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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

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Date of Decision:-19.08.2025

Mohit Garg

.....Petitioner

Versus

State of Haryana and Ors.

.....Respondents

**CORAM: HON'BLE MR. JUSTICE ALOK JAIN**

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Present: Mr. P.S. Ahluwalia, Advocate and  
Mr. Jaiveer Singh, Advocate for the petitioner.

Mr. Paras Talwar, Sr. DAG, Haryana.

Mr. Sartej Singh Narula, Advocate for respondent No.2 to 6.

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**ALOK JAIN, J.**

1. The present petition has been filed invoking the provisions of Section 528 of BNSS, 2023 praying for quashing of order dated 24.04.2025 (Annexure P-5) passed by learned trial Court in case FIR No.0042 dated 07.10.2024 (Annexure P-1), at Police Station Women Police Station, District Dabwali, for offence punishable under Sections 323, 406, 498-A, 506 of IPC, whereby the application under Section 94 of BNSS, 2023 filed by the petitioner was dismissed.

2. The brief facts as narrated by the counsel for the petitioner are being reproduced hereinafter as required for considering the prayer made in the present petition which raises challenge as detailed in above para.

3. The petitioner was married to respondent No.2 on 04.09.2016. Thereafter on account of matrimonial discord, respondent No.2 (as per allegations in the FIR) returned to her parental house on 08.08.2023 and



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lodged a complaint on 27.07.2024(*emphasis laid*), which led to the lodging of the FIR No.42 of 07.10.2024. The allegations in the FIR are not being reproduced as the issue before this Court is only with regard to the impugned order dated 24.04.2025 passed by the Court below whereby during the trial, an application under Section 91 Cr.P.C. (Section 94 BNSS) was adjudicated.

4. It is submitted that the petitioner moved an application under Section 91 Cr.P.C. (Section 94 BNSS) *inter alia* praying for preserving the mobile location data of the respondents from 30.08.2023 to July 2024. It is pertinent to mention here that respondent No.2 is a wife, respondents No.3 and 4 are the parents of the wife and respondents No.5 and 6 are respectable members of the society who allegedly participated in a Panchayat Meeting to resolve the matter between the parties.

The application was opposed by the complainant by filing a detailed reply. The learned Court below dismissed the application, relying on the judgment passed by Delhi High Court in case ***Krishan Pawdia Vs. The State, Nct of Delhi on 03 June, 2022***, holding that “*there is no statutory requirement for the investigating agency or prosecution to share the Call Detail Records or location data and such data is not mandatory evidence and production or preservation of such data was deemed unnecessarily and unfair with the trial process. While the applicant/accused has a right to fair trial but the right must be applied with public interest*”. The application was also dismissed by returning a finding that “*allowing the application would amount to roving and fishing inquiry*”



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*which has no concern with the allegations levelled against the accused in the complaint” in establishing his defence”.*

5. Learned counsel for the petitioner has opened his arguments that the learned Court below has erred in dismissing the application as the prayer was only for **preservation** of the mobile records of the persons mentioned in the application considering the fact that after passage of two years, such records will be automatically deleted. Learned counsel has asserted that petitioner is neither creating a defence nor infringing upon the rights of privacy of the respondents in any manner but the preservation of the records could be instrumental in unveiling the truth at a later stage. Counsel submits that as of today the only urgency is that on 30.08.2025, the data would be automatically deleted and a substantial piece of evidence (which may or may not be required at later stage) would be lost forever and which may be prejudicial for the petitioner on establishing his defence. In support of his contention, learned counsel for the petitioner relies on the following judgments of Hon’ble Apex Court and various High Courts:

- i. Suresh Kumar and Vs. Union of India, 2015(3) RCR (Criminal) 340*
- ii. Amit Yasudev Vs. State of Punjab, 2019 (2) AICLR 717*
- iii. Satnam@Sattu Vs. State of Haryana, 2024 (1) Law Herald 259*
- iv. Chhinder Pal Singh Vs. State of Haryana, 2024 (3) Law Herald 2488*
- v. Chotha Ram and Ors. Vs. State of Rajasthan, 2024 (259) AIC 540*
- vi. Nisar Ahmed Mohiuddin Shaikh Vs. The State of Maharashtra and Anr., 2024 NCBHC-AS 3716*
- vii. Yogesh and Ors. Vs. State of Rajasthan, 2022 (4) CriLR (Raj) 1677*
- viii. State of Himachal Pradesh V. Deepak Rai, 2022 (8) ILR HP 307*
- ix. Mr. Fabian Helmchen Vs. State of Goa and Ors, Doc ID#1828941*



