

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

\*\*\*\*

CRM-M-49365-2022  
Date of Decision:16.08.2023

Prince

. . . . Petitioner

Vs.

State of Punjab

. . . . Respondent

\*\*\*\*

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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Present: - Mr. Yashpal Thakur, Advocates, for the petitioner.

Mr.P.S. Pandher, AAG, Punjab.

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**DEEPAK GUPTA, J.**

By way of this petition filed under Section 482 Cr.P.C., petitioner has prayed to quash order dated 02.09.2022 (Annexure P-10) passed by Id. Trial Court during proceedings of case FIR No.119 dated 09.10.2021 registered at Police Station Mulepur, district Fatehgarh Sahib under Sections 22(c), 29, 61 & 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [for short 'the NDPS Act'], whereby application under Section 91 & 92 Cr.P.C., moved by the petitioner to preserve and produce the call details record of his mobile, was dismissed.

2. It is contended by Id. Counsel that as per prosecution version, 1000 contraband capsules and vials having different batch numbers were recovered from co-accused Sudhir Kumar on 09.10.2021, who in his disclosed statement suffered on 10.10.2021, nominated Sunil Kumar and petitioner (Prince) to be the suppliers and on that basis, Section 29 of the NDPS Act was added. Id. Counsel contends that as per prosecution allegations, on 10.10.2021, police party apprehended the petitioner and

Sunil Kumar from main highway Rajpura, Sirhind within the limits of village Reona and more contraband material was recovered from them.

3. Ld. counsel contends that in fact, CIA staff of Punjab Police had abducted the petitioner on 09.10.2021 at around 8 PM, from near his house in Delhi, when he left the house to meet his friend Sunil Kumar. His mobile phone was turned switched off after 15-20 minutes. His brother had tried to contact him several times and ultimately, his brother lodged a missing report. Ld. Counsel contends that petitioner applied to the Court concerned for directing the concerned nodal officer of Bharti Airtel Limited to produce call details of both incoming and outgoing besides the location of the petitioner for the period of 09.10.2021 to 11.10.2021 in respect of his mobile No.85271-30528, but that application has been rejected by the trial Court vide impugned order dated 02.09.2022 by observing that petitioner had failed to show any ownership documents pertaining to the mobile in question.

4. Ld. counsel for the petitioner, while assailing the aforesaid order, drawn attention towards the loan closure letter dated 05.06.2022 (Annexure P-11) issued in the name of the petitioner by HDFC Bank, in which his mobile number 8527130528 is duly mentioned. Not only this, the same mobile number is mentioned in the passport application form (Annexure P12), which was submitted by the petitioner much earlier. Ld. counsel for the petitioner has relied upon decisions of this Court rendered in ***Gagandeep Singh @ Gagan Vs. State of Punjab, 2022(3) RCR (Criminal) 540*** and ***Jaswinder Singh Vs. State of Punjab, 2021(3) Law Herald 2715*** to support his contention to the effect that in the aforesaid circumstances,

his application deserved to be allowed for preserving the tower location and call details of the mobile number of the petitioner so as to prove his defence.

5. Ld. State counsel has opposed the petition by justifying the impugned order.

6. I have considered submissions of both sides and have appraised the record.

7. Prosecution alleges the apprehension of the petitioner on 10.10.2021, whereas petitioner contends that he had been arrested on 09.10.2021 at about 8 PM. Prosecution alleges that petitioner had been arrested from main highway Rajpura, Sirhind within the limits of village Reona; whereas petitioner contends that he was abducted by the police from near his house at Delhi at about 8 PM on 09.10.2021. Petitioner specifically gave the mobile number belonging to him and requested for preserving tower location and call details record so as to fortify his defence.

8. In the case of **Gagandeep Singh @ Gagan (Supra)**, similar issue was considered, though it was in respect of call details record and tower location of the mobiles of police officials. It was observed by this Court as under: -

*“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."*

9. Apart from in **Jaswinder Singh (Supra)**, it was observed by this Court that no prejudice will be caused to anyone in case call details of police officials are preserved during trial especially when petitioner is making allegation against the police officials.

10. Having regard to the factual and legal position as above, impugned order dated 02.09.2022 (Annexure P10) passed by Id. Trial Court is hereby set aside. It is directed that tower location and call details of the mobile number 85271-30528 of the petitioner be preserved for the period 09.10.2021 to 11.10.2021 and the same be produced in the Court and the copy thereof be also provided to the petitioner.

Disposed of.

**(DEEPAK GUPTA)**  
**JUDGE**

**16.08.2023**

*Vivek*

1. Whether speaking/reasoned?
2. Whether reportable?

**Yes/No**  
**Yes/No**