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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 05.11.2019

+ CRL.M.C. 3161/2019 & CRL.M.A. 12992/2019

NARCOTICS CONTROL BUREAU Petitioner
Through Mr. B. S. Arora, Adv.

versus

GAURAV KUMAR Respondent
Through Mr. Yogesh Saxena with Mr. Hashim
Alam, Adv.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner/NCB seeks direction thereby to set aside order dated 15.01.2019 passed by Spl. Judge, NDPS Act, New Delhi thereby allowing the application U/s 91 Cr.P.C and directed the Smt. Tulika Morang, Superintendent, NCB, Sh. Anand Kumar, IO, Sh. Rajesh Kumar Yadav, IO, Sh. Vikas Yadav, IO, Sh. Bankey Ram, IO, Sh. M.M. Jakhmola, IO, Sh. Sunil Parewa, IO, Sh. Malkiat Singh, Driver, Sh. N.P. Singh, Driver [All NCB personals) and panch witnesses Sh. Chanderpal, Rajesh Talreja, Chaitanya Pandey and Shubham Pachar to provide their

mobile numbers used by them for the period of 28.12.2017 to 01.01.2018 to the court and for issuance of necessary direction to Chaitanya Pandey to disclose his bank account number maintained by him with ICICI Bank, Lucknow and for production of statement of account of Shubham Pachar from 01.01.2017 to 31.12.2017 and further directed the service providers to preserve the Call Detail Records of the panch witnesses and NCB officials.

2. As stated in the present petition, the Ld. Spl. judge, has failed to appreciate that respondent /accused had moved the application U/s 91 Cr.P.C to prove his defence by directing Shubham Pachar and Chetanya Pandey to disclose the name of Services providers of their mobile numbers i.e. 9358277777, 7678537,939 and their service provider may be directed to produce the call details record and location chart for the period from 28.12.2017 to 01.01.2018 call detail record and location of Shubham Pachar which will show his presence on 28.12.2017.

3. Learned counsel for the petitioner submits that under Section 91 Cr.P.C., if something incriminating is found during arguments, at that point of time, the Court is empowered to summon any record or any person for further investigation, inquiry or trial, however, in the present case, the charge has not been even framed, however, the Court has directed the

petitioner institution to preserve the call details of the accused.

4. To strengthen his arguments, learned counsel for the petitioner has relied upon the case decided by this Court in case ***Attar Singh Vs. State (NCT of Delhi) 2016 STPL 13678 Delhi in Crl. M. C. 406/2016*** decided on 18.07.2016 whereby coordinate Bench of this Court held as under:-

“9.I have heard learned counsel for the parties at length & gone through the available records. After hearing the arguments advanced by counsel for the petitioner and the rival contention and after perusal of the order passed by the Trial Court, it appears that the the petitioner is seeking direction from this Court for the supply of the call details of the calls made from the mobile phone of the investigating officer. The grievance of the petitioner is that the calls made from the mobile of the investigating officer would indicate the presence, location and the activities of the investigating officer whereas the case of the State is that in the details of mobile calls of the investigating officer, it is not suggested to be the calls relating to the present case and apart from the present case, the investigating officer being a police officer, had been dealing with other matters and activities of various other accused and with regard to the duty assigned to him. Further contention made by the prosecution is that the accused could not claim the record of various activities of the investigating officer and he has to restrict to the activity of the investigating officer in the present case only. The prosecution has claimed that accused does not have any right to have the information about the final activities of the investigating officer and that cannot be limited to the activity in the present case. So, the accused could not be said to be entitled for seeking the details of records of all the calls made or calls received from the mobile phone of the investigating officer.”

5. For the convenience, Section 91 Cr.P.C. is reproduced as under:-

91. Summons to produce document or other thing.

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

6. On perusal of the aforesaid provision of law, it is clear that whenever any Court or any officer in charge of a Police Station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue summons, or such officer a written order, to the person in whose possession or power

such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

7. The similar issue came before the Hon'ble Supreme Court in the case of ***Suresh Kumar Vs. Union of India 2015 (3) JCC (Narcotics) 121*** whereby the Hon'ble Supreme Court held as under:-

“8. All that we are concerned with is whether call details which the appellant is demanding can be denied to him on the ground that such details are likely to prejudice the case of the prosecution by exposing their activities in relation to similar other cases and individuals. It is not however in dispute that the call details are being summoned only for purposes of determining the exact location of the officers concerned at the time of the alleged arrest of the appellant from Yashica Palace hotel near the bus stand. Ms. Makhija made a candid concession that any other information contained in the call details will be of no use to the appellant and that the appellant would not insist upon disclosure of such information. That in our opinion simplifies the matter in as much as while the call details demanded by the appellant can be summoned in terms of Section 65B of the Indian Evidence Act such details being relevant only to the extent of determining the location of officers concerned need not contain other information concerning such calls received or made from the telephone numbers concerned. In other words if the mobile telephone numbers caller details of the callers are blacked out of the information summoned from the companies concerned it will protect the respondent against any possible prejudice in terms of exposure of sources of information available to the Bureau. Interest of justice would in our opinion be sufficiently served if we direct the Trial Court to summon from the Companies concerned call details

of Sim telephone No. 9039520407 and 7415593902 of Tata Docomo company and in regard to Sim No. 9165077714 of Airtel company for the period 24.02.2013 between 4.30 to 8.30 pm. We further direct that calling numbers and the numbers called from the said mobile phone shall be blacked out by the companies while furnishing such details.”

