

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-1294-2024

Reserved on : 07.08.2024

Pronounced on :09.08.2024

CHHINDER PAL SINGH

....Petitioner.

Versus

STATE OF HARYANA

....Respondent.

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY

Present:- Mr. Gaurav Datta, Advocate for the petitioner.

Mr. Surender Singh, AAG, Haryana.

SANJIV BERRY, J.

1. Instant Revision Petition has been preferred against the impugned order dated 04.05.2024 passed by learned Additional Sessions Judge, FTSC, Sirsa, whereby the application moved by the petitioner for preserving call details record and location of the mobile numbers of the officials from the concerned mobile networking company has been dismissed.

2. Brief facts of the present case put forth by the prosecution are that a secret information was received by police that Chhinderpal alias Kewal and Yadvinder Singh, doing business of selling opium, and are standing on Malekan to Malwani Road in front of their Dhani at Malwani road, and if raid is conducted immediately, they can be apprehended with opium. Finding the information reliable, police constituted a raiding party and left for Malwani Road Malekan, where they saw two person standing there and each of them having black coloured polythene bag in their hands.

On seeing police party both of them started walking in fast speed, they were apprehended and on their personal search was carried out and recovery of 5kg 500 grams of opium was effected from Yadwinder Singh and 5kg of opium was effected from the petitioner, hence the FIR No. 0401, dated 11.09.2023 under Section 17(c) of NDPS Act (Section 27A/29 NDPS added lateron) was registered at Police Station Sadar Sirsa, Tehsil and District Sirsa (Annexure P-1).

3. During the course of trial, petitioner moved an application for preserving call details record and location of mobile numbers of the officials (in total seven) detailed and described in the head note of application from the concerned mobile networking company. The prayer made in the said application was opposed by the prosecution and vide order dated 04.05.2024 learned Additional Sessions Judge, FTSC Sirsa dismissed the application.

4. Aggrieved by the same, petitioner has filed the present revision petition.

5. At the very outset, the learned counsel for the petitioner submits that the petitioner does not press the request for providing him the call details record and presses the petition only qua the tower locations as mentioned in the application (Annexure P-5).

6. It is *inter alia* contended by learned counsel for the petitioner that the petitioner is innocent and has been falsely implicated in this case. He submits that learned Additional Sessions Judge had grossly erred in not allowing the application for preservation of call details record and location of mobile numbers of the officials. He contends that a serious discrepancy is

there regarding the place and time of his arrest by the investigating agency, which can only be corroborated from the tower location of the mobile phones of the investigating officer/arresting officer and thus, the same being relevant for the purpose of adjudication of the trial, is required to be preserved. In support of his contentions he had referred to the judgment of Hon'ble Supreme Court passed in "***Suresh Kumar vs. Union of India***" 2015 (3) RCR (Criminal) 340; and order of the Coordinate Bench of this Court passed ***Satnam @ Sattu vs. State of Haryana, Law Finder Doc Id#2464336***. As such he prays for acceptance of the revision petition and setting-aside of the impugned order.

7. Per contra, learned State counsel has submitted that a detailed and reasoned order has been passed by the learned trial Court, warranting no interference by this Court. He submits that the relevant details whatsoever were given in the application relating to the date, time and place were not sufficient. He contends that supplying of call detail record to the petitioner will interfere in the security of the concerned police official and as such prayed for dismissal of the revision petition.

8. After hearing learned counsel for the parties and perusing the record, it transpires that in the present case, the petitioner has raised contentions that the police party had planted the recovery and also disputed the manner of his arrest and this aspect could be verified by observing the tower locations of the mobile phones used by the police party at the relevant time when he was allegedly arrested. This certainly goes to the root of the matter related to his implication or innocence in the instant case.

