

GAHC020002872022



**THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL  
PRADESH)  
KOHIMA BENCH**

**Case No. : Tr.P.(Crl.)/1/2022**

MR. RENY WILFRED, IAS  
PRESENTLY WORKING AS THE JOINT SECRETARY  
TO THE GOVERNMENT OF NAGALAND,  
DEPARTMENT OF PLANNING AND COORDINATION,  
GOVT. OF NAGALAND

VERSUS

THE STATE OF NAGALAND AND 2 ORS  
NAGALAND KOHIMA

2:MISS B. CHILEM  
D/O BESING, R/O DAULEPDONG SECTOR, NOKLAK TOWN, NOKLAK  
NAGALAND

3:MISS MONGSHAI  
D/O LANGLONG, R/O DAULEPDONG SECTOR, NOKLAK TOWN,  
NOKLAK NAGALAND

**Advocate for the Petitioner : A. ZHO**

**Advocate for the Respondent : GOVT ADV NL**

**BEFORE  
HON'BLE MR. JUSTICE KAKHETO SEMA**

**JUDGMENT & ORDER (CAV)**

**Date : 25-04-2023**

Heard Mr. A. Zho, learned counsel for the petitioner and  
Mr. K. Angami, learned P.P. for the State respondent No.1. Also

heard Ms. Apila Sangtam, learned counsel for the respondent No. 2 & 3.

**2.** The present petition has been filed under section 407 of the Code of Criminal Procedure, 1973 seeking for transfer of State Crime Police Station (SCPS) Case No. 04/2021 under section 354/376/511 IPC r/w section 8 & 10 of POCSO Act, 2012 (corresponding to G.R No. 58/2021) from the Special Court (POCSO) Tuensang, Nagaland, to any other Special Court (POCSO) within the State of Nagaland.

**3.** The case in brief is that the respondent No. 2 & 3 on 28/07/2021 lodged the FIR before the Officer-in-Charge, Noklak Police Station, Nagaland, alleging that the petitioner who was then serving as the Deputy Commissioner, Noklak, had molested them while they were working in the residence of the petitioner.

**4.** That based on the complaint, the Noklak P.S Case No. 08/2021 U/S 354/511/376 IPC r/w Section 8 & 10 POCSO Act was registered against the petitioner on 01/08/2021. However, for effective monitoring of the case, the Police Headquarter (PHQ), Nagaland, Kohima, constituted a Special Investigation Team (SIT) comprising of the Police Officers namely, i) Smti. Roopa M, IPS, DIG (CID/HR & SJ), Nagaland, Kohima as Team Leader, ii) Smti. Achetla Ao, Commandant 2<sup>nd</sup> NAP Bn. Alichen as SIT Member, iii) Smti. Tingbem Thomsong, UBI, SIT Member and I/O of the case and iv) Shri. I.Yongkongtoshi, UBSI, DEF Tuensang as SIT Member. The case was thereafter re-registered as SCPS Case No. 04/2021 u/s 354/376/511 IPC r/w section 8 & 10 of POCSO Act, 2012.

**5.** That the petitioner was granted interim pre-arrest bail by the Gauhati High Court, Kohima Bench on 26/11/2021 and the same was made absolute on 20/01/2022. On completion of the

investigation of the case by the Police, the charge-sheet was filed against the petitioner on 02/12/2021 u/s 354A/354B IPC and u/s 10 & 12 of POCSO Act, 2012 and submitted in the Court of the learned Special Judge (POCSO) Tuensang, Nagaland. In the charge-sheet, the investigation reveals that the alleged molestation occurred in between 03/02/2021 to 06/02/2021 and the respondent No. 2 & 3 were minors aged 17 & 14 years respectively.

**6.** That the learned Special Judge (POCSO) Tuensang, thereafter on 25/03/2022 fixed the case for consideration of the charge and on which date the petitioner appeared before the Court along with the learned counsel and denied the charges. It is only consequent thereto that the petitioner has filed the present petition praying for transfer of the case.