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6. Counsel vehemently relies upon the judgment passed by the Coordinate Bench of this Court in case ***Vikramjit Singh Vs. State of UT, 2025 NCPHHC 14476***. The relevant paragraphs reads as under:

*“8. Preserving and requisitioning of the call details and tower location details would be necessary, otherwise the same would be lost forever. The right of accused to invoke the provisions of Section 91 Cr.P.C. for obtaining documents in support of his defence has been recognized by the Constitutional Courts. The legislative intent behind enactment of Section 91 Cr.P.C. is to ensure that no cogent material or evidence involved in the issue remains undiscovered in unearthing the true facts during investigation, enquiry, trial or other proceedings. No doubt while passing the appropriate direction for preserving and production of call details/tower location details under Section 91 Cr.P.C. would violate the right to privacy of the police officials but the right of the accused under Article 21 of the Constitution of India in ensuring free and fair investigation/trial would prevail over the right to privacy of the police officials. Some extent of privacy can be breached in production of the said call details, as this would facilitate the learned trial Court in discovering the truth and rendering justice, which is fair to all stake holders.*

*9. The denial of an adequate opportunity to the accused by nonproduction of the electronic record, which is admissible under Section 65-A and 65-B of the Indian Evidence Act in criminal trial, would amount to miscarriage of justice. Section 91 Cr.P.C. helps in facilitating a fair and just resolution to the case by ensuring that relevant evidence is made available to the Court for making informed decisions and arrive at a just and fair outcome. It enables the Court to secure important documentary evidence that may be in possession of individuals or*



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*organization and helps prevent the destruction, tampering or loss of crucial documents, thereby maintaining the integrity of the judicial process. The power under 91 Cr.P.C. must be exercised for production of such evidence, which would assist the Court in discovering the truth in the pursuit of justice. However, the right of privacy of the police officials cannot be breached at the ipse dixit of the accused. Before any such order for production of call details/tower location is passed, the accused is required to prove necessity and desirability of such evidence, which would be relevant to establish the guilt or innocence of the accused.*

*10. As principles of natural justice are integral part of fair trial under Article 21 of the Constitution of India, any denial of the best available evidence or effective and substantial hearing to accused in proving defence would amount to denial of free and fair trial. Accordingly, the present petition is allowed and the impugned order dated 03.06.2024 passed by the learned Special Court, Chandigarh is hereby set aside to the extent that instead of four police officials, mobile tower location and call details records of all eight police officials is ordered to be preserved.”*

7. *Per contra*, learned counsel for respondents No.2 to 6 has taken this Court through the reply filed on behalf of respondents and has submitted that respondents have no objection to the preservation of call detail records of the complainant and her parents. However, counsel raised serious objections with regard to respondents No. 5 and 6, who were only party to certain Panchayat meetings convened between the families of the parties for exploring the possibility of an amicable settlement. Learned counsel for the respondents submitted that role of respondents No.5 and 6 is



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not under scrutiny in the present proceedings and, even if it is assumed that respondents suggested or offered some amount in the Panchayat, such actions were only aimed at exploring an amicable settlement and are irrelevant to the offence in question which was committed in the matrimonial home.

8. Learned counsel for the respondents has vehemently contended that, as per the challan, respondents No. 5 and 6 are not even in the list of witnesses, and therefore, any order to preserve their tower location/data would amount to an infringement of their rights to privacy and to substantiate the same, the counsel for respondents relied upon the judgment of the Hon'ble Apex Court in case of Justice *K.S. Puttaswamy (Retd.), and Anr. Vs. Union of India and Ors.(2017) 10 SCC*. It has further argued by learned counsel, that the petitioner is abusing the process of law in procrastinating the trial by moving such frivolous applications. The allegations of demand of dowry and criminal breach of trust were committed in the matrimonial home of the petitioner and there is cogent evidence *qua* the same. The actual attempt of the petitioner is to entangle respondents No.5 and 6 who are respectable citizens and elders of the society, who had made every effort to amicably resolve the matter and petitioner is targeting them only with a view to create a pressure on the complainant side to succumb to the illegal demands to settle the matter.

