HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Criminal Revision Petition No. 1026/2023
CNR: RJHC010541742023 | URN: CRLR / 2125U / 2023

Vijendra Singh S/o Dhukalram, Aged About 43 Years, R/o Thimoli Tehsil Ramgadh Shekhawati Dist. Sikar At Present Assistant Sub ıspector Police Line Dist. Churu Raj.

----Petitioner

Versus

tate Of Rajasthan, Through Pp

----Respondent

For Petitioner(s)	:	None present
For Respondent(s)	:	Mr. NS Chandawat, PP

HON'BLE MR. JUSTICE FARJAND ALI

Order

14/10/2026

1. The instant petition has challenge to the order dated 24.07.2023 passed by learned Special Court Prevention of Corruption Act Cases, Shri Ganganagar in Session Case No.21/2022 whereby the application for summoning the call details and location of complainant preferred by the petitioner was rejected.

2. Heard learned Public Prosecutor. No one appeared on behalf of the petitioner.

3. After going through impugned order, it is transpiring that the petitioner is an accused and is facing trial for commission of an offence under the penal provision of Prevention of Corruption Act. At the stage of consideration of charges, he moved an application to the effect that call detail and location of phone number of the complainant Mahendra Singh be summoned with the assertion that he was not available and present as narrated in the FIR and running

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notes. The said application has been dismissed on the ground that no provision has been mentioned in which the application can be entertained and on the other ground that the case was at the stage of consideration of charge. If the defence is taken by the accused, he can agitate the issue right from the very first day of commencement of the judicial proceeding.

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None present for the petitioner. I have perused the impugned order.

5. The petitioner has sought production of certain documents and electronic records which are not within his possession or accessible to him. From the nature of the material sought to be procured, it appears that the same comprises electronic records maintained in the ordinary course of business and may be subject to automatic deletion after the expiry of a prescribed period, in accordance with the applicable regulatory framework of the Telecom Regulatory Authority of India (TRAI) or the relevant service provider's data-retention policy. In such circumstances, any delay in securing the requisite material may render the very purpose of moving the application nugatory and may irreversibly deprive the petitioner of potentially material evidence.

6. The right of an accused to establish his defence is an integral facet of a fair trial and finds recognition both in the statutory scheme of criminal procedure and in the broader jurisprudential principles governing the administration of criminal justice. The accused cannot be deprived of a fair and reasonable opportunity to place relevant material in support of his defence merely because the trial has progressed to a particular stage. Undoubtedly, the stage of the proceedings is a relevant consideration, and an accused cannot be

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permitted to introduce evidence prematurely in a manner that prejudices the prosecution or disrupts the orderly course of trial. Nevertheless, the procedural stage cannot, by itself, constitute an insurmountable impediment where the material sought is potentially evant to the just adjudication of the controversy and is vulnerable destruction, erasure or automatic deletion with the passage of ne.

7. In such circumstances, the Court cannot remain a silent spectator to the imminent possibility of the loss of potentially relevant evidence. Rather, the interests of justice require the Court to adopt appropriate measures to preserve the material, subject to its relevance, availability and the applicable legal framework, so that a legitimate defence is not rendered illusory by the mere efflux of time. Preservation of such material, at this stage, would not amount to an expression of opinion on its admissibility, evidentiary value or ultimate effect on the merits of the case; it would merely ensure that the material, if available and legally obtainable, remains capable of being considered at the appropriate stage of the proceedings. The paramount consideration is that the trial must not only be fair in form but must also afford a meaningful and effective opportunity to the accused to establish his defence.

8. The issue involved in this case has been dealt with by this Court vide order dated 04.03.2024 in the case of Chotha Ram S/o Shri Lumbha Ram & Anr. Vs. State of Rajasthan in S.B. Criminal Misc (Pet.) No. 3672/2023, the relevant part of the order is reproduced hereinbelow :-

"10. It is the stand of the defence that a false story has been cooked up by the prosecution by fabricating false evidence and the entire

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story set out in the charge-sheet is a bundle of lies. It is his stand that if the material, prayer for which is made for summoning, is taken on record then the entire case of the prosecution would fall on earth.

