



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

% **Date of order: 4<sup>th</sup> March, 2025.**

+ **CRL.REV.P. 1194/2023 & CRL.M.A. 30434/2023**

**CENTRAL BUREAU OF INVESTIGATION**

.....Petitioner

Through: Mr. Ravi Sharma, SPP with Mr. Swapnil Choudhary, Mr. Ishann Bhardwaj, Mr. Sagar and Ms. Madhulika Raj Sharma, Advocates.

versus

**NEERAJ KUMAR**

.....Respondent

Through: Mr. Tushar Agarwal, Mr. Naveen Kumar, Mr. Arun Kumar, Mr. Abhishek Mahal and Ms. Tripti Roy, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

**ORDER**

**CHANDRA DHARI SINGH, J (Oral)**

1. The present petition has been filed under Section 397 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") [now Section 438 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS")], challenging the order dated 12<sup>th</sup> July, 2023 (hereinafter "impugned order") passed by the learned Special Judge (PC Act), Rouse Avenue Courts, New Delhi (hereinafter "Trial Court"), whereby, the learned Trial Court directed the preservation of Call Detail Records (hereinafter "CDR") and location data of CBI officials and independent witnesses in connection with FIR No. RC-DAI-2022-A-0032,



registered under Section 120B of the Indian Penal Code, 1860 (hereinafter “IPC) and Section 7 of the Prevention of Corruption Act, 1988 (hereinafter “PC Act”).

2. The case arose out of a complaint filed by the complainant, Ashok Kumar before the Superintendent of Police, CBI, ACB, New Delhi, alleging that the respondent Neeraj Kumar (Junior Engineer, MCD) and co-accused Sukhdev (Beldar, MCD) demanded a bribe of Rs. 7,000/- to allow him to store construction materials outside his shop.

3. Based on the complaint, the CBI, which is the petitioner herein, conducted verification proceedings on 2<sup>nd</sup> June, 2022 and 6<sup>th</sup> June, 2022, following which a trap operation was conducted on 6<sup>th</sup> June, 2022, leading to the arrest of Sukhdev, who was caught red-handed accepting the bribe on behalf of the respondent allegedly. According to the chargesheet, the respondent was arrested on 6<sup>th</sup> June, 2022 and was released on bail on 23<sup>rd</sup> June, 2022.

4. During the course of the trial proceedings, the respondent filed an application under Section 207 of the CrPC read with Section 91 of the CrPC, seeking copies of unrelayed statements and documents arguing that access to such documents cannot be denied merely because the prosecution deems them irrelevant. The respondent also sought preservation of CDRs and location data of CBI officers and independent witnesses, contending that such records could be crucial for his defence.

5. The learned Trial Court allowed the said application vide order dated 12<sup>th</sup> July, 2023, directing the preservation of CDRs and location data for



specific dates related to the verification and trap proceedings on the ground that it was necessary to safeguard accused person's right to a fair trial ensuring that the relevant records remain available if required at the appropriate stage of proceedings.

6. Aggrieved by the impugned order, the petitioner has preferred the present revision petition seeking setting aside of the same.

7. Learned SPP appearing on behalf of the petitioner submitted that the primary objective of a trial is to uncover the truth and the Court cannot aid the accused in formulating a speculative defence as it would violate the principles of a fair trial and due process. It is further submitted that while the prosecution bears the burden of proof, the accused is expected to either present a truthful version or remain silent rather than fabricate a defence after reviewing prosecution documents.

8. It is submitted that the respondent has neither raised a specific defence in any application nor identified any particular documents in the possession of the petitioner that would support his case. It is further submitted that since the stage of arguments on charge has not yet reached, such a request is premature and legally untenable.

9. It is submitted that the respondent's right to a fair trial was not infringed, as all documents relied upon by the petitioner were duly provided. It is further submitted that in cases where there is a conflict between fundamental rights under Article 21 of the Constitution such as the accused persons' right to a fair trial, the privacy rights of the officials, and the



petitioner's right to investigate, the Court must prioritize the broader public interest.

10. It is submitted that the present application is merely an attempt towards fishing and roving inquiry, lacking any specific allegation, and the accused is merely attempting to identify loopholes in the investigation despite there being no claim of any overt act against him.

