

CRM-M-12662 of 2024 -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision: 06.05.2024

1. CRM-M-12662 of 2024

Mandeep @ Monu Petitioner

Versus

State of Haryana Respondent

2. CRR-120-2024 (O&M)

Jangir Singh Petitioner

Versus

State of Haryana Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Navkiran Singh, Advocate
for the petitioner (in CRM-M-12662-2024).

Mr. Amit Chaudhary, Advocate and
Mr. Himanshu Setia, Advocate
for the petitioner (in CRR-120-2024).

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

This order shall dispose of CRM-M-12662-2024 and CRR-120-2024 as common issues are involved in both the petitions. For the sake of the order, CRM-M-12662-2024 is treated as the lead case.

Challenge in the present petition is to the order dated 21.02.2024 passed by the learned Special Judge (NDPS Act), Kaithal,

whereby, application of the petitioner-accused filed under Section 91



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Cr.P.C. was declined.

It is the stand of the petitioner-accused that as per the prosecution story, he was riding a motor-cycle bearing reg. No.HR83-A-6901 and was carrying a bag on his back when he was apprehended and on search, psychotropic medicines were recovered. Some secret information was received in the case and a notice under Section 42 of the Act was 'sent' by SHO, Rajound on 08.06.2022 at 7.40 pm. The accused alleges that he was forcibly taken away along with the motor-cycle on 08.06.2022 at 3.30 pm in fact and not at 7.40 pm from Haryana Punjab dhaba family restaurant, Jind-Kaithal road by police officials specifically named as ASI Manjeet Singh, ESI Balraj Singh, HC Ashok Kumar, Constable Nirmal Singh and ESI Shamsher Singh, who were travelling in an official vehicle bearing registration No.HR-64-0088.

On the contrary, the stand of the prosecution is that these police officials have laid down a Nakka on Jind-Kaithal road in front of Haryana Punjab dhaba family restaurant after having received the secret information.

In any endeavour to prove the aforesaid contention, the accused petitioner moved an application under Section 91 Cr.P.C. to summon the call details and tower locations by preserving them by giving mobile numbers being used by ESI Balraj Singh and HC Nirmal Singh along with ESI Shamsher Singh during the relevant period i.e. from 3.00 pm to 8.00 pm on 08.06.2022 with the specific allegation mentioning with the site name and the address.

The Court below have rejected the said plea considering an order passed in case of ***Parveen Kumar Vs. State of Haryana, in CRM-M-***



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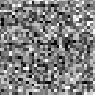
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of public prosecutor to the effect that defence of the accused can be easily established from the call details record and location tower of his mobile number which would show his location at 3.30 pm and then after 7.40 pm on 08.06.2022 and if call details of investigating officers are brought on record, it might result into disclosure of sensitive information including the identity of secret informer etc.

This Court has the occasion to consider the judgment in the case of '**Suresh Kumar Vs. Union of India**' passed by the Hon'ble Supreme Court in **SLP(c) No.1477 of 2014**, decided on 06.05.2014 which observed as under:-

"7. That electronic records are admissible evidence in criminal trials is not in dispute. [Sections 65A](#) and [65B](#) of the Indian Evidence Act make such records admissible subject to the fulfilment of the requirements stipulated therein which includes a certificate in terms of [Section 65B\(4\)](#) of the said Act. To that extent the appellant has every right to summon whatever is relevant and admissible in his defence including electronic record relevant to finding out the location of the officers effecting the arrest. Be that as it may we do not at this stage wish to pre-judge the issue which would eventually fall for the consideration of the Trial Court.

8. All that we are concerned with is whether call details which the appellant is demanding can be denied to him on the ground that such details are likely to prejudice the case of the prosecution by exposing their activities in relation to similar other cases and individuals. It is not however in dispute that the call details are being summoned only for purposes of determining the exact location of the officers concerned at the time of the alleged arrest of the appellant from Yashica Palace hotel near the bus stand. Ms. Makhija made a candid concession that any other information contained in the call



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details will be of no use to the appellant and that the appellant would not insist upon disclosure of such information. That in our opinion simplifies the matter inasmuch as while the call details demanded by the appellant can be summoned in terms of [Section 65B](#) of the Indian Evidence Act such details being relevant only to the extent of determining the location of officers concerned need not contain other information concerning such calls received or made from the telephone numbers concerned. In other words if the mobile telephone numbers called or details of the callers are blacked out of the information summoned from the companies concerned it will protect the respondent against any possible prejudice in terms of exposure of sources of information available to the Bureau. Interest of justice would in our opinion be sufficiently served if we direct the Trial Court to summon from the Companies concerned call details of Sim telephone No. 9039520407 and 7415593902 of Tata Docomo company and in regard to Sim No. 9165077714 of Airtel company for the period 24.02.2013 between 4.30 to 8.30 p.m.. We further direct that calling numbers and the numbers called from the said mobile phone shall be blacked out by the companies while furnishing such details”.

