any of these techniques is an unjustified intrusion into the mental privacy of an individual. It would also amount to 'cruel, inhuman or degrading treatment' with regard to the language of evolving international human rights norms. Furthermore, placing reliance on the results gathered from these techniques comes into conflict with the 'right to fair trial'. Invocations of a compelling public interest cannot justify the dilution of constitutional rights such as the 'right against self-



incrimination’.

264. In light of these conclusions, we hold 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 voluntary administered test results can be admitted in accordance with Section 27 of the [Indian] Evidence Act, 1872.”

18. As regards the safeguards attendant upon a voluntary test, the Supreme Court, reiterating the Guidelines for the Administration of Polygraph Test (Lie Detector Test) on an Accused published by the National Human Rights Commission in the year 2000, directed as under:

“265. 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 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.*
- (iv) During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.*
- (v) At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a ‘confessional’ statement to the Magistrate but will have the status of a statement made to the police.*
- (vi) The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.*
- (vii) The actual recording of the lie detector test shall be done by an independent agency (such as a hospital) and conducted in the presence of*



a lawyer.

(viii) A full medical and factual narration of the manner of the information received must be taken on record.”

19. The above position has since been reiterated, and applied to a closely analogous fact-situation, by the Supreme Court in **Amlesh Kumar** (supra), where a High Court, while entertaining a bail application, had accepted the Investigating Officer’s proposal to subject all the accused persons and witnesses to a narco-analysis test. Setting aside that order, the Supreme Court held:

“8.1. Articles 20 and 21 of the Constitution are non-derogable and sacrosanct rights to which the judiciary cannot carve out exceptions;

8.2. Involuntary administration of narco-analysis and similar tests is in contravention of the protection given by Article 20(3) of the Constitution, i.e. the right against self-incrimination; ...

8.4. Conducting such tests in the absence of consent violates ‘substantive due process’ – which is an essential element required for restraining one’s personal liberty. Permitting such tests may lead to a disproportionate exercise of police powers; ...”

20. Most significantly, **Amlesh Kumar** (supra) also settles the specific question of whether even the accused, applying in his own right, can claim an infeasible entitlement to undergo the test. Answering that question in the negative, the Supreme Court held:

“The accused has a right to voluntarily undergo a narco-analysis test at an appropriate stage. We deem it appropriate to add, that the appropriate stage for such a test to be conducted is when the accused is exercising his right to lead evidence in a trial. However, there is no infeasible right with the accused to undergo a narco-analysis test, for upon receipt of such an application[,] the concerned Court[] must consider the totality of circumstances surrounding the matter, such as free consent, appropriate safeguards etc., [before] authorizing a person to undergo a voluntary narco-analysis test.”

21. If, therefore, even an accused person cannot claim an infeasible right to undergo the test on an application moved by himself, it necessarily follows, *a fortiori*, that no such right, infeasible or otherwise, can be said



to inhere in a complainant seeking to compel an unwilling accused to undergo the very same test. The consent contemplated in *Selvi* (supra) is a personal and nonderogable safeguard available to the subject of the test. It is not a threshold that can be crossed on the accused's behalf, over his express objection, at the instance of a third party.

22. This brings this Court to the second question, namely, the weight to be accorded to the victim's right to a fair trial under Article 21 of the Constitution, as canvassed by learned counsel for the petitioner on the strength of *Zahira Habibulla H. Sheikh* (supra) and *Pooja Pal* (supra). This Court is not, and cannot be, oblivious to the solemnity of the underlying facts, nor to the entirely legitimate anguish of a father seeking justice for a daughter so brutally done to death. The proposition that fair trial "embraces both the life and liberty of the accused as well as the interest of the victim", and that fair investigation is an incident of fair trial, is unexceptionable and stands accepted by this Court.

23. For the foregoing reasons, this Court finds no illegality, perversity or jurisdictional error in the impugned order dated 23.03.2026 passed by the ASJ, affirming the order dated 08.01.2026 passed by the Trial Court. The concurrent finding that the surviving accused persons, having categorically declined to undergo the Narco Analysis Test, cannot be compelled to do so at the instance of the complainant, is in consonance with the binding law laid down in *Selvi* (supra) and reiterated in *Amlesh Kumar* (supra), and warrants no interference under Article 227 of the Constitution.

24. With respect to the submissions made by learned counsel for the petitioner that the petition is also entitled for the fair investigation, since the charge-sheet has been filed, the concerned Court is granted liberty to look



into all the aspects of the matter, and if the petitioner may desire, may also seek for further investigation/ monitoring of the investigation. The reference can be made to the decisions passed by the Supreme Court in the case of ***Sakiri Vasu v. State of U.P.***,⁵ wherein, in paragraph nos. 27 and 28, the Supreme Court has held as under:

“27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 CrPC simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the police officers concerned, and if that is of no avail, under Section 156(3) CrPC before the Magistrate or by filing a criminal complaint under Section 200 CrPC and not by filing a writ petition or a petition under Section 482 CrPC.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.”

25. With the aforesaid observations, the petition, along with pending application, stands disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 17, 2026

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⁵ (2008) 2 SCC 409