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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 10.10.2025

\+ CRL.M.C. 6172/2025

MANGAL SINGH .....Petitioner

Through: Mr. Sumer Singh Boparai, Mr. Surya Pratap Singh, Mr. Abhilash Kumar Pathak, Mr. Sirhaan Seth, Mr. Shubham Raj Anand, Advs.

versus

STATE (NCT OF DELHI) .....Respondent

Through: Mr. Taran Srivastav, APP for the State

CORAM:-
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT (ORAL)

RAVINDER DUDEJA, J.

1. Petitioner has approached this Court, seeking quashing of order dated 16.07.2025, passed by learned Special Judge (NDPS), Patiala House Courts, New Delhi, in case FIR No. 206/2024, PS Special Cell, under Section 18 & 29 of the NDPS Act, whereby, the application preferred by the petitioner seeking preservation of Call Detail Records [**"CDR"**] and Location Chart (s) of the petitioner, the Duty Officer and the members of the raiding team involved at the time of the alleged recovery, seizure and sampling was dismissed.

2. Prosecution case, in brief, is that on the basis of a secret information, co-accused Jagdeep Singh was apprehended near Singhu Border and 5.2 kgs. of opium was recovered from his bag. Thereafter, on his disclosure statement, co-accused Shamsher Singh was apprehended, and from his possession, 50.355 kgs. of opium was recovered.

3. Subsequently, on 16.05.2025, on the basis of disclosure statement of co-accused Shamsher Singh, the present petitioner was apprehended near M.R. Logistic Park, Sonepat along with a truck, from which, 25.180 kgs. of opium was recovered.

4. Petitioner filed an application under Section 94 BNSS, 2023 (erstwhile Section 91 Cr. PC) before the trial court seeking preservation of CDRs and location charts of petitioner, members of the raiding team and Duty Officer. The application came be dismissed vide order dated 16.07.2025. The relevant para of the order reads thus:-

> *"10. As far as maintainability of the present application is concerned, this Court is of considered opinion that as far as section 94 BNSS, 2023 is concerned, the width of the powers provided under the said section are unlimited, however, there is inbuilt inherent limitations as to the stage and the point of time of its exercise, commensurately with the nature of proceedings, has also with respect to the compulsion of necessity and desirability, to fulfill the task and achieve the object. The said power cannot be exercised at the stage prior to framing of charges, i.e. when the trial has not even begun. The reliance of the Ld. Counsel for the applicant/accused on the case laws referred by him are misplaced, since the stage of entertaining the said application u/s 94 BNSS, 2023 (91 CrPC) has been settled by the decision of the three judge bench of Hon'ble Supreme Court of India in "**State of Orissa Vs Debendra Nath Padhi, Crl Appeal No. 497/2001, date of decision***

> ***29.11.2004"***. *Since, the said judgment is of the larger bench and is also prior in time, the case law relied upon by the Ld. Counsel for applicant/accused in* ***Suresh Kumar (supra)*** *shall not be applicable. Furthermore, in* ***Swarn Singh (supra)****, the Hon'ble Supreme Court of India had relied upon its earlier larger bench decision of* ***Debendra Nath Padhi (supra)*** *and held that application u/s 91 CrPC, 1973 (now 94 BNSS, 2023) cannot be filed at the stage of framing of charge. Hence, the present application is pre-mature and is devoid of any merits and is hereby dismissed and disposed off accordingly."*

5. Notice of the petition was issued to the State through learned APP. Learned APP filed the status report, which is taken on record.

6. Learned counsel for the petitioner submits that the trial court failed to consider that the petitioner did not seek the production of the CDR and the location charts but only prayed for preservation of the same. He places strong reliance on the decision of the Supreme Court in the case of ***Suresh Kumar Vs. Union of India, 2014 SCC OnLine SC 1833***, wherein, in a case under the NDPS Act, the Apex Court directed the preservation of CDRs and location charts of the raiding team in order to give fair opportunity to right to defence to the accused therein. He also places reliance on the decision of this Court in ***CBI Vs. Neeraj Kumar, 2025 SCC OnLine Del. 1351***, whereby, the petition filed by the CBI, challenging the order passed by the learned Special Judge directing the preservation of the CDRs and location charts of the CBI, was dismissed.

7. It has been submitted that the data i.e. CDRs and location charts are maintained with the telecom companies only for the two years, and therefore unless preserved, they would be automatically deleted by 16.05.2026. He submits that the trial is still at the pre-charge stage and

there is no likelihood of its commencing soon and thus there is a real and imminent risk of this critical data being lost before it can be used in the petitioner's defence.

