

**HIGH COURT OF TRIPURA
AGARTALA**

Tr.P.(CrI.) No.02 of 2023

Dr. Kaushik Das, S/o Sri Jagat Chandra Das, R/o Arabinda Colony, Amarpur,
P.S. Birganj, Gomati Tripura, Pin-799101

.....Petitioner(s)

Versus

1. The State of Tripura
2. Sri Sankar Banik, S/o Sri Ratan Banik, Vill: Jolaibari, P.S. Baikhora, Dist: South Tripura, Pin-799141
3. Sri Abhijit Saha, S/o Sri Amrit Lal Saha, Vill: Jolaibari, P.S. Baikhora, South Tripura, Pin-799141
4. Sri Titan Paul, S/o Lt. Narayan Chandra Paul, Vill: Jolaibari, P.S. Baikhora, Dist: South Tripura, Pin-799141
5. Sri Mithun Banik @ Mitran, S/o Sri Parimal Banik, Vill: Jolaibari, P.S. Baikhora, Dist: South Tripura, Pin-799141
6. Sri Ganesh Banik, S/o Lt. Rakhal Chandra Banik, Vill: Natunbazar Sukanta Colony, P.S: Natunbazar, Dist: Gomati Tripura, Pin-799101

.....Respondent(s)

For Petitioner(s)	:	Mr. Samrat Kar Bhowmik, Sr. Advocate, Mr. Anirban Bhattacharjee, Advocate, Mr. E.L. Darlong, Advocate, Ms. P. Das, Advocate.
For Respondent(s)	:	Mr. P.K. Biswas, Sr. Advocate, Mr. Ratan Datta, Public Prosecutor, Mr. S. Ghosh, Addl. P.P., Mr. R. Nath, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

17/08/2023

Heard Mr. Samrat Kar Bhowmik, learned senior counsel for the petitioner, Mr. Ratan Datta, learned Public Prosecutor for the respondents-State and Mr. P.K. Biswas, learned senior counsel assisted by Mr. R. Nath, learned counsel, appearing for private respondents No.2 to 6.

2. The petitioner has made a prayer under Section 407 read with Section 482 of the Cr.P.C. for withdrawal and transfer of ST (Type-1) 34 of

2015 from the Court of learned Sessions Judge, Gomati Judicial District, Udaipur to any other Court of competent jurisdiction within the State of Tripura. The learned Sessions Judge, Gomati Judicial District, Udaipur has, by the impugned order dated 10.08.2023, rejected the application made by the accused/petitioner herein under Section 408 of the Cr.P.C for transfer of the case to any other Sessions Court.

3. Mr. Samrat Kar Bhowmik, learned senior counsel for the petitioner, has drawn the attention of this Court to the application under Section 408 of the Cr.P.C. at Annexure-5, affidavit of which was sworn on 09.08.2023 and copies thereof were received by the learned counsel appearing for the five accused persons on 10.08.2023. By referring to the averments of the application under Section 408, learned senior counsel has submitted that the accused entertains likelihood of bias in view of certain observations made by the learned Sessions Court in the face of the accused on 05.08.2023 when the arguments were concluded from both sides and the case was reserved for judgment on 24.08.2023.

4. Apart from that, learned senior counsel for the petitioner has drawn the attention of this Court to the order sheet of the Sessions Trial Case starting from 24.05.2023 till 01.07.2023 when the case was being heard by the predecessor Presiding Officer of the present incumbent. It is submitted that the evidence is voluminous and therefore the argument on the part of the main accused i.e. the petitioner could not be concluded at that point of time. Thereafter the present incumbent has taken over and the case was taken up for arguments on 13.07.2023. Thereafter, on 31.07.2023 and on 05.08.2023, arguments were concluded and judgment reserved. The learned senior counsel

for the accused petitioner herein could not get enough time to conclude his arguments, but the case has been reserved for judgment. The learned Sessions Court, therefore, appears to be in a hurry and there is an apprehension that the approach of the learned Sessions Judge may lead to miscarriage of justice.