9. Learned counsel for the respondents has further raised an issue that Section 91 Cr.P.C. (Section 94 BNSS) cannot be invoked to create a defence for the accused. More so, the provisions of Section 91 Cr.P.C. (Section 94 BNSS) are to be exercised either by the police officer or by the



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Court, and it cannot be permitted to be misused by the accused to build his defence prematurely. It is submitted that the trial is at the stage of framing of charge. The complainant was thrown out of the matrimonial house on 08.08.2023 and counsel for the respondent has very fairly reiterated that if the petitioner wishes to preserve the call records of the complainant and his parents (i.e. respondents No.2 to 4) the same be done.

10. Another issue raised by counsel for the respondents is that the petitioner has already moved an application under Section 175 (3) of the BNSS, 2023 seeking monitoring and investigation of the FIR and in the said application identical prayer has been made which was not allowed and, hence, deemed to be denied and therefore, the Court below has rightly rejected the prayer as the petitioner cannot be permitted to raise the same prayers by invoking different provisions. Learned counsel for respondents has further submitted that the judgment relied upon by the petitioner primarily pertains to the police officials, as the defence raised therein was of illegal confinement or wrongful recoveries or false implication on the accused therein by the police officials.

11. Learned counsel for respondents to substantiate his contention that as to on what stage an application under Section 94 BNSS (91 Cr.P.C.) can be preferred has relied upon the judgment passed by Hon'ble Apex Court in case of *State of Orissa Vs. Debendra Nath Padhi, 2005(1) SCC 568*, the relevant paragraphs reads 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. In so far 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 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.*

*28. We are of the view that jurisdiction under Section 91 of the Code when invoked by accused the necessity and desirability would have to be seen by the Court in the context of the purpose investigation,*



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*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.”*

Counsel also relies upon the judgment of Coordinate Bench of this Court in case of ***Narpinder Singh @ Sunny Vs. State of Punja and Ors.*** in CRM-M-50985-2024 dated on 09.12.2024.

12. Learned counsel for respondents has vehemently argued that the judgment passed by the Coordinate Bench in the Case of ***Vikramjit Singh (Supra)***, in fact, clearly records that the petitioner will have to prove the necessity and desirability of such evidence which would be relevant to establish the guilt or innocence of the accused. It is submitted that the petitioner will have to overcome the hurdle that to seek any such order for preservation of call details or tower location, the accused is required to prove the necessity and desirability of such evidence. However, since the trial is still at the initial stage of framing of charges the petitioner cannot be permitted to seek any such prayer.

13. Lastly, learned counsel for the respondents has relied upon the judgment passed by Hon’ble Apex Court in case of ***State of Rajasthan Vs. Swarn Singh @ Baba, 2024(1) Law Herald (SC) 525*** to reassert that the accused cannot invoke and would not have right to invoke Section 91 Cr.P.C. at the state of framing of charges.

In light of the above, learned counsel for the respondent prays for dismissal of the present petition.

14. In rebuttal Mr. Ahluwalia has submitted that there is a huge delay in lodging the complaint and thereafter the registration of the FIR.



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To cover-up the delay the complainant has propounded a false story of Panchayat meetings and therefore, at the time of evidence the call records could be an important piece of evidence to shatter the testimony of the witnesses so produced. The Counsel further submits that if the petitioner is able to demonstrate that the part of an FIR is false and concocted the same may shatter the veracity of the said witness. However, keeping all his arguments open at the appropriate stage counsel submits that his prayer is only for **preservation** of the record. It is also submitted that whether the said record will be used/relied upon or not, would be a separate issue, for which the petitioner could be put to any condition. But at this stage, the preservation is important as the said record would be completely lost if not protected. As regards to the arguments of the respondents that the preservation of records of respondents No.5 and 6 would amount to infringement of their right of privacy, learned counsel submits that the same is a wrong perception of the respondents as the records are not being made public.