11. It is submitted that as per the accused person's own statements recorded during the investigation, there is no claim that the trap team members were absent at the time of the incident. It is further submitted that there is also no allegation that the said officials falsely implicated the accused. It is also submitted that the request for preserving the CDRs is, therefore, unfounded and merely a vague attempt to invoke the principle of a fair trial without any substantive basis.

12. It is submitted that the mobile phones, whose CDRs are sought to be preserved, are irrelevant to the investigation and have no connection to the subject matter. It is further submitted that none of the requested CDRs would establish that the prosecution's case is improbable or unworthy of trial.

13. It is submitted that the impugned order directed the preservation of CDRs without establishing a clear connection between the requested mobile numbers and their relevance to the case. It is further submitted that there is no specific allegation questioning the presence of the trap team or independent witness, nor any claim that mobile phone records would alter the prosecution's case.



14. It is submitted that the members of the trap team belong to a premier investigative agency tasked with handling matters of national interest, serious economic offences and organized crime often under the directions of constitutional courts. It is further submitted that given their roles, they are regularly engaged in investigations and maintain contact with secret informers. It is also submitted that preserving the CDRs of their mobile phones could compromise their personal safety, jeopardize ongoing investigations, and risk exposing confidential sources ultimately affecting the agency's ability to function effectively.

15. It is submitted that mobile numbers and call detail records of CBI officials and independent witnesses constitute personal information and disclosing them to the respondent would violate their fundamental right to privacy. It is further submitted that granting the accused access to CDRs of CBI officials could lead to the leakage of sensitive information related to other ongoing investigations, jeopardizing national interest and the agency's operational integrity.

16. It is submitted that at no stage has the respondent alleged that the prosecution against him is *mala fide*, nor has he claimed that any electronic evidence in the form of CDRs would disprove the prosecution's case. It is further submitted that the respondent cannot assert a right over the records of the investigating officer's activities, as the officer is engaged in multiple investigations beyond this case.



17. In view of the foregoing submissions, it is prayed that the instant petition may be allowed and the order dated 12<sup>th</sup> July, 2023 passed by the learned Trial Court be set aside.

18. *Per Contra*, the learned counsel for the respondent vehemently opposed the present petition submitting to the effect that the same is liable to be dismissed being devoid of any merit.

19. It is submitted that the present petition is liable to be dismissed *in limine*, as the impugned order is interlocutory in nature. It is further submitted that under Section 397(2) of the CrPC, the powers of revision cannot be exercised in relation to an interlocutory order passed during any appeal, inquiry, trial or other proceedings, making the present revision petition not maintainable in law. In this regard, the learned counsel for the respondent relied on the principles laid down by the Hon'ble Supreme Court in ***Sethuraman v. Rajamanickram*, (2009) 5 SCC 153**, wherein, it was held that an order rejecting an application under Section 91 or Section 311 of the CrPC is interlocutory in nature, and revision against such an order is barred under Section 397(2) of the CrPC. Furthermore, in ***V.C. Shukla v. State through CBI*, 1980 Supp SCC 92**, the Hon'ble Supreme Court has clarified that an interlocutory order is one that does not finally dispose of the rights of the parties but only decides a procedural matter essential to the progress of the case. It is submitted that applying this principle, the impugned order is interlocutory in nature and not subject to revision.

20. It is submitted that the respondent only sought the preservation of CDRs and Location Charts of the verification and trap team, along with



certain independent witnesses, to prevent the automatic deletion of such data by telecom companies after a certain period. It is further submitted that the respondent has expressly stated that these records will not be used at the stage of charge and will only be sought at the stage of evidence, if required.

21. It is submitted that the accused is presumed innocent until proven guilty and cannot be denied any opportunity to establish his defence. It is also submitted that the failure to preserve the CDRs and location charts of the verification and trap team, along with certain independent witnesses as mentioned in the application, would cause serious prejudice to the respondent.

22. It is submitted that in a similar petition by the CBI before this Court in ***CBI v. Saurav Sharma, Crl. M.C. 2774/2021***, this Court directed the preservation of CDRs and observed that while the necessity of such records for a just decision had not been determined, their preservation was crucial, as telecom companies retain such records only for a limited period. It is also submitted that applying the same principle, the preservation of CDRs and Location Charts in the present case is justified to safeguard any potentially relevant evidence and ensure a fair trial.