5. Learned senior counsel for the petitioner has relied upon certain decisions of the Apex Court such as *K. Anbazhagan vs. Superintendent of Police and others* reported in (2004) 3 SCC 767 and *Sri Jayendra Saraswathy Swamikal (II), T.N. vs. State of T.N. and others* reported in (2005) 8 SCC 771 in support of his submission that an apprehension of bias against the Presiding Officer should be duly taken into consideration for fair trial of a criminal case, as it relates to the life and liberty of an individual. Petitioner is facing a prosecution under Section 302 of the IPC. Learned senior counsel for the petitioner has also relied upon Section 407(5) of Cr.P.C. to submit that the learned Sessions Judge took up the matter on the same date on which the application was filed and rejected it on non-tenable grounds.

6. Mr. Ratan Datta, learned Public Prosecutor for the respondents-State, has strongly opposed the prayer. He has also drawn the attention of this Court to the petition under Section 408 of the Cr.P.C. [Annexure-5] and in particular, the averments at paragraph 13 and 19 thereof. It is submitted that the order sheet of the Sessions case enclosed to the instant petition shows that on 31.07.2023, the learned senior counsel representing the accused/present petitioner concluded his arguments. Thereafter, the case was fixed for 05.08.2023 for argument on behalf of the other counsel representing the other five accused persons. There was no objection to this on behalf of the petitioner. On 05.08.2023, again when the learned senior counsel sought to submit his

written argument in open Court after conclusion of oral argument, the learned Trial Court was gracious enough to allow him to submit it before the judgment is pronounced. It is submitted that the officer has been posted only in the last month. There is no allegation of any previous grudge or enmity against the present petitioner on the part of the present Presiding Officer. The Sessions Trial is of the year 2015 and it should not be allowed to be lingered at the behest of one of the accused persons when no other accused person has made such a request for transfer of the case. Therefore, the impugned order needs no interference. No grounds have been made out for transfer of the case to any other Sessions Division since the apprehension is only imaginary.

7. Mr. P.K. Biswas, learned senior counsel representing the private respondents, has also strongly opposed the prayer. He has further added that if such an approach on the part of an accused is encouraged, it would amount to demoralizing the Court concerned and would affect the administration of justice in the State. Therefore, the application needs to be rejected.

8. I have considered the submission of learned counsel for the parties and taken note of the facts placed from record. I have also gone through the order sheets of the Sessions Trial case starting from 24.05.2023 till the arguments concluded on 05.08.2023. At the outset, it needs to be indicated that it is a Sessions Trial of the year 2015. It is eight years by now when evidence has been concluded on the part of both the sides in the year 2022 itself, as per the statements made by learned senior counsel for the petitioner. The arguments have stretched for a number of dates before the predecessor of the present Presiding Officer. However, it is evident that after the present incumbent took

over, the arguments were heard by him on 13.07.2023. The order sheet reads as under:

"13.07.2023

Ld. P.P. Sri Saktipada Chakraborty started his argument.

Heard him partly.

Fix 31-07-2023 for rest part of the argument by the prosecution."

Thereafter it was taken up on 31.07.2023, when learned senior counsel representing the present accused petitioner concluded his arguments. The order dated 31.07.2023 is also extracted hereunder:

"31-07-2023

Ld. P.P. Sri Saktipada Chakraborty is present.

1. Ld. Counsel Sri Jyotishmoy Das is allowed to be represented the accused Koushik Das as per provision U/S.317 of Cr.P.C. in the light of specific prayer made on his behalf.

2. Ld. Counsel Sri Jyotishmoy Das is led by Ld. Senior Counsel Sri Samrat Kar Bhowmik.

3. Ld. Counsel Asif Iqbal is allowed to be represented the accused Titan Paul as per provision U/S.317 of Cr.P.C. in the light of specific prayer made on his behalf.

4. Accused persons namely Sankar Banik, Mithan Banik, Abhijit Saha and Ganesh Banik on bail are present with their engaged Counsel Asif Iqbal.

