

Court No. - 78

1. Case :- TRANSFER APPLICATION (CRIMINAL) No. - 50 of 2025

Applicant :- Surendra Sharma

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Upendra Upadhyay

Counsel for Opposite Party :- G.A.,Sudist Kumar,Suraj Kumar Singh

And

2. Case :- TRANSFER APPLICATION (CRIMINAL) No. - 54 of 2025

Applicant :- Afroz Khan Alias Chunnu

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Upendra Upadhyay

Counsel for Opposite Party :- G.A.,Sudist Kumar,Suraj Kumar Singh

Hon'ble Samit Gopal,J.

1. List revised.

2. Sri Upendra Upadhya, learned counsels for both the applicants in both the matters, Sri Sudist Kumar and Sri Suraj Kumar Singh, learned counsels for the respondent no. 2 in both the matters, Sri Manish Goyal, learned Senior Advocate/Additional Advocate General, assisted by Sri J.K. Upadhya, learned A.G.A.-I, Sri Ajay Singh, learned A.G.A.-I and Sri Rupak Chaubey, learned A.G.A. for the State of U.P./Respondent No.1 are present and have been heard.

3. Records have been perused.

4. Learned State counsel and learned counsel for the opposite party no. 2 do not propose to file any response in the present petitions.

5. These two transfer application (criminal) have been connected together as they arise out of the same case crime number being Case Crime No. 23 of 2023, under Sections 147, 148, 149, 302, 34 I.P.C., Police Station Mohammadabad, District Ghazipur and as such both have been heard and decided together by a common order.

6. In TRANSFER APPLICATION (CRIMINAL) No. - 50 of 2025 the following prayers have been made:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to allow this application and transfer the Session Trial No. 570 of 2024 (State vs. Surendra Sharma) arising out of Case Crime No. 23 of 2023, under Sections 147, 148, 149, 302, 34 I.P.C., Police Station Mohammadabad, District Ghazipur pending in the court of Learned Additional Sessions Judge-1st, Ghazipur to the court of MP/MLA, Lucknow, otherwise the applicant shall suffer irreparable loss and injury.

And/or pass any such other and further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

7. In TRANSFER APPLICATION (CRIMINAL) No. - 54 of 2025 the following prayer have been made:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to allow this application and transfer the Session Trial No. 991 of 2023 (State vs. Afroz Khan@Chunnu) arising out of Case Crime No. 23 of 2023, under Sections 147, 148, 149, 302, 34 I.P.C., Police Station Mohammadabad, District Ghazipur pending in the court of Learned Additional Sessions Judge-1st, Ghazipur to the court of MP/MLA, Lucknow, otherwise the applicant shall suffer irreparable loss and injury.

And/or pass any such other and further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

8. Learned counsel for the applicant(s) has drawn the attention of the Court to Annexure No. 5 (page nos. 66 to 73) of the affidavit in support these transfer applications being an order dated 03.10.2024 passed in TRANSFER APPLICATION (CRIMINAL) No.- 643 of 2023 (Shailendra Kumar Rai vs. State of U.P. and 3 others). It is submitted that since part of the case being another trial arising out of same case crime has been ordered to be transfer by this Court by the said order, the same order may also be passed in the present matters.

9. Learned counsel for the State/opposite party no. 1 and the opposite party no. 2 do not dispute the arguments of learned counsel for the applicants and also the order dated 03.10.2024 passed by this Court in TRANSFER APPLICATION (CRIMINAL) No.- 643 of 2023 (Shailendra Kumar Rai vs. State of U.P. and 3 others). The said order reads as under:-

"1. List revised.

2. Heard Sri Manish Tiwari, learned Senior Advocate assisted by Sri Suraj Kumar Singh, learned counsel for the applicant, Sri Manish Goel, learned Additional Advocate General/Senior Advocate assisted by Sri J.K. Upadhyay and Sri Ajay Singh, learned counsels for the State and perused the records.

3. Although Sri Upendra Upadhyay, Advocate appears for the opposite party no.2 who is no more now but for assistance of the Court he was also heard.

4. This application under Section 407 Cr.P.C. has been filed by the applicant Shailendra Kumar Rai, with the prayer to allow the present transfer application and transfer the Session Trial No. 721 of 2023 (State Vs. Sarfaraj @ Munni and others) arising out of Case Crime No. 23 of 2023 U/s 147, 148, 149, 302, 34 IPC, P.S. Mohammadabad, District Ghazipur from Special Judge M.P./M.L.A. Court District Ghazipur to M.P./M.L.A. Court District Lucknow.

