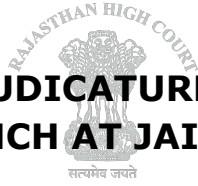




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 7112/2025

Dr. Avinash Sharma Son Of Suresh Kumar Sharma, Aged About 39 Years, Resident Of Kherki Veerbhan, District Kotputli- Behror, Rajasthan. (Presently Under Judicial Custody At District Jail Kotputli- Behror, Rajasthan).

----Petitioner

Versus

1. State Of Rajasthan, Through Public Prosecutor.
2. Rajesh Kumar Sharma Son Of Shri Bhavani Shankar Sharma, Aged About 55 Years, Presently At S.H.O. P.S. Kotputli, District Kotputli- Behror, Rajasthan.

----Respondents

For Petitioner(s)	:	Mr. Bhrigu Sharma
For Respondent(s)	:	Mr. Amit Punia, PP Mr. Ranveer Singh, Inspector, Police Station Paniyala

JUSTICE ANOOP KUMAR DHAND

Order

06/11/2025

1. The instant criminal misc. petition has been preferred against the impugned order dated 17.10.2025 passed by the Additional Sessions Judge No.1, Kotputli, District Kotputli Behror, by which the application submitted by the petitioner under Section 94 of the BNSS has been rejected.
2. Learned counsel for the petitioner submits that by way of filing an application under Section 94 of the BNSS, a prayer was made by the petitioner for issuing directions to the mobile company to preserve the Police official's mobile tower location and Call Data Record for the period commencing w.e.f. 03.00



PM of 08.09.2025 till 05.00 PM of 09.09.2025. Further directions were sought to be issued to the Police Officials to preserve the said data and submit a report. Counsel submits that the FIR No.441/2025 was registered with the Police Station Kotputli, District Kotputli Behror on 09.09.2025 for the offences under Sections 8/21, 22 and 29 of the NDPS Act and during the course of investigation the premises of the petitioner's clinic was inspected and the petitioner was arrested around 10:50 PM by the concerned Police Official on 08.09.2025 and nothing was found from the possession of the petitioner at the relevant time, thereafter, a search was conducted again on 11:20 PM on 08.09.2025 and during this search, certain contraband has been alleged to have been recovered from the premises of the petitioner. Counsel submits that a false, fabricated and concocted case has been made by the Police against the petitioner. In-fact the Police officials were present in the premises of the petitioner prior to commission of the alleged incident at 06.35 PM on 08.09.2025, hence, under these circumstances, the Call Data Record and mobile tower location of these police officials is required to be preserved to ascertain their presence at the place of incident. Counsel submits that unless and until the aforesaid record is preserved, the petitioner would not be in a position to put his defence before the Trial Court where he is facing trial. Counsel submits that for the aforesaid purpose, an application under Section 94 of the BNSS was submitted by the petitioner before the Trial Court, however, the same has



been rejected by the learned Trial Judge, hence, interference of this Court is warranted.

3. In support of his contentions counsel has place reliance upon an order dated 07.01.2025 passed by this Court in the case of **Narendra Kumar Soni vs. State of Rajasthan** while deciding **Criminal Misc. Petition No.4342/2024**.

4. Per contra, learned Public Prosecutor opposed the prayer and submitted that the Trial Court has not committed any error in rejecting the application submitted by the petitioner under Section 94 of the BNSS. Counsel submits that after receiving the secret information, the entire inspection was carried out at the relevant time on the relevant day and there is no concoction in the story of the prosecution. Hence, there is no requirement for any interference of this Court and the instant petition is liable to be rejected.

5. Heard and considered the submissions made at the Bar and perused the material available on the record.

6. If a fact has been disputed by both the sides about the presence of the Investigating Officer/Police officials at the scene of the incident, then under such circumstances, the accused has a right to invoke the provisions contained under Section 94 of the BNSS for obtaining necessary documents. This right has also been recognized by the Constitutional Courts.

7. The Hon'ble Apex Court in the case of **Suresh Kumar Vs. Union** of India reported in **2014 SCC OnLine SC 1833** has held in para 7 and 8 as under:





"7. That electronic records are admissible evidence in criminal trials is not in dispute. Sections 65A and 65B of the Indian Evidence Act make such records admissible subject to the fulfilment of the requirements stipulated therein which includes a certificate in terms of Section 7 65B(4) of the said Act. To that extent the appellant has every right to summon whatever is relevant and admissible in his defence including electronic record relevant to finding out the location of the officers effecting the arrest. Be that as it may we do not at this stage wish to pre-judge the issue which would eventually fall for the consideration of the Trial Court.

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 8 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.”



8. Requisitioning and preserving of the Call Data Record and tower location details at the earliest would be necessary, otherwise, the same would be lost forever. The right of the accused to invoke the provisions of Section 94 of the BNSS for obtaining the aforesaid documents in his defence cannot be overlooked. The legislative intent behind enactment of Section 94 of the BNSS is to ensure that no cogent material or evidence, involved in the case, 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 Data Record/tower location details under Section 94 of the BNSS would violate the right to privacy of the police officials but the right of the accused under Article 21 of the Constitution of India to ensure a free and fair investigation/trial would prevail over the right to privacy of the police officials. Certainly, 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 complete truth and rendering justice, which is fair to all stake holders.

9. The denial of an adequate opportunity to the accused by non-production of the electronic record, which is admissible under Section 65-A and 65-B of the Indian Evidence Act in a criminal trial, would amount to miscarriage of justice. Section



94 of the BNSS 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 arriving at a just and fair outcome. It enables the Court to secure important documentary evidence that may be in possession of any individual or an organization and helps prevent the destruction, tampering or loss of crucial documents, thereby maintaining the integrity of the judicial process. The power under 94 of the BNSS 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 Data Record/tower location details is passed, the accused is required to prove the 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 the accused, in proving his defence, would amount to denial of free and fair trial.

11. Accordingly, application under Section 94 of the BNSS filed by the petitioner stands partly allowed. The Trial Court is directed to summon the location of Cell Phone No.8949576540 of Rajesh Kumar Sharma, SHO, Police Station Kotpurli, Kotwali for the period commencing from 03.00 PM on 8th September, 2025 till 01.00 PM of the intervening night of 08th & 09th



September, 2025. The concerned service provider/mobile company is directed to preserve the Call Data Record and mobile tower location of the aforesaid mobile number, for the aforesaid period.



12. This Court further directs that the details of the phone number of the incoming and outgoing calls made from the aforesaid mobile phone number shall be censored by the service provider/mobile company while furnishing the aforesaid details to the Trial Court.

13. With the aforesaid observations, the instant misc. petition stands disposed of. The stay application and all pending applications, if any, also stand disposed of.

(ANOOP KUMAR DHAND),J

KuD/248