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

+ BAIL APPLN. 2865/2020

PARDEEP KUMAR GUPTA

..... Petitioner

Through: Mr. Sunil Dalal, Mr. Arpit Bhalla
& Mr. Devashish Bhaduria,
Advocates

Versus

THE STATE OF DELHI

..... Respondent

Through: Mr. Amit Chadha, Additional
Public Prosecutor for State with
ASI Sudheer & ASI Dushyant
Kumar from Narcotics Cell, Crime
Branch Delhi.
Mr. Nishant Awana & Mr. Devvrat,
Advocates with Mr. Pawan Singh,
Alternate Nodal Officer, Vodafone
Idea Limited

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

15.01.2021

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The hearing has been conducted through video conferencing.

1. By this petition, petitioner is seeking bail in FIR No. 179/2017, under Sections 20/29 of Narcotic Drugs and Psychotropic Substances Act, 1985, registered at police station Crime Branch, North Delhi, Delhi.
2. The case of the petitioner is that he has been falsely implicated in the present case. According to the petitioner, he was illegally picked up on 11.10.2017 from Sikandra-rao District, Bulanshahar, U.P., around 30 km. away from Aligarh, U.P. by Head Constables Jitender and Kuldeep,

Constable Jitender and five more persons, whom he can identify, though he does not know their names. Petitioner knew that the mobile numbers 9811064181 and 8860469804 either belonged to Head Constable Jitender or Constable Jitender and call records of these mobile numbers will prove that they were present at Sikandra-rao, District, Bulanshahar, U.P at the time of alleged incident. Since the call record of a particular mobile number are available with the mobile operators only for a period of one year and after that it can be preserved only under the directions of the court, to prove his innocence and false implication in this case, petitioner moved an application before the learned trial court for preservation of call records and other details of the aforesaid mobile numbers.

3. The learned trial court vide order dated 24.09.2018 allowed petitioner's application and directed the Nodal Officers of Vodafone, Airtel, Idea, Jio and MTNL to preserve the call detail record as well as mobile phone location and other details pertaining to mobile numbers 9811064181 and 8860469804 for the period 10.10.2017 and 15.10.2017.

4. It is pertinent to note that on the day of passing of the order dated 24.09.2018 by the learned trial court, the petitioner was in judicial custody and was represented through the counsel and State was represented by learned Additional Public Prosecutor. However, the said order dated 24.09.2018 passed by the learned trial court was not communicated to the mobile phone service providers and, therefore, the call detail record/ mobile phone location and other details pertaining to the mobile numbers in question, which were preserved for one year, could not be preserved and are not available.

5. Pursuant to the directions passed by this Court, Additional Nodal

Officer of Vodafone is present with Mr. Nisharnt Awana, Advocate, who submits that no communication qua order dated 24.09.2018 passed by the learned trial court was received and therefore, the call detail record/mobile phone location and other details in respect of aforesaid mobile numbers, are not available, as they are preserved only for one year. Learned counsel further submits that if this Court directs, an effort can be made to retrieve the details but it is a time taking process, as it has to be manually done and more over, Vodafone service provider will not be able to issue certificate under Section 65B of the Evidence Act qua the said record.

6. It is pertinent to mention here that Nodal Officer/ Alternate Nodal Officer of Vodafone Idea Limited vide its communication dated 15.12.2020 to ASI Sudhir Kumar, N & CP Crime Branch, Delhi has submitted that the CDR of mobile numbers 9811064181 and 8860469804 for the period from 10.10.2017 and 15.10.2017 is not available being more than one year old. It has also been mentioned in the said communication that the mobile number 9811064181 is subscribed in the name of Jitender, which was activated on 18.04.2015 and deactivated on 16.03.2019 and that the other mobile number 8860469804 is subscribed in the name of Y.R.Yadav, which was activated on 31.05.2014 and deactivated on 14.03.2019. It seems that these mobile numbers were deactivated because the learned trial court had directed the mobile phone service providers to preserve the CDR, location and other details qua these mobile numbers.

7. I am conscious of Section 37 of Narcotic Drugs and Psychotropic Substances Act, 1985. In view of afore-noted facts and circumstances, I

find that there is some fishy about the whole chain of events and petitioner has been falsely implicated in the present case. However, without commenting on the merits of the case, I am of the view that petitioner deserves bail.

8. Accordingly, petitioner is directed to be released on bail forthwith on his furnishing personal bond in the sum of Rs.25,000/- with one surety in the like amount, to the satisfaction of the trial court.

9. The petitioner shall not directly or indirectly influence any witness or tamper with the evidence.

10. The Vodafone Idea Limited is directed to retrieve the call detail and location record in respect of aforesaid mobile phone numbers.

11. Learned counsel appearing on behalf of Vodafone Idea Limited seeks twelve weeks time to retrieve the records manually and submits that the certificate under Section 65B of the Indian Evidence Act be not insisted upon.

12. Let the needful be done by Vodafone Idea Limited in twelve months and the same be placed before the trial court and the requirement of filing certificate under Section 65B of the Indian Evidence Act is dispensed with. Till such record is placed before the learned trial court by Vodafone Idea Limited, learned trial court is directed not to examine any witness which is in relation to the details of the mobile phones mentioned above, however, shall continue to record evidence of other witnesses.

13. With aforesaid directions, the present petition is disposed of accordingly.

14. A copy of this order be transmitted to the Jail Superintendent

concerned and trial court for information and necessary compliance.

15. The order be uploaded on the website of this Court forthwith.

SURESH KUMAR KAIT, J

JANUARY 15, 2021

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