

**HIGH COURT OF TRIPURA  
AGARTALA**

**Tr. P.(Crl.) No.03 of 2023**

Mantaj Miah

..... Petitioner(s)

**V E R S U S**

The State of Tripura

..... Respondent(s)

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|-------------------|---|-----------------------------------------------------|
| For Petitioner(s) | : | Mr. S. Lodh, Advocate.<br>Mr. Raju Datta, Advocate. |
| For Respondent(s) | : | Mr. Ratan Datta, P.P.                               |

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**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH**

**\_O\_R\_D\_E\_R\_**

**11/10/2023**

Heard Mr. S. Lodh and Mr. Raju Datta, learned counsel appearing for the petitioner. Also heard Mr. Ratan Datta, learned Public Prosecutor appearing for the State.

Petitioner who is facing trial in ST(T-I) 30 of 2021 before the Court of learned Additional Sessions Judge, Gomati Judicial District, Udaipur for the charges under Sections 341/366/354B/376(2)(n)/506 of the IPC has preferred this application under Section 407 of the Cr.P.C. read with Section 482 of the Cr.P.C for transfer of case No. ST(T-I) 30 of 2021 from the Court of the learned Additional Sessions Judge, Udaipur, Gomati Tripura to some other Criminal/Sessions Court under the jurisdiction of Sessions Judge, Gomati Judicial District.

The prayer for transfer has been declined by the learned Sessions Judge, Gomati Judicial District, Udaipur by the impugned order dated 05.10.2023. Petitioner also seeks quashing of the order dated 06.10.2023 passed by the learned Additional Sessions Judge, Gomati Judicial District, Udaipur

whereby the opportunity to adduce DWs was closed. As the facts unfold, the precipitate reason for the petitioner to apprehend likelihood of bias on the part of the Court arose when his bail bond was cancelled on failure to appear for examination under Section 313 Cr.P.C. and he was taken into custody on 23.08.2023. The prosecution witness had been closed on 15.07.2023 as per instructions available with Mr. Ratan Datta, learned Public Prosecutor. The petitioner thereafter approached the learned Sessions Judge, Gomati Judicial District, Udaipur under Section 408 of the Cr.P.C for transfer of the case. The learned Sessions Judge by the impugned order dated 05.10.2023 declined the prayer, inter alia, observing as under:

*“6. I have perused the application of the petitioner along with the documents attached.*

*7. On perusal, it appears that although, Ld. Counsel for the accused has pleaded about the recording of the deposition of the victim with the help of an interpreter, but, this is a general practice and as per the law. How the Court could be considered as bias by applying proper method of recording of evidence. So, such type of argument cannot be taken into consideration for transferring the case from one court to another court.*

*8. So far as the other points are concerned, this Court perused the Order dated 31.07.2023 and finds that on that day accused was absent and one time petition was moved on behalf of the accused on the ground of his illness and when the matter was taken up for hearing, no one was present to press the time petition on behalf of the accused and accordingly, the Court issued the warrant and the case was fixed on 28.07.2023. Thereafter, on 23.08.2023, the accused was produced on the strength of the warrant and record was put up before the Trial Judge and one bail petition was filed by Ld. Counsel Sri Raju Datta stating that on the previous occasion the accused was ill and for which he could not appear before the Court.*

*9. The documents attached with this petition are photocopies of some medical prescriptions and discharge certificates. There is one medical prescription dated 30.07.2023 in the name of accused, but, nowhere in the medical prescription, it has been mentioned that accused patient was advised for rest. Another medical prescription and discharge certificate shows that accused was got admitted in the hospital on 31.07.2023 and discharged from the hospital on 03.08.2023 and another discharge certificate is relating to one Jamila Bibi, which show that she was admitted in the hospital on 10.08.2023 and discharged on 19.08.2023.*

10. The Order dated 23.08.2023 shows that Ld. Counsel had shown the ground of illness of the accused, but, there is no supporting document to show that on 31.07.2023, the accused was ill or he was hospitalized or advised for rest. Although, the Ld. Counsel for the accused has submitted that his client was not given any opportunity to meet and consult with his advocate before examination under section 313 Cr.P.C, but, this argument has no basis, because the Ld. Counsel had enough time to consult the accused even in J/C, before examination of the accused under section 313 of Cr.P.C. or Ld. Counsel had opportunity to assist the Court as per section 313(5) of Cr.P.C.

11. On perusal of the Judgment relied by Ld. Counsel for the petitioner, this Court finds that the fact and circumstances was different before the Hon'ble High Court of Bombay from this case. In the matter before the Hon'ble High Court of Bombay already the interim order was passed through a writ petition. So, that case is altogether different from the case in hand.