9. Though, no doubt relevant details have not been provided in the application filed at the instance of petitioner, however, at the same time, the predicament of the petitioner can also not be ignored that giving detailed reasons may also expose his defence. In view of the categorical stand by the petitioner regarding disputing the time and place of arrest by the police officials, purpose and relevance of seeking tower location, are obvious for the purpose of disputing the claim of the police officials in this regard by making an effort to establish it by way of electronic evidence.

10. An application was moved by the petitioner before the learned trial Court seeking preservation of the tower locations of the mobile phones used by the police party vide application (Annexure P-5), however the learned trial Court dismissed the application vide the impugned order holding that preserving of the “call details” may cause danger to the security of the officials and on this basis, primarily, it had dismissed the application.

11. The petitioner has disputed the alleged time and place of alleged recovery and to establish that aspect in his defence he has sought the preserving of the tower locations of the mobile phones mentioned in the application (Annexure P-5). Simply preserving the tower locations of said mobile phones would not in any manner cause any danger to the security of the said police officials nor will it effect their privacy because the calls made or received by them will not in any manner come in open domain. It is beyond imagination as to how the preserving of the tower locations would in any manner cause danger to the security of the police officials and the learned trial Court also overlooked the fact that preserving of the tower

locations of the mobile phones used at the relevant time as mentioned in the application would infact help the Court to arrive at a just conclusion.

12. No doubt, such right of petitioner cannot be given a scope which in any manner intrudes into the right to privacy of others which has to be given a protection as envisaged in ***Justice K.S. Puttaswamy and another v. Union of India, (2017) 10 SCC 1***. Accordingly, a balancing exercise is necessitated as at one hand there is the right of the petitioner to summon relevant electronic records required for his defence, while on the other hand, police officials' daily activities may also not be exposed.

13. Reference in this regard can also be made to judgment passed by the Hon'ble Supreme Court in case titled as ***"Suresh Kumar's case (supra)***. Relevant paras No.7 and 8 of the aforesaid judgment pertaining to the matter in issue, are reproduced hereunder:-

"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 xxxx near the bus stand. Ms. Makhija made a candid concession that any other information contained in the call 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. xxxxxxxxxx and xxxxxxxxxx of Tata Docomo company and in regard to Sim No. xxxxxxxxxx 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.”

14. It is not out of place to mention here that the Judgment in **Suresh Kumar’s case (Supra)** was also followed by a coordinate bench of this Court in **Satnam Singh Sattu’s case (supra)**, and it was observed that:-

“Every criminal trial is a process of discovery of truth. It is the duty of a Presiding Court to explore every avenue open to him in order to discover the reality and to advance the cause of justice.”

15. Admittedly, in view of the fact that in accordance with directions issued by the Central Government, electronic records are preserved by the telecom companies only for a limited period and therefore, timely preservation of these records is necessary. The petitioner had to move the application seeking the preservation of the tower locations of the mobile numbers mentioned in the application as otherwise the telecom companies



would delete it after a specific period. As stated above the right of petitioner to seek such preservation have been specifically dealt with by Hon’ble Supreme Court and also by this Court in the judgment referred to above to the extent that such right of the petitioner to summon the relevant electronic record for their defence must be respected, at the same time it should not infringe upon the right to privacy of the others.

16. Therefore, in these circumstances, the impugned order dated 04.05.2024 passed by learned Additional Sessions Judge, FTSC, Sirsa being suffering from infirmity, as such the same is hereby set-aside. The instant petition is accordingly disposed of with the directions that the mobile tower locations of the phone numbers mentioned in the application (Annexure P-5) be preserved by the respective telecom companies for the period(s) mentioned in the application itself, as a piece of evidence so that the same can be referred to during course of trial by the petitioner at the relevant stage.

17. Pending miscellaneous application(s), if any, stands disposed of.

18. Copy of the order be transmitted to learned Trial Court for immediate compliance.

09.08.2024

Gyan

(SANJIV BERRY)
JUDGE

- | | | |
|-----|----------------------------|--------|
| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |