

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Ms. Tasneem Sultana

Mr. Justice Dr. Syed Fiaz ul Hassan Shah

Criminal Revision Application No.75 of 2025

Applicant : Nasibullah S/o Hameedullah
through Mr. Syed Imdad Hussain Shah,
Advocate

Respondent : The State
through Mr. Habib Ahmed, Special Prosecutor
ANF

Date of hearing : 03.07.2025

Date of order : 08.07.2025

ORDER

Dr. Syed Fiaz ul Hassan Shah, J. - Through this Revision Application, the Applicant/accused seeks setting aside the impugned Order dated 06.03.2025 passed by learned Judge, Special Court-I (CNS), Karachi (**Trial Court**) in Special Case No.10/2025 under FIR No.05/2025 U/s 6/9(1)3(C) of CNS Act (Amended Act, 2022) registered at PS ANF Gulshan-e-Iqbal, Karachi on the Application filed by the Applicant for production of Call Data Record (CDR).

2. Brief facts of the case are that on 23.01.2025, the Complainant Sub-Inspector Muhammad Shah Syed Hashmi, posted at PS ANF, Gulshan-e-Iqbal, Karachi had received a spy information through his Superior Officer that one drug peddler namely Younus Khan, resident of Peshwar through his agent Nasibullah would deliver the narcotics to his specific customer near Power Cement Chowrangi Super Highway, Sohrab Goth Karachi around 0130 to 0200 hours

through Toyota Corolla car bearing No.BDM-733 having white colour. On receiving such information, the Complainant SI Muhammad Shah Syed Hashmi alongwith subordinate staff reached at the place around 0145 hours and where the raiding ANF party saw one person who was sitting on driving seat of the above-mentioned Car and he was waiting in a suspicious manner, therefore, on the indication of informer, the Complainant encircled the said suspicious person, who disclosed his name as Nasibullah. On inquiry, he voluntarily disclosed about the availability of Narcotics (charas) which was lying under his driving seat of said car and subsequently he handed over two packets wrapped in yellow tape solution to the Complainant which were weighed at spot and found weighing 02 KG of Narcotics (charas). Later, the said suspicious person was arrested and brought to police station and a case was registered against him bearing FIR No.05 of 2025 and same is pending trial before the learned Trial Court. During pendency of trial, the Applicant moved an application for production of CDR in respect of Cell No.0307-3846786 and 0333-7790716 which was declined by the trial Court through the impugned Order.

3. It is contended by the learned counsel for the applicant that the applicant has no access to obtain the CDR from public functionaries including Pakistan Telecommunication Authority (PTA). He further submits that overwhelmingly practice of the public functionaries including telecommunication companies dealing with the CDR is that they restore on the CDR of the customers for a period of 03 to 06 months and in case the trial is not concluded within such period, it will not be possible for the applicant to call the communication companies or PTA as defence witness in support of his case.

4. Learned Special Prosecutor ANF strongly opposes the application and contended that the application is not maintainable. He further submits that the trial Court has started recording evidence of prosecution and one PW has already been examined; therefore, this application is liable to be dismissed.
5. Heard the learned counsel for the Applicant and the learned Special Prosecutor and have perused the record.
6. We have duly considered the contention raised by the learned Special Prosecutor for ANF that the ANF prosecution bears the onus of establishing its case by producing relevant prosecution witnesses and documentary evidence and case property, and that the trial Court has already commenced recording evidence, with one prosecution witness having been examined thus far and therefore, the applicant ought to await the completion of the prosecution's evidence before raising any defence. However, the argument advanced by the learned counsel for the Applicant merits serious consideration. It has been pointed out that telecommunication service providers and the Pakistan Telecommunication Authority (PTA) typically retain Call Data Record (CDR) information for a limited period of approximately three to six months. Should the prosecution evidence not be concluded within this timeframe, the applicant may be unjustly deprived of access to critical defence material. Such deprivation would not be attributable to any fault of the applicant and may cause irreparable prejudice to the defence.
7. Besides, the above logical reason and potential consequences, the law position is very clear on this point. In order to adjudicate upon

the present application, we have carefully examined the provision of Section 94(i) of the Code of Criminal Procedure, 1898, which is of material significance to the issue at hand. The said provision is reproduced herein for ready reference:

“94. Summons to produce document or other thing. (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.”

8. Section 94 (i) Cr.P.C. clearly empowers a Court to issue summons for the production of any document or other tangible thing relevant to the proceedings. The statute uses the word **“whenever,”** which is significant from an interpretive standpoint. This term denotes temporal flexibility and discretionary authority, indicating that the Court's power to require production of records is not confined to any specific procedural stage but is exercisable during an “inquiry,” “trial,” or “other proceeding.” The cumulative reading of the word “whenever” coupled with the defined stages to exercise such powers, for interpreting the provision in accordance with the purposive and literal canons of statutory construction, it is evident that the legislature intended to vest wide-ranging authority in the judicial forum to secure relevant materials whenever such production serves the ends of justice.

9. There exists no statutory bar or procedural limitation that restrains the trial Court from exercising its authority under Section 94 Cr.P.C. to summon the production of documents or other material evidence. The language of the statute is broad and permissive, and any attempt to import restrictions not expressly provided by the legislature would constitute judicial legislation—an impermissible exercise of interpretive discretion.
10. Furthermore, it is pertinent to observe that no prejudice would be caused to the Respondent Anti-Narcotics Force (ANF) if the Call Data Record (CDR) pertaining to the aforementioned cell numbers is summoned and brought on the record. The production of such data does not hinder or obstruct the prosecution's case; rather, it serves to assist the Court in ensuring a complete and impartial adjudication of the matter. The summoning of CDRs falls squarely within the ambit of Section 94 Cr.P.C., which permits the trial Court to call for relevant documentary evidence at any stage of the proceedings. Therefore, the request for production of such record is both legally permissible and procedurally neutral vis-à-vis the prosecution. Such production is squarely aligned with the principles of a fair trial and assists the Court in arriving at a just conclusion without encumbering the prosecution's case.
11. Lastly, upon careful examination, it appears that the learned trial Court has rejected the application filed by the defence counsel for summoning the Call Data Record (CDR) with the limited view that its relevance was confined to substantiating the defence plea. This approach, however, overlooks a critical legal dimension: the evidentiary utility of CDRs is not restricted to the direct defence plea

at the time of statement of Accused under section 342 Cr.P.C or on Oath under section 340 Cr.P.C, but equally extends to their admissibility for the purposes of confronting prosecution witnesses during cross-examination. Such confrontation is a well-established constitutional and procedural safeguard enshrined under the Qanun-e-Shahadat Order, 1984 that forms an integral part of a fair trial. The rejection of the application, without due regard to the doctrine of confrontation, effectively denies the applicant an essential tool for impeaching the credibility of witnesses—an approach that is legally untenable. In an identical matter, the learned Division Bench of this Court, in *Criminal Miscellaneous Application No. 128 of 2024* [Muhammad Ramzan vs. The State & others], vide order dated 14.02.2024, allowed a similar application on the apprehension that the CDR—being material evidence—may be deleted or lost due to routine data retention policies. The said precedent underscores the legal necessity of timely production of such records to safeguard the accused’s right to mount a meaningful defence.

12. Consequently, the impugned order dated 06.03.2025 is set aside and the instant Crl. Misc. Application is allowed with direction to Trial Court to call the CDR data of above mentioned cell numbers in accordance with law.

JUDGE

JUDGE

Kamran/PS