23. It is submitted that the petitioner's vague assertions seek to deprive the respondent of his constitutional right to a fair trial under the pretext of fishing and roving inquiry. It is also submitted that in ***Suresh Kalmadi v. CBI, 2015 SCC OnLine Del 9639***, this Court held that a criminal trial aims to uncover the truth, not merely convict, and an accused cannot be denied access to relevant documents for his defence. It is further submitted that the



respondent's request for CDR preservation, hence, is justified to ensure access to potential evidence and uphold his right to a fair trial.

24. It is submitted that the petitioner is mistaken in claiming that the mobile numbers in question are unrelated to the present proceedings as they were integral to the search and recovery process which forms the basis of the case. It is also submitted that it is contradictory that while the petitioner relies entirely on mobile phones, call recordings and locations to build its case, it seeks to deny the respondent the same data for a fair trial which goes against equity and due process.

25. It is submitted that the impugned order expressly directed the preservation of CDRs and location charts of individuals mentioned in the respondent's application. It is also submitted that it is improbable that the raiding party operated without mobile phones, verifying the subscriber and end user requires a court order, not independent action by the respondent. It is further submitted that in *Om Prakash v. State*, 2014 SCC OnLine Del 3213, this Court held that in the absence of public witnesses, CDRs of the raiding team could serve as crucial evidence to verify their presence, and failure to produce such records could prejudice the defence and raise doubts about the prosecution's case.

26. It is submitted that the impugned order only directed the preservation of CDRs and location charts and nowhere mandates their immediate disclosure to the respondent. It is further submitted that preservation of these records does not interfere with the investigation, as the respondent is not seeking access at this stage but merely ensuring their availability for future



use if required. It is also submitted that the respondent never sought CDRs or location data of secret informers and the impugned order explicitly excludes them.

27. It is submitted that the impugned order states that the respondent must seek Court's approval during trial if he wishes to summon these records and only directs the preservation of the location chart and CDRs of the trap and verification team members, IO and certain witnesses, none of whom are secret identities. It is also submitted that this does not compromise their safety or privacy, nor does it seek access to their contacts or family details. It is further submitted that non-compliance would cause irreparable loss to the respondent, depriving him of crucial evidence for his defence.

28. It is submitted that the learned Trial Court has the discretion under Section 91 of the CrPC to order the production of documents for investigation, inquiry or trial. It is also submitted that the respondent has only sought preservation of CDRs and location details, not their immediate supply. It is further submitted that the respondent will present his defence at the appropriate stage of trial, and the prosecution cannot compel disclosure of defence before proceedings reach the stage of Section 313 of the CrPC.

29. In view of the foregoing submissions, it is prayed that the present petition may be dismissed and the impugned order passed by the learned Trial Court be upheld.

30. Heard the learned counsel for the parties and perused the material available on record.



31. It is the case of the petitioner that the impugned order is legally untenable and prejudicial to the investigation and contends that the respondent's request for the preservation of CDRs and location data lacks legal basis, as no specific defence has been raised, nor has any claim been made that the prosecution is *mala fide*. It is submitted that all necessary documents have already been provided, and the accused cannot manufacture a defence by scrutinizing investigative records.

32. Additionally, since CBI officials and independent witnesses handle sensitive cases, preserving their CDRs could compromise their privacy, security and investigative operations. It is further argued that that no prejudice is caused to the respondent's fair trial rights and the impugned order serves no legitimate purpose. Accordingly, the impugned order is legally unsustainable and may be set aside.

33. The respondent opposes the present petition, arguing that it is not maintainable as the impugned order is interlocutory and barred under Section 397(2) of the CrPC. Citing *Sethuraman v. Rajamanickram (Supra)* and *V.C. Shukla v. State through CBI (Supra)*, the respondent asserts that the impugned order only directs preservation of CDRs, not disclosure, ensuring evidence is not lost due to automatic deletion by the telecom companies.

34. It is submitted that the learned Trial Court retains discretion under Section 91 of the CrPC and failure to preserve these records would seriously prejudice the defence, especially when the prosecution relies on mobile data itself. Given that the petitioner has failed to show any prejudice from mere



preservation and the respondent's fair trial rights must be protected, the petition is liable to be dismissed.