15. Heard learned counsel for the parties at length and they have rested their arguments.

16. Before proceeding any further, it would be relevant to reproduce the provisions of Section 91 Cr.P.C. and Section 94 of BNSS which are almost identical.

***Section 91 Cr.P.C – 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*



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*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-*

*(a) 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*

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

***Section 94 BNSS–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, electronic communication, including communication devices, which is likely to contain digital evidence or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Sanhita by or before such Court or officer, such Court may issue a summons or such officer may, by a written order, either in physical form or in electronic form, require the person in whose possession or power such document or thing is believed to be, 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*



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*causes such document or thing to be produced instead of attending personally to produce the same.*

*(3) Nothing in this section shall be deemed-*

*(a) to affect sections 129 and 130 of the Bharatiya Sakshya Adhiniyam, 2023 or the Bankers' Books Evidence Act, 1891 (13 of 1891); or*

*(b) to apply to a letter, postcard, or other document or any parcel or thing in the custody of the postal authority.*

17. Considering the above provisions of law and the settled proposition of law, the matter is adjudicated as under:

18. The factual matrix of the case demonstrates that the petitioner and respondent No.2 got married on 04.09.2016. Admittedly, respondent No.2 left the matrimonial house on 08.08.2023 and there is no complaint lodged by the complainant or her relatives before the marriage, on the occasion of marriage or even after the marriage till the date respondent No.2 left the matrimonial house. Thereafter, a complaint is stated to be filed on 30.06.2024 i.e. after almost 10 months and serious allegations are levelled therein. The said complaint after being looked into led to registration of FIR No.42 on 07.10.2024 and in order to explain the delay the complainant referred to convening of certain Panchayat meetings, wherein respondents No.5 and 6 are stated to be the mediator. The petitioner after being granted the concession of bail/anticipatory bail had also moved an application under Section 175(3) of BNSS in which the following prayer was made:

*"11 As the case of complainant is weak, she has planted these witnesses namely Surinder Bansal and Neeraj Jindal. The fact is that applicant never met these persons and the same can easily be verified by*



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*the IO by asking these individuals about place of incident and their respective mobile numbers so that location of these individuals can be compared to location of applicant on that day. But as the IO is totally biased and in connivance with the complainant, she has blatantly refused to investigate this aspect.*

*12. Another instance of a meeting has been alleged by the complainant in her complaint. She alleged that her father, along with Arvind Jindal and Neeraj Kumar Jindal met with my father and his friend in July 2024 in Chandigarh and there dowry was demanded. The fact is my father never met these people during that period.*

*13. Therefore, it is clear that the case of complainant is a false case based on a concocted story. By conducting basic investigation like collecting mobile location of my father, my own mobile, mobile location of father of the complainant and mobile location of Surinder Bansal, Arvind Jindal and Neerai Jindal of the relevant period i.e. 30.08.2023 and July, 2024, these facts can be verified. The same has been conveyed to the IO via a detailed reply. But the IO has refused to take any action.*

*14. It is we known that as per Statutory rules of TRAI, the record of location can only be preserved for 2 years. Therefore, timely investigation on these aspects is of utmost importance in the interest of justice*

*15. The applicant is aware that the court cannot direct the IO to conduct investigation in a certain manner, but it can always monitor the investigation/call for status report and put questions to the IO as to why various aspects of Investigation are being ignored by the IO”.*

19. The said application is still pending before the Court of competent jurisdiction. However, subsequent thereto the petitioner again



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moved an application invoking provisions of Section 91 Cr.P.C./94 BNSS *inter alia* praying as under:

*Seeking preservation of mobile location of following persons of the relevant period i.e. 30.08.2023 to July 2024*

- *Petitioner's own mobile*
- *Petitioner's father*
- *Complainant's father*
- *Surinder Bansal, Arvind Jindal and Neeraj Kumar Jindal*

20. The said application was contested and in the reply filed by the respondents the following stand is taken that:

- *Respondent No. 5 and 6 were the member of the panchayat meetings convened at the house of Complainant at Mandi Dabwal.*
- *To prove the factum of meetings oral evidence is sufficient as mobile phones can be left by a person inadvertently at house or some other place .*
- *The matter was already investigated by the police and the accused cannot get the matter investigated as per his own choice.*

