



**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-43288-2024 (O&M)
Date of Decision:-28.10.2024

Parminder Singh Bajwa ... Petitioner

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Jasraj Singh, Advocate for the petitioner.

GURVINDER SINGH GILL, J.

1. Petitioner – Parminder Singh Bajwa assails order dated 2.8.2024 (Annexure P-14) passed by learned Judge, Special Court, Ferozepur vide which two separate applications, both dated 26.7.2024 (Annexures P-11 & P-12) filed by the petitioner seeking issuance of directions to preserve call-detail record pertaining to the phone numbers mentioned therein, have been declined.
2. The matter arising out of FIR No.90, dated 25.7.2022 registered at Police Station Cantt. Ferozepur, District Ferozepur, under Sections 166, 167, 195, 471, 218, 120-B of Indian Penal Code, Sections 21, 59 of NDPS Act and Section 13 of Prevention of Corruption Act, 1988 (Annexure P-1). The said FIR, however, happens to be connected with two other FIRs i.e. FIR No.88 dated 20.7.2022 registered at Police Station Cantt., Ferozepur, under Section 21 of Narcotic Drugs and Psychotropic Substances Act (Annexure P-2) and FIR No.99, dated 1.8.2022 registered at Police Station Kulgari, District



Ferozepur, under Section 22 of NDPS Act (Annexure P-5). Therefore, the gists of all the three FIRs are herein referred to briefly:

“(1) The gist in respect of FIR No.88 dated 20.7.2022:

The FIR was lodged pursuant to receipt of secret information by ASI Angrej Singh, to the effect that one Kawaljeet Singh and Gautam Parik indulged in smuggling ‘heroin’ and that even on the given day they were proceeding in their car from Moga to Fazilka while carrying ‘heroin’ and drug money. Pursuant to lodging of the said FIR, a raid was conducted and the vehicle in which Kawaljeet Singh and Gautam Parik were travelling was intercepted and as per the police 1 kilogram of ‘heroin’ and drug money amounting to Rs.5 lakhs was recovered.

(Upon investigation and verification by Senior Superintendent of Police, Ferozepur, District Ferozepur, a cancellation report was presented in the said case before the Trial Court, which stands accepted vide order dated 12.7.2024)

(2) The gist in respect of FIR No.90 dated 25.7.2022:

The said FIR was lodged at the instance of Bhanawar Lal Parik, wherein it is alleged that his younger brother Ashok Kumar does work of money transactions and that on 20.7.2022 at about 05:30 P.M., he (Ashok) had sent his employee Gautam to Moga in a taxi from Ludhiana, which was driven by Kawaljeet Singh and that Gautam was to collect payment of Rs.86 lakhs from a party in Moga. However, since the mobile phone of Gautam remained switched off around 07:30-08:30 P.M., Ashok Kumar made inquiries and came to know that the police officials of District Ferozepur namely Inspector Parminder Singh



Bajwa, ASI Angrej Singh, Head Constable Joginder Singh and others had detained Gautam and Kawaljeet Singh. Ashok Kumar informed his brother Bhanawar Lal Parik that he strongly suspected that Inspector Parminder Singh Bajwa and his associates had misappropriated an amount of Rs.81 lakhs out of the payment of Rs.86 lakhs, which Gautam had collected on behalf of Ashok Kumar and that the police officials had lodged a false FIR for having committed offence punishable under NDPS Act against Gautam and taxi driver Kawaljeet Singh by projecting that 1 kilograms of 'heroin' and drug money amounting to Rs.5 lakhs had been recovered from them and had thus siphoned off Rs.81 lakhs.

(Pursuant to a disclosure statement stated to have been made by petitioner – Parminder Singh Bajwa, an amount of Rs.30 lakhs was got recovered from the petitioner. As per his disclosure statement, an amount of Rs.26 lakhs was shared amongst co-accused and that remaining amount of Rs.25 lakhs had already been spent by him.)

(3) The gist in respect of FIR No.99 dated 1.8.2022:

Pursuant to lodging of FIR No.90 dated 25.7.2022 against Inspector Parminder Singh Bajwa and others, search warrants were issued so as to effect search in the rented house of Parminder Singh Bajwa. After breaking open the lock in the presence of Executive Magistrate, the search of the house yielded the following recoveries:

- (i) 356 strips (each strip containing 10 tablets) i.e. total of 3560 tablets of 'Tramadol';
- (ii) 15 strips (each strip containing 10 tablets) i.e. total of 150 tablets of 'Tramadol';



- (iii) 10 empty cardboard boxes of intoxicant tablets i.e. 'Tramadol HCL SR';
- (iv) A black coloured polythene bag containing 1.369 kilograms of intoxicating powder recovered from iron almirah;
- (v) A white coloured polythene bag containing 1.895 kilograms of intoxicating powder recovered from the iron almirah; and
- (vi) A plastic bag containing 1.445 kilograms of intoxicating powder was recovered underneath a plastic box.

