

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
(Heard through VC)**

**CRR No. 91 of 2022 (O&M)
Date of Decision: 21.02.2022**

Baljit Singh and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Satnam Singh Gill, Advocate
for the petitioners.

Mr. Sandeep Singh Deol, DAG, Punjab.

JAISHREE THAKUR, J.

Challenge in the instant revision is to the order dated 19.10.2021 passed by the Judge, Special Court, Barnala, by which the application filed by the petitioners for direction to Nodal Officers of the concerned Telecom companies to preserve the tower locations and call details of Mobile Phone (Nos. 98721-45574 and 98558-91094) of the petitioners and the police officials for the period of 15.02.2021 and 16.02.2021, has been dismissed.

In brief, the facts are that on a secret information received by the police, the petitioners were apprehended and 10000 intoxicant tablets of Carisoma and 1500 intoxicant tablets of Tramadol Hydrochloride were recovered from the petitioners and on that basis, FIR No. 78 dated 16.2.2021 under Sections 22/25 of the NDPS Act came to be registered.

Thereafter, on the basis of disclosure statement made by the petitioners, one Raj Kumar @ Raju was nominated as accused and Section 29 of the NDPS Act was added on 17.2.2021. After completion of the investigation, challan was presented on 30.4.2021 and charges were framed on 1.9.2021.

During the course of the trial, the petitioners moved an application for issuance of directions to the Nodal Officer of the concerned Telecom companies to preserve the tower location and call details of mobile number of the petitioners and the police officials for the period 15.02.2021 and 16.02.2021, which was dismissed, as already noticed.

Learned counsel for the petitioners would submit that the impugned order is not sustainable in the eyes of law. In fact, the petitioners have been falsely implicated in the instant case. It is submitted that in fact the petitioners were arrested on 15.2.2021 from Ambedkar Chowk, Samana, District Patiala and thereafter the case was registered on 16.2.2021 and thus the alleged contraband was planted on the petitioners. Therefore, in order to ascertain the location of the petitioners as well as the police officials on the relevant dates, it is necessary to preserve the tower location and the call details of the mobile numbers, as prayed for in the application filed by the petitioners. It is further submitted that in case tower location and call details of the mobile are not preserved, a great prejudice would be caused to the petitioners.

Per contra, learned counsel for the respondent—State submits that there is not even a single averment in the application as to for what purpose the preservation of the call details and tower location is needed and, therefore, the application was rightly dismissed by the trial court.

I have heard learned counsel for the parties and have gone through the paper book.

The limited prayer in this petition is for preservation of the call record of both the petitioners and the police officials as mentioned in the application. It is mentioned in the FIR that HC Gurpreet Singh and HC Manpreet Singh were riding in a government vehicle bearing registration No. PB-19F-1217, which was being driven by PHG Gurdeep Singh and when they were present at Balmiki Chowk, Barnala, they received a secret information that Baljit Singh son of Ranjit Singh and Gursewak Singh @ Kala son of Avtar Singh, are habitual of selling intoxicant tablets and they could be apprehended in possession of the same. It is the contention of the petitioners that they were not apprehended from the spot as specified in the FIR but were apprehended on 15.2.2021 from Ambedkar Chowk, Samana and recovery of fake contraband has been shown from them at bridge drain Bajakhana—Barnala Road. In order to establish their defence, it would be imperative to preserve the call details of the mobile phones and the location of both the petitioners as well as the police officials mentioned in the FIR, who had allegedly received a secret information regarding involvement of the petitioners in the alleged crime. As per reply filed, a categorical stand has been taken that concerned telecom companies have been asked to retain the call details and location of ASI Balwinder Singh, ASI Dalwinder Singh, Constable Harjinder Singh, HC/Driver Rajiv Kumar, Ram Ji, PPS D.S.P., CAW&C, Barnala, SC Gagandeep Singh, ASI Satwinder Pal Singh, SC Balwinder Singh, SC Rajinder Singh and SC/Driver Kulwant Singh. However, a specific prayer made in the application is for preservation of the

call details of the petitioners herein as well as of Lakhwinder Singh SHO PS City, Barnala, C. Gurpreet Singh 842/BNL, SC Manpreet Singh 259 and PHG Gurpdeep Singh 27049/BNL, which call details have not been preserved.

It is well settled that trial must be fair, giving an opportunity to the prosecution and the accused to set up their cases. When there is a specific averment made that the petitioners herein were not present at the spot from where they were allegedly apprehended, one of the means for them to establish their innocence would be through the mobile phone tower location. However, this court must hasten to add that merely the call details as obtained from the mobile tower by itself would not be a conclusive proof. The accused/petitioners cannot be deprived of a chance to a fair trial and therefore, the impugned order deserves to be set aside.

For the reasons afore-stated, the instant revision is allowed, the impugned order is set aside and the application filed by the petitioners for preservation of the tower locations and call details of Mobile Phone (Nos. 98721-45574 and 98558-91094) of the petitioners and the police officials for the period of 15.02.2021 and 16.02.2021, as prayed in the application, is allowed.

21.2.2022

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No