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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 28.07.2023

+ CRL.M.C. 185/2023 & CRL.M.A. 772/2023 (for stay)

CENTRAL BUREAU OF INVESTIGATION

..... Petitioner

versus

SHASHANK JADON

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Nikhil Goel, SPP for CBI with Mr. Kartik Kaushal, Mr. Naveen Goel, Mr. Adithya Koshy Roy and Ms. Sidhi Gupta, Advocates.

For the Respondent : Ms. Manisha Bhandari, Advocate with Mr. Omkar Shrivastava, Mr. Divyadeep Chaturvedi, Mr. Dhruv Chandra and Mr. Ayush Jain, Advocates.
Mr. Ankur Mittal, Advocate for Complainant.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. This is a criminal miscellaneous petition filed under Section 482 Cr.P.C., 1973 on behalf of the CBI seeking setting aside of the order



dated 26.11.2022 passed by the Special Judge, PC Act, CBI-18, Rouse Avenue District Court, New Delhi, whereby the learned Special Judge had dismissed the application under Section 91/92 of the Cr.P.C., 1973.

2. By way of the application under Section 91/92 Cr.P.C., the petitioner sought the preservation of the call records. They sought the following prayers :-

"In view of the above-mentioned facts and circumstances, it is most humbly prayed that the Call Detail Records of mobile numbers 9711469933 (PW-07 Shashank Garg @ Meetu) and 8375034700 (PW-14 Rahul Chaudhary) and landline numbers 0120-2763016, 0120-2763022, 0120-2763088, 0120-2763089, 0120-2985812, 0120-2985813, 0120-2985814, 0120-2985815 may kindly be ordered to be sought and preserved from the respective mobile service providers i.e. Airtel, Reliance JIO and BSNL, respectively, in order to verify the above mentioned facts as stated by the reliable source, in the interest of justice"

3. By way of the impugned order, the learned Special Judge had dismissed the application on the ground that the petitioner could have lodged an FIR under Section 195A of the IPC, 1860, which contemplates punishment of imprisonment up to 7 years and proceed to take appropriate steps in that particular case, if so filed.

4. Learned Special Judge was under the impression that the petitioner herein is delaying the proceedings on one account or the other.

5. Mr. Nikhil Goel, Learned SPP appearing for the petitioner submits that the two witness, namely, PW-7 and PW-14, who were hitherto-before, in the statement under Section 164 Cr.P.C., 1973, had corroborated and supported the version of the prosecution. However, according to learned counsel, due to a threat issued by the respondent from the jail through the jail phone to the said witnesses, the witnesses subsequently turned hostile.



6. Learned counsel submits that, this is apparent by the fact that soon after such calls, the witnesses had turned hostile.

7. Learned counsel further submits that in contradistinction to the aforesaid, PW-5, who was threatened by the family members of the respondent, still continued to support the case of the prosecution. Learned counsel submits that in fact PW- 5 had sent an email to them informing petitioner of such threat however, did not succumb to such threat.

8. Learned counsel further submits that apart from the fact that the witnesses were threatened, the reason for filing such an application was to seek transfer of the respondent from Dasna Jail, Ghaziabad, Uttar Pradesh to Tihar Jail at New Delhi, vide application dated 28.08.2022.

9. The present application was moved only to gather enough evidence and to support the application seeking transfer of the respondent from Dasna Jail, to Tihar Jail.

10. On that basis, learned counsel submits that the application under Sections 91/92 of the Cr.P.C. was filed with justified reasons, which have been rejected on erroneous justification by the learned Special Judge.

11. Learned SPP relies upon the judgment in *Special Police Establishment vs. Umesh Tiwari* to support his arguments.

12. *Per contra*, Ms. Manisha Bhandari, learned counsel appearing for the respondent refers to her reply to the present application, to submit that the witnesses, particularly witness PW-7 is a next door neighbor, which is an admitted fact.



13. Learned counsel submits that the witness is a childhood friend of the respondent and in case, if any such threat was to be extended, there was no requirement for the respondent to even make a call. The family members, who are residing next doors to the said witness could have threatened the witness to give a hostile statement.

14. Ms. Bhandari, learned counsel submits that the entire exercise appears to be only targeting the respondent as and when the respondent files an application seeking enlargement on bail. In fact, Ms. Bhandari, learned counsel also refers to the RTI reply received from the Dasna Jail administration, to submit that according to the reply at point 3, the jail itself had categorically stated that the respondent has not had conversations on mobile Nos. 8375034700 and 9711469933 through any facility being made available by the jail administration to the prisoners, during the period which they have been detained in the jail.

15. That apart, Ms. Bhandari, learned counsel also submits that the question of the petitioner making any such request by way of the application to the learned Special Judge, does not arise unless they have first exhausted the request being made to the Jail Authorities or the persons to whom the petitioner is stated to have allegedly approached or threatened.

16. Ms. Bhandari refers to the chart, which has been made a part of the reply, to submit that the filing of such applications unerringly coincide with the dates when the application is filed by the respondent to seek enlargement on bail.

17. Ms. Bhandari, learned counsel submits that the applications filed by the petitioner are not innocuous and appears to be *mala fide* and only



to target the right of the respondent to seek enlargement on bail from the courts.

18. Moreover, Ms. Bhandari, learned counsel submits that the exercise of filing this application under Sections 91/92 Cr.P.C. by the petitioner, does not have any connection or nexus or co-relation to any of the offences as alleged against the respondent and are empty exercise only to delay as also to prejudice the bail applications being filed by the respondent.