35. Having considered the submissions advanced by both parties, it is evident that the crux of the dispute revolves around the scope and validity of the impugned order.

36. While the petitioner contends that the order is legally flawed, prejudicial to the investigation and allows the accused to engage in fishing and roving inquiry, the respondent argues that the order is merely interlocutory, does not interfere with the prosecution and is essential to safeguard fair trial rights.

37. Before delving into the merits of the impugned order, it is necessary to *first* determine whether the present revision petition is maintainable under Section 397(2) of the CrPC. If the petition is found maintainable, the next question for consideration is whether the impugned order suffers from legal infirmities and contravenes established principles of law. *Lastly*, since the present petition also invokes the inherent powers of this Court, it must be examined whether the impugned order warrants interference under the inherent powers of this Court to prevent miscarriage of justice.

38. Accordingly, the following issues arise for determination:

- a. Whether the impugned order is interlocutory in nature and thus, barred from revision under Section 397(2) of the CrPC?*
- b. Whether the impugned order is legally erroneous or contrary to established principles of law, and if so, whether it warrants*



***interference under Section 482 of the CrPC (now Section 528 of the BNSS) to prevent miscarriage of justice?***

39. At the outset, the question that arises for determination is whether the present revision petition is maintainable under Section 397(2) of the CrPC, given that the impugned order is alleged to be interlocutory in nature.

40. The term ‘interlocutory order’ is nowhere defined in the CrPC and the only place where the word ‘interlocutory order’ has been mentioned is in sub section 2 of Section 397 of the CrPC, which provides that “*the powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding*”.

41. So, in other words, subsection (2) of Section 397 of the CrPC imposes a statutory bar on the revisional jurisdiction in respect of interlocutory orders, ensuring that the trial or inquiry is not stalled by repeated challenges at an intermediate stage. The provision aims to prevent unnecessary delays in criminal proceedings by limiting revisions to orders that finally determine the right of the parties or have substantial impact on the trial’s outcome.

42. Since, the term ‘*interlocutory order*’ has not been defined in the CrPC, this Court must rely on different dictionaries and judicial pronouncements for ascertaining the meaning of this term.

43. According to ***Black’s Law Dictionary***, an interlocutory order is a temporary or interim ruling that addresses a specific issue but does not resolve the entire dispute. The relevant portion is quoted herein below:

*“Provisional; interim; temporary; not final. Something intervening between the commencement and the end of a suit*



*which decides some point or matter, but is not a final decision of the whole controversy.”*

44. According to ***Halsbury’s Laws of England, 4<sup>th</sup> Edition, Vol. 26***, an interlocutory order is one that does not determine the final rights of the parties but instead deals with procedural matters before judgment or guides the implementation of a final judgment. While it may not resolve the main dispute, it can be decisive on specific procedural aspect. The relevant portion is quoted herein below:

*“504. Interlocutory judgment or order: An order which does not deal with the final rights of the parties, but either (1) is made before judgment and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declaration of right already given in the final judgment are to be worked out, is termed ‘interlocutory’. An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate order matter with which it deals.’*

45. In ***V.C. Shukla v. State through CBI (Supra)***, the Hon’ble Supreme Court emphasized that the term ‘interlocutory order’ under Section 397(2) of the CrPC must be broadly interpreted to prevent unnecessary delays in criminal trials while ensuring fairness in proceedings. The relevant portion is quoted herein below:

*“5. It will be important to note that the word ‘interlocutory order’ used in this sub-section relates to various stages of the trial, namely, appeal, inquiry, trial or any other proceeding. The object seems to be to cut down the delays in stages through which a criminal case passes before it culminates in an acquittal, discharge or conviction. So far as the Code of*



*Criminal Procedure, 1973, is concerned, it has got a wide and diverse area of jurisdiction inasmuch as it regulates the procedure of trial not only of the large number of offences contained in the Penal Code, 1860 but also in other Acts and statutes which apply the Code of Criminal Procedure or which are statutes in pari materia the Code. Having regard, therefore, to the very large ambit and range of the Code, the expression “interlocutory order” would have to be given a broad meaning so as to achieve the object of the Act without disturbing or interfering with the fairness of the trial.”*

