

**SUPREME COURT OF INDIA****Bench: Justices Bela M. Trivedi and Pankaj Mithal****Date of Decision: 12th February 2024**

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)****Legislation:**Sections 8/18, 25, and 29 of the NDPS Act  
Section 91 of the Cr.P.C.**Subject:** Appeal against the High Court's order allowing the summoning of call details by the accused during criminal proceedings. The case primarily addresses the stage at which an accused can invoke Section 91 of the Cr.P.C.**Headnotes:**

High Court Order Challenged – Accused facing trial under NDPS Act requested call details of Seizure Officer and police officials – High Court directed immediate decision on such applications – Challenged by State of Rajasthan. [Paras 3-4]

Legal Position of Section 91 Cr.P.C. – Established by State of Orissa Vs. Debendra Nath Padhi (2005) 1 SCC 568 – Accused's right to invoke Section 91 typically arises at the defence stage, not at the charge framing stage. [Para 6]

Nitya Dharmananda Case Reference – Emphasizes the court's obligation to justice but maintains that Section 91 cannot be invoked by accused at charge framing stage. [Para 7]

Supreme Court's Decision – Overturned High Court's order – Held that the accused can file application at appropriate stage, without expressing any opinion on the merits of the case. [Para 8-10]

**Referred Cases:**

- State of Orissa Vs. Debendra Nath Padhi (2005) 1 SCC 568

- Nitya Dharmananda Vs. Gopal Sheelum Reddy, (2018) 2 SCC 93

## **ORDER**

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.

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