

IA No. 19/2025
SC No. 385/2023
NCB Vs. Abhishek Anil & Ors.
Crime No. VIII/16/DZU/2023

04.07.2025

ORDER

1. Vide this order I shall dispose off the application u/s 94 BNSS, 2023 moved on behalf of accused/applicant Naveen Fogat seeking summoning, production and preservation of the CDRs and Cell Location ID Chart of the members of the raiding party, witnesses and of the applicant/accused. Reply was filed by the NCB and same was carefully perused.

2. It is submitted by Ld. Counsel for the applicant/accused that there is no other similar application preferred by the present applicant/accused which is pending disposal before the Hon'ble Supreme Court of India, before the Hon'ble High Court of Delhi, or any other Court in the present case FIR.

3. It is submitted by Ld. Counsel for applicant/accused that accused/applicant is in JC and the charges against him have already been framed and for enabling him to enter into his defence, the preservation of the CDRs and the Cell Location ID Chart are absolutely essential, since, the applicant/accused was illegally detained in the office of NCB on 19.07.2023, inspite of the fact that his name came up in the disclosure statement of the co-accused persons which were recorded only on 20.07.2023. Therefore, there was no occasion for the officials of NCB to issue him the notice u/s 67 of the Act on 19.07.2023.

4. It is submitted by Ld. Counsel for applicant/accused that in the said notice dated 19.07.2023, there was no time and date of reporting mentioned and the receiving on the said notice was illegally taken by the officials of NCB at the later stage. The falsity of the case of the NCB is evident from his own alleged disclosure statement, wherein it is recorded that he came to the office of NCB on 20.07.2023 and not on 19.07.2023, as falsely shown on the notice. The applicant/accused was picked up by the officials of NCB and he was taken to their R K Puram office. When his family members got to know about the same, they all reached the said office on 19.07.2023 itself and were not allowed to enter. They stayed outside the office for the entire time and their cell location ID chart would prove the same. Furthermore, the CDRs and cell location ID chart of the mobile phones of the applicant/accused would also prove the factum of his illegal detention and that he was not produced before the Ld. Magistrate within 24 hours of his arrest, since the arrest is shown belatedly in the documents.

5. It is submitted by Ld. Counsel for applicant/accused that as per the rules and regulations, the telecom companies automatically destroys the CDRs and cell location ID chart after expiry of two years and if the same is not preserved before 19.07.2025, the said record would be dissipated and would cause immense prejudice to the rights of the applicant/accused.

6. It has been submitted by the Ld. counsel for the applicant/accused that as per the law laid down by the Hon'ble Supreme Court of India in “***Suresh Kumar Vs Union of India***”,

2014 SCC OnLine SC 1833, it was held that the call details were admissible in terms of section 65A and 65B of Indian Evidence Act. The accused has every right to summon whatever is relevant and admissible in his defence including the electronic record relevant to finding out the location of the officers effecting the arrest.

7. Per contra, it is submitted by the Ld. SPP for NCB that the present application is nothing but an abuse of the process of law and same is not maintainable and liable to be dismissed. There is no cogent reason to establish the necessity or the deriability of the record so requested and the applicant/accused is merely trying to level vague and false allegations of illegal arrest. The applicant/accused was arrested on 20.07.2023 by following the letters of the law to the t. His statement was duly recorded u/s 67 NDPS Act, 1985, after the notice was issued to him on 19.07.2023.

8. It is further submitted by Ld SPP for NCB that the charge sheet has already been filed and the investigation was completed within the prescribed period of time. The matter is at the stage of prosecution evidence, after charges were duly framed against the applicant/accused. There is no necessity of preservation of any CDRs. The NCB is relying upon the decision of Hon'ble Supreme Court of India in State of "**Rajasthan Vs Swarn Singh @ Baba**", CrI. Appeal No. 856/2024 to substantiate their averments.

9. It is further submitted by Ld SPP for NCB that the Hon'ble High Court of Delhi has held in catena of judgments that the CDRs, cell location ID chart of the IOs must not be disclosed, since, it may cause prejudice to the safety/security of police officials as well as it may expose the identity of secret informers. The reliance was placed on the decisions rendered in “**Krishan Pawdia Vs State of NCT of Delhi**”, WP CrI. 1236/2022 and in “**State vs Haripal**”, CrI. MC No. 1239/2018. Therefore, the NCB is strongly opposing the present application.

10. I have carefully gone through the application and reply filed by the NCB. I have carefully considered the rival contentions of the parties and also perused the case laws relied upon by them.

