

Puneet Arora vs The State (Nct Of Delhi) on 9 December, 2021

Author: Anu Malhotra

Bench: Anu Malhotra

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 2477/2020

PUNEET ARORA

Through: Mr.Rajesh Tarun, Advocate

versus

THE STATE (NCT OF DELHI) Respondent

Through: Ms. Aashaa Tiwari, APP for State

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% 09.12.2021 Crl.M.A. No.19706/2021 Exemption allowed, subject to just exceptions.

Crl.M.C. No. 19705/2021 The petitioner vide the present petition seeks the setting aside of the impugned order dated 24.9.2020 of the Court of the learned Additional Sessions Judge, Patiala House Courts, New Delhi in FIR No.50/2020 Police Station Special Cell and seeks preservation of phone location records of the witnesses as averred vide paragraph 6 of the petition.

The notice of the application is issued to the State. Submissions have been made on behalf of either side. The applicant in the instant case as averred in the petition is indicated to have been arrested in FIR 50/2020 Police Station Special Cell under Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:13.12.2021 19:06:45 This file is digitally signed by PS to HMJ ANU MALHOTRA.

Sections 22/29 of the NDPS Act, 1985. The applicant inter alia submits to the effect that the allegations against him are false and erroneous. In order to bring forth the said aspect the applicant had preferred the application before the learned trial Court seeking preservation of the phone location records of the concerned police officials and the witnesses so that the record does not become non-existent due to passage of time. The details of the witnesses of whom the applicant has sought the preservation of call records are detailed in paragraph 6 of the petition to the effect:

Sr. No. Mobile Name Time Period Purpose Number

1. 9818151086 Constable 26.02.2020 To prove her Suman (1000 HRS) absence at the (Special Cell) TO time (PS Janakpuri) 27.02.2020 of recovery (1000 HRS)

2. 9268217879 Somil Sharma 24.02.2020 To prove his (IO PS Special (1000 HRS) absence at the Cell, TO place of first Janakpuri) 29.02.2020 alleged trap and (1700 HRS) His Presence along with his team at the time of 2nd alleged trap.

3. Constable 26.02.2020 To prove her Sangita (1000 HRS) absence at the Special Cell TO time PS Janakpuri 27.02.2020 of alleged (1000 HRS) recovery

4. SANJAY 26.02.2020 To prove his DUTT (ACP) (1000 HRS) absence at the TO time of Alleged 27.02.2020 recovery of Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:13.12.2021 19:06:45 This file is digitally signed by PS to HMJ ANU MALHOTRA.

			(1000 HRS)	
5.		Tilak Chand 24.02.2020 Bisht (1000 HRS) (Inspector) TO 29.02.2020 (1900 HRS)		prohi substa To sho absenc time o And su recove
6.	9999786855	Puneet Arora 26.02.2020 (number in the (1000 Hours) name of to 27.02.2020 Meenu Arora) (1000 Hours)		To sho presen entire party of all recove
7.	9910006549	Puneet Arora 26.02.2020 (In the name (1000 Hours) of Ms.Seema to 27.02.2020 Makkar) (1000 Hours)		To pro he was the Po Offici
8.	9958875522	Seema 26.02.2020 Makkar D/o (1000 Hours) Sh. Roop Lal to 27.02.2020 Makkar, R/o (1000 Hours) H. No. 151-P Sector 55, Gurugram, Haryana		To pro presen Gazett at the recove

The learned trial Court vide the impugned order had observed to the effect that the call location chart and the CDR of accused Vinod Kumar and Puneet Arora, ie., the applicant herein, were already on record along with the records of the witness Seema Makkar and that the applicant was found using the mobile phone in the name of Meenu Arora,i.e., his mother therefore no direction was required for preservation of the mobile numbers as desired by the accused but that as regards the mobile records of the police officials as well as other persons involved were concerned as they deal in

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very sensitive cases, the Trial Court did not think fit to call their location chart and the CDR details.

On behalf of the applicant, reliance is sought to be placed on the verdict of the Co-ordinate Bench of this Court in Crl.Rev.P. No. 276/2018 dated 28.1.2021 titled Govt. of NCT of Delhi V. Nizamuddin @ Nizam; wherein there is reference inter alia to the observation of this Court in Narcotics Control Bureau v. Gaurav Kumar; Crl.M.C. No. 3161/2019, a verdict dated 5.11.2019 to the effect:

"6. On perusal of the aforesaid provision of law, it is clear that 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 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. with observations also in paragraph 8 of the said verdict in relation to an issue having been dealt with by Hon'ble Supreme Court in the case of Suresh Kumar Vs. Union of India 2015 (3) JCC (Narcotics) 121 with observations to the effect:

"8. All that we are concerned with is whether call details which the appellant 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 Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:13.12.2021 19:06:45 This file is digitally signed by PS to HMJ ANU MALHOTRA.

only for purposes of determining the exact location of the officers concerned at the time of the 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 in 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 officers concerned need not contain other information concerning such calls received or made from the telephone numbers 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 of 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."

Reference has also been made therein to the verdict of the Hon'ble Supreme Court in Suresh Kalmadi Vs. CBI 2015 {3} JCC 1874 with observations of the said verdict to the effect:

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"24. It is submitted by the petitioner that the nexus that the call records will demonstrate strikes at the foundation of the Prosecution's case, and which would show that there was no conspiracy between the petitioner and other accused persons to favour M/s Swiss Timing, and that in fact other officials of the OC, i.e. Prosecution witness PW- 18 Sujit Panigrahi attempted to favour MSL as a bidder and these facts in support of this are evident and demonstrable, but have been deliberately overlooked or concealed by the Prosecution and therefore, the petitioner has a right to an effective opportunity to establish this case with the aid of relevant documents such as the Call Detail Records of Mr. Jyoti Chhabra. At this stage, the Court is not concerned whether the averments made in the application under Section 91 Cr.P.C. may be gospel truth or not. If the documents are necessary in order to decide the real controversy, the same cannot be thrown particularly when the application is filed by the accused....."

On behalf of the State, the learned Additional Public Prosecutor for the State submits that to the extent the prayer made seeking preservation of the call record and the location chart vide paragraph 6 of the persons there is no objection thereto subject to the availability of the said call detail records.

In view of the verdict relied upon on behalf of the petitioner and the submissions made on behalf of the State, the call details of all the witnesses mentioned in paragraph 6 of the petition are directed to be preserved specifically to ascertain the location of witnesses as mentioned at Sr. Nos. 1 to 8 in paragraph 6 of the application of the petitioner referred to hereinabove. However, the same shall be preserved in relation to the location of these witnesses only and in terms of the verdict of the Hon'ble Supreme Court in Suresh Kumar V. Union of India (supra), the calling numbers and the numbers called from the said mobile phones shall be Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:13.12.2021 19:06:45 This file is digitally signed by PS to HMJ ANU MALHOTRA.

blacked out by the companies Airtel, Vodafone, Idea and Jio also are thus directed to ensure that the call detail records of the persons mentioned at in paragraph 6 herein above in the petition are retained and preserved, if presently available.

The petition is disposed of.

ANU MALHOTRA, J DECEMBER 9, 2021/SV Signature Not Verified Digitally Signed By:SUMIT GHAI Signing Date:13.12.2021 19:06:45 This file is digitally signed by PS to HMJ ANU MALHOTRA.