21. The learned Court below has dismissed the said application relying upon the judgment passed in ***Krishan Pawdia Vs. The State, NCT of Delhi on 03 June, 2002***. The relevant extract of the finding returned by learned trial Court is reproduced as under:

*"12. Further it has been held in case titled **Krishan Pawdia vs The State, Nct Of Delhi on 3 June, 2022** in which it has held by Hon'ble Delhi High Court that:-*

*Hon'ble Delhi High Court dismissed the petition filed by the petitioner in which petitioner had sought direction for investigating agency to provide the contacts number and mobile*



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*location data of the moving party involved in FIR No.0489/2021, registered under Section of Narcotic Drugs and Psychotropic Substances Act, 1985. The petitioner contended that such information was essential to establish his claim for false implication and to assure fair investigation. The Hon'ble Court held that disclosing or preserving call detail records within CDR whose and mobile location data of these officials could compromise of their personal safety and potentially expose identity of the confidential informers. Furthermore, the court noted that the investigation in the case had already been completed and the trial was under way. Given these circumstances, the Hon'ble court concluded that the relief sought by the petitioner could not be granted and accordingly dismissed the same.*

*13. Therefore, endeavor of the court is to balance the rights, safety and integrity of both the parties and even the investigating agency even in aforementioned judgment Hon'ble Delhi High Court has given his observation that " there is no statutory requirement for the investigating agency the prosecution or share the CDR and location data and such data is not mandatory evidence and production or preservation of such data was deemed unnecessarily and unfair with the trial process. While the applicant/accused has a right to fair trial but that right must be applied with public interest.*

*14. Hence, in view of the aforementioned judgment this court is of the considered opinion that there is no necessity or desirability for the purpose of investigation, inquiry, trial or other proceedings under the BNSS regarding preserving mobile location as defence of accused is not relevant at all at this stage. As allowing the present application under Section 94 of BNSS would amount to roving and fishing inquiry which has no concern with the allegations leveled against the accused in the complaint in establishing his defence.*



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*15. Therefore, the application under Section 94 of BNSS moved by the applicant-accused stands dismissed being not maintainable.*

*16. Nothing contained herein above shall be deemed to be an expression of this court on the merits of the case.”*

22. In the case of **Zahira Habibulla H. Sheikh v. State of Gujarat [2004 AIR (SCW) 2325]**, the principle of fair trial has been discussed and the relevant extract is reproduced herein under:

*“33. The principle of fair trial now informs and energises many areas of the law. It is reflected in numerous rules and practices. It is a constant, ongoing development process continually adapted to new and changing circumstances, and exigencies of the situation - peculiar at times and related to the nature of crime, persons involved - directly or operating behind, social impact and societal needs and even so many powerful balancing factors which may come in the way of administration of criminal justice system.*

*34. As will presently appear, the principle of a fair trial manifests itself in virtually every aspect of our practice and procedure, including the law of evidence. There is, however, an overriding and, perhaps, unifying principle. As Deane, J. put it :*

*"It is desirable that the requirement of fairness be separately identified since it transcends the content of more particularized legal rules and principles and provides the ultimate rationale and touchstone of the rules and practices which the common law requires to be observed in the administration of the substantive criminal law."*

*35. This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crimes being public wrongs in breach and violation of public rights and duties, which affect the whole community as a community and harmful to*



*the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interests of society is not to be treated completely with disdain and as persona non grata. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice - often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due administration of justice has always been viewed as a continuous process. not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is till possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators.*

*36. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining truth has to be fair to all concerned. There can be no analytical, all-comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said*



*either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will be not correct to say that it is only the accused who must be fairly dealt with. That would be turning Nelson's eyes to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.”*

23. Further in the case of **Ram Chander v. State of Haryana, [1981 SSC 191]** the Hon’ble Supreme Court has observed that the criminal Court have to be an effective instrument in dispensing justice. The relevant extract of the judgment is reproduced as follows:

