

Meena

**IN THE HIGH COURT OF BOMBAY AT GOA**

CRIMINAL WRIT PETITION NO.595 OF 2023(F)

1 Mr.Ravi Laxman Naik,  
s/o. Late Laxman Gopi Naik,  
Aged 34 years,  
R/o. H.No.619, Povacao vaddo,  
Moirra, Bardez-Goa.  
Presently in judicial custody at Central  
Jail, Covale, Bardez, Goa. ....Petitioner

***Versus***

1 Police Inspector,  
Crime Branch Police Station,  
Ribandar, Tiswadi, Goa.

2 State,  
Through PP,  
High Court of Bombay at Porvorim,  
Goa. ....Respondents

Mr. Arun Bras De Sa with Mr. Franco Coburn and Mr Sahil Sardessai, Advocate for the Petitioner.

Mr. Pravin Faldessai, Additional Public Prosecutor for the respondents-State.

**CORAM:** **BHARAT P.  
DESHPANDE,J.**

**RESERVED ON:** 12<sup>th</sup> December, 2023

**PRONOUNCED ON:** 20<sup>th</sup> December, 2023

**JUDGMENT: (Bharat P. Deshapande,J)**

1. Rule. Rule is made returnable forthwith. Heard finally with consent of the learned Counsel for the parties.

2. The petitioner/accused filed an application under Section 91 of CrPC before the Special Criminal Court (NDPS) in Case No.29 of 2023 at the stage when the matter was fixed for arguments for framing of charge. The said application was rejected by the learned Special Court vide order dated 15/07/2023, which is under challenge.

3. Heard Mr. Arun Bras De Sa, learned Counsel for the petitioner and Mr. Pravin Faldessai, learned Additional Public Prosecutor for the respondents-State.

4. Mr. De Sa would submit that on 04/11/2022 the petitioner was allegedly taken away from his home and was booked under FIR No.104/2022 by the Crime Branch Police Station Ribander on the allegations that during house search, Ganja weighing 5.042kgs, Charas weighing 1.008kgs, cultivated cannabis plants having flowering and fruiting tops substance suspected to be Ganja weighing 5.350kgs were recovered. He would submit that no panchanama of search and seizure was carried out at the house of the petitioner and the entire procedure was conducted at the police station. He would submit that the mobile phone locations of the raiding party members are required to be

preserved and called for the purpose of showing that the raiding party was not present at the house of the petitioner during the alleged period of the entire panchanama. He submits that the petitioner moved such application at the time of bail which was rejected vide order dated 11/01/2023.

5. Mr. De Sa then would submit that the wife of the petitioner filed a complaint on 18/11/2022 with Mapusa Police Station against the Police Officer claiming therein that they entered the house and took away the petitioner forcibly by fabricating some documents and evidence. He then would submit that another application was filed by the petitioner under Section 91 of CrPC dated 27/06/2023 which was rejected by the Special Court vide the impugned order dated 15/07/2023.

6. Mr. De Sa by placing reliance in the case of **Suresh Kumar v/s. Union of India** [2015 0 AllMR (Cri) SC 4111] and **Paramjit Kaur v/s. State of Haryana** [CRR No.2605 of 2023 (O & M) decided on 04/12/2023 by the Punjab and Haryana High Court, would submit that details of CDR and SDR of the mobile phones of the raiding party are absolutely necessary to establish that the raiding party members were not

present at the time of the panchanama in the house of the petitioner. He submits that in order to have fair investigation and trial, it is the duty of the Court to call for such records. He submits that the application was filed only because there is time limit for preservation of CDR and SDR by the service provider. After a lapse of one year from the date of alleged panchanama, even the service providers would not be in a position of furnishing such details.

7. Mr De Sa would then submits that no prejudice is going to cause to the prosecution if such details are called and kept with the Court.

8. Per contra, Mr. Faldessai, learned Additional Public Prosecutor would submit that the accused is not having any right to produce any document or rely upon any document beyond the charge sheet and the documents attached by the Investigating Agency, at the time when the matter is fixed for arguments before charge or even at the time of bail. He would submit that the right of the accused could be exercised only when the matter is fixed for defence. At that stage the accused may apply to the Court under Section 91 of CrPC for production of documents in

his defence.

