

GOA STATE INFORMATION COMMISSION

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Appeal No. 213/2021/SCIC

Shri. Karim A. Mulla,
H.No. 217, Housing Board Colony,
Nr. Last Bus Stop, New Vadem,
Vasco-Da-Gama, Goa. 403802.

.....Appellant

V/S

1. The Sub-Divisional Police Officer,
State Public Information Officer,
Office of Sub-Divisional Police Officer,
Vasco Police Station,
Vasco-Da-Gama, Goa. 403802.

2. The Superintendent of Police (South) &
First Appellate Authority,
Margao Town Police Station,
Margao-Goa. 403601.

.....Respondents

Shri. Vishwas R. Satarkar

State Chief Information Commissioner

Filed on: 30/08/2021

Decided on: 27/04/2022

FACTS IN BRIEF

1. The Appellant, Shri. Karim A. Mulla, r/o. H.No. 217, Housing Board Colony, Nr. Last Bus Stop, New Vadem, Vasco-Da-Gama, Goa by his application dated 16/03/2021 filed under section 6(1) of the Right to Information Act, 2005 (hereinafter to be referred as 'Act') sought certain information pertaining to investigation of FIR No. 173/2020 on his complaint from the Public Information officer (PIO), Deputy Superintendent of Police, Vasco-Da-Gama, Goa.
2. The PIO responded to the said application on 13/04/2021, in the following manner:-

| Sr. No. | Information sought | Reply | No of pages |
|----------------|--|--|--------------------|
| 1. | Copy of Charge sheet | Certified copy of FIR No. | 05 |
| 2 | Copy of investigation report carried out against alleged forges government | 173/2020 dated 26/11/2020 alongwith complaint is enclosed. | pages X 09 pages |

| | | | |
|---|--|---|---|
| | document submitted viz voter ID cards, driving licence etc from office of Mamlatdar Sub Registrar or from any govt Office | The information asked by the applicant is rejected u/s 8(1)(h) of RTI Act 2005 as the case is under | |
| 3 | Copy of investigation report carried out against loan obtained at Sahakar Urban Credit Co-operative Society Ltd. Vasco & NKGSB Co-op Bank Vasco on same mortgaged property against alleged forged document | investigation with PSI Ritesh Tari of Vasco Police Station and providing documents may impede the process of investigation or apprehension or prosecution of offenders. | |
| 4 | Status of arrest/applied bail if any | Accused not arrested | - |
| 5 | List of witnesses | Information at point No. | - |
| 6 | Progress/ Status of case | 1,2 an3 | |

3. Being aggrieved with the reply of the PIO, the Appellant filed first appeal before the Superintendent of Police, South at Margao, Goa being the First Appellate Authority (FAA).
4. The FAA by its order, upheld the reply of the PIO and dismissed the first appeal on 01/06/2021.
5. Dissatisfied with the order of FAA, the Appellant landed before the Commission with this second appeal under section 19(3) of the Act, with the prayer to issue direction to the PIO to furnish the information free of cost, to impose the penalty, recommend disciplinary action against the PIO and to award the compensation.
6. Parties were notified, pursuant to which the APIO, Police Inspector of Vasco Police Station, Shri. Nilesh Rane appeared and placed on record the reply of the PIO on 20/10/2021, representative of the FAA appeared however opted not to file reply in the matter.

7. According to the Appellant, through his RTI application, he sought information with regards to investigation of FIR No. 173/2020 based on his complaint lodged before Vasco Police Station on 03/11/2020 against one Mr. Sarfaraz Shaikh for deceiving and cheating.

Further according to him, upset with the no action taken against the accused, he filed the RTI application to know the outcome of his complaint/FIR. However the PIO refused to divulge the information under section 8(1)(h) of the Act.

8. On the other hand, through his reply the PIO contended that, on receiving the RTI application he immediately forwarded the application to APIO i.e PI of Vasco Police Station and on receipt of information from APIO he replied to the Appellant vide letter No. SDPO/VSC/RTI/71/132/2021 dated 13/04/2021.

Further according to him part of the information has been furnished to the Appellant. Since the case is under investigation with Shri. Ritesh Tari, Police Sub-Inspector of Vasco Police Station, the part of the information has been denied under section 8(1)(h) as providing such information may impede the process of investigation/prosecution.

9. Perused the pleadings, reply, rejoinder and considered the written submissions filed by the Appellant.

10. On perusal of the reply to RTI application which is produced in para No. 2 hereinabove, it reveals that the part of the information has been denied under section 8(1)(h) of the Act.

Considering the contention of the rival parties, it may be relevant to go through section 8(1)(h) of the Act, which reads as under:-

"8(1)-Exemption from disclosure of information.

*_____ (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,____
(h)- information which would impede the process of investigation or apprehension or prosecution of offenders;"*

11. The Appellant submitted that, he had lodged the complaint on the basis of which the Vasco Police Station registered FIR on 26/11/2020 against one Sarfaraz Shaikh of cheating and even after the lapse of 1 ½ year, the Appellant has not seen any concrete action in respect of said FIR.

He further argued that, the PIO who is denying the information under section 8(1)(h) of the Act must show satisfactory reason as to why and how disclosure of such information would impede the process of investigation. The PIO is silent as far as information on point No. 1 i.e information with regards to charge sheet. The Complainant has got every right to know whether, the charge sheet is filed or not upon his compliant. The reply filed by the PIO is vague and cannot be accepted.