*“2. The adversary system of trial being what it is, there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive elements entering the trial procedure. If a Criminal Court is to be an effective instrument in dispensing justice the presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth. As one of us had occasion to say in the past:*



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*"Every Criminal trial is a voyage of discovery in which truth is the quest. It is the duty of a presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. For that purpose he is expressly invested by Section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact, relevant or irrelevant. section 172 (2) of the Code of Criminal Procedure, 1973 enables the Court to send for the police-diaries in a case and use them to aid it in the trial. The record of the proceedings of the committing Magistrate may also be perused by the Sessions Judge to further aid him in the trial". (Sessions Judge, Nellore v. Intna Ramana Reddy, ILR (1972) Andh Pra 683).*

*3. With such wide powers the Court must actively participate in the trial, to elicit the truth and to protect the weak and the innocent. It must, of course, not assume the role of a prosecutor in putting questions. The functions of the counsel, particularly those of the Public Prosecutor, are not to be usurped by the judge, by descending into the arena as it were. Any questions put by the judge must be so as not to frighten, coerce, confuse or intimidate the witnesses".*

24. The learned Hon'ble Apex Court has repeatedly held that in every criminal trial the discovery of truth is pivotal. Any such evidence which could unfurl the truth is an importance piece of evidence. At the same time, the privacy of an individual is also heavily weighed but when compared to the fundamental right of a citizen as to whether to preserve the privacy of an individual would lead to inability of discovery of truth, in my opinion the fundamental right for discovery of truth would be of much



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more importance. Article 21 of the Constitution of India clearly lays down the principle of natural justice and the denial of access to evidence which would be lost if not preserve within time, will lead to miscarriage of justice. This Court finds support from the judgment of Hon'ble Apex Court in case of ***Tarun Sharma @Vipul & Anr. Vs. The State of Uttar Pradesh and Ors.*** (arising out of SLP(Crl.) No.17319 of 2024, wherein it has been held as under:

*“6. We have considered the rival submissions and carefully perused the material placed on record.*

*7. It seems to us that if, in the due course of events, it is found that the CDRs which the appellants seek to preserve have a direct bearing on the merits of the case, they are likely to be prejudiced in the pending trial, as the mobile companies would have already destroyed the relevant records.*

*8. On the other hand, if the mobile companies are directed to preserve the CDRs, thereby leaving it open for the Trial Court to determine the relevance of such records at an appropriate stage, no prejudice shall be caused to the prosecution or to the complainant.*

*9. Consequently, we allow this appeal; set aside the impugned order dated 25.10.2024, passed by the High Court of Judicature at Allahabad; and we also set aside order dated 22.12.2023, passed by the Trial Court.*

*10. We further direct the mobile companies, the details whereof are mentioned in the application dated 12.12.2023, moved by the appellants before the Trial Court, to preserve the CDRs of the witnesses, whose requisite details are also appended to the aforesaid application. The CDRs shall be produced before the Trial Court as and when summoned, in accordance with law.*



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*11. It goes without saying that the relevance of such evidence shall be determined by the Trial Court at an appropriate stage, and mere preservation of the records shall not accrue any undue advantage to the appellants.”*

25. Further the Hon’ble Delhi High Court in the judgment of ***Sohail Malik Vs. State NCT of Delhi (2025 NCDHC 6718)*** has directed preservation of data with safeguards, including in-camera proceedings if necessary, to protect complainant's privacy. The relevant extract of judgment is reproduced as under:

*“14.2. It may be observed that CDRs can reveal information such as the number of times that calls are exchanged between parties, the number of times one party calls the other and vice-versa, the time of day when phone-calls are made or received, and the duration of phone-calls exchanged between parties, etc., which can be interpreted in the course of trial to examine the nature of the engagement of parties with each other. To be clear, the CDRs could turn-out to be elements of evidence, which are either inculpatory or exculpatory, when examined in conjunction with other evidence that may come on record. Furthermore, the mere allegation that the accused had erased data from his mobile phone while in police custody, in and of itself, is no ground to have denied preservation of the data and information requested by way of the application, especially in view of complaint dated 16.05.2023 stated to have been filed by the accused, alleging that the complainant's husband had forcibly destroyed the data from his phone. It is pertinent to note that the forensic report in respect of the mobile phone of the accused says that the phone was 'factory reset' on 17.05.2023 at 10:11:51 AM at PS: Parliament Street.*