12. This is an admitted fact that the case is running at the last stage of the trial. The entire proceeding of this case has been conducted by the Ld. Trial Court. But, nowhere the accused has raised any doubt against the Ld. Trial Court. Only when the warrant was issued against the accused for his non-presence before the Ld. Trial Court for his examination under section 313 Cr.P.C., the accused has started doubting the Trial Court. Hence, only rejecting the bail application of the accused does not give any ground to doubt the Trial Court where the entire proceeding has been conducted.

13. On the basis of the above observation, this Court finds that the petition filed by the accused-petitioner has no basis to doubt the Trial Court about any kind of being biased and the right of fair trial is fundamental right for all the parties involving in a case.

14. So, the prayer of the accused petitioner is dismissed.

Send a copy of this order to the Ld. Addl. Sessions Judge, Gomati District for information.

Make necessary entry."

Petitioner became further apprehensive as by the impugned order dated 06.10.2023, the learned Additional Sessions Judge refused to allow further adjournment for adducing the defence witnesses by observing that the accused had been given five consecutive dates since 04.09.2023 for filing list of DWs but he has not filed any such list. In the opinion of the learned Court, the accused was adopting dilatory tactics to thwart the process of criminal justice

system. Therefore, the case was fixed for argument on 11.10.2023 i.e. today. Further time for approaching this Court has also not been acceded to.

Mr. S. Lodh, learned counsel for the petitioner submits that the learned Trial Court has not appreciated the medical reasons despite submission of medical prescription and discharge certificate to show that the petitioner was under treatment and could not appear for his examination under Section 313 Cr.P.C. on the particular date. The approach of the learned Trial Court in refusing to grant even one adjournment for adducing DWs also accentuates the apprehension that the learned Court appears to be operating under a bias against the accused petitioner and the tenet of a fair trial may be jeopardized. Therefore, the impugned orders may be set aside by transferring the case to any other Sessions Court in Gomati Judicial District and the petitioner may be allowed one opportunity to adduce his defence witnesses. Learned counsel for the petitioner submits that there are only two defence witnesses to be produced which the petitioner is ready to produce on any date fixed by this Court.

Mr. Ratan Datta, learned Public Prosecutor has strongly opposed the prayer for transfer of the case to any other Sessions Court in Gomati Judicial District. He has drawn the attention of the Court to the conduct of the petitioner who despite closure of prosecution witness as back as 15.07.2023 took unnecessary adjournments in giving the list of DWs and failing to appear for his examination under Section 313 of the Cr.P.C. which led to issuance of warrant of arrest against him and consequent custody. During the entire proceedings of the Sessions case since 2021, the accused petitioner never bore any apprehension about the likelihood of bias in the minds of the Court but at the fag end of the trial such a plea is being raised only to delay the final

adjudication of the case. The learned Sessions Court has given due consideration to the plea raised by the petitioner and observed that even the medical prescription did not show that the accused patient was advised rest. Learned Public Prosecutor however, is not averse to the plea for giving one more indulgence to the petitioner to adduce his defence witnesses. However, he submits that the Sessions Trial may not be transferred to any other Court as it could have the effect of demoralizing a Judicial Officer who has been diligently performing his duties.

I have considered the submissions of learned counsel for the parties and taken into consideration the relevant materials placed on record and also gone through impugned orders.

Prima facie, as observed at the outset, the apprehension of the petitioner of bias against the learned Court of Additional Sessions Judge, Gomati Judicial District, Udaipur stems from the fact that the warrant of arrest was issued on his failure to appear for his examination under Section 313 of the Cr.P.C. For 2(two) years since the Sessions Trial was going on, the petitioner did not bear any such apprehension on the conduct of fair trial by the same Court. It also appears that petitioner had been taking unnecessary adjournments on the ground of adducing the list of DWs. The learned Sessions Court after giving due consideration to the prayer of the petitioner therefore, did not find any basis to doubt that the Trial Court bears any bias against the petitioner and right of fair trial is likely to be affected. This Court is also of the same view that petitioner's apprehension of likelihood of bias is misplaced. However, if the petitioner is able to adduce his defence witnesses as proposed by learned counsel representing him, the learned Trial Court would give one more

opportunity to him to do so. As it appears from the statement made by learned counsel for the petitioner, petitioner would be able to adduce his two defence witnesses on 16.10.2023. The learned Trial Court would endeavor that the examination and cross-examination of the defence witnesses is concluded on the same day without any delay and the witnesses are discharged. On account of the festivities that may have started with the onset of Durga Puja, the learned Court would also accommodate the timings of examination of the defence witnesses at 2.00 PM. However, no further adjournment should be granted for that purpose.

Petitioner would also file the bond as desired by the learned Trial Court under Section 437A of the Cr.P.C. on the same day.

With the aforesaid observations, the instant petition is disposed of.

Let the order be communicated during course of the day to the learned Trial Court.

Pending application(s), if any, shall also stand disposed of.

**(APARESH KUMAR SINGH), CJ**