

**Court No. - 11**

**Case :-** TRANSFER APPLICATION (CRIMINAL) No. - 94 of 2022

**Applicant :-** Ram Mohan Rastogi

**Opposite Party :-** State Of U.P. Thru. D.M. Lakhimpur Kheri And Another

**Counsel for Applicant :-** Shailendra Singh Rajawat, Akash Verma

**Counsel for Opposite Party :-** G.A.

**Hon'ble Saurabh Lavania, J.**

1. Heard Sri Shailendra Singh Rajawat, learned counsel for the applicant and Sri Girjesh Diwvedi, learned AGA for the State.

2. This is an application under Section 407 of Cr.P.C. preferred for transfer of Sessions Trial No.109 of 2020 (State vs. Vaibhav Shukla) arising out of Case Crime No.7 of 2020 under Section 302, 504 IPC, PS-Mohammadi, District-Lakhimpur Kheri to any other Additional Sessions Judge at District Head Quarter or to the District Judge, Lakhimpur Kheri.

3. It appears from the submissions advanced by the learned counsel for the applicant and record available before this Court that the application under consideration seeking transfer of Sessions Trial No. 109 of 2020 (State vs. Vaibhav Shukla) has been filed on the following main grounds:-

"Fair trial before the trial Court at Mohammadi is not possible."

4. To substantiate the aforesaid ground, following facts have been indicated:-

(i) Father of accused namely Late Mahendra Shukla was member of local Bar Association and he was elected twice for the post of Senior Vice President of local Bar Association at Mohammadi and the mother of the accused is also Member of the same Bar Association and as such, fair trial is not possible.

(ii) On account of relationship of family of the accused with

local Bar Association, applicant-informant was compelled to engage a lawyer from the district-Lakhimpur Kheri.

(iii) On account of threat given by the side of accused to the witnesses of fact namely Anas and Tauheed Mansoor an application seeking discharge of these witnesses was preferred by the informant-applicant, which was allowed on 02.07.2022.

(iv) On account of creating pressure on the eye-witness, the trial Court in compelling circumstances, provided the security to eye-witness namely Vaibhav Kanaujiya.

(v) The Court is also under influence of the accused and to support the same, attention of this Court is drawn to the orders passed by the trial Court from 18.07.2022 to 21.09.2022.

5. In support of present application seeking transfer of Sessions Trial, learned counsel for the applicant placed reliance on the judgment dated 28.03.2011 passed by this Court in **TRANSFER APPLICATION (CRIMINAL) No. - 708 of 2010 (Ehsan And Others vs. State of U.P. And Another)**, which reads as under:-

*"Heard Mr. Manish Tiwary for the applicants, Mr. Sanjay Srivatava for the respondent no. 2 and the learned AGA for the State and perused the record.*

*This is an application for transfer of Session Trial No. 1330 of 2010 (State v Ehsan & others), Crime No. 606 of 2010, P.S. Kotwali Nagar, District Bulandshahr from the court of the I-Additional Sessions Judge, Bulandshahr to any other district.*

*The grounds of the transfer are that respondent no. 2 Nadeem Hussain is a practicing Advocate and it is alleged that the deceased Iftekhhar Hussain was his brother and was also an advocate. The father of the respondent no. 2 is a well known advocate of Bulandshahr practicing in the Hon'ble Supreme Court, therefore, the respondent no. 2 and his family members are highly influential and have also influence on the advocates practicing in district courts at Bulandshahr. After the murder of Mr Iftekhhar Hussain, Advocate a meeting of the District Bar Association was held on 03.08.2010 to mourn the death of the deceased in which the Bar Association resolved to abstain from work for the day. The Bar Association, vide the resolution dated 04.08.2010 further resolved to*

abstain from doing any work till the accused of the murder were not arrested. Similar resolutions were passed on 05.08.2010 and 12.08.2010. It was further submitted that due to influence of the respondent no. 2 and his father no good lawyer is ready to appear and defend the applicants. Moreover, the applicants' pairokars are being threatened by the respondent no. 2 and his aids. It was next submitted that so long as the applicants are not provided services of advocates of their choice, they would not get justice in the trial.

In view of the fact that none of the senior advocates is ready to defend the applicants, therefore, the aforesaid session trial may be transferred to some other district. It was lastly submitted by the learned counsel for the applicants that respondent no. 2 and his father have influence not only on the advocates practicing at Bulandshahr but also on the advocates practicing at Ghaziabad, Hapur and Khurja courts, therefore, the case may be transferred to some other place.

This Court vide its order dated 17.03.2011 required the I-Additional Sessions Judge, Bulandshahr to inform as to whether the applicants were being represented by any counsel or not. The learned Additional Sessions Judge has submitted his report dated 22.03.2011 disclosing therein the names of certain advocates who appeared for the applicants at the stage of bail but none of them is appearing during the trial, therefore, according to the report of the Additional Sessions Judge, the applicants have no advocate at Bulandshahr, therefore, they are not in a position to defend in a proper manner.