8. It is submitted that the learned trial court committed grave error in dismissing the application by citing it "premature" on the ground that the application under Section 94 BNSS cannot be moved by the petitioner before framing of charge. It is also submitted that the failure to preserve the CDRs and the location charts would cause serious prejudice to the respondent in establishing his defence.

9. *Per contra*, learned APP, relying upon the judgment of the Full Bench of the Supreme Court in the case of State of ***Orissa Vs. Debendra Nath Padhi (2005) 1 Supreme Court Cases 568***, submits that Section 94 BNSS does not give any right to the accused to approach the court at pre-defence stage. The prayer for preservation of the records on the ground that the same may get destroyed over the period of time has no legal backup, inasmuch as, there is no provision in law which entails an accused to seek such directions. He submits that the given role of the Investigating Officer and other members of the raiding team, they are regularly engaged in investigations and maintaining contacts with secret informers. Preserving the CDRs of their mobile phones or their production before the court would compromise their personal safety and jeopardise the ongoing investigations and would also involve risk of exposing confidential sources, ultimately affecting the ability of the investigating agency to function effectively. The learned APP places strong reliance on the

judgment in the case of ***State Vs. Harpal, 2023 DHC 5796***, wherein, this Court declined the preservation of the CDR/location charts of police party by observing that procuring the call detail records of the mobile phones of the police officials including their tower-wise locations can prejudice both their safety and privacy and the same would also put at risk and expose the identities of the secret informers and risk their safety and security. In view of the said submissions, learned APP has prayed that the present petition may be dismissed and the impugned order passed by the learned trial court be upheld.

10. The Court has heard the rival submissions and has perused the material available on record.

11. Admittedly, petitioner filed an application under Section 94 BNSS at the pre-charge stage. In ***State Vs. Debendra Nath Padhi*** (*supra*), the Apex Court held that 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 charge would not arise as the defence of the accused is not relevant at that stage. The relevant paras of the judgment read as under:-

> *"**24.** On behalf of the accused a contention about production of documents relying upon Section 91 of the Code has also been made. Section 91 of the Code reads as under:*
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> *"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)-(3) * *
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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.*

12. The argument of the learned APP has been that an application, under Section 94 BNSS filed at pre-charge stage, is not maintainable in view of the judgment of ***Debendra Nath Padhi*** (*supra*). However, the reliance placed on ***Debendra Nath Padhi*** (*supra*) is misplaced,

inasmuch as, in the said case, the Hon'ble Supreme Court was dealing with the issue of right of the accused to summon documents in his defence before the commencement of trial. In such circumstances, the Hon'ble Court held that accused does not have the right to summon and produce the documents before the commencement of the trial.

13. The facts in the present case are different from those in ***Debendra Nath Padi****'s* (*supra*) case. The petitioner, by virtue of his application under Section 94 BNSS, did not seek the production of the documents before the court but merely sought the preservation of the CDRs and the location charts so that the said data does not get lost in terms of Notification of the Department of Telecommunication. The question for consideration in ***Debendra Nath Padhi*** (*supra*) was as to whether the accused can summon the documents to establish his defence at the charge stage, whereas, in the present case, the prayer has been only for the purpose of preservation of the data which may be required at the stage of defence. Hence, the principles laid down in ***Debendra Nath Padhi*** (*supra*) are not applicable in the present case.

14. The Hon'ble Supreme Court in the case of ***Suresh Kumar Vs. Union of India*** (*supra*), ordered preservation of the CDRs and location charts of the raiding team while observing that the call details relevant only to the extent determining the location of the officers concerned may be summoned and such details need not contain other information concerning such calls received or made from the telephone numbers concerned. The relevant para of the judgment reads thus:-

> ***"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 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 inasmuch 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 called or 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 p.m. 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."*

15. Thus, there is no embargo to the production of CDRs/location charts before the court at an appropriate stage while taking necessary precautions regarding the safety and privacy of the members of the raiding team and the police informers.

16. Be that as it may, as of now, by virtue of his application, petitioner only sought the preservation of the CDRs and location charts and not for its production. The Court is of the view that if such

data is not preserved, there is likelihood that the same may get lost and may not be available to the petitioner in support of his defence.

17. The learned trial court therefore committed an error in dismissing the application on the ground that it was "premature". The impugned order dated 16.07.2025 is therefore set aside and application filed under Section 94 BNSS dated 26.04.2025 stands allowed with direction that the CDRs and location charts of the petitioner, Investigating Officer, Duty Officer and the other members of the raiding team, involved at the time of the alleged recovery, be preserved by the respective service providers.

18. Petition is accordingly allowed.

RAVINDER DUDEJA, J.

OCTOBER 10, 2025
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