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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-10232-2022

Date of decision:10.03.2022

PARMOD AND ANOTHER

...Petitioners

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Parminder Singh, Advocate
for the petitioners.

Mr. Pradeep Prakash Chahar, DAG, Haryana.

(Through Video Conferencing)

SURESHWAR THAKUR, J. (ORAL)

1. In FIR No.605, dated 21.11.2020, registered at Police Station Gharaunda, District Karnal, offences constituted under Sections 29, 27, 20, 25 of NDPS Act, are embodied.

2. The petitioner is alleged to carry 230 kg of ganja patti in the canter behind the tractor. The recovery of the afore weight of the ganja patti, makes it fall, within the ambit of commercial quantity thereof.

3. The petitioner intends to carry forth his defence, qua the afore made recovery, as, alleged to be made at Gharaunda, District Karnal being a false or a tainted recovery, inasmuch as, at the relevant time of his being arrested, and, also at the relevant time of his driving the afore tractor from whose canter, the afore recovery became effected, rather he was at Mathura.

4. To take ahead the afore defence the petitioner had moved an application bearing No.CRM/429/2021 before the learned Additional Sessions Judge concerned. In the above application he had claimed relief, that the call

details of the police officials concerned, be ordered to be preserved by the service provider, as on their examination, it would become unfolded, that at the relevant time the police officials concerned, were not at Gharaunda but were at Mathura. The learned Additional Sessions Judge concerned, through an order, made on 18.11.2021, declined the relief (supra), to the petitioner. The above made order is challenged before this Court. The reason as assigned by the learned Additional Sessions Judge concerned, to decline relief to the accused-petitioner is centered upon the factum, that in case relief is granted to the petitioner, thereupon, it will make intrusions into the privacy of the police officials concerned.

5. The above made ground is not meritworthy, as it completely prejudices, and, infringes the liberty of the accused to carry forth his defence qua his being falsely implicated in the FIR (supra), especially when the recovery was made not at Gharaunda, District Karnal rather was made at Mathura. Therefore, only on examination of the call details of the police officials concerned, it would become unfolded, that at the relevant time of effectuation of recovery (supra), and, also at the relevant time of the petitioner becoming arrested, the police officials were at Mathura, hence the afore defence could become furthered.

6. Be that as it may, the erosion through the impugned order to the indefeasible right of the accused-petitioner to seek a fair trial, as would become entered, upon, the purportedly blemished recovery, and, when the solemn tenet for ensuring his being put to a fair trial, and/or also his seeking his being tried in accordance with law, does also empower him to canvass the afore plea in defence. Therefore, the afore right of a fair trial, and, the concomitant thereto right of the accused to canvass all available pleas in defence, would become

furthered, and, also would become fully efficacious only upon the impugned order being quashed, and, set aside.

7. Consequently, the impugned order is quashed, and, set aside. The service provider concerned, is directed to preserve the call details of the police officials concerned. In addition, the Superintendent of Police, Karnal is directed to collect from the service provider concerned, the call details, and, locations of the police officials concerned, who were involved in the effectuation of recovery, and, also in the arrest of the accused, and, after his examining them, specifically with respect to the locations of the police officials concerned, at the relevant times, to thereafter proceed to, in accordance with law make an appropriate application through the learned Public Prosecutor concerned, before the learned trial Judge concerned. However, the afore is subject to the rider, that the call details, and, locations of the police officials concerned, are not deleted by the service provider concerned.

8. Disposed of.

10.03.2022

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(SURESHWAR THAKUR)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:

Yes/No