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

+ **W.P.(CRL) 3439/2024 & CRL.M.A. 33065/2024**

RUKSANA

.....Petitioner

Through: Mr. Chander Prakash, Mr. Pawan
Kumar & Mr. Gaurav, Advocates.

versus

STATE GOVT OF NCT OF DELHI AND ANR.Respondent

Through: Mr. Rupali Bandopadhyay, ASC with
Mr. Abhijeet, Advocate.
Inspector Chetan Singh Meena, PS
Khyala & IO/HC Krishan.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

05.11.2024

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1. The instant petition under Articles 226 and 227 of the Constitution of India and Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter as the “BNSS”) has been filed on behalf of the petitioner challenging the order dated 5th October, 2024 (hereinafter as the “impugned order”) passed by the learned Judicial Magistrate First Class-04, District West, Tis Hazari Court, Delhi (hereinafter as the “Trial Court”), whereby the application under Sections 94/109 of the BNSS (earlier Sections 91/104 of the Code of Criminal Procedure, 1973) in FIR No. 564/24 under Sections 25/53/59 of Arms Act, 1959 was dismissed.

2. Learned counsel appearing on behalf of the petitioner submitted that the impugned order was passed by the learned Trial Court without application of judicial mind and without proper appreciation of the facts and



settled position of law.

3. It is submitted that the petitioner had filed an application under Sections 94/109 of BNSS before the learned Trial Court for the preservation of the CCTV footage which was erroneously dismissed by the learned Trial Court observing that the same cannot be entertained at the current stage of the trial.

4. It is submitted that the petitioner's husband is falsely implicated by the police officials of the Police Station – Khayla in the case arising out of FIR bearing no. 564/24 under Sections 25/53/59 of the Arms Act, 1959.

5. It is submitted that the petitioner's husband was mercilessly beaten up by the concerned police officials by using excessive force while he was in their custody and the injuries on his body were fresh and visible as per the Medical Legal Report prepared by the concerned doctor. Moreover, since the said incident is captured in the CCTV footage of the concerned police station, the same is to be preserved by the Investigating Officer.

6. It is further submitted that the conduct of the concerned police officials is violative of Article 21 of the Constitution of India. In support of the said argument, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of ***Paramvir Singh Saini Vs. Baljit Singh***, AIR 2021 SC 64, particularly paragraph nos. 17 and 18 of the judgment, wherein the Hon'ble Court directed that the CCTV cameras are to be installed in all police stations, which are required to be equipped with night vision and necessarily consist of audio as well as video footage.

7. It is submitted that the directions of the Hon'ble Supreme Court in the aforesaid case are intended to keep a check on the usage of excessive force



and torture towards the accused in police station.

8. In light of the foregoing submissions, it is prayed that the CCTV footage of the Police Station – Khayla may be preserved and the impugned order passed by the learned Trial Court in dismissing the application under Sections 94/109 of the BNSS may be set aside.

9. *Per Contra*, learned ASC appearing on behalf of the State submitted that there is no illegality or error committed by the learned Trial Court while passing the impugned order as it was passed after considering the scope of Section 94 of the BNSS i.e., Section 91 of the Code of Criminal Procedure, 1973 (hereinafter as the “Code”), law laid down by the Hon’ble Supreme Court and the facts of the present case.

10. It is submitted that Section 94 of the BNSS warrants that any Court ‘can’ and ‘may’ adjudicate an application under the said provision only when there arises a requirement or desirability of such document at the stage of investigation, inquiry, trial, or other proceedings. However, the Court cannot adjudicate on the application filed by the petitioner seeking preservation of CCTV footage as it is not the right stage of the proceedings. For adjudication of such application, the necessity or desirability of such document at that particular stage of the proceedings is required to be tested by the Court concerned.

11. In support of her arguments, learned ASC for the State relied upon the judgment of the Hon’ble Supreme Court in the case of ***State of Orissa Vs. Debendra Nath Padhi*, (2005) 1 SCC 568**, specifically paragraph nos. 25 and 26. It further relied on a judgment of the Co-ordinate Bench of this Court, after considering the aforesaid judgment, held that the application under Section 91 of the Code i.e., Section 94 of the BNSS shall be



adjudicated at the right stage.

12. It is submitted that in the instant case, the investigation is still underway and therefore, the learned Trial Court was right in observing that the application under Section 94 read with Section 528 of the BNSS cannot be allowed as it is not the right stage of the proceedings.

13. Therefore, in view of the aforesaid submissions, it is prayed that the instant petition being devoid of any merits is liable to be dismissed.

