

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1424 of 2021

Rohtas Kumar and others

....

Petitioners

-versus-

State of Odisha & others

....

Opposite Parties

CORAM: JUSTICE S.PUJAHARI

ORDER
02.08.2022

Order No.

05.

1. This matter is taken up through Hybrid mode.
2. Heard learned counsel for the Petitioners and learned counsel for the State.
3. This application under Section 482 of Cr.P.C. has been filed by the Petitioners with a prayer to quash the order dated 07.07.2021 passed by the learned Addl. Sessions Judge-cum-Special Judge, Koraput in T.R. Case No.51 of 2020 wherein the learned Special Judge has rejected the petition filed under Section 91 Cr.P.C. by the Petitioners to call for the C.C.T.V. footage and the Call Detail Records of the accused-Rohtas Kumar, Vishal Kumar and Sumit Kumar, who have been indicted for the offence under Section 20(b)ii)(C) of the N.D.P.S. Act vide Machkund P.S. CaseNo.81 of 2020.

4. It appears that the Petitioners had earlier approached this Court in WPCRL No.71 of 2021. A Division Bench of this Court disposed of the said petition vide order dated 22.06.2021. The operative portion of the said order, as follows:

“4. Having heard learned counsel for the Petitioners, the Court is of the view that since the above piece of electronic evidence, if available, would be crucial for the defence of the Petitioners in the trial, it is essential for the Petitioners to move the concerned trial Court without delay for appropriate directions regarding the collection and preservation of the above piece of electronic evidence.

5. On the strength of this order, the Petitioners are permitted to move the trial Court immediately for appropriate reliefs. The Court makes it clear that it has not expressed any opinion on the correctness or otherwise of the allegations made in the present writ petition by the Petitioners.”

5. Pursuant to the said direction, the Petitioners approached the learned Addl. Sessions Judge-cum-Special Judge, Koraput in T.R. Case No.51 of 2020, and the learned Addl. Sessions Judge-cum-Special Judge, Koraput vide the order dated 07.07.2021 held that it was known to the Government that when the investigation was ongoing, the Petitioners filed WPCRL. No.71 of 2021 and the said petition was disposed of on 22.06.2021, and thereafter the Petitioners having filed the petition under Section 91 Cr.P.C on 24.06.2021, i.e., after lapse of ten months, there is remote chance of availability of the CCTV footage.

6. The specific case of the Petitioners is that this case has been falsely foisted against them inasmuch as though they were

taken to custody of the Police Station on 25th August, 2020 but they were later on shown to have been moving with 'Ganja' on 28th August, 2020 in the Machkund Police Station. The Petitioners, therefore, wanted CCTV footage and CDR to show that they had been taken to custody on 25th August, 2020 which is crucial for their defence in this case. It is their contention that if the CCTV footage and CDR are preserved and adduced to be the defence evidence, the same would vindicate their stand that they have been falsely framed in the aforesaid case. They made such a petition before the learned Addl. Sessions Judge-cum-Special Judge, Koraput, but the learned Addl. Sessions Judge-cum-Special Judge instead of directing for preservation of the CCTV footage, misinterpreted Section 91 of Cr.P.C. and rejected the petition on the ground that in the meantime ten months have elapsed and there is remote chance of availability of CCTV footage of Lamtaput beat house, even if the statement of the Petitioners are accepted to be true.

7. Mr. Shyam Manohar, learned counsel for the Petitioners, submits that it is the duty of the Police officials to preserve the CCTV footage for one year and non-preservation of the same shows the conduct of the Police officials to avoid production of the same, inasmuch as the footage of the CCTV would show the innocence of the Petitioners who had been taken to police custody on 25th August, 2020 till 29th August, 2020. The Investigating Agency has never denied that the CCTV is not there in the location, but their only plea that the

same is not presently available. The same speaks volume of their conduct. They have intentionally not produced the same. Furthermore, the CDR details would also show the location of the petitioners on the 25th of August, 2020, but the same was also not collected. Therefore, for non-production of the same or non-preservation of the CCTV footage and non-collection of CDR details, the petitioners have been deprived of their valuable right, i.e., defence plea of alibi to show their false implication. In such premises, it is submitted by the learned counsel for the petitioners to pass necessary order in the facts and circumstances of the case.

8. Mr. Praharaj, learned counsel for the State, however, submits that the Petitioners have taken such plea at a belated stage, when the CCTV footage is not available, and they have approached this Court with an evil design to create evidence to draw an adverse inference against the Investigating Agency as they are not in possession of the same for production. According to him, the Petitioners have not come to this Court with clean hand and they having been indicted in a grave offence under Section 20(b)(ii)(C) of the NDPS Act, this petition is to be dismissed in limine.

9. After having heard the learned counsel for the parties, and on going through the materials available on record, this Court is of the view that since the CCTV footage which ought to have been preserved for one year is not available with the

Investigating Agency. So also, though it is expected from a prudent Investigating Agency while investigating such serious cases to know the larger angle of conspiracy to collect the CDR details of the petitioners, but the same has not been collected nor produced before the Court and plea has been taken that at the belated stage, the same is not likely to be available. Hence, any direction to them to produce the same under Section 482 Cr.P.C for preservation, cannot serve any fruitful purpose. However, for non-production of the same, if the Petitioners raise the plea, as aforesaid, by laying the foundation during cross-examination of the prosecution witnesses and/or through evidence, if any, adduced in defence, the Court in seisin over the matter, at the conclusion of the trial, shall address the defence plea of false implication in proper perspective while deciding the case of the prosecution, keeping in view the facts indicated above including drawal of adverse inference, if any.

10. With the aforesaid order, this Criminal Misc. Case stands disposed of.

11. Urgent certified copy of this order be granted on proper application.

(S. Pujahari)
Judge