46. In ***Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd., (2001) 7 SCC 401***, the Hon’ble Supreme Court clarified that whether an order is interlocutory cannot be determined merely by its stage in proceedings. Instead, the test to distinguish an interlocutory order is whether allowing the revision would result in the termination of the entire criminal proceedings. If so, the order is not interlocutory, even if passed at an interlocutory stage. The relevant portion is quoted herein below:

*“8. The interdict contained in Section 397(2) of the Code of Criminal Procedure (for short “the Code”) is that the powers of revision shall not be exercised in relation to any interlocutory order. Whether an order is interlocutory or not, cannot be decided by merely looking at the order or merely because the order was passed at the interlocutory stage. The safe test laid down by this Court through a series of decisions is this: if the contention of the petitioner who moves the superior court in revision, as against the order under challenge is upheld, would the criminal proceedings as a whole culminate? If they would, then the order is not interlocutory in spite of the fact that it was passed during any interlocutory stage.”*



47. In *Mohan Lal Magan Lal Thacker v. State of Gujarat*, 1968 AIR 733, the Hon'ble Supreme Court observed that an order may be final for one purpose and interlocutory for another, depending on the context in which it is examined. The Court outlined four tests to determine whether an order is final or interlocutory, focusing on whether the order resolves the main dispute or merely decides a subsidiary procedural matter. An interlocutory order, while not deciding the primary issue, may still be conclusive on procedural aspects. The relevant portion is quoted herein below:

*“The reason probably is that a judgment or order may be final for one purpose and interlocutory for another or final as to part and interlocutory as to part. The meaning of the two words “final” and “interlocutory” has, therefore, to be considered separately in relation to the particular purpose for which it is required. However, generally speaking a judgment or order which determines the principal matter in question is termed final. It may be final although it directs enquiries or is made on an interlocutory application or reserves liberty to apply. In some of the English decisions where this question arose, one or the other of the following four tests was applied.*

- 1. Was the order made upon an application such that a decision in favour of either party would determine the main dispute?*
- 2. Was it made upon an application upon which the main dispute could have been decided?*
- 3. Does the order as made determine the dispute?*
- 4. If the order in question is reversed, would the action have to go on?*

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*An interlocutory order, though not conclusive of the main dispute may be conclusive as to the sub-ordinate matter with which it deals.”*



48. From the collective analysis of legal definitions and judicial pronouncements, it is evident that an interlocutory order is one that does not finally determine the rights of the parties and merely address a procedural or interim aspect necessary for the progression of the case. Such an order does not bring the proceedings to a conclusion, rather, it operates as a temporary or interim measure that facilitates the trial process.

49. The primary test to determine whether an order is interlocutory is whether, if reversed, it would terminate the proceedings. If the order does not conclusively decide the case or any substantial right of the parties, it is interlocutory in nature and thus, barred from revision under Section 397(2) of the CrPC.

50. In the present case, the impugned order dated 12<sup>th</sup> July, 2023 merely directs the preservation of CDRs and location charts, ensuring that such data remains available if required at a later stage. It does not grant immediate access to the records, nor does it alter the prosecution's case in any manner. The order only safeguards potential evidence from automatic deletion, and the respondent would still have to seek permission from the Court at the appropriate stage to access these records. There is no element of finality in the order, as it neither adjudicates upon the guilt or innocence of the accused nor conclusively affects the prosecution's ability to conduct the trial.

51. Furthermore, applying the test of finality, the impugned order does not bring the criminal proceedings to an end or determine any significant right of the parties. The prosecution/petitioner herein remains unaffected in its ability to proceed with the case, and the respondent's request merely



preserves a category of evidence without disrupting the investigation. Since the order is procedural and interlocutory in nature, its reversal would not terminate the proceedings. Therefore, it is barred from revision under Section 397(2) of the CrPC, rendering the present revision petition not maintainable.

52. During the course of the proceedings, the petitioner placed reliance on the judgment passed in *State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568, particularly paragraphs no. 24 and 25, which are reproduced below:

*“24. On behalf of the accused a contention about production of documents relying upon Section 91 of the Code has also been made. Section 91 of the Code 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.”*

*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.”*

53. While the petitioner relied upon the above quoted precedent to argue that an accused cannot invoke Section 91 of the CrPC at the stage of framing of charge, a closer examination reveals that the judgment is not directly applicable to the present case and is distinguishable upon the facts.



