

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 797 of 2019

1. Rajat Bose S/o Shri Khirod Bose, Aged About 19 Years, R/o Negiguda, Ghatpadmur, Police Station Parpa, Jagdalpur, District Baster Chhattisgarh., District : Bastar (Jagdalpur), Chhattisgarh
2. Sarita Bose W/o Shri Khirod Bose, Aged About 48 Years, R/o Negiguda Ghatpadmur, Police Station Parpa, Jagdalpur, District Bastar Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

---- Petitioners

Versus

1. State of Chhattisgarh Through Secretary, Department of Home Affairs, Mantralaya Mahanadi Bhawan, Atal Nagar, New Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Superintendent of Police, Jagdalpur, District Bastar Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh
3. Station House Officer, Police Station Frazerpur (Parpa), Jagdalpur District Baster, Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh

-----Respondents

For Petitioners	: Shri Manish Nigam, Advocate
For Respondents/State	: Shri Arijit Tiwari, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

11/09/2019

Heard.

1. Instant petition has been brought under Article 226 of the Constitution of India praying for issuance of appropriate writ(s)/direction(s)/order(s) etc.
2. It is submitted that petitioner No.1 is facing trial in Special Criminal Case No.20/2019 before the Court of the Additional Sessions Judge (FTC) Jagdalpur for charges under Section 376, 342, 506 of the IPC

and Section 4 and 5 of POCSO Act. The petitioner No.1 is falsely prosecuted by the prosecutrix and others regarding which a representation was made to respondent No.2 and on that basis the FIR has not been registered. The petitioner No.1 has taken ground of alibi, regarding which the applications were filed to the respondents authorities for producing the mobile location data of the petitioner No.1, on which no action was taken. Subsequently, the petitioners filed one application before the trial Court under Section 91 of the Cr.P.C. making same prayer, but, learned trial Court by order dated 26-06-2019 has rejected that application. The petitioner No.1 is entitled for fair investigation and fair trial. As per the terms of leave licence agreement and other regulations of the telecom regulatory authority of India the mobile data is kept stored only for six months and that can be obtained only by the investigating agency, therefore, it is prayed that appropriate order be passed against the respondents to collect the mobile data with location of the mobile of the petitioner No.1 on the date and time of the incident.

3. Learned counsel appearing for the respondents opposes the petition and submission made in this respect. It is submitted that there is no specific prayer made by the petitioners before the trial Court under Section 91 of the Cr.P.C. regarding production of mobile data record, therefore, the application may be rejected.
4. Heard learned counsel for the parties and perused the documents.
5. On perusal of the copy of the application under Section 91 of the Cr.P.C., it is found that petitioner No.1 stated in the application that on the date and time of the incident he was present on another spot with his friends and regarding which he had given representation to the

police that mobile location be traced on the basis of mobile numbers provided to them of various phones. The only prayer before the trial Court that the police be directed to produce the documents of enquiry on the representation made by petitioner No.1 and on the applications filed by him. There is no specific prayer made that the mobile data record be collected and produced before the Court. Section 91 of the Cr.P.C. meant only for production of documents or things which may be in possession of any officer or any person. The respondents have not made any admission or claimed that they are in possession of mobile data record and the telecom company has not been made a party in this petition and now there is request in the application under Section 91 of the Cr.P.C. any such data may be called from telecom company of which the petitioner No.1 was subscriber. The petitioner No.1 still has liberty available to file application under section 91 of the Cr.P.C. to the trial Court making a prayer for production of call records with mobile location details from the said telecom company. Therefore, I do not find any reason to entertain this petition, which is dismissed at the motion stage. The petitioner No.1 is given liberty to file fresh application under Section 91 of the Cr.P.C. before the trial Court making a prayer for production of call records from the telecom company of which he is subscriber.

Sd/-

(Rajendra Chandra Singh Samant)
Judge