

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

109)

CRM-M-42664 of 2020 (O&M)
Date of Decision: 15.01.2021

Upashu

...Petitioner

Versus

State of Punjab

...Respondent

2)

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CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Ishan Gupta, Advocate, for the petitioner.
Mr. R.S. Khaira, AAG, Punjab.

AMOL RATTAN SINGH, J. (Oral)

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This petition has been filed seeking setting aside/quashing of the impugned order dated 24.11.2020 passed by the learned Judge, Special Court, Sangrur (copy Annexure P-6) in case CRM/1164/2020, titled as **State v. Upashu**, arising out of FIR no.51 dated 22.02.2020, registered under the provisions of Sections 22, 61, 85 of the NDPS Act, at Police Station Sadar Dhuri, District Sangrur, whereby the application filed by the petitioner to direct the mobile companies concerned to preserve the call and tower location records and produce the same in the court, has been disposed of without allowing the application qua all mobile phone numbers given therein.

A further prayer has been made for issuance of a direction that the mobile location records as prayed for in the application may be preserved, with further proceedings also sought to be stayed before the trial court, during the pendency of the present petition.

2. Learned counsel for the petitioner points to the application filed by the petitioner before the learned Judge, Special Court, Dhuri, dated 14.09.2020 (copy Annexure P-1), wherein it is seen that 10 mobile phone numbers are referred to, with the application stating the name and address of the subscribers of those numbers and call details and the tower locations of those numbers on 22.02.220, was sought to be obtained by a direction of that court.

3. Notice having been issued by the learned Judge, Special Court, on 28.09.2020, through the Public Prosecutor, thereafter a reply thereto was filed on behalf of the prosecution (State) on 26.10.2020 (copy Annexure P-3), to which learned counsel submits that even a rejoinder was filed by the petitioner on 03.11.2020 (copy Annexure P-4).

He submits that the impugned order passed thereafter on 24.11.2020 holds that other than the mobile numbers 7888325495 and 9876862404, no connection was shown of the remaining mobile numbers (to the case in hand).

However, Mr. Gupta points to paragraph 5 of the rejoinder filed by the petitioner before the trial court on 03.11.2020, wherein it is specifically stated that the purpose for calling the details of the other police officials, including one Darshan Singh and one Bhajan Lal, was to show that

the petitioner was arrested at about 7.00 p.m. from near the Ramgarhia Gurudwara, Dhuri and not from the spot in question, which is stated to be near Village Benra after 10.20 p.m.

Hence, it is further stated in the rejoinder that there are two versions of the arrest, one (as per the petitioner) from near the said Gurudwara, and the other (as per the police), near the aforesaid village.

Learned counsel therefore submits that to show that the petitioner was taken through various localities by police officials from 7.00 p.m. onwards and was not arrested near Village Benra after 10.20 p.m. as is contended in the FIR, the mobile tower locations of the phones used by the police officials was necessary to be obtained and therefore the trial court has wholly erred in passing the impugned order.

4. He further submits, on query of this court, that other than the mobile phone of the petitioner and the person from whose mobile phone the petitioner received a call to come near the Ramgarhia Gurudwara Sahib, the other mobile numbers are of police officials, as per the information obtained by the petitioner; and consequently the owner and user thereof, as also the tower locations of those mobile phones, would be necessary for the petitioner to prove that he was actually not arrested near Village Benra after 10.20 p.m.

5. To support his contention that the application seeking mobile detail records could have been sought by the petitioner from the trial court, Mr. Gupta relies upon a judgment of the Supreme Court in **Suresh Kumar v. Union of India** 2015 (3) RCR (Crl.) 340, from which he specifically

points to paragraph 7, in which it is stated as follows:-

“7. That electronic records are admissible evidence in criminal trials is not in dispute. Sections 65A and 65B of the Indian Evidence Act make such records admissible subject to the fulfillment of the requirements stipulated therein which includes a certificate in terms of Section 65B (4) of the said Act. To that extent the appellant has every right to summon whatever is relevant and admissible in his defence including electronic record relevant to finding out the location of the officers effecting the arrest. Be that as it may we do not at this stage wish to pre-judge the issue which would eventually fall for the consideration of the trial court.”

