

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.856 OF 2024
(Arising out of SLP(Criminal) No.3146 of 2021)

STATE OF RAJASTHAN

...APPELLANT(S)

VERSUS

SWARN SINGH @ BABA

...RESPONDENT(S)

O R D E R

1. Leave granted.
2. Heard learned counsel for the parties.
3. The present appeal arises out of the impugned order dated 18.02.2020 passed by the High Court of Judicature for Rajasthan at Jodhpur in S.B. Criminal Misc. (Pet.) No.273 of 2020, whereby the High Court while allowing the said petition has directed all Courts in the State of Rajasthan that whenever an application is moved to summon the Call-details by the accused during the criminal proceedings, the same shall not be deferred and will be decided forthwith.
4. In the instant case, the respondent-accused is facing the trial before the Additional Sessions Judge, Sri Karanpur District Sri Ganganagar in Sessions Case No.18/2019 for the offences under Sections 8/18, 25 and 29 of the NDPS Act. The respondent-accused had filed an application before the Trial Court for summoning of the call details

of the Seizure Officer and some other police officials for the date of seizure, i.e., 15.02.2019.

5. The said application was rejected by the Trial Court vide the order dated 03.01.2020, against which the respondent had filed the Miscellaneous Petition, which has been allowed by the High Court vide the impugned order.
6. The learned counsel for the appellant- State has rightly drawn the attention of this Court to the legal position settled by this Court in the case of State of Orissa Vs. Debendra Nath Padhi, (2005) 1 SCC 568, in which a Three Judge Bench of this Court has held 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. Insofar 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 a 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."

7. The learned counsel for the respondent has relied upon the decision in the case of Nitya Dharmananda Vs. Gopal Sheelum Reddy, (2018) 2 SCC 93, to submit that the court being under the obligation to impart justice, is not debarred from exercising its power under Section 91 Cr.P.C., if the interest of justice in a given case so requires. However the said decision is not helpful to the respondent. In the said decision also, it has been observed that the accused cannot invoke and would not have right to invoke Section 91 Cr.P.C. at the stage of framing of charge. In view of the law laid down by the Three Judge Bench in State of Orissa Vs. Debendra Nath Padhi, (supra), we are inclined to accept the present appeal.
8. In that view of the matter, the impugned order is set aside. The Criminal Appeal stands allowed accordingly.
9. Pending applications, if any, shall stand disposed of.

10. It is needless to say that the respondent-accused shall be at liberty to file the application at the appropriate stage. It is further clarified that we have not expressed any opinion on the merits of the case.

.....J.
(BELA M. TRIVEDI)

.....J.
(PANKAJ MITHAL)

NEW DELHI;
12TH FEBRUARY, 2024.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SPetition(s) for Special Leave to Appeal (Crl.) No(s).3146/2021

(Arising out of impugned final judgment and order dated 18-02-2020 in SBCRMP No.273/2020 passed by the High Court of Judicature for Rajasthan at Jodhpur)

STATE OF RAJASTHAN

Petitioner(s)

VERSUS

SWARN SINGH @ BABA

Respondent(s)

(FOR ADMISSION and I.R. and IA No.52743/2021-EXEMPTION FROM FILING O.T.)

Date : 12-02-2024 This petition was called on for hearing today.

CORAM : HON'BLE MS. JUSTICE BELA M. TRIVEDI
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Petitioner(s) Mr. Vishal Meghwal, Adv.
Mr. Milind Kumar, AOR
Mrs. Padhmalakshmi Iyengar, Adv.
Ms. Yashika Bum, Adv.

For Respondent(s) Mr. Pushpinder Singh, AOR
Mr. Dharmendar Singh, Adv.
Mr. Sudhakar Kulwant, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. Leave granted.
2. In terms of the signed order, the Criminal Appeal is allowed.
3. Pending application(s), if any, shall stand disposed of.

(RAVI ARORA)
COURT MASTER (SH)

(MAMTA RAWAT)
COURT MASTER (NSH)

(signed order is placed on the file)