



CRR-1902-2024(O&M)

1

**271 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRR-1902-2024(O&M)

Date of decision: 27.01.2025

Vikramjit Singh

...Petitioner

Versus

Satte of U.T. Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRARPresent: - Mr. Abhay Gupta, Advocate
for the petitioner.

Mr. Abhinav Gupta, Addl. P.P., U.T. Chandigarh.

Harpreet Singh Brar, J. (Oral)

1. The present revision petition is preferred against the order dated 03.06.2024 passed by the learned Special Court, Chandigarh whereby the mobile tower location and call detail records of four out of eight police officials were directed to be preserved, in the case stemming from FIR No. 04 dated 18.05.2024 registered under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'NDPS Act') at Police Station Anti Narcotics Task Force (ANTF) Chandigarh.

2. Briefly, the facts, as alleged, are that the police party on patrolling duty near Sector 43, Chandigarh, received secret information that the petitioner and one Avneet Kaur are coming in a car make Toyota Glanza bearing No.PB-65-AB-0880 in order to supply heroin in Chandigarh and the tricity area. Acting on the said information, the petitioner and Avneet Kaur were apprehended. Subsequently, the spot was videographed and their search as well as that of the car was conducted by DSP Udaypal Singh, who arrived at about 1:35 AM.

Subsequently, 1.012 kg of heroin was recovered from the car.



3. The petitioner had filed an application seeking preservation of mobile tower location and call detail records of a police official namely Ravinder Kumar, which was dismissed by the learned trial Court vide order dated 25.04.2024(Annexure P-2). Thereafter, the petitioner filed another application for preserving mobile tower location and call detail records of eight police officials along with their contact details. The same was partially allowed vide impugned order dated 03.06.2024 and mobile tower location and call detail records of four of the police officials was ordered to be preserved.

4. Learned counsel for the petitioner *inter alia* contends that the story of the prosecution is that the petitioner was arrested from the area of Sector 42, Chandigarh, however, he was brought in captivity to the spot of recovery from Kharar toll plaza by the police officials. Learned Court below has failed to appreciate that it is necessary that mobile tower location and call detail records of all eight police officials be preserved for the petitioner to appropriately defend his case. Reliance in this regard is placed on the judgment rendered by the Hon'ble Supreme Court in ***Suresh Kumar vs. Union of India 2015(3) R.C.R. (criminal) 340*** and this Court in ***Amit Vasudev vs. State of Punjab 2018(4) Law Herald 3383 and Satnam @Sattu vs. State of Haryana 2024(1) Law Herald 259*** and ***Chhinder Pal Singh vs. State of Haryana CRR-1294-2024***.

5. *Per contra* learned State counsel submits that the petitioner is merely trying to delay the trial. The petitioner has no right to claim to this information. Moreover, the same would amount to violation of privacy of the concerned police officials.

6. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the petitioner had requested



28.03.2024 to 12:00 AM of 29.03.2024, of eight police officials to be preserved.

The learned Court below had allowed the same qua four of the police officials namely Satyawan, Anil Kumar, Jasveer Singh and Sumer Singh as the Investigating Officer- SI Jasbir Singh had submitted that Jasveer (Bobby), Rinku, Satinder Kumar and Ravinder were not a part of the police team involved.

7. For proper adjudication of the issue, it would be apt to reproduce Section 91 Cr.P.C, which is as under:

Section 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.

A two Judge Bench of the Hon'ble Supreme Court in ***Suresh Kumar Vs. Union of India 2015 (3) R.C.R (Criminal) 340*** has considered the necessity and desirability of preserving the call detail records and tower location at the behest of the accused under the NDPS Act and speaking through Justice T.S. Thakur, has held as under:

“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. 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.

9. 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 by ensuring that relevant evidence is made available to the Court for making 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.

10. 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. Accordingly, the present petition is allowed and the impugned order dated 03.06.2024 passed by the learned Special Court, Chandigarh is hereby set aside to the extent that instead of four police officials, mobile tower location and call details records of all eight police officials is ordered to be preserved.

11. Pending miscellaneous application(s), if any, shall also stand disposed of.

27.01.2025

Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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