5. Today Ld. P.P as well as Ld. Senior Counsel Sri Samrat Kar Bhowmik have concluded their argument.

6. Ld. Counsel Asif Iqbal has verbally prayed for fixing the instant case on 05-08-2023 for placing his argument in this case.

7. Considered. Prayer is allowed.

8. Ld. Counsel Sri Abir Baran has filed written argument on behalf of defecto complainant by supplying copy to the other side.

9. Keep it with the case record.

Fix 05-08-2023 for further argument."

9. It further appears that there was no protest on the part of the present petitioner regarding conclusion of his argument in a hurried manner on 31.07.2023. On 05.08.2023, arguments of both the sides were heard and the case was fixed for judgment on 24.08.2023. It is only thereafter that an application on 10.08.2023 has been made for transfer of the case from one

Sessions Court to another Sessions Court invoking Section 408 of the Cr.P.C. It further appears that no other accused has objected to the conclusion of arguments or have supported the allegation of the petitioner that he was not allowed to complete his arguments in full. This is quite conspicuous.

10. Mr. Biswas, learned senior counsel, representing the private respondents/other accused persons, has also strongly objected to such a move on the part of one accused, as it may lead to demoralization of the Court concerned.

11. The attention of this Court has been drawn to the provisions of Section 407(5) of the Cr.P.C. The provisions of the Criminal Procedure Code have to be read as to advance the interest of justice as they are handmaiden of justice. The petitioner has not been able to show that any prejudice has been caused to him on that account. This Court does not find any element of bias borne from the records against the present Presiding Officer of the Sessions Court, Gomati Judicial District, Udaipur for the reasons indicated hereinabove. It is therefore not inclined to accede to the prayer of transfer of this case to any other Session Divisions when the trial is at the fag end. In fact the evidence has concluded in the year 2022 and the arguments have been concluded on 05.08.2023. The case is posted for 24.08.2023 for judgment. It appears from the averments made at paragraph 19 of the transfer petition under Section 408 of the Cr.P.C. that the learned Court has been gracious to allow the petitioner to submit his written arguments before passing of the judgment; though Section 314 of the Cr.P.C. requires written submission or memorandum to the Court setting forth concisely and under distinct headings in support of the case before the oral arguments have concluded.

12. Learned senior counsel for the petitioner has relied upon the decision rendered in the case of *K. Anbazhagan* (supra) which related to transfer of criminal cases pending against the Chief Minister of the State and her close relatives/associates from one state to another state. The decision of the said case are distinguishable on facts in the present matter. The instant decision relates to objections raised on the ground of political vendetta raising reasonable apprehension of likelihood of bias in dispensation of criminal justice. In the present case, the incumbent has taken over the office of the Sessions Court, Gomati Judicial District, Udaipur only one month back and has endeavoured to hear and conclude the trial of the case which was pending since 2015. system. The decision in the case of *Sri Jayendra Saraswathy Swamigal (II)*, *T.N.* (supra) relates to inter-state transfer of criminal case against the accused who was a religious seer on the allegations of attempt by the prosecution machinery to demoralize and scare the petitioner's senior counsel by scandalizing his reputation and casting a slur on his character and conduct. False cases were lodged against other lawyers appearing for the defence.

13. The facts of the present case are distinguishable from the decisions cited above. The principle in this regard is well settled that a party should bear reasonable apprehension that justice may not be done to support a prayer for transfer of a case from one Court to another or from one Session Division to another Session Division in a state. The petitioner has failed to make out any case of motivated prosecution or bias on the part of the Presiding Officer who has endeavoured to conclude the trial which is pending since 2015.

14. In these circumstances, this Court is satisfied that no interference is required in the impugned order. The petitioner has failed to make out a case

for exercise of inherent powers of the High Court. As such, the instant petition is dismissed.

15. Pending application(s), if any, also stands disposed of.

Apresh Kumar Singh
(APARESH KUMAR SINGH), CJ