

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-1732-2023

Reserved on : 18.07.2024

Pronounced on : 31.07.2024

DINESH @ KALA

....Petitioner.

Versus

STATE OF HARYANA

....Respondent.

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY

Present:- Mr. Mohit Rathee, Advocate for the petitioner.

Mr. Ramender Singh Chauhan, AAG, Haryana.

SANJIV BERRY, J.

1. Instant Revision Petition has been preferred against the impugned order dated 06.05.2023 passed by learned Additional Sessions Judge, Jind, whereby the application moved by the petitioner for issuance of directions to nodal officers of the concerned companies to preserve the tower location of mobile numbers of petitioner and police officials for the duration between 10:00 A.M. dated 04.08.2022 to 11:00 PM dated 05.08.2022 has been dismissed.

2. Brief facts of the present case put forth by the prosecution are that an information was received by police that Dinesh @ Kala doing business of selling charas is standing under tree outside the gate of Baba Khari Nath Dera Dhanori on his motorcycle and if raid is conducted immediately, he can be apprehended with charas. Finding the information



reliable, police constituted a raiding party and left for Baba Khair Nath, Dera Dhanouri, where they saw a person wearing white kurta pajama sitting on a black motorcycle under a tree near the gate of the Dera, holding a pink envelope in his hand, police party overpowered him and his personal search was carried out and recovery of 1 kg. 50 grams of charas was effected from the petitioner, hence the FIR No. 214, dated 05.08.2022 under Section 20 of NDPS Act, was registered at PS Garhi, District Jind (Annexure P-1).

3. During the course of trial, petitioner moved an application under Order 91 Cr.P.C for preserving tower location record of mobile phones of the investigating officer, besides few other police officials, some private individuals along with location of petitioner himself. The prayer made in the said application was opposed by the prosecution and vide order dated 06.05.2023 learned Additional Sessions Judge, Jind dismissed the application.

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

5. 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 of preservation of tower location of the mobile phones of the police officers allegedly effecting the arrest of the petitioner, his brother and uncle. 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.

6. 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.

7. 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 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.

8. 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.

9. 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-6), 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. The perusal of the impugned order would reveal that although the petitioner had sought the preservation of the tower location of the mobile phone allegedly used by the police officials at the time of his arrest and also of the mobile phones belonging to the petitioner, his brother and uncle, but the learned trial Court proceeded to decide the application as if the preservation of call detail records of the said mobile phones had been sought and dealt with the application passing the impugned order in that manner, totally ignoring the prayer made by the petitioner in the application was only for the preserving of the tower locations thereof and had not sought preserving of call detail records.

10. 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-6). The perusal thereof would reveal that the petitioner had not sought any call detail record pertaining to the mobile

numbers uses by the police officials comprising the arresting party. 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. The perusal of the impugned order would reveal that instead of deciding the matter in issue regarding the preserving of the tower locations, the learned trial Court proceeded to discuss the law point pertaining to the call detail record which was never the matter in issue. 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. 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.

11. 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.”*

12. 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.”

13. 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 under Section 91 Cr.P.C 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.

14. As discussed above the learned trial Court while passing the impugned order failed to take note of aforesaid circumstances and proceeded to decide the application Annexure P-6 as if, the same had been moved for preservation of call detail records and discussed at length the danger to the security of the police officials which although is not relevant because in the application (Annexure P-6) the petitioner had sought only the preservation of the tower locations of the mobile phones mentioned in the application (Annexure P-6). There is not an iota of mention in the application regarding the requirement by the petitioner of any call detail records.



15. Therefore, in these circumstances it is observed that the impugned order suffers from infirmity and 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-6) 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.

16. Resultantly, the present petition is allowed and the order dated 06.05.2023 passed by learned Additional Sessions Judge, Jind, is hereby set aside and it is directed that electronic records as specified in the application regarding preservation of tower location (Annexure P-6) be preserved by the telecom companies.

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

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

31.07.2024

(SANJIV BERRY)
JUDGE

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