*14.3. It is also elementary, that if data and information such as CDRs and other electronic records, are not preserved at this stage, they would quite definitely be weeded-out by the service providers or be over-written in their information technology systems; and would therefore subsequently become completely irretrievable and unavailable. In fact, it is appropriate to note, that according to the telecom service provider, the CDRs for a substantial part of the relevant period relating to the above-referenced mobile numbers, have already been weeded-out by them, statedly in compliance with the terms of their license. Furthermore, as noted in the learned Magistrate's order dated 24.04.2024, even the requested CCTV footage of the Indira Gandhi International Airport, New Delhi has already been wiped-out or erased by the authorities since it is only retained for a limited period of 30 days.*

*14.4. In the course of submissions, there has been fierce contestation on whether the CDRs and the data sought to be preserved satisfy the test of 'necessity' and 'desirability' required under section 91 Cr.P.C. The complainant and the State, both have argued that the CDRs and other data in question fails the test of necessity or desirability. The learned APPs have in effect argued, that the data and information sought by way of section 91 Cr.P.C. application would only be needed, if at all, at the stage of defence evidence; but since the matter before the learned Magistrate is at the stage of framing of charge, the application under section 91 Cr.P.C. was premature; nor could the learned Magistrate have considered the question of defence evidence at this stage. Learned counsel appearing for the complainant has also contended that disclosure of the data and information sought by the accused would amount to a breach of the complainant's privacy and should therefore not be permitted.*



*14.5. However, this court views the foregoing submissions in a different light. In the opinion of this court, the rival submissions show that at the very least, the data and information sought to be preserved by the accused may be required for purposes of the trial, even if at the stage of defence evidence. The accused contends that the data and information would be necessary for him to show the nature of the relationship between him and the complainant, both contemporaneously with the time of registration of the subject FIR as well as in the past period. It is the contention of the accused that the complainant engaged in a very close and intimate relationship with him, which factor would be relevant to construe and decide the veracity of the allegations that the complainant is making against him. Whether or not this contention has substance cannot be determined at this nascent stage, and it cannot be said that the data and information sought to be preserved is unnecessary or undesirable for purposes of a fair trial.*

*14.6. In the opinion of this court therefore, the data and information sought fulfils the test of necessity under section 91 of the Cr.P.C. It also appears obvious, and beyond doubt, that the data and information in question are perishable, in the sense that these are bound to be weeded-out or overwritten over a period of time. It can therefore hardly be contended with any seriousness, that it is not desirable to preserve that data and information right-away. It would be a travesty of justice to tell the accused, that we know that the data and information is bound to disappear for-good if it is not preserved at this stage, but since the proceedings are only at the stage of framing of charge, so at this stage, you have no right to ask that the data and information which will disappear subsequently, even be preserved. If evidence, claimed to be exculpatory, is allowed to dissipate in this manner, with the court being*



*fully aware that such evidence would become irretrievable subsequently, it could prejudice a fair trial.*

*14.7. The other objection strenuously raised on behalf of the complainant is that the CDRs and other data and information relating to the period prior to 01.01.2023 is irrelevant and of no consequence. In the opinion of this court, that contention is too broad to be accepted, since this court cannot lose sight of the stand of the accused that the complainant and the accused were in a relationship prior to that period, and to support that submission, the accused has sought preservation of the CDRs and other data and information for the entire period from 01.04.2020 to 15.05.2023. This court also cannot ignore the concept of res-gestae contained in sections 6, 7 and 8 of the Indian Evidence Act, 1872 ('Evidence Act') which makes even the past conduct of parties relevant, in the following words :*

*6. Relevancy of facts forming part of same transaction.-Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.*

*7. Facts which are the occasion, cause or effect of facts in issue.- Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.*

*8. Motive, preparation and previous or subsequent conduct.- Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.*