5. At the very outset learned counsel for the State again reiterates that he does not intend to file any counter

affidavit to the present petition and also gives a statement that he is not opposing the present transfer application.

6. The facts of the case are that an application under Section 407 Cr.P.C. was filed seeking transfer of the Session Trial No. 304 of 2009 (State Vs. Brijesh Kumar Singh and others) arising out of Case Crime No. 251 of 2001, under Sections 147, 148, 149, 302, 307, 427, 120-B IPC and Section 7 of Criminal Law Amendment Act, P.S. Mohammadabad, District Ghazipur from the Court of Special Judge, M.P./M.L.A. Court, District Ghazipur to M.P./M.L.A. Court District Prayagraj before this Court as Transfer Application (Criminal) No. 33 of 2023 (Tribhuwan Singh Vs. State of U.P. and 2 others) which was allowed vide order dated 03.03.2023 passed by another Bench of this Court and the said case was transferred from the Court of Special Judge, M.P./M.L.A. District Ghazipur to M.P./M.L.A. Court at Lucknow. The said order reads as under:

"1. Heard S/Sri Amit Kumar Srivastava, Suraj Kumar Singh and Sudist Kumar, learned counsel for the applicant as well as Sri Ratnendu Kumar Singh, learned AGA, Sri Upendra Upadhaya, learned counsel for the complainant and Sri Arvind Kumar Singh, learned counsel for opposite party no.4 and perused the record.

2. The present application under Section 407 Cr.P.C. has been filed seeking transfer of Session Trial No.304 of 2009 (State Vs. Brijesh Kumar Singh and others, arising out of Case Crime No.251 of 2001, under Sections 147, 148, 149, 302, 307, 427 and 120-B IPC and Section 7 of Criminal Law Amendment Act, Police Station Mohamdabad, District Ghazipur from the Court of Special Judge, M.P./M.L.A., District Ghazipur to M.P./M.L.A. Court, District Prayagraj to secure the ends of justice.

3. In support of the transfer application, it has been said that informant of the case is Mukhtar Ansari, a dreaded criminal facing several dozens of heinous offences. The said Mukhtar Ansari is not only a dreaded criminal, gangster and Babubali, but he is five times Member of Legislative Assembly from Mau constituency adjacent to District Ghazipur. The said criminal, gangster and Bahubali turned into politician and commands un-parallel influence, terror and fear in the hearts and minds of the public in general. He is extremely influential in Districts Ghazipur, Mau and other adjoining districts of eastern Uttar Pradesh and his reign of terror is not limited to the State of Uttar Pradesh, but to several states such as Bihar,

Punjab and Delhi.

4. It is said that during the pendency of the trial, five family members of the applicant have been eliminated by the complainant and his henchmen, including the nephew and brother of the applicant. Real brother of the applicant, Anil Singh, who was co-accused in the present case and nephew of the applicant have also been murdered by the complainant and his accomplices. The criminal history of the Mukhtar Ansari has been given in the present application, which would read as under:-

Cases registered at Gazipur

Case Crime No. Under Sections Police Station/District

- 1. 493/05, 302, 506, 120B IPC, Mohammdabad*
- 2. 589/05, 302, 504, 506, 120B IPC ,Bhanwar Col*
- 3. 169/86, 302 IPC, Mohammadabad*
- 4. 266/90, 467, 468, 420, 120B IPC*
- 5. 172/91, 147, 323, 504, 506 IPC, Mohammadabad*
- 6. 237/96, 136(2), 130, 135, 136(1) Public Property Act & 384, 506 IPC, Mohammadabad*
- 7. 1182/09, 307, 506, 120B IPC, Mohammadabad*
- 8. 1051/07, 3(1) U.P. Gangster Act, Mohammadabad*
- 9. 482/10, 3(1) U.P.Gangster Act, Karanda*
- 10. 361/09, 302, 120 IPC & 7 Cr.L.A. Act, Karanda*
- 11. NCR No. 219/78, 506 IPC, Saidpur*
- 12. NCR No. 19/97, 506 IPC, Saidpur*
- 13. 106/88, 302 IPC, Kotwali*
- 14. 682/90, 143, 506 IPC, Kotwali*
- 15. 399/90, 147, 148, 149, 307 IPC, Kotwali*
- 16. 44/91, 302, 506 IPC, Kotwali*
- 17. 165/96, 147, 148, 149, 307, 332, 353, 506, 504 IPC & 7 Cr.L.A. Act, Kotwali*

18. 834/95, 353, 504, 506 IPC, Kotwali

19. 284/96, 3(2) NSA Act ,Kotwali

20. 33/99, 3(2) NSA, Kotwali

21. 192/96, 3(1) U.P. Ganster Act, Kotwali

22. 121/21, 21/25 Arms Act, Mohammadabad

Cases registered at District Varanasi

1. 58/98, 3 NSA Act, Bhelupur

2. 17/99, 506 IPC, Bhelupur

3. 285/17, 302 IPC, Bhelupur

4. 19/97, 364A, 365 IPC, Bhelupur

5. 229/91, 147, 148, 149, 302 IPC, Chetganj

6. 410/88, 147, 148, 149, 302, 307 IPC, Cantt.