14. Heard learned counsel for the parties and perused the record.

15. At this juncture, it is imperative to note that the powers envisaged under Article 226 of the Constitution as well as Section 528 of the BNSS (Section 482 of the Code) are wide in nature and hence, the same must be used sparingly, carefully and in exigent cases. When Article 226 of the Constitution is invoked, an appropriate writ can be issued to any person or authority and when there is a violation of fundamental rights or for any other purpose.

16. The Hon'ble Supreme Court in the case of ***Pepsi Foods Ltd. vs. Special Judicial Magistrate, (1998) 5 SCC 749***, also observed that the power conferred on the High Court under Articles 226/227 of the Constitution and under Section 482 of the Code have no limits, however, with more power, more due care and caution is to be exercised while invoking these powers.

17. Before going into the contents and reasoning of the impugned order, this Court finds it pertinent to delve into the scope of Section 94 of the BNSS, which deals with the summoning of production of documents or any other thing. The contents of the said provision confers power upon a Court to summon any person to produce any document, or such thing, who is in



power or possession of such document, after considering the relevancy and desirability of such document at the stage of investigation, inquiry, trial or other proceedings. It is also to be noted that the document mentioned in the said provision is inclusive of electronic record as well.

18. Upon bare reading of the said provision, it is observed that for invocation of Section 94 of the BNSS, the Courts are required to testify whether the document in question is necessary or desirable at the existing stage of the proceedings or investigation.

19. While passing the impugned order, the learned Trial Court relied upon the settled position of law and observed that the application under Section 94 of the BNSS cannot be entertained at the stage of investigation, especially when the investigation is at a nascent stage.

20. Adverting to the instant case, an application under Section 94 of the BNSS has been filed by the petitioner before the learned Trial Court seeking the preservation of the CCTV footage of the Police Station – Khayla, wherein it was contented that the petitioner's husband was beaten up by the concerned police officials which was allegedly captured by the CCTV cameras.

21. It is the contention of the learned ASC for the State that the investigation in the instant case is still going on. However, the alleged contents of the CCTV footage *prima facie* appear to be determining the acquittal or conviction of the petitioner, thereby forming relevancy at the time of the defence. Moreover, if the application for preservation of the CCTV footage is allowed at the stage of investigation, which is still ongoing, it will defeat the purpose of the investigation as the gravity of the document in question is one which determines or aids the Court in attaining



finality of the matter and hence, the same cannot be relevant or desirable at this stage of investigation.

22. Taking into consideration the stage of the proceedings and the document in question, it is observed that the contents of the CCTV footage, as alleged by the petitioner, does not necessitate to be brought forward as the investigation is still underway and the relevancy of the same only arises at the stage of defence.

23. Moreover, at the stage of framing of the charge, the Courts can only evaluate the material on record. However, in the present case, the investigation is still underway and the charges are not yet framed. The stage of proceedings is premature and therefore, does not necessitate the production or preservation of CCTV footage as the requirement of the same only arises at the stage of defence due to its relevancy in attaining the finality of the matter.

24. In light of the same, this Court relies on ***Debendra Nath Padhi (Supra)***, wherein, the Hon'ble Supreme Court observed that as far as the accused is concerned, the necessity or desirability of a document under Section 91 of the Code i.e., Section 94 of the BNSS ordinarily does not arise before the stage of defence. The relevant portion of the same is as follows –

“25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is “necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code”. The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage



of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.”

25. Moreover, upon perusal of the impugned order, the learned Trial Court has rightly relied on the case of **Ashok Chawla v. Ram Chander Garvan, Inspector CBI, 2011 SCC OnLine Del 1074**, wherein the Coordinate Bench of this court reiterated that the entitlement of the accused in terms of Section 91 of the Code (Section 94 of the BNSS) does not usually arise before the stage of defence.

26. Taking in view the entirety of the matter as well as the law laid down by the aforesaid case-laws, it is observed that the investigation is at a nascent stage and the application filed by the petitioner under Section 94 of



the BNSS is not maintainable at this stage of investigation, which was also recorded by the learned Trial Court in its impugned order.

27. Therefore, this Court does not find any error in the impugned order passed by the learned Trial Court pertaining to the dismissal of the application under Section 94 of the BNSS and this Court is of the considered view that the instant case is not a fit case to exercise its powers under Article 226 of the Constitution or Section 528 of the BNSS (Section 482 of the Code) and in view of the same, this Court does not find any merit in allowing the instant petition.

28. Accordingly, the instant petition is dismissed along with pending applications, if any.

CHANDRA DHARI SINGH, J

NOVEMBER 5, 2024
NA/mk

Click here to check corrigendum, if any