

**CRM-M-54712-2024**

116

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-54712-2024****Date of Decision : 12.11.2024**

Gurcharan Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGHPresent: Mr. Vaibhav Sehgal, Advocate
for the petitioner

Mr. Vinay Kumar Malhotra, DAG Punjab

KIRTI SINGH, J.(Oral)

This petition has been filed under Section 528 of BNSS, 2023 for quashing the impugned order dated 27.09.2024 passed by the learned trial Court in CRM No. 164 dated 23.04.2024 arising out of FIR No.119 dated 29.08.2023 under Sections 304-A, 427, 279 IPC registered at Police Station Goraya, District Jalandhar (Rural).

2. The brief facts of the present case are that allegedly the deceased persons were riding Activa scooter and a car, which was being driven by the petitioner, hit the scooter causing multiple injuries to the deceased persons who succumbed to the injuries.

2. Learned counsel for the petitioner submits that the petitioner has been falsely implicated and the complainant/first informant (respondent No.3) is a planted witness, who was not even present at the spot when the petitioner made call from his phone No.70152-17031 to the PCR to inform them about the accident



CRM-M-54712-2024

2

and at 2.51 p.m. six calls were made by the petitioner to PCR regarding the accident. He has placed reliance upon the judgment passed by Hon'ble Supreme Court rendered in the case of "**Suresh CRR-1367-2024 - 2 - 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 Judicial Magistrate 1st Class, Phillaur 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

**CRM-M-54712-2024****4**

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 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 present petition is allowed and the impugned order dated 27.09.2024 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

12.11.2024

reena

**(KIRTI SINGH)
JUDGE**