In the light of above, the impugned order dated 21.02.2024 suffers from material infirmity, which is not sustainable in law as also not been taken care of wherein reliance has been made on Suresh Kumar's case (supra). The observations made in the said judgment while examining the an identical issue under Section 91 Cr.P.C., it was held as under:-

“5. Having heard learned counsel for the parties and after a perusal of the record, it transpires that the learned trial Court has dismissed the application filed by the petitioner under Section 91 Cr.P.C. on the ground that the petitioner has not mentioned the purpose of collecting such call details and tower



locations and without disclosing the necessity and relevancy of such evidence, the application filed by her cannot be allowed.

6. *A perusal of the application filed by the petitioner (Annexure P-1) indicates that the accused has taken a specific ground that husband of the petitioner namely Satnam Singh @ Sattu was taken by the police from their house in Village Peerawali on 03.12.2021 at 10 AM in the presence of the covillagers and the necessity and relevancy of the call details and the tower locations was duly indicated by pleading that the prosecution witnesses were not present at the place and time of alleged recovery. As such, summoning of call details records of witnesses mentioned at Annexure A-1 is essential.*

7. *A two Judge Bench of the Hon'ble Supreme Court in Suresh Kumar Vs. Union of India 2015 (3) RCR (Criminal) 340 has considered the necessity and desirability of preserving the call detail records and tower location at the behest of the accused under the NDPS Act and speaking through Justice T.S. Thakur has held as under:-*

“That electronic records are admissible evidence in criminal trials is not in dispute. Sections 65A and 65B of the Indian Evidence Act make such records admissible subject to the fulfilment of the requirements stipulated therein which includes a certificate in terms of Section 65B(4) of the said Act. To that extent the appellant has every right to summon whatever is relevant and admissible in his defence including electronic record relevant to finding out the location of the officers effecting the arrest. Be that as it may we do not at this stage wish to pre-judge the issue which would eventually fall for the consideration of the Trial Court.”

8. *For proper adjudication of the issue, it would be apt to reproduce Section 91 Cr.P.C, which is as under:-*

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any



investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed--

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.”

9. *Preserving and requisitioning of the call details and tower location details would be necessary, otherwise the same would be lost forever. The right of accused to invoke the provisions of Section 91 Cr.P.C. for obtaining documents in support of his defence has been recognized by the Constitutional Courts. The legislative intent behind enactment of Section 91 Cr.P.C. is to ensure that no cogent material or evidence involved in the issue remains undiscovered in unearthing the true facts during investigation, enquiry, trial or other proceedings. No doubt while passing the appropriate direction for preserving and production of call details/tower location details under Section 91 Cr.P.C. would violate the right to privacy of the police officials but the right of the accused under Article 21 of the Constitution of India in ensuring free and fair investigation/trial would prevail over the right to privacy of the police officials. Some extent of privacy can be breached in production of the said call details, as this*



would facilitate the learned trial Court in discovering the truth and rendering justice, which is fair to all stake holders.

10. The denial of an adequate opportunity to the accused by non production of the electronic record, which is admissible under Section 65-A and 65-B of the Indian Evidence Act in criminal trial, would amount to miscarriage of justice. Section 91 Cr.P.C. helps in facilitating a fair and just resolution to the case by ensuring that relevant evidence is made available to the Court for making informed decisions and arrive at a just and fair outcome. It enables the Court to secure important documentary evidence that may be in possession of individuals or organization and helps prevent the destruction, tampering or loss of crucial documents, thereby maintaining the integrity of the judicial process. The power under 91 Cr.P.C. must be exercised for production of such evidence, which would assist the Court in discovering the truth in the pursuit of justice. However, the right of privacy of the police officials cannot be breached at the ipse dixit of the accused. Before any such order for production of call details/tower location is passed, the accused is required to prove necessity and desirability of such evidence, which would be relevant to establish the guilt or innocence of the accused.

11. As principles of natural justice are integral part of fair trial under Article 21 of the Constitution of India, any denial of the best available evidence or effective and substantial hearing to accused in proving defence would amount to denial of free and fair trial.

12. In view of the observations made hereinabove and without going into the merits of the case, the impugned order dated 11.09.2023 is hereby set aside. The learned trial Court is directed to pass necessary directions under Section 91 Cr.P.C. for preserving and production of the call details/tower location details of the phone numbers mentioned in Annexure A-1 attached with the application filed under Section 91 Cr.P.C.



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13. *The instant petition stands disposed of in above terms”.*

In the light of the aforesaid discussion and the categorical contention of the petitioner-accused that he was picked up from Haryana Punjab dhaba family restaurant, Jind-Kaithal road at 3.30 pm and not at 7.40 pm and also as per the ratio laid down in the case of Suresh Kumar (supra), the order dated 21.02.2024 is set aside and a direction is issued to trace the call details as well as the tower location and the same be preserved by the trial Court through the cellular company after verifying the mobile numbers detailed in the application under Section 91 Cr.P.C. preferred by the petitioner-accused from the concerned cellular companies.

The petitioner-accused is at liberty to examine the said details at the relevant stage during the course of evidence ensuring that no prejudice is caused to the case of the petitioner-accused.

In view of above, both the present petitions are allowed in the aforesaid terms.

06.05.2024*D.Bansal***(SANDEEP MOUDGIL)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No