8. Similar issue also came up before this Court in the case of **Suresh Kalmadi Vs. CBI 2015 {3} JCC 1874** whereby this Court held as under:-

“24. It is submitted by the petitioner that the nexus that the call records will demonstrate strikes at the foundation of the Prosecution's case, and which would show that there was no conspiracy between the petitioner and other accused persons to favour M/s Swiss Timing, and that in fact other officials of the OC, i.e. Prosecution witness PW- 18 Sujit Panigrahi attempted to favour MSL as a bidder and these facts in support of this are evident and demonstrable, but have been deliberately overlooked or concealed by the Prosecution and therefore, the petitioner has a right to an effective opportunity to establish this case with the aid of relevant documents such as the Call Detail Records of Mr. Jyoti Chhabra. At this stage, the Court is not concerned whether the averments made in the application under Section 91 Cr.P.C. may be gospel truth or not. If the documents are necessary in order to decide the real controversy, the same cannot be thrown particularly when the application is filed by the accused.

25. There is some force in the submission of the petitioner for some extent as it also appears from the pleadings that the Trial Court has taken an inconsistent view while passing the Impugned Order. In similar applications under Section 91 Cr.P.C. moved by Accused No. 3 for summoning Call Detail Records of PW-18 Sujit Panigrahi and PW-29 Vijay Kumar Gautam, the Trial

Court by orders dated 16th April, 2013 and 9th July, 2013 summoned the records sought. However, the prayer of the petitioner in the application under Section 91 Cr.P.C. was rejected.”

9. The case of the respondent/accused as mentioned in the application under Section 91 Cr.P.C is that the respondent/accused has incurred wrath of NCB Officials and has been falsely implicated in the present case. No contraband was recovered from his possession or at his instance. He neither booked any parcel nor instructed any other person to book the parcel on his behalf.

10. Further, Shubham Pachar, Sam Mallick, Anirudh Mathur, Tenzin, Yusuf, Chetanya Pandey, Milind are friends and known to each other. Respondent/ accused sometimes used to smoke/party with them.

11. On 28.12.2017, respondent received missed calls on his mobile from Shubham Pachar, who tried to contact him from his mobile as well as from the mobile of Anirudh/Tenzin. Respondent reached Delhi in the morning of 29.12.2017 and received a call from Shubham Pachar at about 7.58 a.m. and on the asking of Shubham Pachar reached to his house alongwith Anirudh Mathur and Tenzin. After reaching the house of Shubham Pachar, Anirudh Mathur and Tenzin asked respondent to collect the keys of the house of Yusuf from Shubham Pachar and reached his house where they were going.

While respondent/accused was at the entrance of the house of Shubham Pachar, he was stopped by five/six persons in civil clothes. Shubham Pachar was also with them. Respondent asked Shubham Pachar about those persons, however, he did not reply but was told by those persons that they are NCB officials and are going to Yusuf's House with Shubham Pachar in relation to some drug matter. Respondent stated that he did not know anything and wanted to leave. Altercation took place between respondent and those officials and respondent was abused and threatened by them.

12. Respondent informed those officials that his father is working as Under Secretary posted in Delhi and they cannot deal with him in that manner. The NCB Official, however stated that we had seen many Under Secretaries and we will implicate the petitioner herein, in such a case where his father or any other person will not be able to do anything.

13. Keeping in view the aforesaid stand of the respondent, to come to the truth of the prosecution case, if the call details of the NCB officials and the petitioner are preserved, thereafter, if required, they may be called during the course of trial. Accordingly, learned Trial Court directed that call details of the persons mentioned be preserved from the period 01.12.2017 to 31.12.2017.

14. Learned counsel appearing on behalf of petitioner submits that the respondent had sought direction to preserve and produce CDRs from 01.11.2017 to 31.12.2017.

15. Counsel for the respondent has stated at bar that in fact he seeks CDR of the persons mentioned in the impugned order from 28.12.2017 to 30.12.2017 and the bank statement of Chaitanya Pandey of his bank account maintained by him in ICICI Bank, Lucknow branch from 01.11.2017 to 31.12.2017.

16. In view of above, to come to the truth of the prosecution case, I find no illegality and perversity in order dated 15.01.2019, however, I modify the said order to the extent that CDRs shall be preserved from 28.12.2017 to 30.12.2017.

17. In view of above, the petition is disposed of.

18. Pending application also stands disposed of.

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 05, 2019/ms