

IA-1-2022 SC No. 693-2022

State V. Mohd. Aurangzeb

FIR No. 267/2022

PS Shahbad Dairy

Under Section 20/25 NDPS Act & 482/411 IPC

05.01.2023

Pr: Sh. Gurbhej Singh Guraya, Ld. Addl. P.P for the State.
Sh. A.K. , Ld. Counsel for the applicant / accused
I.O with case file.

At the outset, Ld counsel for the accused/applicant submits that by way of present application under Section 173 (8) Cr.P.C, he is pressing only for filing of location of mobile numbers of the accused and raiding party of the police from 13.04.2022 to 14.04.2022. and not his prayer for re-investigate the case and this may be treated as application u/s 91 of CrPC.

Arguments heard on the aforesaid application.

It is stated on behalf of the applicant that the applicant / accused was arrested by the special cell on 14.04.2022 at about 4:40 PM at dividing road of T-Point in the middle of Sector 28-29, however, in fact, the accused/applicant was apprehended by the special staff on 13.04.2022 out of Delhi and thereafter, he was brought to Delhi and in the intervening night of 13/14-4-2022 he was implicated in the present matter. He was shown to be carrying Katta Ganja weighing about 102 KG 240 Gram. It is further stated that during the investigation, IO seized the CDR of mobile No. of the accused 9711019385 and 84580839195 but did not obtain the CDR of the said mobile phones. As the accused/applicant was apprehended out of Delhi,

the location of the raiding party as well as accused was out of Delhi. Thus, the CDRs as well as location abovesaid two mobile phones of the accused/applicant are crucial for just adjudication of the present case. Hence, the present application.

Ld. Counsel for applicant in support of his contentions has placed reliance on judgment titled as ***Narcotics Control Bureau Vs Gaurav Kumar, 2020 (1) JCC 471.***

Per contra, IO/SI Parveen in his reply to the present application has stated that any disclosure of the CDR / mobile numbers of the raiding party would intrude in the privacy and safety of the police officials.

Ld. Addl PP for the State also placed reliance on the judgment of the Hon'ble Delhi High Court in case titled as ***Puneet Arora Vs State of NCT of Delhi in Crl Rev P. 327/20 & Crl MC No. 406/16 titled as Attar Singh Vs State (NCT of Delhi)*** in support of his arguments regarding non disclosure of the mobile numbers and CDRs of the raiding party.

Heard and considered.

The issue with respect to the summoning and placing on record the CDR as well as location details of the police officials at the instance of the accused in order to prove his defence as discussed by the Hon'ble Supreme Court in the case titled as ***Suresh Kumar Vs Union of India, 2015 (3) JCC (Narcotics) 121 as under :***

“8. All that we are concerned with is whether call details which the applicant is demanding can be denied to him on the ground that such details are likely to prejudice the case of the prosecution by exposing their activities in relation to similar other cases and individuals. It is not however in dispute that the call details are being summoned only for purposes of determining the exact location of the officers concerned at the time of alleged arrest of the appellant from Yashica Palace Hotel

near the bus stand. Ms. Makhija made a candid concession that any other information contained in the call details will be of no use to the appellant and that the appellant would not insist upon disclosure of such information. That is our opinion simplifies the matter in as much as while the call details demanded by the appellant can be summoned in terms of Section 65B of the Indian Evidence Act such details being relevant only to the extent of determining the location of the officers concerned need not contain other information concerning such calls received or made from the telephone number concerned. In other words if the mobile telephone numbers caller details of the callers are blacked out of the information summoned from the companies concerned it will protect the respondent against any possible prejudice in terms of exposure of sources of information available to the bureau. Interest of justice would in our opinion be sufficiently served if we direct the Trial Court to summon from the Companies concerned call details in Sim telephone No. 9039520407 and 7415593902 of Tata Docomo company and in regard to Sim no. 9165077714 of Airtel company for the period 24.02.2013 between 4.30 to 8.30 pm. We further direct that calling numbers and the numbers called from the said mobile phone shall be blacked out by the companies while furnishing such details.”

The said issue has also been dealt with by the Hon'ble High Court of Delhi in case titled as **Attar Singh Vs State (NCT of Delhi) in Crl MC No. 406/2016** wherein again the said contention of the accused seeking summoning of the electronic evidence was accepted. The said view recently been again reiterated by the Hon'ble Delhi High Court in case titled as **Narcotics Control Bureau Vs Gaurav Kumar, 2020 (1) JCC 471** relied upon by the applicant in the present case in hand.

A specific defence has been taken by the accused of he being apprehended out of Delhi and thereafter brought to Delhi and arrested in the intervening night of 13-14/04/2022 between 4:00 to 4:30 . The said electronic evidence either

concerning the applicant or the members of the raiding party are only going to decipher and help the court in deciding the involvement of the accused. It is not going to cause any intrusion of privacy as only for the relevant period the CDR and location has been sought. The judgment relied upon by the Ld. Addl PP for State in case titled as ***Puneet Arora Vs State of NCT of Delhi (supra)*** is distinguishable on facts as in that case it was concerning the CDR of the police officials of the Special Cell, Delhi Police and the same was denied in view of the Special Cell dealing in matters of National interest which is not the case herein. Accordingly, **the application in hand is allowed and the IO/SHO is directed to file on record the CDR alongwith the location chart of two mobile numbers of applicant i.e 97110 19385 and 84580 839195 as well as of police officials of raiding party w.e.f 13/04/2022 to 14/04/2022. The mobile numbers of the informers if any be blacked out .**

Copy of this order be sent to the IO/SHO concerned for compliance.

The application stands disposed of.

(Gagandeep Singh)
ASJ/Spl. Judge (NDPS):
North, Rohini Courts, Delhi
05.01.2023