

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

112.

CRR No.2605 of 2023 (O&M)

Date of Decision:04.12.2023

Paramjit Kaur

... Petitioner

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amit Choudhary, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner is challenging the impugned order dated 11.09.2023 passed by the learned Additional Sessions Judge, Hisar whereby the application filed by the petitioner under Section 91 Cr.P.C. for preserving the calls details records with location chart of Mobile No.8708196220 (SI Satbir Singh, 51/H), 99914-39813 (ESI Raghbir Singh), 8814016312 (L/C Asha), 88140-11305 (DSP Ashok), 8708787725 (SI Phool Singh), 104/HSR, 8814011308 (Inspector Mandeep), 9466478128 (ASI Rajesh Kumar), 9466092628 (HC Ranvir Singh), 8901158402 (L/CT Kamlesh) was dismissed.

2. Learned counsel appearing for the petitioner *inter alia* contends that the husband of the petitioner namely Satnam Singh @ Sattu had made a complaint against the police officials on 12.09.2020 and on account of his complaint, police started nurturing a grudge against the husband of the petitioner. The husband of the petitioner was arrested and 4 grams 85 miligrams of heroin

was planted on him and FIR No.1090 dated 03.12.2021 under Section 21 of the NDPS Act was registered at Police Station Sadar, Hisar.

2. Learned counsel for the petitioner has taken a categorical stand that her husband was lifted from her house in village Peerawali on 03.12.2021 at 10 AM in the presence of co-villagers and the recovery of the alleged contraband was shown at a different location. The petitioner had moved an application under Section 91 Cr.P.C. before the learned trial Court for issuance of necessary direction to preserve the call details and tower location details of the police officials at the relevant point of time. The call details and the tower locations are extremely vital for proving that husband of the petitioner was not arrested at the time and place alleged by the investigating agency. Any denial of these details would seriously prejudice the case of husband of the petitioner to prove his innocence. Moreover, the electronic record is admissible in terms of Sections 65-A and 65-B of the Indian Evidence Act. The learned trial Court has not considered the issue in right earnest rather rejected the application filed by the petitioner in a mechanical manner without assigning any reason.

3. Per contra, learned State Counsel contends that production of the 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 trial Court has rightly rejected the application filed by the petitioner on cogent grounds.

4. Having heard learned counsel for the parties and after a perusal of the record, it transpires that the learned trial Court has dismissed the application filed by the petitioner under Section 91 Cr.P.C. on the ground that the petitioner has not mentioned the purpose of collecting such call details and tower locations

and without disclosing the necessity and relevancy of such evidence, the application filed by her cannot be allowed.

5. A perusal of the application filed by the petitioner (Annexure P-1) indicates that the accused has taken a specific ground that husband of the petitioner namely Satnam Singh @ Sattu was taken by the police from their house in Village Peerawali on 03.12.2021 at 10 AM in the presence of the co-villagers and the necessity and relevancy of the call details and the tower locations was duly indicated by pleading that the prosecution witnesses were not present at the place and time of alleged recovery. As such, summoning of call details records of witnesses mentioned at Annexure A-1 is essential.

6. A two Judge Bench of the Hon'ble Supreme Court in **Suresh Kumar Vs. Union of India 2015 (3) RCR (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.”

7. 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.”

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.

VERDICTUM.IN

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11. In view of the observations made hereinabove and without going into the merits of the case, the impugned order dated 11.09.2023 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 Annexure A-1 attached with the application filed under Section 91 Cr.P.C.

12. The instant petition stands disposed of in above terms.

(HARPREET SINGH BRAR)
JUDGE

December 04, 2023

Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No