11. As far as maintainability of the present application is concerned, there is no merit in the submissions made by the Ld. SPP for NCB. Even the case law relied upon by the NCB in **Swarn Singh (supra)** is not supporting their case, since in the said decision, Hon'ble Apex Court had observed that the application u/s 91 CrPC, 1973 (now 94 BNSS, 2023) cannot be filed at the stage of framing of charge, which is not the case in the present case. Charges against the applicant/accused have already been framed and his defence is relevant and same cannot be brushed aside.

12. There is no merit in the submissions of Ld. SPP for NCB that the CDRs and location ID chart of the investigating officers and the other members of raiding team cannot be supplied and

the reliance placed on the decisions of the Hon'ble High Court of Delhi in **Krishan Pawdia** (*supra*) and **Haripal** (*Supra*) would not come in the way of the applicant/accused, in view of the decision of Hon'ble Supreme Court of India in **Suresh Kumar** (*supra*) and as per the law of precedents, the law laid down by the Hon'ble Apex Court shall prevail and be binding upon this Court.

13 During the pendency of present application, the Ld. Predecessor of this Court had sought the affidavit of no objection from the family members of the applicant/accused, so as to avoid violation of their fundamental right of privacy enshrined under article 21 of the Constitution of India. Same were duly filed by the family members of applicant/accused.

14 In the considered opinion of this Court, the applicant/accused has been able to create prima facie doubts upon the investigating agency's conduct regarding the arrest and surrounding circumstances, as evident from the discrepancies in the documents filed along with the complaint. Therefore, in order to enable the applicant/accused to effectively defend himself, this Court deems fit to partially allow the present application, w.r.t. the cell location ID charts of the applicant/accused's mobile phone numbers; the cell location ID charts of the family members of the applicant/accused's mobile phone numbers and the cell location ID chart of the members of the NCB i.e. IO Chetan Sharma and Superintendent Amit Kumar Tiwary. However, the CDRs of the said NCB officials are neither required nor warranted to be supplied to the applicant/accused.

Therefore, the portions of the CDRs and cell location ID chart that discloses the details of the numbers from which the calls were made and received shall not be supplied to the applicant/accused and the same must be blacked out. The remaining portions, evidencing the location of the said mobile numbers may be provided to the applicant/accused.

15 Therefore, in the considered opinion of this court, the present applicant/accused has made out his case for preservation and production of the CDRs (after blacking out the details of the calls received and made by the IO Chetan Sharma and superintendent Amit Kumar Tiwary) and cell location ID chart of all the mobile numbers mentioned in the prayer clause of the present application.

16 The IO Chetan Sharma and superintendent Amit Kumar Tiwary are hereby directed to furnish the details of their personal/official mobile numbers being used by them between 19.07.2023-20.07.2023 in a sealed cover before this Court within five days from today.

17 The concerned nodal officer of Airtel India Ltd shall preserve and produce before this Court the CDRs and cell location ID chart of mobile no. 7042306185 & 9466884775 for the period between 19.07.2023-20.07.2023.

18 The concerned nodal officer of Vodafone Idea Ltd (VI) shall preserve and produce before this Court the CDRs and cell location ID chart of mobile no. 7210543050 for the period

between 19.07.2023-20.07.2023.

19 The concerned nodal officer of Jio shall preserve and produce before this Court the CDRs and cell location ID chart of mobile no. 9318464326 for the period between 19.07.2023-20.07.2023.

20 The directions qua the preservation and filing of the cell location ID chart of the mobile numbers being used by the IO Chetan Sharma and superintendent Amit Kumar Tiwary shall be passed after the same is filed in sealed cover within 05 days from today.

21 It is made abundantly clear that the details of the cell location ID chart of the IO Chetan Sharma and superintendent Amit Kumar Tiwary shall not bear the details of their personal/official numbers and the same shall be blacked out in the documents by the concerned nodal officers, prior to filing the same before this Court and at no stage the said mobile numbers shall be disclosed to the applicant/accused or any other person and the same shall remain in sealed cover on the judicial record.

22. Nothing stated herein shall tantamount to any expression or opinion on the merits of the case.

23. The application under Section 94 BNSS, 2023 moved on behalf of applicant/accused Naveen Fogat is accordingly disposed off as partially allowed.

24. Needless to say, that nothing expressed herein shall have any effect on the merits of the case.

25. Copy of this order be sent to Jail Superintendent, Tihar/Mandoli Jail for necessary intimation to the applicant/accused.

26. Application is disposed off accordingly.

27. A copy of this order be given *dasti* to all concerned parties.

(ATUL AHLAWAT)
ASJ/SPECIAL JUDGE (NDPS)/
PHC/NEW DELHI/04.07.2025