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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRR No. 1121 of 2024 (O&M)
Date of decision: 06.08.2024

Anil ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ankit Chaudhary, Advocate
For the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Ajay Kirpal Singh, Advocate
for respondent No. 2.

MANISHA BATRA, J. (Oral)

1. The instant revision petition has been filed against the order dated 04.04.2024, passed by the Court of learned Additional Sessions Judge, Panipat in case titled as *State vs. Anil*, arising out of FIR No. 325 dated 11.08.2023, registered under Sections 323, 324, 34, 341 and 506 of IPC (Sections 307 and 325 of IPC added later on) at Police Station Madlauda, District Panipat, whereby an application filed by the petitioner under Section 91 of Cr.P.C. was partly allowed.
2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on the basis of a written complaint submitted by respondent No. 2/complainant Sukhbir alleging therein that on 05.08.2023, when he was returning home late night after getting free from his duty, he noticed that someone was following him.

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Since he got scared, he called his brother Sombir to take him to home and when they both were going home, Satbir armed with a *danda*, his wife and son Anil (petitioner), armed with a knife, were standing in the street. They all stopped the complainant and his brother and took them inside the house, wherein Satbir and his wife caught hold of complainant's brother and Satbir, while abusing him, proclaimed to kill him, on which, the petitioner opened an attack on the complainant with a knife, due to which, he sustained deep injuries on his chest, waist and left arm. The complainant and his brother started shouting, on which, the accused persons got them out of the house and closed the gate while extending threat that in case, they would get treatment from any hospital or would file any FIR, then they would be killed. The complainant was taken to Anuj Hospital, Safido, where he was given medical treatment.

3. As per the further allegations, the complainant was taken to Badridas Hospital, Panipat on 06.08.2023, where he remained admitted till 08.08.2023. On 08.08.2023, the complainant was brought to Aadhar Hospital, Panipat, where his medico-legal examination was conducted and the matter was reported to the police. After two days, Sunil, who is son of Satbir, called brother of the complainant, namely Kaptan on Whatsapp and threatened him to kill his children if any FIR was lodged. Complainant prayed for taking legal action against the culprits.

4. After registration of the FIR, investigation proceedings were initiated. After completion of necessary investigation and usual formalities, *challan* under Section 173 of Cr.P.C. was presented in the Court and presently, the petitioner is facing trial for the aforementioned offences. During the course

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of trial, the petitioner, in order to prove his innocence, had moved an application before the trial Court for preserving the call details record with tower location of himself, complainant, complainant's brother Kaptan, Ravi and Pardeep, which was partly allowed by the trial Court and preservation of call details record/tower location only qua petitioner was ordered to be preserved and it was dismissed qua other persons. Aggrieved from the same, the petitioner has filed the present petition.

5. Learned counsel for the petitioner has argued that the impugned order is not sustainable in the eyes of law and it needs to be modified as while passing the same, the trial Court erred in observing that preservation of call details record/tower location in respect of complainant, Kaptan, Ravi and Pardeep would infringe their right to privacy. The evidence in the form of their call details record/tower location is essential for the defence of the petitioner as in fact, on the fateful day, the complainant and his brother were present in the village for the entire day and a false story, qua complainant having gone for his work, had been concocted.

6. Learned State counsel, assisted by learned counsel for respondent No. 2, has argued that the impugned order has rightly been passed by the trial Court and it suffers from no illegality or infirmity. Hence, it is urged that the petition is liable to be dismissed.

7. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

8. On going through the record, it has been noticed that in order to establish the plea of his alibi from the place of occurrence at the relevant time, the petitioner/accused wants to get the call details record/tower location of

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himself, Ravi and Pardeep to be preserved. Then to falsify the claim of the complainant that on the day of occurrence, he had gone to perform his duty and while coming back towards the village at about 11:30 PM, he suspected that someone was following him and then the alleged incident had taken place, the petitioner wants to get the call details record/tower location of the complainant preserved. With regard to the allegations levelled in the FIR that the brother of the petitioner, namely Sunil, had extended threats to complainant's brother, namely Kaptan, by making a Whatsapp call that if any FIR is lodged, he would kill the children, the petitioner wants to get preserved the call details record/tower location of Kaptan also. So far as his own call details record is concerned, the trial Court had allowed the prayer of the petitioner to that extent. On going through the record, I am of the considered opinion that so far as the prayer of the petitioner qua preservation of call details record/tower location of the complainant on the fateful day is concerned, since it is apparent that the said record may help the petitioner in proving his defence plea, therefore, the trial Court erred in rejecting the prayer made by the petitioner to that extent. Preservation of call details record/tower location of the phone of the complainant, in no manner, amounts to infringing of his right to privacy.

9. So far as the question of preservation of call details record of the phone of Kaptan is concerned, the same is not feasible as it is stated in the FIR that brother of the petitioner had extended threats to him by making a Whatsapp call through internet, which record can obviously not be preserved. With regard to preservation of call details record/tower location of Ravi and Pardeep, who were allegedly with the petitioner at the relevant time, I am of

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the opinion that by denying the same, no error had been committed by the trial Court, in view of the fact that even if it is presumed that these two persons were present along with the petitioner at the relevant time, that would no serve any purpose for proper decision of the case.

10. In view of the above discussion, the impugned order is partly modified and it is ordered that the learned trial Court will direct the Incharge of the service provider company of the phone of the complainant to preserve his call details record/tower location for the relevant period, on furnishing the details of the service provider company and phone number(s) of the complainant by the petitioner.

11. Petition stands disposed of accordingly.

06.08.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No