

**HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) CRM-M-20346-2015 (O&M)

Date of Decision: 30.09.2015

RV Shanmugam

... Petitioner

vs.

State of Punjab & Ors.

... Respondents

(2) CRM-M-31095-2015 (O&M)

RV Shanmugam

... Petitioner

vs.

State of Punjab

... Respondent

(3) CRM-M-31192-2015 (O&M)

M.Prabhu

... Petitioner

vs.

State of Punjab

... Respondent

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE P.B. BAJANTHRI**

- 1. Whether Reporters of local papers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Present: Mr. Dharmender Bhan, Advocate for the petitioner(s)

Mr. Vaibhav Sharma, DAG Punjab

Ms. Parminder Kaur, Advocate for
Mr. Vishal Gupta, Advocate for respondents No.3&4

(1) This order shall dispose of CRM-M Nos.20346, 31095 & 31192 of 2015 as the facts are overlapping and the issues raised therein are also interlinked.

(2) In CRM-20346-2015, the petitioner RV Shanmugam seeks a direction to respondent No.2 to 6, namely, the Mobile Service Providers for immediate preservation of call detail records and mobile tower locations of the mobile numbers given in prayer clause (a) of the petition. In the other two petitions, the petitioners RV Shanmugam and M.Prabhu seek their release on bail in FIR No.228 dated 28.06.2014 registered at Police Station, Tripri Town, Patiala under Section 21/22/25/25A/27/29 of NDPS Act in which subsequently Section 9/9A of NDPS Act read with Section 471 & 489 IPC have also been added.

(3) The above-stated FIR was registered on the basis of secret information which was *inter alia* to the effect that various persons including (i) Shiva Kumar s/o M. Raju r/o Chennai, (ii) V.Venkatesh s/o Vishwanathan r/o Chennai, (iii) Suresh Kumar r/o Chennai (iv) Mani @ Rajesh Kumar r/o Chennai (v) Rajesh Kumar r/o Delhi, (vi) Ashwani Kumar Chhabra r/o Delhi (vii) Rehman r/o Malaysia and (viii) Cherry r/o Delhi have formed a gang to smuggle and supply intoxicating items including chemicals, medicines and synthetic drugs and they have been supplying such material in Patiala and Rajpura area of Punjab. They had earlier supplied various consignments in the area of Tripri Town, Patiala and if kept under surveillance or raids conducted, they can be arrested with huge quantity of intoxicating substances.

(4) After registration of FIR, five out of eight accused persons who were coming in a Indica car from Delhi side, were apprehended at

Shambu border (of Punjab and Haryana) and besides the cash amount of ₹1.60 crores Indian currency, following synthetic drugs etc. were also got recovered from the vehicle and/or subsequent disclosure statements:-

R.Shiva Kumar	820 grams powder	Containing diphenoxylate
V. Venkatesh	760 grams powder	
M.Prabhu	750 grams powder	
R.V. Shanmugam	620 grams powder	
S.Mani	620 grams powder	

(5) The petitioners’ case is that in fact a team of Punjab police led by Inspectors Davinder Kumar Attri and Shaminder Singh illegally abducted them from Delhi at 6.30 am on 28.06.2014 except R.V.Shanmugam who was illegally arrested from Delhi on 29.06.2014. It is claimed that the Punjab police robbed off the petitioners and took away a sum of ₹1.67 crores and then falsely implicated them in the above-mentioned case.

(6) The petitioners thus contend that if the call details of the mobile phones of police officers are preserved, it would help in establishing that they were in Delhi on 28th and 29th June, 2014 when the petitioners were allegedly abducted. The petitioners’ further case that the charge-sheet filed under Section 173 CrPC in December, 2014 was in Gurmukhi language and only after getting it translated that they could make a complaint to Delhi police on 16.03.2015 (P3) and on investigation their allegations have been found correct. On this premise, it is claimed that since the petitioners have been falsely implicated they are entitled to be released on bail.

(7) Learned State counsel, on the other hand, has vehemently refuted the petitioners' allegations. According to him, the petitioners are active members of drug mafia who have established their deep-rooted links across the country. They were caught on the basis of secret information while entering Punjab with huge quantity of synthetic drugs i.e. much more than the 'commercial quantity' besides the cash amount of ₹1.60 crores. He contends that the complaint dated 16.03.2015 was an afterthought and when the learned Court and Police authorities in Delhi were apprised of the correct facts, the Delhi Police has given its final report dated 09.09.2015 falsifying the petitioners' allegations.

(8) State counsel further pointed out that Enforcement Directorate in Delhi and the NCB, Chennai, Tamil Nadu have also registered cases against one of the petitioner R.V. Shanmugam. Both the cases pertain to huge quantity of controlled substances.

(9) We have heard learned counsel for the parties at considerable length and gone through the record.

(10) So far as the first petition filed by RVS Shanmugam i.e. CRM-20346-2015 for preservation of call details of mobile phones mentioned in prayer (a) is concerned, we are of the considered view that if such call details are still lying intact, it would be in the interest of justice to direct the Service Providers to preserve those details though subject to the following caveat:-

- (i) the questions whether or not these call details are to be made available to the petitioner will be decided by the Special Court in accordance with law;
 - (ii) even if these details are made available, it shall be for the Special Court to determine whether such call details are admissible and/or are relevant piece of evidence;
- (11) These questions will be determined by Special Court obviously without prejudice to the right of aggrieved party to challenge the order determining those questions.
- (12) Adverting to the bail-plea of R.V.Shanmugam, it appears that the rigors of Section 37(1)(b)(ii) of the NDPS Act are attracted as he is involved in more than one cases under that Act. Notwithstanding the nature of cases registered against him by the Enforcement Directorate or NCB, the quantity and nature of recoveries allegedly effected in the instant case dissuade us to release him on bail. Consequently, the bail application of R.V.Shanmugam is dismissed.
- (13) Similarly, in the case of M. Prabhu, as per the prosecution case, the recovery made from him and/or at his instance include 650 gm Diphenoxylate which is much more than the 'commercial quantity' besides ₹77 lacs cash.
- (14) Taking into consideration the totality of the circumstances, we do not deem it appropriate to release him on bail at this stage.
- (15) There is every likelihood that the petitioners would evade their presence and might hamper the ongoing trial.

(16) CRM-M No.20346 of 2015 filed by RV Shanmugam seeking preservation of call details is allowed in part while CRM-M Nos.31095 & 31192 of 2015 are dismissed.

(17) The observations made herein shall not be taken as an expression on merits.

(18) Service providers are directed to file their compliance affidavits before the Special Court.

(Surya Kant)
Judge

30.09.2015
vishal shonkar

(P.B. Bajanthri)
Judge