

Jayaprasad vs the State of Kerala

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Court : Kerala Orders

Decided On : Feb-13-2023

Judge : Honourable Mr.Justice V.G.Arun

Appeal No. : WP(Crl.)/65/2023

Appellant : Jayaprasad

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN MONDAY,
THE 13TH DAY OF FEBRUARY 2023 / 24TH MAGHA, 1944 AGAINST
THE ORDER/JUDGMENTSC 106/2022 OF SPECIAL COURT (NDPS
ACT CASES), VADAKARA PETITIONER/S: JAYAPRASAD AGED 54
YEARS PULIYANGIL HOUSE, ATHANIKKAL DESOM, VALLIKKUNNU
VILLAGE, THIROORANGADY, MALAPPURAM DIST., PIN - 673005 BY
ADVS. M.J.SANTHOSH RENJITH B.MARAR RESPONDENT/S:

1 THE STATE OF KERALA REP. BY SECRETARY TO HOME
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANATHAPURAM, PIN - 695001 2 MUHAMMED SHAFEEK
EXCISE INSPECTOR, EXCISE INTELLIGENCE & INVESTIGATION

BUREAU, MALAPPURAM DIST., PIN - 676505 3 VISHNU AGED 22 YEARS SON OF SURESH, MUTHUVATTU HOUSE, MALAPPURAM DESOM, CHEVAYOOR VILLAGE, KOZHIKODE DIST., PIN - 673009 4 NODAL OFFICER DGM NETWORK OPERATION, CONSUMER MOBILITY, BSNL BHAVAN, ERNAKULAM DIST, PIN - 682016 5 NODAL OFFICER BHARATI AIRTEL LIMITED, S.L. AVENUE, N.H. BYEPASS, KUNDANOOR JN. MARADU P.O., ERNAKULAM DIST., PIN - 6 ADDL.R6.DEPUTY ENGINEER LEA OFFICE OF NODAL OFFICER OF BSNL, PANAMPILLY NAGAR,

ERNAKULAM - 682036 ** ADDL.R6 IMPEADED AS PER ORDER

DATED 31/01/2023 IN IA 1/23 ** BY ADVS. SMT.I. SHEELA DEVI M.J.SANTHOSH OTHER PRESENT: SC FOR BHARTI AIRTEL SANTHOSH MATHEW; PP M.C.ASHI THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 13.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Dated this the 13th day of February, 2023 Petitioner is the father of the 1st accused in Crime no.2 of 2022 of the Excise Range office, Kozhikode registered for the offence punishable under Sections 22(c) and 29 of the NDPS Act. The matter is now pending as SC No.106 of 2022 on the files Special court for the trial of NDPS cases.

2. This writ petition is filed seeking a direction to the

telecom service providers mainly the BSNL and Bharti-Airtel Ltd, to preserve the call records and tower location details pertaining to the mobile numbers of the 1st accused, the investigating officer / 2nd respondent and the 3rd accused / 3rd respondent.

3. Learned Standing counsel appearing for the BSNL

and Bharti-Airtel submits that the call records and tower location details are normally preserved for a period of two years. Learned Standing Counsel for Bharti-Airtel points out that it is inappropriate to direct production of evidence in relation to the mobile number of the 3rd accused. Learned public prosecutor points out that the trial has only commenced and the investigating officer is yet to be examined, at which stage alone, the defence will be revealed.

4. In my opinion, the petitioners remedy is to take

appropriate steps before the trial court for production of the call record and tower location details and not to approach this court under Article 226 of the constitution of India. The petitioner need not have any apprehension regarding destruction of the records since the learned Standing Counsel for the service providers have made it clear that the records will be preserved for two years. I also find merit in the submission that the petitioner cannot seek production of call record details of the 3rd accuseds mobile number, as it would infringe the other persons privacy. In any event, these are matters for the trial court to consider. The writ petition is hence closed, recording the submission that the call records will be preserved for two years and leaving it open for the petitioner to take appropriate steps before the trial court. Sd/- V.G ARUN JUDGE SJ APPENDIX OF WP(CRL.) 65/2023 PETITIONER EXHIBITS Exhibit-P1 THE TRUE COPY OF SEIZURE MAHASAR DATED RANGE OFFICE, KOZHIKODE. Exhibit-P2 THE TRUE COPY OF ORDER DATED 19/12/2022 IN W.P.(CRL.) NO.981/2022 OF HON'BLE HIGH COURT OF KERALA

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