**7.** Mr. A. Zho, the learned counsel for the petitioner submits that after the alleged incident and even before the filing of the FIR, the petitioner has received life threatening called from an unknown person from Mobile No. 9362725134, however no action has been taken by the Police at Noklak to track/ascertain the identity of the unknown caller. Mr. A. Zho also submits that even before the FIR was registered by the Police in the case a misleading news was telecast in the Hornbill T.V on 30/07/2021 stating that the Police has registered the FIR against the petitioner. Such misinformation, the learned counsel submits was broadcast to instigate the public and to harm the petitioner. The learned counsel also submits that on 03/08/2021, the Khamniungan Menyu Hoikam (hereinafter referred to as 'KMH'), i.e. the Khamniungan Tribe Women Organization took out a protest rally at Noklak town against the petitioner and the same was widely published in the Hornbill T.V as well as in the local media. Mr. A. Zho further submits that on 10/08/2021, the KMH took out a mass protest rally demanding

stern action against the petitioner and also called upon His Excellency the Governor of Nagaland for immediate intervention in the matter. Such protest was telecast in the Hornbill T.V channel. It is also submitted that on 17/09/2021 there were reports in the News Pulse channel as well as in the social media that KMH has express concerned on the slow progress of the investigation. Mr. A. Zho, the learned counsel for the petitioner has also submitted that the KMH on 05/11/2021 had written letters to the Headmaster of the School in Noklak town and also to the President of the Noklak Town Sector Union to allow the student and the public to participate in the protest rally against the petitioner for the alleged molestation of the two Khamniungan girls at Noklak. The learned counsel also submits that on 30/05/2022 there was a social media campaign against the petitioner that the petitioner should be the second guy to be hanged at the City Tower Dimapur, a reference to an incident of the recent past where one alleged accused namely Syed Arif Khan facing trial in a rape case was forcibly dragged out from the Central Jail Dimapur by the protestor after overpowering the jail guards and lynched to death in full view of the public, the Police and the District Administration.

**8.** Mr. A. Zho, the learned counsel for the petitioner accordingly submits that all events and instances which has taken place against the petitioner for the alleged molestation has created a serious threat to the life and personal liberty of the petitioner and the petitioner apprehends that all such situation against him may create a very volatile atmosphere which may disrupt and adversely impact the smooth and proper conduct of the trial before the Special Judge (POCSO) at Tuensang, where people belonging to the Tribe from which the victim hails has a sizable population. In support of his submission, the learned counsel for the petitioner

has relied in the case of **Usmangani Adambhai Vahora -versus- State of Gujarat & Another**, reported in **(2016) 3 SCC 370** and in the case of **Maguni Charan Behra (Prof) -versus- State of Arunachal Pradesh & Others**, reported in **2018 (1) GLT 697**.

**9.** Mr. K. Angami, the learned P.P. for the State respondents at the outset submits that in regard to the threatening call received by the petitioner from Mobile No. 9362725134, the Superintendent of Police (SP), Noklak, communicated the letter dated 25/05/2021 requesting the petitioner to lodge a written complaint but the petitioner refused on the ground that he did not want to make the issue public. The Noklak Police however in the course of their enquiry sought the CDR of Mobile No. 9362725134 and the CDR of the said mobile showed that it was the petitioner who from his Mobile No. (91)9366085255 had actually call the unknown No. 9362725134 at 20:01:32 for 61 seconds on the night of 24/04/2021 and not vice versa. The learned P.P. accordingly submitted that the allegation of threat call received by the petitioner is completely false and misleading.

**10.** The learned P.P. also submits that the protest carried out by the KMH was at Noklak town where the incident of molestation occurred, but the trial of the case for consideration of the charge against the petitioner was held before the Court of the learned Special Judge (POCSO) Tuensang which is outside the jurisdiction of Noklak district where the alleged offence took place. Insofar as the news item carried out in the electronic and print media, the learned P.P. submits that it is essentially a part of their routine work and duty and has in no way cause any harm or threat to the life and safety of the petitioner that would in turn vitiate the trial of the case against the petitioner. On the averments made by the

petitioner apprehending serious threat to his life by citing the lynching and hanging case of the alleged rapist by the public at Dimapur, in full view of the Police and the District Administration, the learned P.P. submits that such unfortunate incident has no relevance with the present case as the petitioner's movement had never been restricted by the protest and the petitioner had even attended the case at Tuensang without any threat to his life and security and without any untoward incident. The learned P.P. submits that the apprehension expressed by the petitioner against his safety to life if the trial is conducted at Tuensang is his own creation solely to delay the trial and cause prejudice to the victims who are based at Noklak. Mr. K. Angami further submits that on the day the trial was held at Tuensang for consideration of the charge proper security was deployed at court premises and the proceeding before the trial was conducted calmly and peacefully without anything to suggest that the trial, if held, at Tuensang will not be conducive for the petitioner. Lastly, the learned P.P. submits that the media coverage of the incident and the protest rally carried out by the Women Organization at Noklak are all very natural in a democratic society and the grounds cited by the petitioner to portray the colour of threat to his life, if the trial is held at Tuensang, is only with an ulterior motive to delay the trial of the case.