The Apex Court, in the case of **Zahira Habibulla H. Sheikh vs. State of Gujarat, (2004) 4 SCC 158**, propounded that fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. Therefore, it is well settled that there should be an atmosphere of judicial calm to hold free and fair trial. In the case of **Maneka Sanjay Gandhi vs. Rani Jethmalani (1979) 4 SCC 167**, availability of easy legal services was also considered to be one of the grounds for transfer. When the respondent no. 2 and his father are advocates, and the members of the Bar of the Bulandshahr have passed resolution not to appear for and on behalf of the applicants, it can be easily inferred that the applicants will not be able to defend themselves in the courts at Bulandshahr; consequently, a fair trial is not possible in Bulandshahr. As such the transfer of the trial seems to be just and expedient in the interest of justice.

Keeping in view the facts and circumstances of the case and submissions of the learned counsel for the applicants, respondent no. 2 and the learned AGA and also the fact that no advocate is willing to appear for the applicants and conduct their trial at Bulandshahr, it would be just and expedient to transfer the aforesaid session trial to a nearby district so that the applicants may engage one or more advocate of their choice.

The transfer application is **allowed**.

The Session Trial No. 1330 of 2010 (State v Ehsan & others) is transferred from district Bulandshahr **to district Aligarh** for trial in accordance with law. It will be open to the learned Sessions Judge, Aligarh to try the case himself or make it over to some other Additional Sessions Judge for

*disposal in accordance with law."*

6. Reliance has also been placed on the judgment passed by the Hon'ble Apex Court passed in the case of **Zahira Habibulla H. Sheikh And Another vs. State of Gujarat And Others; (2004) 4 SCC 158**. The relevant para referred of the same on reproduction reads as under:-

*"36. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all-comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial."*

7. Learned AGA opposing the present application submitted that the grounds taken to get the case transferred are not sufficient to pass the order favourable to applicant under Section 407 Cr.P.C.

8. Considered the submissions of the learned counsel for the parties and perused the record as also the judgments, referred above.

9. In the case of **Ehasan & Others (Supra)**, this Court while allowing the application of accused preferred under Section 407 Cr.P.C. seeking transfer of a case considered the report dated 22.03.2011, which was submitted by the concerned court, in compliance of order passed by this Court on 17.03.2011,

wherein the concerned court indicated that on account of resolution of Bar no advocate is appearing during trial for applicants.

10. Taking note of aforesaid and the observation made by the Hon'ble Apex Court in Para 36, quoted above, this Court is of the view that Session Trial in issue is not liable to be transferred, as prayed for. It is for the following reasons:-

(a) Witnesses of fact, as appears, are four namely Ram Manohar Rastogi, Vaibhav Kanaujiya, Anas and Tauheed Mansoor and out of these witnesses, the evidence of two witnesses namely Ram Manohar Rastogi as PW-1 and Vaibhav Kanaujiya as PW-2 have already been concluded and witnesses namely Anas and Tauheed Mansoor have already been discharged. As such, appearance of these witnesses are not required before the trial Court at this stage of proceedings. Thus, the ground for seeking transfer based upon the witnesses of fact has no force.

(b) The allegations against the Court concerned that the same is under pressure of the local Bar Association is also unsustainable in view of the fact that to substantiate the same, no material has been produced before this Court, except the order sheet annexed as annexure No.9, which also does not support the case of the applicant as from the same it cannot be deduced that concerned court is under pressure of local Bar. On the other hand, it appears that concerned court is not in pressure of local Bar as on an application the security was provided by the trial court to witness namely Vaibhav Kanaujiya (PW-2) and before the trial Court the witnesses of fact have already been examined and now only formal witnesses are left to be examined before the trial Court.

(c) The fact that Vaibhav Kanaujiya (PW-2) was provided

security in terms of the order of trial Court itself speaks in so many words that the trial court is neither biased nor under pressure of any of the Pairokar or local Member of Bar association.

(d) To support the allegations against the local Bar, learned counsel for the applicant has not placed any documents including a copy of resolution passed by the Members of the Bar, as such, the allegations against local Bar are completely baseless and fallacious.

(e) No material has been placed on record to support the fact/allegation that no Advocate of local Bar Association is willing to take the case of the applicant. It is to be noted that the applicant himself has engaged an Advocate from district Bar Association and it appears that he is attending the Court regularly as to controvert the same, no document has been placed before this Court, and in this way, it could be presumed that local Bar Association is not obstructing the Advocate engaged by the applicant in attending the proceedings of the trial in issue.

(f) Report dated 04.11.2022 submitted before this Court by the Additional District & Sessions Judge, Mohammadi in compliance of order dated 21.10.2022 also does not find favour of the applicant.

11. Thus, for the reasons aforesaid, this Court is not inclined to interfere in the matter. Accordingly, the application is **dismissed**.

**Order Date :- 20.11.2023/Vinay/-**