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

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CRM-M-14929-2025 (O&M)

Date of decision: 21.03.2025

Divesh Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Aditya Sanghi, Advocate
for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*), is for setting aside the order dated 25.02.2025 (Annexure P-1), passed by the Court of learned Additional Sessions Judge/Special Court, Kaithal in case titled as ***State of Haryana vs. Divesh Kumar and others***, arising out of FIR No. 263 dated 23.08.2023, registered under Sections 120, 120-B, 302 and 384 of IPC at Police Station Kalayat, District Kaithal, whereby an application filed by the petitioner under Section 91 of Cr.P.C. (*which is pari materia with Section 94 of BNSS*) for preserving the tower location charts and all associate mobile data of mobile number 94672-22999, belonging to the petitioner, for the period from 24.08.2023 to 25.08.2023 and that of mobile numbers 90507-09033 and 94666-90898, belonging to HC Manish and HC Tarsem Kumar for the period from 23.08.2023 to 05.08.2023, had been dismissed.

2. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated as an accused in the aforesaid and is facing trial

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therein. During the course of trial, he had filed an application before the learned trial Court under Section 91 of Cr.P.C. for preserving the tower location and other associate data of aforementioned mobile numbers for the aforesaid period along with a certificate under Section 65-B of the Indian Evidence Act to ensure its authenticity as the said data was of paramount importance for his defence. However, the said application has been dismissed by the learned trial Court primarily on the ground that the petitioner failed to establish how the requested location charts, especially after the date of the incident, would be necessary for just decision of the trial and also on the ground that he already had access to certain call details record relating to the period of 22.08.2023/23.08.2023. It is argued that the impugned order is not sustainable in the eyes of law as while passing the same, the learned trial Court has not applied its judicious mind. The learned trial Court has ignored the fact that the petitioner was entitled to bring potentially exculpatory electronic evidence on record in order to lead his defence evidence. The provisions of Section 94 of BNSS enable a Court to summon any document or thing if such document or thing is necessary or desirable for the purpose of investigation, inquiry or trial. While submitting that the requested data/tower locations of the mobile numbers as mentioned in the application are necessary and crucial for the petitioner to defend himself and also for just and proper decision of the case, it is urged that the petition deserves to be allowed and the impugned order is liable to be set aside. To fortify his arguments, learned counsel for the petitioner has relied upon the authority cited as ***Suresh Kumar vs. Union of India : 2015 (3) RCR (Criminal) 340***, wherein Hon'ble Supreme Court has held that an accused can be allowed to summon call record of mobile telephones of concerned police officials to show that they were

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not near the location as alleged. He has also relied upon the judgments rendered by this Court and reported as *Upashu and another vs. State of Punjab and others : 2021 (3) RCR (Criminal) 75* and *Gagandeep Singh @ Gagan vs. State of Punjab : 2022 (3) RCR (Criminal) 540*, wherein similar view has been taken.

3. *Per contra*, learned State counsel, who has advance notice of the petition and is ready to argue the matter, has submitted that there is no infirmity or illegality in the impugned order as the petitioner had failed to show as to how the requisite data/tower locations of the aforesaid mobile numbers were necessary for just decision of the case. Hence, it is urged that the petition is liable to be dismissed.

4. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

5. The petitioner has been booked and challaned in the aforesaid case on the allegations that he had committed murder of victim Sanjay in the intervening night of 22.08.2023/23.08.2023. He is facing trial. During the course of trial, he had filed aforesaid application under Section 91 of Cr.P.C. for preserving the tower location charts and all associate mobile data of mobile number 94672-22999, belonging to him, for the period from 24.08.2023 to 25.08.2023 and that of mobile numbers 90507-09033 and 94666-90898, belonging to HC Manish and HC Tarsem Kumar for the period from 23.08.2023 to 05.08.2023. However, the application had been dismissed by the learned trial Court on the ground that the petitioner could not demonstrate as to how the same was necessary for just decision of trial and that during the course of investigation, Customer Application Form and call data record of the mobile number of the petitioner had already been obtained by the Investigating Officer

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for the period from 20.08.2023 to 23.08.2023. A perusal of the application reveals that although aforesaid data for the said period has already been procured but the petitioner is praying for preservation of tower location charts and all associate mobile data of mobile number 94672-22999, belonging to himself, for the period from 24.08.2023 to 25.08.2023 and that of mobile numbers 90507-09033 and 94666-90898, belonging to HC Manish and HC Tarsem Kumar for the period from 23.08.2023 to 05.08.2023. As per the petitioner, this data in addition to data already procured is essential for the just decision of the case as well as for proving his innocence. In view thereof, this Court does not see any rationale in depriving the petitioner from the documents/information, which as per him, is crucial for just and proper decision of the case. Accordingly, the present petition is allowed. The impugned order is set aside. The application filed by the petitioner under Section 91 of Cr.P.C. stands allowed. It is directed that the data with regard to mobile numbers as mentioned in the application be preserved for the period mentioned therein.

21.03.2025*Wasim Anwar***(MANISHA BATRA)
JUDGE***Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*