54. The Hon'ble Supreme Court in the above quoted precedent was dealing with the issue of accused person's right to summon documents in his defence before the commencement of trial. The Hon'ble Court held that an accused does not have an absolute right to summon and produce documents to prove his innocence before the trial begins, as the charge is to be framed based only on the prosecution's case under Section 173 of the CrPC.

55. However, the facts in the present case are materially different. The respondent is not seeking the production of documents for his defence at the charge stage but has merely sought the preservation of CDRs and location data to ensure the relevant records are not lost due to automatic deletion by telecom service providers. This distinction is crucial, as the above quoted precedent dealt with whether an accused can summon documents to establish his defence at the charge stage, whereas the present case concerns the preservation of potential evidence and not its immediate production or use by the accused.

56. It is also clear that the Hon'ble Supreme Court observed that the entitlement of an accused to seek an order under Section 91 of the CrPC would 'ordinarily' not arise until the defence stage. The use of the word 'ordinarily' suggest that this is not an absolute rule and that exceptions may exist where such an order could be warranted at an earlier stage, depending upon the necessity of the documents sought.

57. Thus, reliance on *Debendra Nath Padhi (Supra)* to argue that an accused can never seek preservation of documents before the defence stage is misplaced and also due to the reason that the present case does not involve



an attempt by the accused to introduce evidence prematurely but rather a judicial direction ensuring that potentially exculpatory evidence is not lost before the trial progresses. Hence, the impugned order does not conflict with the principles laid down in *State of Orissa v. Debendra Nath Padhi (supra)*, and the petitioner's argument on this point does not hold merit.

58. Accordingly, issue 'a' stands decided.

59. Since the revision petition has been found to be not maintainable under Section 397(2) of the CrPC, a detailed examination of the legality of the impugned order dated 12<sup>th</sup> July, 2023 is not necessary. However, given that the petitioner has challenged the correctness of the impugned order, and the present petition has been filed under Section 397 read with 'Section 482 of the CrPC', it becomes necessary to determine whether the inherent powers of this Court under Section 482 of the CrPC can be invoked to interfere with the impugned order dated 12<sup>th</sup> July, 2023 and whether any miscarriage of justice has occurred that warrants judicial intervention?

60. Section 482 of the CrPC embodies the inherent powers of the High Court to ensure that there is no miscarriage of justice. These powers, however, must be exercised sparingly, with great caution and only in circumstances where judicial interference is imperative to secure the ends of justice. The provision functions as a safeguard to rectify exceptional situations where procedural or substantive justice would otherwise be compromised.

61. The inherent jurisdiction under Section 482 of the CrPC is extraordinary and must be exercised sparingly. The Hon'ble Supreme Court



in *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335, laid down the power under Section 482 of the CrPC can only be invoked (i) to prevent abuse of process of the court, or (ii) to secure the ends of justice.

62. At this juncture, it is imperative to peruse the impugned order passed by the learned Trial Court to shed some light on the nature of the document and consequences of taking it on record. The relevant extracts from the impugned order are reproduced below:

*“2. In the present application, it is stated that the CDRs of the mobile phones which were used by the entire team members of the CBI as well as independent witnesses during investigation may be directed to be preserved because these call details may be used by the accused during cross-examination of the relevant witnesses as well as in his defence. It is also specifically stated that if no such direction is given today, the said data may not be available after a period of two years, if it is not directed to be preserved by the service provider.*

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*6. Be that as it may, it is observed that generally call details are preserved only for a period of two years from the date of inception of data whereas trial of such cases take longer time. Therefore, in order to give an opportunity to the accused to have a fair trial, the present application is allowed with following directions:*

- (i) The CDRs of mobile numbers as mentioned in the List of the Witnesses of the persons sought in the present application will be preserved by the concerned service provider for 02.06.2022 (from 10:45 AM to 5.00 PM); 06.06.2022 (11.30AM to 01.30 PM); 06.06.2022 (01.50 PM to 01.30 AM next day).*
- (ii) However, the said call details will be summoned if a request is made by accused person during trial.*
- (iii) Where mobile number of a person/witness has not been mentioned, such name need not be sent.*