**11.** Ms. Apila Sangtam, the learned counsel for the respondent No. 2 & 3 (victims) while subscribing to the submission made by the learned P.P. submits that the KMH, upon receiving the information about the filing of the complaint against the petitioner submitted the letter dated 27/07/2021 to the Superintendent of Police, Noklak, supporting the filing of the FIR against the petitioner for a fair and in-depth investigation of the case in

accordance with law. The Centre Administrator, Sakhi-One Stop Centre, Tuensang, Nagaland, also addressed the letter dated 27/07/2021 to the Chairperson State Women Commission, Kohima, Nagaland, to intervene in the matter as the case involved a high ranking government official. The State Women Commission Team accordingly reached Noklak to assess the situation and also met and interacted with the victims. So also the President KMH, even prior to the registration of the FIR addressed the letter dated 05/07/2021 to the Chief Secretary, Nagaland, to immediately transfer out the petitioner from Noklak district. The President KMH along with the respondent No.2 also submitted the representation dated 14/05/2022 to the Commissioner & Secretary, department of Personnel & Administrative Reforms (P&AR) Nagaland, Kohima, for initiating necessary departmental action against the petitioner. However, no action was taken against the petitioner on the letters/representations submitted to the government.

**12.** Ms. Apila Sangtam further submits that insofar as the apprehension of threat to the life of the petitioner is concerned, the learned counsel submits that it is not the petitioner but the KMH and the poor complainant victims who have been constantly harassed by the petitioner through his acquaintance and well wishers. The learned counsel has taken this Court to the *Whatsapp message* to show as to how some of the well wishers of the petitioner has been attempting to influence the President KMH to compromise the case solely with the intent to absolve the petitioner from the criminal liability of the case.

**13.** The learned counsel for the victims has also taken this Court to the model guidelines framed by the Ministry of Women and Child Development, Government of India, under section 39 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 and

submits that the KMH, as the Apex Body of the Khamniungan Mother's Association has every right to play an active role in rendering assistance to the victims of sexual offences under the POCSO Act and in overseeing that justice is meted out to victims of sexual abuse/molestation etc. The learned counsel therefore submits that rendering assistance to the victims by submitting representations to the Government against the petitioner and organizing public rallies against the crime can in no way said to have threatened the life of the petitioner and prejudiced the trial of the case against the petitioner.

**14.** On the allegations made by the petitioner about having serious apprehension of threat to his life and liberty if the trial of the case is conducted before the Special Court (POCSO) Tuensang, the learned counsel submits that all such apprehension of the petitioner are only speculations created by the petitioner with the sole intent to delay the trial of the case. The learned counsel submits that under the POCSO Act, the welfare of the victim must be given priority and the case must be victim-centric and not accused centric and therefore if the petition for transfer is allowed it will not only prejudice the victim but will also occasion a failure of justice.

**15.** The petitioner in his affidavit-in-reply has more or less reiterated the threatening call received from the Mobile No. 9362725134 and the steps taken by the petitioner with the authorities concerned. The petitioner has also categorically refuted the statements made by the respondents that the petitioner had provided false report regarding the anonymous threat call.

**16.** Heard the learned counsel for the parties and also perused the pleadings exchange between the parties. In order to consider

the petition for transfer of the case, this Court will have to decipher as to whether the apprehension of threat to life and personal liberty entertained by the petitioner is real and as to whether such threat will deny a fair trial to the petitioner if the case is conducted before the Special Court (POCSO) Tuensang. The reasons cited by the petitioner for transferring the case is fundamentally based on the ground of receiving threat call from unknown person, the continuous publication of the news relating to the case in which the petitioner is implicated, the protest rally organized by the KMH, the representation submitted to the authorities and the social media campaign against the petitioner. It is however seen that the petitioner, by citing all such instances, has however not been able to even remotely link as to how it has endangered the life of the petitioner and caused a reasonable apprehension in the mind of the petitioner that justice will not be done if the trial is held before the Special Judge (POCSO) Tuensang. It is very natural that when a crime is committed against the society more particularly against minors, the public/women organization comes out in the forefront in protest against such crimes, but such protest by itself, without anything more, will not mean that there is a serious threat to the life of the offender, unless actual harm in some form, physical or otherwise, is inflicted on the accused concerned. In the instant case, there is nothing to infer that because of such protest organized at Noklak, the petitioner was harmed giving rise to a reasonable apprehension that the petitioner's case will be prejudice if the trial is conducted at Tuensang. So also the petitioner has not been able to demonstrate as to how the news of the incident carried out in the print and electronic media and the representations submitted to the higher authorities has in any way threatened the life of the petitioner and cause a reasonable