9. Mr. Faldessai would submit that first application under Section 91 of CrPC was filed along with the bail application which was rejected by the trial Court vide its order dated 11/01/2023. The accused did not challenge such order and therefore such order is final and binding.

10. Mr. Faldessai would then submit that the application filed on 27/06/2023 under Section 91 of CrPC itself shows that the accused is trying to collect documents in his defence even when the charges are not framed. He then submitted that there are specific averments in the application itself that in order to decide bail application, it is necessary to obtain tower locations of the official mobile of the raiding party members, which cannot be permitted by taking recourse to Section 91 of CrPC.

11. Rival contention fall for my determination.

12. Chapter VII of CrPC deals with processes to compel the production of things. Section 91 of CrPC reads thus:

*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-*

*1. 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*

*2. to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.*

13. A careful reading of all the above provisions would go to show that it gives powers to the Court as well as to the officer in

charge of the Police Station. This power could be exercised 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 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.

14. Besides this the wording “considers that the production of any document or other thing is necessary or desirable for the purposes” assumes importance. When an officer in charge of a police station while conducting investigation considers that a document or other thing is necessary or desirable for conducting such investigation, he may issue summons to such person in whose possession or power such a thing exists.

15. Similarly this power could be exercised by a Court on satisfying that production of such a document or other thing is necessary or desirable for the purposes of trial or enquiry or other proceedings under the Code. The Court either issues summons or passes order to that effect directing such person in whose possession or power the document or thing exists, to

produce it before the Court on the date fixed therein.

16. It therefore presupposes that there are different stages wherein the in charge of the police station or the Court as the case may be exercise such power only on the satisfaction that the document or thing is necessary or desirable for the purpose of investigation, enquiry, trial or other proceedings. It further shows that there is discretion given to the officer in charge of the Police Station and Court as the case may be to issue summons or order for production of documents or things and only on satisfaction that it is necessary or desirable. The stages at which such power could be exercised need to be kept in mind by the authorities with whom such power exists.

17. The petitioner filed Bail Application No.96 of 2022 on 25/11/2022 and in that application he moved an application under Section 91 of CrPC. The copy of order dated 11/01/2023 would clearly go to show that the petitioner alleged that on 04/11/2022 at 7.30 am while he was sleeping in his bedroom, 8 to 10 men and one woman claiming to be officers of Crime Branch forcibly took the applicant with them along with the DVR. The wife of petitioner lodged FIR at Mapusa Police Station



claiming/alleging that her husband has been abducted however during evening time on the same day it was reported in the newspaper that the petitioner was arrested by the Crime Branch for illegally possessing drugs vide Crime No.104/2022. It is the contention of the petitioner that the police officers and his team fabricated false panchanama alleging that they conducted such search and seizure panchanama from 8.20 hours to 12.40 hours on 04/11/2022 at his house. Thus the petitioner claimed that in order to certify that such officers were present at the location of the panchanama, tower locations of official mobile numbers of all raiding party members are absolutely necessary.

18. The learned trial Court in its order dated 11/01/2023 observed that the power under Section 91 of CrPC cannot be exercised for collecting the evidence at the stage of bail at the behest of the accused. Reliance was placed in the State of **State of Orissa v/s. Debendra Nath Padhi**[2005 1 SCC 568].

19. Subsequently, the accused again filed a similar application on 27/06/2023 claiming therein that he has been falsely implicated and no such house search panchanama was conducted for the period as mentioned therein. In paragraph 6

of this application, the petitioner has pleaded as under:

*“that in the interest of justice and to decide the bail application filed by the accused it is absolutely necessary to obtain the tower location of the official mobile numbers or the persons whose names are mentioned in para no.5 of this application so that it enables this Hon’ble Court to ascertain whether the said persons were actually present on 04/11/2022 from 8.20hrs to 12.40 hrs at the residence of the accused or not.”*

20. The petitioner then mentioned in paragraph 7 that earlier application filed on 16/12/2022 was rejected by the Court vide order dated 11/06/2023, was challenged by the petitioner before this Court by filing Criminal Writ Petition No.57 of 2023(F). However before disposal of the said Writ Petition, a charge sheet was filed. Accordingly, the petitioner was granted liberty to file a fresh application under Section 91 of CrPC before the trial Court while disposing of the Writ Petition No.57 of 2023(F). Accordingly, the petitioner filed the said application claiming that call details or tower locations of the raiding party be called.