*(iv) It is also made clear that the said mobile numbers are not treated to be the one which was/were used or not used on the specific date of the investigation and this will be subject to evidence and trial.*

*(v) Copy of the order and a notice be sent to the concerned service provider along with list of the witnesses and the team members/persons which have been disclosed in the said application with mobile numbers for preservations of their CDRs. In this regard,*

*Ahlmad can take assistance of the IO/HIO and the Ld. Counsels of the applicant/applicant to know the name and address of the concerned service provider.”*

63. Upon perusal of the impugned order, it is clear that it merely directs the preservation of CDRs and location charts, without granting immediate access to the respondent.

64. The purpose of the impugned order is not to provide the accused with evidence at this stage but to ensure that relevant records are not lost due to automatic deletion by telecom service providers. The learned Trial Court exercised its discretion under Section 91 of the CrPC, a provision that allows the court to summon documents if they are necessary or desirable for the proceedings.

65. Furthermore, upon perusal of the pleadings and submissions of the petitioner, it is evident that no specific grounds have been raised justifying interference under Section 482 of the CrPC. The present petition does not disclose any exceptional circumstances where the impugned order leads to an abuse of process or results in a miscarriage of justice.



66. The trial court has categorically held that the impugned order merely directs the preservation of records and does not grant access to the respondent at this stage. Since the CDRs and location data have only been ordered to be preserved and not disclosed, there is no basis for the petitioner's apprehension that this would provide an undue advantage to the defence. The direction does not interfere with the prosecution's case but simply ensures that potentially relevant evidence is not lost due to automatic deletion. Therefore, the petitioner's contention regarding prejudice to the prosecution or an unfair advantage to the respondent is unfounded.

67. In view of the foregoing discussions, it is evident that the entire argument of the petitioner holds no merits as there is neither any legal infirmity in the impugned order, nor any exceptional ground warranting interference under Section 482 of the CrPC. The impugned order merely directs the preservation of potential evidence without affecting the prosecution's case or investigative authority. Furthermore, the petitioner has not demonstrated any abuse of process or miscarriage of justice which are the only recognized grounds for invoking the inherent jurisdiction of this Court under Section 482 of the CrPC.

68. Accordingly, issue 'b' stands decided.

69. In light of the foregoing discussions on law and facts, this Court finds that the present revision petition is not maintainable under Section 397(2) of the CrPC, as the impugned order is interlocutory in nature. Furthermore, even upon examining the impugned order under the spectacles of Section 482 of the CrPC, the petitioner has failed to demonstrate any legal infirmity,



abuse of process or miscarriage of justice that would warrant interference by this Court.

70. In view of the above, this Court finds no reason to interfere with the impugned order passed by the learned Trial Court, as it merely directs the preservation of potential evidence without affecting the prosecution's case or investigative prerogatives. The impugned order is well within the learned Trial Court's discretionary powers and does not confer any unwarranted advantage to the accused at this stage.

71. Accordingly, the impugned order dated 12<sup>th</sup> July, 2023, passed by the learned Special Judge (PC Act), CBI, Rouse Avenue Courts, New Delhi, in CBI Case No. 19/2023, RC No. DAI0032022A-32/CBI/ACB/Delhi is, hereby, upheld.

72. Taking into consideration the sensitive nature of the information and data, the learned Trial Court shall ensure that no sensitive information, including the identity of investigating officers, is disclosed in a manner that may compromise their security or ongoing investigations. Any disclosure of such records shall be made strictly in accordance with the law, ensuring that the gravity of the sensitive nature of the records, the confidentiality of investigative operations, and the security of officers involved in other investigations are duly safeguarded.

73. Accordingly, the present petition stands dismissed along with the pending application(s), if any.

74. It is made clear that any observations made herein are only for the purpose of deciding the present petition and shall not be construed as an



expression on the merits of the case. The learned Trial Court shall proceed with the matter uninfluenced by any observations made by this Court and shall decide the case strictly in accordance with law.

75. This order be uploaded on the website forthwith.

**CHANDRA DHARI SINGH, J**

**MARCH 4, 2024**  
**NA/KJ/RYP**

*Click here to check corrigendum, if any*