apprehension in the mind of the petitioner that he will not get a fair trial at Tuensang. Even as regards the threat call made from Mobile No. 9362725134, besides the bare allegations, the petitioner has not reveal nor disclosed as to why and for what reasons the threatening call was made. It is very unusual that the threat call will be made without disclosing the reasons as to why such calls was made. Moreover, the incident of lynching narrated by the petitioner has no relevance to the present case as the petitioner has never been detained at a place which would suggest threat to his life and the petitioner had complete freedom of movement even after the FIR was registered and inspite of the protest rallies organized against the petitioner. Another instance which dispels the theory of reasonable apprehension of threat to life if the trial is held at Tuensang is that on 25/03/2022, the case was fixed for consideration of charge before the learned Special Judge (POCSO) Tuensang where the petitioner appeared before the Court with his learned counsel. The proceeding before the Court, as the record reveals, was conducted peacefully without any untoward incident from any person/quarter etc. and the petitioner had also not even made a whisper that the trial was not conducted in a conducive manner. The apprehension therefore expressed by the petitioner that there will be threat to his life and safety if the trial of the case is held at Tuensang is completely misplaced and unfounded. It is not the case of the petitioner that he has been prevented to appear before the Special Court (POCSO) Tuensang to present his case or to produce his witness to adduce evidence on his behalf or that the Court at Tuensang is bias against him or that there is absence of congenial atmosphere to conduct the case at Tuensang. Over and above, it is seen that the alleged molestation took place at the Noklak district headquarter and the protest rallies were organized

against the petitioner at Noklak and not in Tuensang district. Furthermore, the petitioner apprehension of not getting a fair trial at Tuensang also stems from the fact that Tuensang district has a sizable population of the community to which the victims belongs. The petitioner has however not been able to demonstrate as to how the sizable population of the tribe to which the victims belongs at Tuensang, even assuming to be true, is co-related to the petitioner not getting a fair trial. The apprehension expressed by the petitioner of threat to his life and not getting a fair trial if the case is conducted before the Special Court (POCSO) Tuensang, therefore can only be said to be speculative and imaginary which does not merit the due consideration of this Court.

**17.** This Court has perused the judgment rendered by the Hon'ble Supreme Court in *Usmangani Adambhai Vahora* (supra) and is of the view that the said judgment in fact does not support the case of the petitioner for transferring the case. In the said case, the Hon'ble Supreme Court by observing that the order of transfer is not to be passed as the matter of routine but has to be exercised cautiously and in exceptional situation where it becomes necessary to provide credibility to the trial and by observing that there has to be real apprehension that there would be miscarriage of justice, dismissed the petition for transfer.

**18.** In the case above, the Hon'ble Supreme Court has held that;

*"7. So far as apprehension is concerned, it has to be one which would establish that justice will not be done. In this context, we may profitably refer to a passage from a three-Judge Bench decision in *Gurcharan Das Chadha v. State of Rajasthan*<sup>5</sup>, wherein it has been held: (AIR p.1423, para 13)*

*"13... The law with regard to transfer of cases is well settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if*

*he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension.”*

8. This Court in *Abdul Nazar Madani v. State of T.N*<sup>6</sup> has ruled that: (SCC pp. 210-11, para 7)

*“7...The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. No universal or hard-and-fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society.”*

9. *In Amarinder Singh v. Parkash Singh Badal*<sup>7</sup>, while dealing with an application for transfer petition preferred under Section 406 CrPC, a three-Judge Bench has opined that for transfer of a criminal case, there must be a reasonable apprehension on the part of the party to a case that justice will not be done. It has also been observed therein that merely an allegation that there is an apprehension that justice will not be done in a given case alone does not suffice. It is also required on the part of the Court to see whether the apprehension alleged is reasonable or not, for the apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension. In the said context, the Court has held thus: (SCC p. 273, paras 19-20)