6. As per the reply filed before this court by the DSP, Sub-Division Dhuri, dated 12.01.2021, it has been firstly stated that the impugned order being an interlocutory order passed by the trial court, an appeal/revision can be filed against it, with the present petition (invoking jurisdiction under the provisions of Section 482), not being maintainable.

Thereafter, it is stated that the petitioner having said that he received a phone call on his mobile no.78883-25495 from mobile no.9876862404 on 22.02.2020, vide the impugned order, it was correctly directed that the concerned mobile company shall preserve the call details record of the said numbers, with the petitioner having actually failed to show any link or concern or connection with the other mobile numbers.

In the reply on merits, essentially the same has been reiterated, with it also stated in paragraph 15 that “an explanation of definition of Section 91 Cr.P.C.” has been mentioned in the petition and the explanation is the version of the petitioner.

7. Learned State counsel submits that he would not be able to submit anything other than what is stated in the reply and as per the instructions received from the investigating officer.

8. Having considered the matter, I fail to understand as to how the Special Judge (trial court) has held that the petitioner has failed to establish any connection with the mobile numbers the details of which he seeks, to the case in question, because other than the fact that the purpose of the application would be very obvious, even as per the rejoinder filed to the reply filed before that court by the prosecution, (to the application of the petitioner), it has been stated that the connection is simply to show that the petitioner along with some police officials was taken from the Ramgarhia Gurudawara Sahib, Dhuri, through a particular route and was not arrested near Village Benra after 10.20 p.m.

9. That being so, this petition is allowed with the impugned order set aside and the application of the petitioner dated 14.09.2020, moved before the trial court (Annexure P-1), is allowed, with the trial court directed to now immediately obtain the call details record of mobile numbers given in the application and to pass an order to that effect within one week from today, upon which the SSP, Sangrur, shall obtain the call details record of the said mobile numbers, as also the names of the subscribers of the said numbers, and present them before the trial court within two weeks thereafter, i.e. positively before one year elapses from 20.02.2020, with the concerned mobile companies “operating the towers” also directed to ensure that the said records pertaining to the said mobile numbers are not destroyed/deleted

prior to this order being carried out in letter and spirit.

The SSP shall also provide to the trial court a complete list of mobile phone numbers of the police party that is alleged to have apprehended the petitioner in terms of what is stated in the FIR, within 10 days from today, so that the tower locations of those mobile phone numbers can also be obtained immediately by the trial court from the concerned mobile phone service companies for the date in question, i.e. 20.01.2020.

Obviously, any non-compliance of the said direction either by the SSP or by the mobile companies, would invite consequences thereto.

10. Having said that, it is also made absolutely clear that other than directing that the call details records of the said mobile numbers and subscribers thereto be submitted to the trial court, this court has not made any observation, whatsoever, as to the correctness of the contention of the petitioner with regard to the actual relevance of those numbers or whether he was arrested or not arrested at any particular place, which would be evidence that would be gone into and appraised by the trial court upon the call details records of the said telephone numbers being presented before it.

Till such time that the said mobile numbers are not obtained by the trial court pursuant to the aforesaid direction of this court, it would not proceed further with the trial.

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Learned counsel for the petitioner submits that this petition impugns the order of the trial court by which his application seeking a direction to the investigating officer in the case to produce the call details

records and tower locations of the mobile phones of the police officials concerned, has been dismissed.

Learned counsel submits that this petition has in fact been rendered infructuous in view of the order passed hereinabove in CRM-M-42664 of 2020 and may be disposed of as such.

Ordered accordingly.

A copy of this order be placed on the file of the other connected matter too.

15.01.2021
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes

Whether reportable: Yes