19. That apart, Ms. Bhandari, learned counsel submits that the petitioner has made up false averments in the application, whereby the examination in respect of PW-14, to submit that to give a flimsy excuse as to why the said witness had not turned up for examination. In fact, according to Ms. Bhandari, learned counsel, the alleged eye-witness admittedly has never been threatened at all by the respondent, thus the need to threaten PW-7 and PW-14 does not even arise.

20. On that basis, Ms. Bhandari, learned counsel submits that the learned Special Judge has appropriately dealt with the application and dismissed the same. She further prays that the present petition be also dismissed.

21. This Court has considered the arguments of the learned counsel appearing for the parties and perused the impugned order and the documents annexed thereto.

22. This Court is of the considered view that the prayer made in the application seeking preservation of records of certain mobile numbers could have been allowed by the Special Judge if not for the purposes of using them at the time of consideration of the bail application, but for



the purposes of entertaining the application seeking transfer of the respondent from Dasna Jail to Tihar Jail.

23. The submissions of Mr. Goel, learned SPP appearing for the petitioner with respect to the application being allowed for the purposes of seeking transfer of the respondent from Dasna Jail to Tihar Jail appears to be justified.

24. Learned counsel for the petitioner has been able to ascertain from relevant sources that the respondent has been using the different landline numbers installed inside the premises of District Jail, Dasna, Ghaziabad, UP to contact and threaten the witnesses.

25. According to the averments made in the petition particularly, in para 9, 10, 11 and 12, the petitioner is seeking to establish the connection between the phone call records emanating from the Dasna Jail and being received by PW-7 and PW-14 on their respective mobile numbers. It would be apposite to extract the said paragraphs below :-

“9. That it has been learnt from reliable sources that Respondent/ accused from the different landline numbers installed inside the premise of District Jail Dasna, Ghaziabad, UP (having numbers 0120-2763016, 0120-2763022, 0120-2763088, 0120-2763089, 0120-2985812, 0120-2985813, 01202985814, 0120-2985815 etc.) is trying to contact and threaten the witnesses. That it has been further learnt from reliable sources that accused Shashank Jadon has contacted various ether relatives / advocates on their mobile numbers from the landline numbers of District Jail Dasna, Ghaziabad, UP.

10. That as per the source information, Respondent/Accused has contacted PW-14 Rahul Chaudhary on his mobile phone number 8375034700 on 21.10.2022 (i.e. one day prior to his deposition) through landline of District Jail Dasna, Ghaziabad, UP as per the details mentioned below:



S.No.	A Party	From	Date
1	8375034700 - Rahul	0120-2985813	25-Aug-2022
2	8375034700 - Rahul	0120-2763089	29-Aug-2022
3	8375034700 - Rahul	0120-2763089	21-Aug-2022

11. That on 22.10.2022, PW-14 Rahul Chaudhary was examined before the Ld. Trial Court and the said witness suddenly turned hostile and did not support the case of prosecution during his deposition and favoured the Respondent/Accused.

12. That as per the source information, Respondent/Accused has contacted another witness being PW-7 Shashank Garg @ Meetu (who is immediate neighbour of Respondent/accused) on his mobile number 9711469933 on his birthday i.e. 3rd of October from different landline numbers installed inside District Jail Dasna, Ghaziabad, UP as mentioned below:

S. No.	A Party	From	Date
1	9711469933 - Shashank Garg @ Meetu	0120-2985813	03-Oct-2021
2	9711469933 - Shashank Garg @ Meetu	0120-2763022	03-Oct-2021
3	9711469933 - Shashank Garg @ Meetu	0120-2763022	03-Oct-2021
4	9711469933 - Shashank Garg @ Meetu	0120-2763022	03-Oct-2021

26. From the above, the thrust of the counsel is that the witnesses, who were hitherto-before supporting the case of the prosecution had,



after the phone calls have been received by them from the Dasna Jail either turned hostile or not supported the case of the prosecution.

27. From the aforesaid instances, the petitioner has tried to project as to what it considers calls, which were threatening in nature, which have substantially altered the stand of the PW-7 and PW-14.

28. Though, Ms. Bhandari, learned counsel has been able to show from her chart, contained in the reply, as to how and why the applications seeking protection of the witnesses have suddenly been filed immediately after the applications seeking bail were filed by the respondent, the same may not have an impact on what the petitioner's are seeking now. That is for the reason that the entire exercise for which the application under Sections 91/92 Cr.P.C. has been filed is only in respect of the support which they seek for the application seeking transfer from Dasna Jail to Tihar Jail.

29. To the aspect as to whether the witnesses were in fact threatened or not, this Court has no evidence in front of it to come to the conclusion, that by such phone calls, if at all made to such persons or the witnesses, the witnesses had in fact turned hostile.

30. That is on merits and for the prosecution agency i.e. the petitioner to prove in accordance with law.

31. In view of the above, this Court is of the considered opinion that the Call Detail Records of mobile numbers 9711469933 (PW-07 Shashank Garg @ Meetu) and 8375034700 (PW-14 Rahul Chaudhary) and landline numbers 0120-2763016, 0120-2763022, 0120-2763088, 0120-2763089, 0120-2985812, 0120-2985813, 0120-2985814, 0120-



2985815 are ordered to be provided to the petitioner and be preserved by Airtel, Reliance JIO and BSNL, respectively.

32. In view of the above, the impugned order is quashed and set aside.

33. The learned Special Judge is requested to expeditiously dispose of the application seeking transfer of the respondent from Dasna Jail to Tihar Jail.

34. It goes without saying that the respondent would be entitled to take all and any objections available to him under the law at the time of the arguments on the said application.

35. The petition is disposed of with above directions.

TUSHAR RAO GEDELA, J.

JULY 28, 2023/nd

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