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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: May 26, 2022***Decided on: June 03, 2022***

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W.P.(CRL) 1236/2022**KRISHAN PAWDIA****..... Petitioner****Through: Mr. J.P. Singh and Mr. Pramod
Kumar, Advocates.****versus****THE STATE, NCT OF DELHI****..... Respondent****Through: Mr. Avi Singh, ASC for State****CORAM:****HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN****J U D G M E N T**

1. The present petition is filed under Article 226/227 of the Constitution of India read with Section 482 of Code of Criminal Procedure, 1973 (herein after referred as Cr.P.C.) for giving directions to the investigating agency/I.O./SHO for supplying contact numbers of the members of the raiding party and the location chart of the mobile of the members of the raiding party in FIR no. 0489/2021, P.S. Baba Haridas Nagar and also giving directions to the investigating agency/I.O./SHO to conduct fair investigation. The petitioner made the following prayers:-

In view of the above-mentioned facts, circumstances and submissions, it is, therefore, respectfully prayed that this Hon'ble court may kindly be pleased to pass an order/s directing the IO/SHO/investigation agency with the direction/s:

A)- To provide the correct details with regards to all mobile contact number/s of the members of raiding party, as stated in the above alleged case/FIR No.0489/2021, of police, which they were using from: 08/10/2021 to 10/10/2021.

B)- To preserve and supply a set of the location chart of all those mobile/contact numbers of the above-mentioned officials of raiding party, to the petitioner/ applicant, and of the mobile contact No's of the applicant/petitioner and all other co-

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accused person for the period of 08/10/2021 to 10/10/2021 in the interest of justice and for the sake of brevity.

2. As per the investigation, a secret information was received by S.I. Saroj Singh on 08.10.2021 at about 11:30 PM, that three persons would be coming from Orissa in a Eicher Truck bearing registration no. 2945 carrying illegal ganja for delivering to a person near Najafgarh, Anaj Mandi on 09.10.2021 at about 3:00AM to 4:00AM. Thereafter, a raiding party comprising ASI Randhir No. 311/DW, HC Jitender No. 195/DW, HC Sonu No. 1684 DW, Constable Parvinder No. 1196/DW and Ct. Rajbir No. 1645/DW under supervision of inspector AATS, Dwarka District was prepared and during raid three persons, namely, Krishna Pawardia i.e., the petitioner, Aman and Rakesh Dahiya were apprehended. FIR bearing no. 0489/2022 dated 09.10.2021 was got registered at Baba Haridas Nagar under sections 20/25 of Narcotic Drugs and Psychotropic Substances Act, 1985. The charge sheet is already filed and trial is pending.

3. The petitioner during the trial filed an application under section 91 Cr.P.C. in SC no. 245/2022 titled as **State v. Rakesh and Ors.** arising out of the FIR no. 0489/2021 registered at Baba Haridas Nagar. The trial court vide order dated 04.05.2022 has dismissed the application. It was observed that a similar type of application was filed by co-accused Rakesh Dahiya who was represented by same counsel and was dismissed as withdrawn on 28.10.2021. It was also observed that the accused Rakesh Dahiya again filed a similar application which was disposed of by the concerned trial court on 18.01.2022 and against order dated 18.01.2022, a writ petition bearing no. WP(CRL) 215/2022 titled as **Rakesh Dahiya v. State of NCT, Delhi** was filed, which was ordered to be dismissed as withdrawn vide order dated



01.02.2022 passed by another Bench of this Court. The application under section 91 Cr.P.C. filed by the petitioner was dismissed vide order dated 04.05.2022.

4. The counsel for the petitioner argued that the petitioner was falsely implicated in the present case by the investigating agency and was not arrested in the manner as alleged in the FIR. The entire prosecution case is planted and concocted. The contents mentioned in the Final Report under section 173 Cr.P.C. regarding the recovery of contraband and manner of arrest are completely false and far away from truth. The investigating agency may destroy the evidence which is required to prove the innocence of the petitioner during the trial of the case. The petitioner along with the co-accused was apprehended/hijacked by the raiding party at toll plaza, National Highway at Pilakhua, Hapur, U.P. in dramatic manner. The petitioner has a right to natural justice and fair investigation and for this it is required to preserve the location chart of the members of the raiding party as mentioned in the FIR along with the location chart and the contact no. of the accused including the petitioner.

5. The Additional Public Prosecutor argued that the petitioner has not appeared with clean hands and suppressed the material facts. The petitioner has not disclosed that the similar application under section 91 Cr.P.C. filed by co-accused Rakesh Dahiya through same counsel was dismissed as withdrawn on 28.10.2021. As per the order dated 28.10.2021, the counsel for the co-accused Rakesh Dahiya has agreed that CCTV footage from Peepli Kharkhonda, Entry Toll to Badli Exit Toll be arranged which was procured and is a part of the charge-sheet. The application under section 91 Cr.P.C. filed by the petitioner before the concerned court was not



maintainable. The petitioner does not have any prima facie case.

6. The co-accused Rakesh Dahiya filed an application under section 91 Cr. P.C. which was ordered to be disposed of as withdrawn vide order dated 28.10.2021 passed by the Special Judge (NDPS)/Dwarka Courts/SW. The counsel for the co-accused Rakesh Dahiya stated that CCTV footage from Peepli Karkhoda, Entry Toll to Badli Exit Toll be arranged and same was filed along with the charge-sheet. The petitioner also filed an application under section 91 Cr.P.C. which was dismissed vide order dated 04.05.2022 passed by the court of Special Judge(NDPS), Dwarka courts/South West. The writ petition bearing no. WP(CRL)215/2022 was also ordered to be dismissed as withdrawn vide order dated 22.02.2022 passed by another Bench of this court.

7. In the present case, the members of raiding party belong to a specialized investigating agency which carries investigation in the matter of national interest, terrorism, armed dealing, drug paddling and organized criminal activities and for said purpose the members of the raiding party have to remain in touch with the secret informers. It would not be in the interest of the functioning of the investigating agency to preserve CDR of mobile phone of the raiding party as it may cause prejudice to the personal safety/security of the police officials as well as may expose identity of the secret informers. The investigation is already completed.

8. After considering all facts, the relief as prayed for cannot be granted and the petition is dismissed. The pending applications, if any, stand disposed of.

SUDHIR KUMAR JAIN, J

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