*“19. Assurance of a fair trial is the first imperative of*

*the dispensation of justice. The purpose of the [criminal](#) trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that the public confidence in the fairness of a trial would be seriously undermined, the aggrieved party can seek the transfer of a case within the State under [Section 407](#) and anywhere in the country under [Section 406](#) CrPC.*

*20. However, the apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary. Free and fair trial is sine qua non of [Article 21](#) of the Constitution. If the [criminal](#) trial is not free and fair and if it is biased, judicial fairness and the [criminal](#) justice system would be at stake, shaking the confidence of the public in the system. The apprehension must appear to the court to be a reasonable one.”*

10. ....

*The aforesaid passage, as we perceive, clearly lays emphasis on sustenance of majesty of law by all concerned. Seeking transfer at the drop of a [hat](#) is inconceivable. An [order](#) of transfer is not to be passed as a matter of routine or merely because an interested party has expressed some apprehension about proper conduct of the trial. The power has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide credibility to the trial. There has to be a real apprehension that there would be miscarriage of justice. (See [Nahar Singh Yadav and another v. Union of India](#)<sup>9</sup>).*

**20.** So also in the case of **Mrs. Maneka Sanjay Gandhi & Another** -versus- **Mrs. Rani Jethmalani**, reported in **(1979) 4 SCC 167**, the Hon’ble Supreme Court has held that;

*“2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstance may be myriad and vary from case to case. We have to test the petitioner’s grounds on this touch-stone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case*

*against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.”*

**21.** The petitioner's reliance in the case of Maguni Charan Behra (Prof) (supra) also does not support his case as the facts and circumstances in the said case and the present case is entirely different. In the said case decided by the Co-ordinate Bench of this Court, an FIR was lodged against the petitioner who was serving as the Director, Arunachal Institute of Tribal Services (AITS) of Rajiv Gandhi University (RGU) for allegedly molesting a Ph.D scholar and two others. Subsequent to the filing of the FIR against the petitioner, his residential quarter was ransacked and looted by anti social elements. The petitioner's life was however spared as during that relevant point of time he was not at home. Even on the day the anticipatory bail filed by the petitioner was heard there were group of students and others who had gathered outside the Court complex of the Gauhati High Court, Itanagar Bench protesting against the granting of bail to the petitioner and because of which the Court had to pass the bail order from the Chamber. After the bail was granted to the petitioner about 200 students led by the Rajiv Gandhi Student's Union entered the residential quarter of the petitioner and forcibly took the petitioner to a place and garlanded him with shoes and his effigy was also burned. All such humiliations took place in the presence of the Registrar, RGU and other officials and despite the information made to the police neither the police nor the university authorities took any action to safeguard the petitioner from the rowdy crowd. After the case was charge-sheeted as the petitioner went to attend the Court he was surrounded and assaulted by a group of person and threatened to resign from the post. On a particular day as the petitioner was

proceeding to Naharlung to meet his counsel, he was pulled down from the bus in which he was travelling and assaulted and threatened to resign from his job or else they will kill him. Such was the threat to his life that the petitioner had no choice but to leave Arunachal Pradesh for North Lakhimpur. It was under such circumstances that the Hon'ble High Court being prima facie satisfied that the petitioner had a reasonable apprehension that he may not get a fair trial in the State of Arunachal Pradesh transferred the said case from the Court of the Chief Judicial Magistrate, Papumpare at Yupia to the Court of the learned Chief Judicial Magistrate, North Lakhimpur, Assam. In the present case, no such adverse circumstances existed against the petitioner so as to infer and give rise to a reasonable apprehension that there was threat to the life of the petitioner and the petitioner will not get a fair trial if the case was conducted before the learned Special Judge (POCSO) Tuensang.

**22.** In the light of the discussion made above, this Court does not find any ground to infer or suggest that the petitioner has been able to exhibit a reasonable apprehension that he will be prejudice and denied a fair trial if the case is conducted before the learned Special Judge (POCSO) Tuensang. There is therefore no merit in the petition and the same is accordingly dismissed.

**23.** The learned Special Judge (POCSO) Tuensang shall forthwith proceed with the case and dispose the same in accordance with law.

Sd/-  
**JUDGE**

**Comparing Assistant**