

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-22371-2022 (O&M)
Date of Decision:- 31.5.2022

Gagandeep Singh @ Gagan ... Petitioner

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Naveen Bawa, Advocate, for the petitioner.

Mr. Tanvir Joshi, AAG, Punjab with
Mr. Luvinder Sofat, AAG, Punjab.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner assails order dated 6.4.2022 passed by Judge, Special Court, Ludhiana (Annexure P-4), whereby an application moved by the petitioner/accused seeking issuance of directions to Nodal Officers of Jio/Reliance and Airtel, to provide call detail record/mobile tower location record, which had already been directed to be preserved, has been dismissed.
2. A few facts necessary to notice for disposal of this petition are that the petitioner is facing trial before the Court of Special Judge (NDPS), Ludhiana, in respect of FIR No.155, dated 30.11.2020, Police Station Dehlon, District Ludhiana, under Sections 22, 61, 85 of NDPS Act. The petitioner had earlier moved an application before the trial Court seeking issuance of a direction to the Nodal Officers of

the mobile companies concerned, to provide the phone numbers of the police officials and also the call detail record in respect of their phone numbers. The said application was allowed vide order dated 6.5.2021(Annexure P-3) passed by learned Judge, Special Court, Ludhiana. The operative portion of the said order read as follows:

“..... The Nodal officers of concerned network are directed to produce the same in the court as and when directed by the court. So application for preserving call details along with tower location is partly allowed and same is ordered to be attached with the main file.”

3. When the matter was fixed at the stage of framing of charges, an application was moved by the petitioner seeking issuance of a direction to Nodal Officers of the mobile companies concerned to provide the phone call detail record along with the tower location record in respect of the phone numbers regarding which directions had been issued on 6.5.2021 (Annexure P-3) so as to preserve the call detail record and tower location record.
4. The said application was declined by the trial Court while observing therein that the said record may be proved during the course of defence evidence by summoning the witnesses concerned.
5. Learned counsel for the petitioner has submitted that once the call detail record had been ordered to be preserved, the petitioner/accused ought to have been furnished with copy of the same as he has to build up his defence on the basis of said call detail record and that he would be seriously prejudiced in case he is not permitted to build up

his defence and infact he may also be permitted to make submissions in this regard at the stage of framing of charges.

6. On the other hand, learned State counsel while opposing the petition has submitted that such like documents cannot be furnished to the petitioner at the stage of consideration on framing of charges since the same do not form part of the charge-sheet and are not “relied upon” documents and had never been taken into possession by the police during the course of investigation. It has further been submitted that it is only at the stage of defence evidence that the petitioner may be permitted to have access to the said documents so as to use the same for his defence.
7. I have considered rival submissions addressed before this Court.
8. As far as the contention of learned State counsel to the effect that the petitioner is not to be furnished with the aforesaid documents at the stage of consideration regarding framing of charges is concerned, this Court is of the opinion that the petitioner, at the stage of framing of charges certainly does not have a right to have access to these documents which are not part of challan and are in the nature of documents to help him put forth his defence. The question as regards framing of charges has to be considered mainly on the basis of the documents collected by the police during the course of investigation. Since, the call detail record is not part of the challan, therefore, the petitioner, at this stage has no right to call for these documents.
9. As far as the contention of learned State counsel to the effect that the said document i.e. call detail record and tower location record can

only be supplied to the petitioner at the stage of recording defence evidence is concerned, this Court somehow cannot accept the aforesaid contention inasmuch as the accused has to build up his defence right from the very inception after charges are framed. It is not that defence has to be build up only at the stage of recording of statement under Section 313 Cr.P.C. or at the stage of recording defence evidence, but the same can well be built up right from the stage of cross-examination of the prosecution witnesses when the accused would be confronting the prosecution witnesses with all such material which could demolish their deposition. If the accused can be permitted to have access to these documents at the stage of recording defence evidence, then this Court does not see any rationale in depriving accused access to such documents at the stage of cross-examining prosecution witnesses so as to build up his defence. Hon'ble Delhi High Court in Suresh Kalmadi Vs. CBI 2015(8) RCR 378, in an identical situation where a request for furnishing call details at the stage of recording prosecution evidence had been declined held that since the accused has to build up his defence from day one, therefore, such documents ought to be supplied to the accused and consequently set aside the order of the trial Court, while directing that call details record be furnished to accused.

10. In view of the discussion made above and in light of ratio of Suresh Kalmadi's case (supra), the impugned order dated 6.4.2022 (Annexure P-4) cannot sustain and is hereby set aside. The petitioner

would be entitled to the aforesaid call detail record and tower location record once the charges are framed.

11. In case the trial Court proceeds to frame charges against the accused, the trial Court shall issue necessary directions for calling for the call detail record and tower location record which had been ordered to be preserved vide order dated 6.5.2021 (Annexure P-3) and to furnish a copy of the same to the accused.
12. Needless to mention while the petitioner would be at liberty to confront the PWs with the said documents, but the same would be admissible in evidence only after such documents are duly proved during the course of defence evidence by recording statements of witnesses concerned and also in accordance with provisions of Section 65-B of Indian Evidence Act.

31.5.2022

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**(GURVINDER SINGH GILL)
JUDGE**

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No