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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 5120/2022 & CRL.M.A. 20455/2022**

CENTRAL BUREAU OF INVESTIGATION

.....Petitioner

Through: Mr. Anupam S Sharrma, SPP for CBI
with Ms. Harpreet Kalsi, Mr.
Prakarsh Airan, Mr. Abhishek Batra,
Mr. Ripudaman Sharma, Mr. Vashisht
Rao, Mr. Syamantak Modgil,
Advocates.

versus

JALAJ SHRIVASTAVA

.....Respondent

Through: Mr. Naveen Kumar, Mr. Tushar
Agarwal & Mr. Abhishek Mahal,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

23.07.2024

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1. The CBI has approached this Court challenging the Order dated 29.04.2022 passed by the learned Special Judge, PC Act, Rouse Avenue Courts directing preservation of the Call Detail Records (CDRs) and location of mobile phones of all members of the search team of the CBI.
2. The fact emanates from an application filed under Section 91 of the CrPC wherein the Respondent/accused asked for the following documents:-

“4. That the copies of statement and documents are supplied to the present applicant, however the said documents and statements are deficient and not supplied under the following headings as under:

A) All the statements recorded under Section 161/164



or statement recorded in the case diary, by the CBI during investigation he also supplied.

B) All the documents submitted or seized or retained by the all during investigation be also supplied.

C) All the documents and statements, which were confronted with the accused persons during investigation be also supplied.

D) All the seizure memos/panchnamas whereby documents were seized be also supplied.

E) Copy of Seizure Register be also supplied through which documents were seized during investigation.

F) Copy of all the notices as issued either under Sections 160, 41A and 91 CR.P.C, by CBI in the present ease, be supplied to applicant accused.

G) Copy of the expert opinions with complete report be also supplied.

H) All the statements and documents, whether it is relied upon or unrelid he also supplied.

I) Copy of valuable properly register, if any, pertain to present case be also supplied.

J) Copies of all the documents of aforesaid RC file as maintained by CBI as per crime manual he also supplied.

K) That copy of previous approval under section 17A of PC Act as accorded by competent authority, be also supplied to applicant.

L) E-copies of Articles as mentioned in the Annexure-



III as annexed with the charge sheet, be also supplied to the applicant.

M) That the second page of the statement of Mrs Sonia Sarong has not been supplied, hence the same is deficient and be supplied to applicant.

N) That page no 41-43, 47-49, 55-57, 70-72 as mentioned in the list of the documents as annexed with the charge shed are not legible, hence the legible copy of the same be supplied to the applicant.

O) That the Government guidelines dated 52.2014 in reference to procuring CDRs be supplied to the applicant.

P) That all the recordings of calls of the phone numbers which no intercepted by the C.B.I. as mentioned in the chargesheet. However, C.B.I. has provided only 7 recordings but failed to provide other recordings which are material to prove the innocence of the accused person therefore copy of all the recordings be supplied to the applicant.

Q) That there is apprehension that CBI has tampered with the evidence and not collected the CDRs, CAF and location details of the entire members of the search teams including IO.

R) That therefore in the interest of fair trial, it is necessary to preserve the CDRs, and location details of the mobile phones of all the member of search teams who conducted following searches as under:

i. At the residence of applicant at Quarter Type —IV NO. 6, 182 Battalion, BSF, Koirengei, Imphal, Manipur vide dated 28/8/2020.



S) That it is pertinent to mention that the aforesaid documents are material evidence to prove the innocence of applicant accused.

T) That after registration of aforesaid FIR, CBI has intentionally delayed the investigation so that aforesaid material evidence of sterling quality would not been placed on record for judicial scrutiny, as the nodal officer of the respective mobile operator companies would not provided the aforesaid details beyond the period of two years.

U) That in the interest of justice and for the just decision of the case, it is desirable to preserve the aforesaid CDRs and location details of all the members of aforesaid search teams in this case vide 28/08/2020 from the nodal officer of the mobile operator companies. ”

3. During the course of the arguments, the Respondent restricted his claim to item mentioned at Serial No. R. Serial No. R, CDR and location details of the mobile phones of the search team. The learned Trial Court by the impugned order herein allowed the application by stating the since the accused is disputing that any search was conducted at his residence, the Trial Court directed the CDR, location of all the members of the search team to be preserved.

4. Learned SPP for the CBI draws the attention of this Court to the seizure memo. A perusal of the seizure memo indicates that the seizure memo cum search warrant was issued by a Special Judge under the PC Act. During the search, certain articles were seized and the search memo has been signed by 11 witnesses which includes a Constable from BSF where the Respondent herein, i.e., the accused was working.



5. Section 91 of the CrPC reads 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.”

6. A perusal of Section 91 of the CrPC shows that there has to be an application of mind by the Trial Court as to why is it desirable and necessary to preserve the CDRs. In the present case, it has to be stated as to why it is necessary to preserve the CDRs because the CDRs would also contain sensitive information of the officials of the specialized investigating agency



regarding other cases also. The impugned order does not indicate as to why is it desirable and necessary to preserve the CDRs especially in view of the material placed before it. The mere say so of the accused alone cannot be a reason for the Trial Court to pass such direction

7. In view of the above, without giving any observations on the merits of the case, this Court is inclined to set aside the order impugned herein and remand the matter back to the Trial Court for the Trial Court to give reasons as to why it is necessary and desirable to preserve the CDRs and location of the search team.

8. With these observations, the petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JULY 23, 2024

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