11.This Court feels that if for the purpose of reserving and saving the right of the accused and for the sake of justice, if a prayer is made to summon the electronic evidence so as to elicit the truth behind the story, then such prayer ought not to have been declined. When the assertion is made that what is wrong may be proved to be wrong and vice-versa in the end so that the oil and truth must come out, then the defence must be given an opportunity because not giving an opportunity would mean denying them to counter the charges or to defend themselves as well as closing the door of justice for truth to enter in.

12. It is true that after commencement of the trial, the opportunity is being given to the prosecution to lead or adduce evidence in support of charges, whereafter an explanation under Section 313 of Cr.P.C. will be sought from the accused and then the stage of entering into defence under Section 233 of Cr.P.C. would come. It is also true that until the stage of taking the evidence of the defence on record comes, the defence evidence isnot required to be taken on record and for that purpose nodefence material would be summoned but here is not the questionof taking or tendering the defence evidence or relying upon thatrather it is observed that, as per the Rules and Regulations of the Telecom Regulatory Authority of India, the data of call record is deleted automatically after lapse of one year, then it becomes the duty of the Court to save the data so as to enable the defence or any other party to take use of it at the appropriate stage. In fact, ordering saving/storing/preserving data from destroy would not mean that at the premature stage defence evidence is taken.

13.It does not mean that allowing an application under Section91 of Cr.P.C. for protection of electronic records from deletion and summoning the same to keep on record would mean taking evidence of defence at a nascent stage; rather, it is being done only for the purpose of saving and protecting the evidence from being destroyed. In fact, the defence evidence shall be taken and considered after the stage of Section 233 of Cr.P.C. would come. The Court of Law and Justice is not supposed to tolerate vanishing or damaging the evidence of vital importance, the presence of which would be displaying the truth which would further mean that the truth

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will prevail, that the truth will be separated and set aside from the lies.

14.It is not comprehensible that what is the harm if the evidence of vital importance, which may play a key role in adjudicating the charges, is saved, stored, preserved and protected from being destroyed till the actual stage of consideration of that evidence would come.

15. This Court is of the firm opinion that if the accused persons are taking risk in making prayer for summoning call data record and tower locations record of the police officers, who claim that they apprehended the accused persons from a particular place and at a particular time, which if produced and found genuine then it may be a further piece of evidence against them as the story of the prosecution shall be proved genuine, however, imagine that if the call data record and tower locations of the police officers are not found to be matching with the time and place mentioned in the seizure memo, then it may be a serious dent in the story set out in the charge-sheet and so then there is no legal impediment in summoning the material even at a premature stage just for the purpose of saving the same from deletion. The main object of the courts are meant to impart justice and for that very object it is established. If something suggesting for truth to come on record then in my opinion not allowing the same would mean hiding the truth.

16.Why an opportunity could not be granted to the accused to disprove the charges, though such evidence would neither be considered before its actual stage nor any finding would be given on it but at least an order for protection/preservation of the evidence can certainly be passed.

17.A plain reading of Sections 91 and 311 of Cr.P.C. if read together would elucidate that whenever it appears to the Court that any evidence is essential for the just decision of the case,then it may call or recall such evidence or witness at any stage of the trial. Even after culmination of trial and during pendency of the appeal, such task can be undertaken by the Court by taking resort to Section 391 of the Cr.P.C. as the ultimate object of the Court is to impart justice and justice only.

18.For the purpose of making differentiation between truth and lie, the course of law is supposed to provide ample opportunities to the

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parties of the lis so that the ultimate task of securing the ends of justice can be achieved."

6. In view of the above, the instant petition is allowed. The application moved at the instance of petitioner is allowed and the learned trial court is directed to make necessary communication with regard to issue raised in the application and for the production of the call data record, tower location etc. as demanded in the application provided the same is available till now. As the documents would be produced shall be taken on record and can be used by the parties to the proceedings during trial.

7. Pending applications, if any, are disposed of.

(FARJAND ALI),J

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