



\$~

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

%

Reserved on: 21.07.2023
Pronounced on: 16.08.2023

+ CRL.M.C. 1239/2018

STATE

..... Petitioner

Through: Mr. Naresh Kumar Chahar, APP
 for State with SI Sudhir Kumar,
 Crime Branch, Delhi
 Mr. Ripu Daman Bhardwaj,
 CGSC for UOI
 Mr. Subhash Bansal, Senior
 Standing Counsel alongwith Mr.
 Shashwat Bansal, Advocate for
 NCB

versus

HARIPAL

..... Respondent

Through: None

+ CRL.REV.P. 498/2018 & CRL.M.A. 10637/2018

STATE (GOVT OF NCT DELHI)

..... Petitioner

Through: Mr. Naresh Kumar Chahar, APP
 for State with SI Anil, PS
 Seemapuri
 Mr. Ripu Daman Bhardwaj,
 CGSC for UOI

versus

SALMAN

..... Respondent

Through: None



+ CRL.REV.P. 556/2018

STATE (NCT) OF DELHI

..... Petitioner

Through: Mr. Naresh Kumar Chahar, APP
for State with SI Niraj Singh, PS
Nand Nagri
Mr. Ripu Daman Bhardwaj,
CGSC for UOI

versus

NEERAJ

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

Index

FACTUAL BACKGROUND	3
(i) CRL.M.C.1239/2018	3
(ii) CRL.REV. P.498/2018	4
(iii) CRL.REV. P.556/2018	5
CONTENTIONS RAISED BEFORE THIS COURT	7
ANALYSIS AND FINDINGS	8

SWARANA KANTA SHARMA, J.

1. The present batch of petitions have been filed assailing the orders passed by learned Additional Sessions Judge, Karkardooma Court, New Delhi, directing the investigating officers to procure Call Detail Records (CDRs) including tower-wise locations of all members of raiding party and of the respondents/accused persons.



FACTUAL BACKGROUND

(i) CRL.M.C.1239/2018

2. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter* 'Cr.P.C.'), the petitioner seeks setting aside of order dated 04.12.2017 passed by learned ASJ-03, Shahadra District, Karkardooma Courts, Delhi in case arising out of FIR bearing no. 175/2021 registered at Crime Branch, Delhi for offence punishable under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 (*hereinafter* 'NDPS Act').

3. Brief facts of the case are that pursuant to receipt of information through a secret informer at Narcotics Cell, Crime Branch, a raiding team had been constituted and respondent/accused had been apprehended on 04.10.2017 with 200 grams of *heroin*. During investigation, the accused had disclosed the name of the supplier as Irfan, from whom he used to get the psychotropic substance, who was later declared proclaimed offender under Section 82 Cr.P.C. Chargesheet was filed against the accused on 30.11.2017.

4. The learned ASJ, *vide* order dated 04.12.2017, directed the concerned investigating officer to procure the call detail records and location via mobile tower of all members of the raiding party, the secret informer, the investigating officer and the respondent/accused. The relevant portion of the impugned order is reproduced herein for reference:



“IO is directed to procure the call detail records and location via mobile tower of all the members of raiding team and also the secret informer and himself and also that of accused.

The service provider concerned is also directed to preserve the call detail record, for the date of alleged offence i.e., 04.10.2017.”

(ii) CRL.REV. P.498/2018

5. By way of this revision petition filed under Section 397 read with Section 401 Cr.P.C., the petitioner seeks setting aside of order dated 06.04.2018 passed by the learned ASJ-03, Shahadra District, Karkardooma Courts, Delhi in case arising out of FIR bearing no. 212/2018, registered at Police Station Seemapuri for offences punishable under Sections 20/61/85 of NDPS Act.

6. Brief facts of the case are that the present FIR was registered on the complaint of one Sub-Inspector who had informed that when he alongwith two other constables had been patrolling in the night on 04.04.2018, they had observed the suspicious movements of the accused, after which, they had apprehended the accused who was carrying 7.70 kgs of *ganja* in a bag.

7. Thereafter, the learned ASJ *vide* order dated 06.04.2018, while remanding the respondent/accused to judicial custody, directed the investigating officer to procure the CDRs containing the tower-wise location of all the members of the raiding team and of the accused on the date of alleged incident. The relevant portion of the said order reads as under:



“2. IO has been asked to furnish the names and phone numbers of the members of the raiding party and of himself. He submits that he shall be furnishing the same on the next date of hearing.

