



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

117

CRR-1367-2024
Decided on : 25.07.2024

MANGAT SINGH ALIAS MANGA

. . . Petitioner(s)

Versus

STATE OF HARYANA

. . . Respondent(s)

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

PRESENT: Mr. Dhruv Gupta, Advocate
for the petitioner.

Mr. Anmol Malik, DAG, Haryana.

KIRTI SINGH, J. (Oral)

This is a criminal revision petition under Section 397 read with Section 401 Cr.P.C, 1973 for challenging and setting aside the impugned order dated 01.05.2024 passed by the learned Court of Additional Sessions Judge, Ambala in case FIR No.322 dated 27.05.2023 under Sections 22(C)/29 of NDPS Act registered at Police Station Ambala City, District Ambala.

2. The grievance raised in this petition is with regard to the order dated 01.05.2024 passed by the by the learned Court of Additional Sessions Judge, Ambala. The application dated 14.03.2024 bearing No. CRM/221/2024 for preserving the tower location and call details of SI Jai Gopal No.251 of mobile No. 9996620078, Constable Bhagyashali No.886 of mobile No.7357519225 and of petitioner's mobile no.8570956361 from 25.05.2023 till 27.05.2023 has been dismissed vide order dated 01.05.2024 by the learned Court of Additional Sessions Judge, Ambala.

3. Learned counsel for the petitioner has placed reliance upon the

judgment passed by Hon'ble Supreme Court rendered in the case of **"Suresh**



Kumar Vs. Union of India 2015 (3) RCR (Criminal) 340. and the judgments passed by this Court in *"Paramjit Kaur Vs. State of Haryana 2024 (1) RCR (Criminal) 104"*; *"Gagandeep Singh @ Gagan Vs. State of Punjab 2022(3) RCR (Criminal) 540"* and *"Upashu Vs. State of Punjab 2021(3) RCR (Criminal) 75*.

4. On the other hand, learned State counsel while opposing the petition submits that production of call details and the tower location of the police officials would expose the secret informers, who help the investigating agency in intercepting the anti-social elements and these details cannot be made available for public in routine matter. It would put the witnesses in danger also and the learned Additional Sessions Judge has rightly rejected the application filed by the petitioner on cogent grounds.

5. Heard the rival submissions made by both the parties.

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

"91. Summons to produce document or other thing.

(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."



7. 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.

8. 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

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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.

9. 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.

10. In view of the observations made hereinabove and without going into the merits of the case, the impugned order dated 01.05.2024 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 the application filed under Section 91 Cr.P.C.

(KIRTI SINGH)
JUDGE

July,25 2024

Kavita Nain

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*