Further according to him, exemption was wrongly claimed by the Respondents without illustrating any specific ground and alleged that the FAA did not act as judicious authority. However, FAA only endorsed the view expressed by the PIO and claims that he is entitled for the information sought. To substantiate his case, he placed reliance on the judgement of High Court of Delhi in the case **Bhagat Singh v/s Chief Information Commissioner & Ors. (2008 (100) DRJ 63)**; the judgement of High Court of Delhi in the case **B.S. Mathur v/s Public Information Officer of Delhi High Court (2011 (125) DRJ 508)**; **Union of India v/s Manjit Singh Bali (2018 SCC Del. 10394)**.

12. The PIO after filing the reply on 20/10/2021 did not appear for subsequent hearings on 25/11/2021, 10/01/2022, 10/02/2022, 22/03/2022, 01/04/2022 and 27/04/2022 therefore I dispose the matter on the basis of submissions of the Appellant and considering the documents on record.
13. In the case of **Bhagat Singh v/s Chief Information Commissioner & Ors. (Supra)** the High Court of Delhi has observed in para No. 13 that:-

"13. Access to information, under [Section 3](#) of the Act, is the rule and exemptions under [Section 8](#), the exception. [Section 8](#) being a restriction on this fundamental right, must therefore is to be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under [Section 8](#), exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, [Section 8\(1\)\(h\)](#) and other such provisions would become the haven for dodging demands for information."

The view taken by High Court of Delhi is reiterated in another identical judgement in the case of **B.S. Mathur v/s Public Information Officer of Delhi High Court (Supra)**, and also

assist the case of the Appellant and applies to the facts of this case, which reads as follows:-

"19. The question that arises for consideration has already been formulated in the Court's order dated 21st April 2011: Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would "impede the investigation" in terms of Section 8 (1) (h) RTI Act? The scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and non-disclosure the exception. A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI Act. As regards Section 8 (1) (h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have to be shown by the public authority that the information sought "would impede the process of investigation."

22..... The mere pendency of an investigation or inquiry is by itself not a sufficient justification for withholding information. It must be shown that the disclosure of the information sought would "impede" or even on a lesser threshold "hamper" or "interfere with" the investigation. This burden the Respondent has failed to discharge."

Furthermore the High Court of Delhi in the case of **Adesh Kumar v/s Union of India & Ors. (W.P. No. 3542/2014)** has held as under:-

"10. A bare perusal of the order passed by the FAA also indicates that the aspect as to how the disclosure of information would impede prosecution has not been considered. Merely, citing that the information is exempted under [Section 8\(1\)\(h\)](#) of the Act would not absolve the public authority from discharging its onus as required to claim such exemption. Thus, neither the FAA nor the CIC has questioned the Public Authority as to how the disclosure of information would impede the prosecution."

14. In the present case, admittedly the FIR was registered by Vasco Police Station on 26/11/2020. The investigation on the issue is going on since last one and half year. The authority withholding the information did not show at what stage inquiry is pending. Whether it is in preliminary stage or advance stage or whether charge sheet is filed or not. They have even failed to substantiate how the disclosure of information is likely to impede the process of investigation, if not at the stage of reply to the application, atleast at the stage of first appeal or atleast before the Commission. The reply under section 7(1) of the Act should be specific so that seeker can pursue his grievance properly. The PIO has denied the information on a mere blanket statement, not supported by any cogent reasoning or evidence.

15. Apart from that, it is appropriate to refer to the following paras of the order of FAA which reads as under:-

"During the hearing, Appellant has stated that the PIO/SDPO Vasco has denied the information sought by him vide application dated 16/03/2021. As such the matter was inquired with PSI Ganesh Matonkar of Vasco PS, who has informed that case is under

investigation with PSI Ritesh Tari of Vasco PS and providing documents will impede the process of investigation. Hence, it was rejected u/s 8(1)(h) of the RTI Act 2005."

From the plain reading of the above reasoning, the order of the FAA is based on hearsay evidence thus indicates that the approach of the FAA is very casual and cursory. A mere apprehension of an impediment cannot be a ground to deny the information atleast to the party who has filed the complaint. In absence of any convincing reason, I cannot accept the denial of information is appropriate as contemplated under section 8(1)(h) of the Act.

16. Under section 19(5) of the Act, the burden to prove that information cannot be furnished lies on the PIO. Above provision of law has been fortified by High Court of Delhi in the case **State Bank of India v/s Mohd. Shahjahan (W.P. No. 9810/2009)** at para No. 22:-

"22. The very object and purpose of the RTI Act is to make the working of Public Authorities transparent and accountable for the purpose of RTI Act all information held by a Public Authority is accessible except to the extend such information is expressly exempted from disclosure as provided in the RTI Act itself. In other words, unless the Public Authority is able to demonstrate why the information held by it should be exempt from disclosure, it should normally be disclosed. The burden therefore is entirely on the Public Authority to show why the information sought from it should not be disclosed."

17. It is admitted fact that, upon the complaint of Appellant FIR was registered on 26/11/2020, by invoking section 420 of IPC. It is also admitted by the PIO that accused was not arrested. Considering the above fact, the Appellant desire to know whether charge sheet has been filed or not upon his complaint. The investigation or inquiry cannot be continued for indefinite period and it has to attain its logical conclusion at a certain point. Mere statement that one Police Sub-Inspector Shri. Ritesh Tari is investigating the matter is not satisfactory reason to withhold the information.

Considering the unexplained delay in investigation and failure of the public authority to justify the denial of information, I find that the Appellant is entitled for relief. Therefore I hereby direct the PIO to release the information sought on the basis of material available and collected by the Public authority, within the period of **FIFTEEN DAYS**.

With this discussion and considering the precedents and position of law, I dispose off the present appeal

- Proceeding closed.
- Pronounced in the open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)
State Chief Information Commissioner