3. Considering the lack of transparency in investigation of the NDPS matters, involving huge punishment, without there being any discretion regarding the quantum of punishment of the imprisonment in the event of conviction, it is imperative that obsolete methods of investigation are discouraged. Therefore, it is imperative to authenticate the process of recovery/seizure of contraband etc. on which alone the fate of the accused/prosecution case depends.

4. So, with a view to ensure the authenticity of recovery/seizure and also to rule out the instances of false implication, it is important that at least the CDRs of the police staff and the accused (if he was found in possession of mobile phone at the time of personal search) are taken. Needless to say, that ideally the whole process of recovery and seizure must be photographed/video graphed and, in my view, no reason can justify the not following of these safeguards with a view to ensure fair investigation and balance the rights of the accused vis-a-vis the investigation of the police.

5. Accused was also having his mobile phone at the time of alleged recovery. IO confirms this fact that accused was in possession of a mobile at the time of his apprehension. I direct the IO to procure CDRs containing tower-wise location of the police staff as well as of accused on the date of alleged incident...”

(iii) CRL.REV. P.556/2018

8. By way of this revision petition filed under Section 397 read with Section 401 and Section 482 of Cr.P.C., the petitioner seeks setting aside of order dated 31.03.2018 passed by the learned ASJ-03, Shahadra District, Karkardooma Courts, Delhi, in case arising out of FIR bearing no. 234/2018, registered at Police Station Nand Nagri, Delhi for offences punishable under Sections 20(b)(ii)(b)/25 NDPS Act.



9. Brief facts of the case are that pursuant to receipt of information through a secret informer at P.S. Nand Nagri, a raiding team had been constituted which had apprehended the respondent/accused on 30.03.2018 at about 1:20 AM and 5 kg of *ganja* had been recovered from his possession.

10. Thereafter, the learned ASJ *vide* order dated 31.03.2018, while remanding the respondent/accused to judicial custody, directed the investigating officer to procure CDRs containing tower-wise location of the police staff as well as of the respondent/accused on the date of alleged incident. The relevant portion of the said impugned order is reproduced as under:

“2. IO has been asked to furnish the names and phone numbers of the members of the raiding party and of himself. He submits that he shall be furnishing the same on the next date of hearing.

3. Considering the lack of transparency in investigation of the NDPS matters, involving huge punishment, without there being any discretion regarding the quantum of punishment of the imprisonment in the event of conviction, it is imperative that obsolete methods of investigation are discouraged. Therefore, it is imperative to authenticate the process of recovery/seizure of contraband etc. on which alone the fate of the accused/prosecution case depends.

4. So, with a view to ensure the authenticity of recovery/seizure and also to rule out the instances of false implication, it is important that at least the CDRs of the police staff and the accused (if he was found in possession of mobile phone at the time of personal search) are taken. Needless to say, that ideally the whole process of recovery and seizure must be photographed/video graphed and, in my view, no reason can justify the not following of these safeguards with a view to ensure fair investigation and balance the rights of the accused vis-a-vis the investigation of the police.



5. IO submits that accused was also having his mobile phone make Samsung Galaxy J7 with the Airtel Sim no. 95609****. I direct the IO to procure CDRs containing tower-wise location of the police staff as well as of accused on the date of alleged incident.”

CONTENTIONS RAISED BEFORE THIS COURT

11. Learned Additional Public Prosecutor, appearing on behalf o the State/petitioner, has argued that learned ASJ has committed an error in passing the impugned orders without applying judicial mind, especially when even no application had been moved by accused persons requesting for preservation of call detail records of members of the raiding parties or the secret informers. It is stated that the learned Trial Court has failed to recognize that providing call details of investigating officers, witnesses and of the secret informers would violate their privacy. It is also stated that call detail records of the police officials would also contain details regarding their other activities or duties assigned to them and any such order shall prejudice the rights and privacy of police officers and created hindrance in performance of their duties. In support of these arguments, reliance has been placed upon judgments passed by this Court in cases of ***Krishan Pawdia v. State (NCT of Delhi) 2022 SCC OnLine Del 1758*** and ***Attar Singh v. State (NCT of Delhi) 2016 SCC OnLine Del 3907***.