Consequently, the aforesaid FIR i.e. FIR No.99 dated 1.8.2022 was lodged for offence under Section 22 of NDPS Act.

3. The details of various applications filed earlier by the petitioner for preservation of call-detail record in the present case (FIR No.90 dated 25.7.2022) also need to be referred to, which are stated herein-under chronologically:

“(i) **12.7.2023** : An application dated 12.7.2023 (Annexure P-17) was initially moved by the petitioner seeking preservation of call-detail record for the period 15.7.2022 to 15.8.2022 in respect of 15 police officials including officers of the rank of Senior Superintendent of Police, Deputy Superintendent of Police, Inspector, Sub Inspector, Assistant Sub Inspector, Head Constable, which was duly allowed by learned Judge, Special Court vide its order dated 15.7.2023 (Annexure P-18) and the call-



detail record in respect of 15 police officials was ordered to be kept preserved.

(ii) **5.3.2024 :** Another application dated 5.3.2024 (Annexure P-7) was filed by petitioner – Parminder Singh Bajwa seeking issuance of a direction to the police officers/telecom companies concerned to produce and preserve call-detail record for different periods of time in respect of another 13 phone numbers. The said application was dismissed by learned Judge, Special Court, vide its order dated 10.4.2024 (Annexure P-9).

4. The petitioner assailed the said order dated 10.4.2024 (Annexure P-9) by way of filing CRM-M-34475-2024 in this Court, which was disposed of vide order dated 23.7.2024 (Annexure P-10) granting liberty to the petitioner to file separate applications before the Trial Court for preservation of call-detail record i.e. one application for preserving call-detail record prior to arrest of the petitioner and another application for preserving call-detail record pertaining to post arrest period.
5. Pursuant to the aforesaid order dated 23.7.2024 (Annexure P-10), the petitioner filed two separate applications both dated 26.7.2024 (Annexures P-11 & P-12), which have been dismissed by a common order dated 2.8.2024 (Annexure P-14) passed by learned Judge, Special Court, which is impugned by way of filing the instant petition.
6. Learned counsel for the petitioner, while assailing the impugned order, vehemently argued that the petitioner has falsely been implicated in the



present case i.e. in FIR No.90, dated 25.7.2022 pursuant to a deep rooted conspiracy hatched by several of his colleagues and that the call-detail record would go a long way to establish link between the police officials and drug 'mafia' particularly Ashok Joshi @ Ashok Parik. Learned counsel submitted that on account of declining of his application by the Trial Court, the petitioner would stand seriously prejudiced in defending his case. Learned counsel for the petitioner submitted that Hon'ble the Supreme Court in its judgment reported as 2015(3) R.C.R. (Criminal) 340 titled Suresh Kumar Vs. Union of India, while dealing with a matter pertaining to preservation of call-detail record in a case pertaining to offence under NDPS Act, held that an accused has every right to summon the call-detail record. Learned counsel for the petitioner further submitted the aforesaid judgment has been followed by several coordinate Benches of this Court and that a liberal view has been taken in such matters as it is the cardinal principle of criminal jurisprudence that an accused deserves to be given proper and ample opportunity to defend himself.

7. This Court has considered the aforesaid submissions and has also gone through the judgment of Hon'ble the Apex Court pressed into service by learned counsel for the petitioner. The relevant extract from the said judgment is reproduced hereinunder:

“.....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. While there can be no denying the fact that keeping in view the cardinal principle of criminal jurisprudence that an accused has to be afforded proper and ample opportunity to defend himself, the said principle cannot be interpreted to vest the accused with wide sweeping rights to seek roving inquiry to be made for collecting evidence on his behalf or to encroach into privacy of others unnecessarily. The right of privacy as duly recognized by Hon'ble the Supreme Court in a case reported as (2017) 10 SCC 1 titled Justice K.S. Puttaswamy and another Vs. Union of India, has to be kept in mind. The same, however, has to be balanced with a larger societal interest and may be allowed to be compromised to some extent only in genuine cases for establishing a valid defence of an accused and not on mere asking of the accused.
9. Providing call-detail record of police officials would even amount to exposing their sources of information (secret informers), which could hamper investigation in various cases as the police has to develop and depend upon secret informers for detecting and solving cases. As such, an accused would be required to atleast *prima facie* establish the genuineness of his defence plea while seeking any direction for preservation or production of call-detail record of another individual. In Suresh Kumar's case (supra), it was the specific case of the accused that the police officials were not present at the location of the alleged arrest of the accused and in which case Hon'ble the Supreme Court had directed that a limited information to be requisitioned from the concerned telecom companies inasmuch as the call-detail record in respect of a very short period of 4 hours was directed to be furnished and that too by blackening out the details of telephone numbers from where any call



had been received or any call had been made. In other words, it was only the tower location record in respect of the phone numbers concerned was directed to be furnished i.e. in respect of 3 phone numbers.

10. In the present case, it is noticed that despite the earlier application pertaining to preservation of call-detail record of 15 police officials, which was allowed vide order dated 15.7.2023 (Annexure P-18), the petitioner subsequently moved fresh applications both dated 26.7.2024 (Annexures P-11 & P-12) with regard to preserving of call-detail record pertaining to 13 (5+8) phone numbers. A perusal of the said applications, however, shows that vague averments have been made therein without disclosing the specific purpose for which the same is required. The relevant extract from application dated 26.7.2023 (Annexure P-11) is reproduced hereinunder:

“Sir first of all it is a false case and accused is in the custody since the inception and their arrest and already the police cancelled the correct version of FIR No.88 and the accused has to prove their defense for which the purpose of just fair trial and this record is very must essential, to be preserved and produced before this Hon’ble court for the proper adjudication, fair trial and justice to accused.”

11. Similar averments have been made in the other application dated 26.7.2023 (Annexure P-12).
12. In case, the Courts permit preservation of call-detail record in respect of dozens of police officers on the basis of such vague averments, then there would hardly be any case where such applications would not be allowed and the entire call-detail record of the police officials would be thrown in public domain unnecessarily.



13. Although learned counsel for the petitioner tried to justify the vague averments on the ground that in case the accused discloses purpose for preserving the call-detail record in the application, then the entire defence of the petitioner would stand disclosed, but generalising it as a principle would be hazardous and there will be no end to trial if accused was to be allowed to summon witnesses in his defence on the mere asking. Those interested in delaying conclusion of trial could very conveniently repeatedly furnish long lists of witnesses to be summoned. In the present case, the evidence sought to be preserved to be produced subsequently is the “Call Detail Record” in respect of 13 phone numbers. Earlier his application with respect to another 15 phone numbers already stood allowed. The call-detail record broadly contains the following two types of information:

- (i) The details of the calls made from the phone number of the subscriber and also the phone number to whom such call is made. The phone numbers of the calls received by such subscriber alongwith the time and duration of such calls.
 - (ii) The location of phone when any such calls are made or received.
14. Generally speaking the details of the phone numbers from which any call is made or received may be called in question, wherein the mere factum of making any call by the accused or police official, is a material fact. It, however, needs to be borne in mind that the call-detail record does not contain any recording of conversation that had taken place between the two subscribers. In other words, it is only if the mere factum of making or receiving a call advances the defence of accused that such “call detail” may be relevant. The information as regards tower location of any subscriber



assumes importance when the ‘presence’ or ‘absence’ of any person at a particular spot is required to be proved or is required to be ruled out. Since the applicant in his application has not furnished any such basic information i.e. purpose for which the call-detail record is required to be preserved, the Courts cannot initiate a roving inquiry on behalf of the accused to collect information as to gather any such information could furnish any evidence for the accused.

15. The plea of petitioner that in case he discloses purpose for which the call-detail record is needed, his defence will be disclosed, needs to be turned down for an additional reason that such apprehension is misconceived inasmuch as the moment call details of a particular person are sought, it gets obvious that the accused is either disputing the presence of such person/official at the spot or the factum of making or receiving of call during the period in question. In other words, such person whose call details are sought would easily get alerted. As already discussed above, there is absolute lack of justification for preserving records of police officials by the dozens. Such wide sweeping requests, without proper rationale do not merit acceptance.
16. In view of the discussion made above, this Court does not find any infirmity in the impugned order and the same is hereby upheld. Finding no merit in the instant petition, the same is hereby dismissed.

28.10.2024
Pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No