21. This application was opposed by the prosecution and accordingly learned trial Court relying upon the case of

**Debendra Nath Padhi** (supra) rejected such an application.

22. **Debendra Nath Padhi** (supra) is the decision of three Hon'ble Judges of the Supreme Court wherein a question as to whether a trial Court at the time of framing of charge to consider material filed by the accused was under determination. While deciding such issues, decision of the two learned Judges Bench in the case of **Satish Mehra v/s. Delhi Admn.** [(1996) 98 SCC 766] and the case in **Supdt. And Remembrancer of Legal Affairs, W.B. vs. Anul Kumar Bhunja** [(1979) 4 SCC 274] were considered. Since there were divergent views, the matter was placed before the larger Bench. While dealing with the powers under Sections 227 and 91 of CrPC observed thus as under:

*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.*

*26. Reliance on behalf of the accused was placed on some observations made in the case of Om Parkash Sharma v. CBI [(2000) 5 SCC 679 : 2000 SCC (Cri) 1014] . In that case the application filed by the accused for summoning and production of documents was rejected by the Special Judge and that order was affirmed by the High Court. Challenging those orders before this Court, reliance was placed on behalf of the accused upon Satish Mehra case [(1996) 9 SCC 766 : 1996 SCC (Cri) 1104] . The contentions based on Satish Mehra case [(1996) 9 SCC 766 : 1996 SCC (Cri) 1104] have been noticed in para 4 as under: (SCC p. 682)*

*“4. The learned counsel for the appellant reiterated the stand taken before the courts below with great vehemence by inviting our attention to the decision of this Court reported in Satish Mehra v. Delhi Admn. [(1996) 9 SCC 766 : 1996 SCC (Cri) 1104] laying emphasis on the fact that the very learned Judge in the High Court has*

*taken a different view in such matters, in the decision reported in Ashok Kaushik v. State [(1999) 49 DRJ 202] . Mr Altaf Ahmed, the learned ASG for the respondents not only contended that the decisions relied upon for the appellants would not justify the claim of the appellant in this case, at this stage, but also invited, extensively our attention to the exercise undertaken by the courts below to find out the relevance, desirability and necessity of those documents as well as the need for issuing any such directions as claimed at that stage and consequently there was no justification whatsoever, to intervene by an interference at the present stage of the proceedings.”*

*27. Insofar as Section 91 is concerned, it was rightly held that the width of the powers of that section was unlimited but there were inbuilt, inherent limitations as to the stage or point of time of its exercise, commensurate with the nature of proceedings as also the compulsions of necessity and desirability, to fulfill the task or achieve the object. Before the trial court the stage was to find out whether there was sufficient ground for proceeding to the next stage against the accused. The application filed by the accused under Section 91 of the Code for summoning and*

*production of documents was dismissed and order was upheld by the High Court and this Court. But observations were made in para 6 to the effect that if the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to look into the material so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time, these observations are clearly obiter dicta and in any case of no consequence in view of conclusion reached by us hereinbefore. Further, the observations cannot be understood to mean that the accused has a right to produce any document at the stage of framing of charge having regard to the clear mandate of Sections 227 and 228 in Chapter 18 and Sections 239 and 240 in Chapter 19.*

*28. We are of the view that jurisdiction under Section 91 of the Code when invoked by the accused, the necessity and desirability would have to be seen by the court in the context of the purpose — investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry.*

23. **Suresh Kumar**(supra) on which Mr De Sa has placed reliance, is a decision of two Hon'ble Judges. The decision in the case of **Debendra Nath Padhi**(supra) was not brought to the notice while deciding the case of **Suresh Kumar**(supra). Thus the decision of the larger Bench is binding on the trial Court as well as this Court. **Suresh Kumar**(supra) therefore cannot be looked into as it turns on its own facts. It nowhere discusses the scope of Section 91 of CrPC as found in the case of **Debendra Nath Padhi**(supra).

24. **Paramjit Kaur**(supra) is entirely based on the observations of **Suresh Kumar**(supra). Here also the decision in the case of **Debendra Nath Padhi**(supra) was not brought to the notice of the learned High Court.