12. Since respondents did not appear despite service in this case, therefore, this Court *vide* order dated 21.07.2023 had passed the following order:



- “1. No one has appeared on behalf of respondent.
2. Respondent has not been appearing since long. Therefore, this Court proceeds to hear the arguments on behalf of the State.
3. Arguments have been concluded on behalf of State.
4. Judgment reserved...”

ANALYSIS AND FINDINGS

13. In a nutshell, the case of the petitioner/State is that the respondents had been apprehended in different cases under NDPS Act and some narcotic drug/psychotropic substance had been recovered from them. However, the learned ASJ, either at the stage of remanding accused to judicial custody or at the time of filing of chargesheet, had orders for production of Call Detail Records including tower-wise locations of the investigating officers, members of raiding teams/concerned police staff, secret informers and the accused persons.

14. Thus, the short issue before this Court is whether such orders passed by learned ASJ suffer from any infirmity and are liable to set aside or not.

15. At the outset, it is pertinent to note that Co-ordinate bench of this Court in **Krishan Pawdia** (*supra*), while dealing with a similar issue, has held a view that it would not be in interest of the functioning of the investigating agency and its officers to preserve CDR of mobile phones of the raiding party as it may be prejudicial to the personal safety and security of the police officials and secret informers. The relevant portion of this judgment is reproduced as under:



“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.”

16. A similar view had also been taken by this Court in *Attar Singh (supra)* whereby it was observed that an accused cannot claim a right to seek the details of records of all the calls made or received from the mobile phone of the investigating officer. The relevant portion of the said judgment is reproduced as under:

“...9. I have heard learned counsel for the parties at length & gone through the available records. After hearing the arguments advanced by counsel for the petitioner and the rival contention and after perusal of the order passed by the Trial Court, it appears that the petitioner is seeking direction from this Court for the supply of the call details of the calls made from the mobile phone of the investigating officer. The grievance of the petitioner is that the calls made from the mobile of the investigating officer would indicate the presence, location and the activities of the investigating officer whereas the case of the State is that in the details of mobile calls of the investigating officer, it is not suggested to be the calls relating to the present case and apart from the present case, the investigating officer being a police officer, had been dealing with other matters and activities of various other accused and with regard to the duty assigned to him. The contention made by the prosecution is that the accused could



not claim the record of various activities of the investigating officer, and he has to restrict to the activity of the investigating officer in the present case only. The prosecution has claimed that accused does not have any right to have the information about the final activities of the investigating officer and that cannot be limited to the activity in the present case. So, the accused could not be said to be entitled for seeking the details of records of all the calls made or calls received from the mobile phone of the investigating officer.

10. The learned Magistrate has delivered a reasoned order for the denial of the claim of the petitioner. Similar reasoned order has also been passed by the revisional Court i.e., Court of Sessions. This Court is not of any different view than the one taken by learned Metropolitan Magistrate as well as by the Court of Sessions. So, the view of the Trial Court as well as the Court of Sessions is upheld by this Court also.

11. Consequently, the present petition is dismissed.”

17. Having heard the learned APP for the State, perused the contents of impugned order, this Court finds no reasons to take a view, other than the one expressed in the aforesaid decisions passed by Co-ordinate benches of this Court. In this Court’s opinion, procuring call detail records of the mobile phones of police officials including their tower-wise location can prejudice both their safety and privacy. The concerned police officers may be involved in dealing with cases of different nature, including sensitive or heinous cases or cases of national security, and orders, such as those impugned before this Court, can directly encroach upon the privacy of the police officials. Further, the impugned orders also have the capacity to put at risk and expose the identities of the ‘secret informers’ and risk their safety and security. Thus, the learned ASJ has not passed reasoned orders, and the same



opens up windows for possibility of risking confidential information which may be brought on record through call detail records of the investigating officers and other police officials.

18. Considering the overall facts and circumstances of the case, this Court is of the view that there is no requirement to procure call detail records of investigating officers, members of raiding team/other concerned police officials, etc., as directed in the impugned orders.

19. Thus, the impugned orders passed by the learned ASJ, as recorded in para nos. 4, 7 and 10 of this judgment, are set aside.

20. Accordingly, the present petitions are allowed. Pending applications are accordingly disposed of.

21. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 16, 2023/dk