*The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in*



*reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.*

*14.8. It must also be observed that, in any case, the 'relevance' or 'admissibility' of the data and information in question, is not to be examined at this stage. Section 91 Cr.P.C. hinges on two tests : namely of 'necessity' and 'desirability'; and whether or not the data and information sought would be 'relevant' or 'admissible' in the course of trial; and whether the data and information would have any persuasive value in aid of the defence of the accused, are not aspects that would enter this court's consideration while deciding an application under section 91 Cr.P.C. At the risk of repetition, it must be noticed that the accused is only seeking that the data and information in question be preserved; and whether or not such data and information is relevant or admissible, or whether it would amount to breach of the complainant's privacy are all matters to be considered subsequently in the course of the trial.*

*17. In these circumstances, it is de rigueur that the preservation of evidence claimed to be exculpatory must be the rule, unless the claim is ex-facie baseless.*

*18. Preservation of exculpatory evidence is of the utmost sanctity for purposes of ensuring a fair trial guaranteed under Article 21 of the Constitution of India; and a narrow construction or interpretation of section 91 Cr.P.C. must not stand in the way of preservation of such evidence, whilst of course leaving it to the trial court to subsequently decide whether such evidence is relevant and admissible.*

*22. As for the apprehension that mere preservation of the CDRs, data and information sought by the accused, would amount to breach of the*



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*complainant's privacy or would stigmatize her, this court is of the view that this submission requires a calibrated response. It may be observed that this court is not blind to the concerns of the complainant; however, in the opinion of this court, such concerns cannot stand in the way of at least preserving what the accused claims to be exculpatory evidence. As a measured approach, this court would direct that insofar as the CDRs are concerned, in order to obviate unnecessary exposure of the complainant's CDRs, only the CDRs of the accused for the period from 01.04.2020 to 15.05.2023 shall be preserved, which would be adequate to show the communications, if any, between the parties for that period. As for the other apprehensions expressed by the complainant, suffice it to say that those can be adequately protected by holding in-camera proceedings and adopting such other measures, at the appropriate stage, if so warranted, as the learned trial court may consider proper.*

*24. Coming next to the argument that the application under section 91 of the Cr.P.C. was premature, since the accused had no right to be heard before the stage of framing of charge, in the opinion of this court, in the day and age of electronic evidence, it would be a travesty of justice if the court takes the view that it would not direct even preservation of electronic evidence, until the time comes for recording defence evidence. Since the court is aware that such evidence would inevitably be erased or deleted within certain time frames, declining to preserve such evidence would be a recipe for disaster of a fair trial. This position can never be countenanced by the court."*

26. In light of the peculiar facts of the case coupled with the rules framed by the TRAI, whereby that the telephone companies are obligated to preserve record only for a period for two years, and by the time the defence



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evidence will start the above said period might lapse and the record shall be perished and lost forever, when considered with the above settled proposition of law, the present petition is partly allowed and the impugned order dated 24.04.2025 is set aside. The authorities are directed to preserve the mobile data *qua* respondents No.2, 3 and 4 separately and data *qua* respondents No.5 and 6 separately.

27. It is further directed that the learned Magistrate shall verify that the data is accessible and the same shall be preserved along with requisite certificate as required under Section 65-B of the Evidence Act (Section 63 of Bharatiya Sakshya Adhinyam, 2023) without disclosing it to either the accused or the complainant and the entire data i.e. CDR etc. shall be kept in a sealed cover, at this stage.

It is further made clear that, in case the petitioner wishes to get the said evidence on record he will have to overcome the hurdle of proving that the said evidence is necessary, desirable and relevant, which could establish either the guilt or innocence of the accused. Both the accused and the complainant shall be at liberty to file appropriate applications before the learned Magistrate, seeking disclosure or production of such CDRs, data and information, at the appropriate stage, as may be permissible, in accordance with law, and the said application if so moved at an appropriate stage, would be considered on its own merits without being impressed by the present order. It is further made clear that mere '**preservation**' of the record shall not accrue any right *qua* the accused or cause any undue advantage to them and at the same time shall not be prejudicial to the interest of the complainant.



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28. The present petition is disposed of in above terms.
29. Pending miscellaneous application(s), if any, stands disposed of.

**(ALOK JAIN)**  
**JUDGE**

**August 19, 2025**

manju

Whether speaking/reasoned:- Yes  
Whether Reportable:- Yes