25. In the **State of Gujarat v/s. Dilipsinh Kishorsinh Rao** [2023 0 Supreme(SC) 1052], the Apex Court while dealing with the powers under Section 227 of CrPC was called upon to decide as to whether the accused is having any right to file any material or document at the stage of framing of charge. While answering the above question, it is observed by the Apex Court that at the time of framing of charge or taking cognizance, the



accused has no right to produce any material and call upon the Court to examine the same. There is no provision in the Code granting any right to the accused to file any material or document at the stage of framing of charge. The trial Court has to apply its judicious mind to the facts of the case as may be necessary to determine whether the case has been made out by the prosecution in the trial on the basis of charge sheet material only. In case the accused is able to demonstrate from the charge sheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage. The intention of granting a chance to the accused of making submissions at the stage of arguments before framing of charge, is to assist the court to determine whether it is required to proceed to conduct the trial.

26. The Apex Court further observed that it is settled principle of law that at the stage of considering an application for discharge, the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value,

disclose the existence of the ingredients necessary of the offence alleged. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction.

**27.** Above observation, though recorded by the Apex Court in connection with Section 227 of the CrPC, equally applies to the matter in hand when an application is filed under Section 91 of CrPC at the time of arguments of bail application. There are specific averments in paragraph 6 of the application filed under Section 91 of CrPC by the petitioner that such material is necessary to effectively decide bail application. Admittedly, a charge is not framed yet. Though it was suggested/argued that after order was passed, the trial Court directed the charges to be framed against the accused. One thing is clear that the present application under Section 91 of CrPC was moved prior to the order of framing of charge. At that stage it is exactly the stage under Section 227 of CrPC, the trial Court is duty bound to proceed on the assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value disclose existence of

ingredients which are necessary for framing of charge. Such propositions equally apply at the stage of grant or refusal of bail specifically when such bail application is filed before framing of the charge.

28. **Dilipsinh Kishorsinh Rao**(supra), further observed that the defence of the accused is not to be looked into at the said stage when the accused seeks to be discharged. The expression “the record of the case” used in Section 227 CrPC is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency. The matter in hand was admittedly staged for framing of charge since the charge sheet was filed and though the petitioner sought leave from this Court in Criminal Writ Petition No.57 of 2023(F), the fact remains that the purpose for procuring such document by the aid of Section 91 of CrPC is to decide bail application filed by the accused.

29. The necessity or desirability would have to be seen with reference to the stage when a prayer made for production of

documents under Section 91 of CrPC. In this case the petitioner is trying to produce his defence by claiming that no panchanama was conducted at his residence between the time mentioned in the search and seizure panchanama. In other words, the petitioner is trying to raise his defence that a false and fabricated panchanama was carried out at the police station in order to falsely implicate him in a drug case. Basically this is purely a defence and stage to prove the defence would arise only after the evidence of prosecution is over during the trial. The question of invoking a discretion in view of accused before the start of trial would not be appropriate for the simple reason that at the stage when the bail application is filed or even the matter is argued for the purpose of framing of charges, the court has to look into only the material and documents placed along with the charge sheet with an assumption that such material is true and evaluate it in order to determine whether the facts emerging from it constitute the ingredients of the offence alleged or whether the accused is entitled for bail. No extraneous material at this stage could be looked into. When the duty is cast upon the Court to look into prima facie material and assume that such material is true on the face of it, the accused cannot, by taking recourse of Section 91 of

CrPC seek an order from the Court directing production of any document which according to him proves his innocence.

30. It is to be borne in mind that under Section 91 of CrPC a Police Officer may take recourse by summoning any person to produce any document during investigation or move the Court for summoning and production of document in possession of any person during trial or enquiry. As far as the accused is concerned, his entitlement to an order under Section 91 of CrPC would clearly be considered at the stage of defence but not prior to it for the simple reason that it is to the satisfaction of the Court at a particular stage that such a document is necessary and desirable to be produced during trial. Thus the contention of Mr. De Sa that the CDR's and mobile tower locations of the raiding party members are necessary for deciding bail application and even for the purpose of framing of charge cannot be considered at this stage as it is purely in defence of the accused/petitioner which is not necessary or desirable at this stage. However, at the time of defence of the accused, if it is found necessary and desirable, the Court may consider such a request.

31. The impugned order, thus need not interfere and accordingly the petition stands rejected.

32. Rule stands discharged.

**BHARAT P. DESHPANDE, J.**