Cases registered at District Lucknow

1. 209/02, 3/7/25 Arms Act, Hazratganj

2. 106/99, 307, 302, 120B IPC, Hazratganj

3. 91-A/04, 147, 148, 149, 307, 427 IPC, Cantt.

4. 428/99, 2/3 Gangster Act, Hazratganj

5. 126/99, 506 IPC, Krishna Nagar

6. 66/2000, 147, 336, 353, 506 IPC, Alambagh

7. 236/20, 468, 471, 120B IPC & Section 3 of
Damages of Public Property Act, Hazratganj

Case registered at District Chandauli

1. 294/91, 302, 307 IPC
Mughalsarai/Chandauli

Case registered at District Shonbhadra

1. 121/97, 364A, Anpara

Cases registered at District Mau

1. 808/04 147, 148, 149, 393, 307, 504, 506,
342 IPC, Kotwali

2. 1580/05, 147, 148, 149,302, 435, 436, 427,
153A IPC, Kotwali

3. 1866/09, 147, 148, 149,302, 307, 120B, 404,
325/34 IPC & 7 Cr.L.A Act, Kotwali

4. 399/10, 302, 307, 120B, 34 IPC & 7 Cr.L.A Act & 25/27 Arms Act, Dakshin Tola

5. 891/10, 3(1) Gangster Act, Dakshin Tola

6. 185/21, 419, 420, 467, 468, 471, 120B IPC, Sarai Lakhansi

7. 55/21, 3(1) of U.P. Gangster Act, Dakshin Tola

8. 4/20, 30 Arms Act and Sections 419, 420, 467, 468, 471, 120 B IPC, Dakshin Tola

Cases registered at New Delhi

1. 456/93, 364A, 365, 387 IPC, Tilak Marg

2. 508/93, 24/54/59 Arms Act & S. Tada, K.G. Marg

Case registered in State of Punjab

1. 5/19, 386/506 IPC, Mathaur, Mohali

Cases registered at District Azamgarh

1. 20/14, 147, 148, 149, 302, 307, 506, 120B IPC & Tarwa 7 CrL. Law Amendment Act

2. 160/20, 3(1) U.P. Gangster Act, Tarwa

Cases registered at District Barabanki

1. 369/21, 419, 420, 467, 468, 471, 120B, 506, 177 IPC & 7 CrL. Law Amendment Act, Kotwali."

5. In the present case, charges were framed only on 11.1.2013 under Sections 147, 148, 149, 307/149, 302/149, 427 and 120-B IPC and Section 7 Criminal Law Amendment Act.

6. Earlier in pursuance to the order and direction issued by the Supreme Court, the trial of the present case was transferred to the newly constituted MP/MLA Court at Allahabad (Now Prayagraj) because of one of the co-accused, Brijesh Singh was an elected Member of the Legislative Council of the Uttar Pradesh. Thereafter, when the MP/MLA Court got constituted in each and every district, the trial of the present case was again transferred to the Sessions Division, Ghazipur on 28.12.2021 and is presently pending before the MP/MLA Court at Ghazipur.

7. The complainant's real brother, Afzal Ansari, criminal and gangster, is also existing

Member of Parliament from Ghazipur parliamentary constituency. Abbas Ansari, son of Mukhtar Ansari, who is also facing several criminal cases, is sitting Member of Legislative Assembly from adjacent District Mau constituency, whereas nephew of Mukhtar Ansari is sitting Member of Legislative Assembly from Ghazipur constituency. Mukhtar Ansari has been instrumental in killing several family members of the applicant, including his father, brother and nephew and other relatives and supporters. It is said that Mukhtar Ansari is a local resident of Ghazipur city. On his every appearance before the court, hundreds of his supporters, including the dreaded criminals in the guise of normal persons come to the court premises and these criminals, who come as general public, are in look out for an opportunity and a chance to eliminate the applicant inside or outside the court premises.

8. It is further said that the District and Sessions Judge, Mau had written a letter to the Registrar General of this Court on 28.10.2012 and made a request for transfer of six session trials relating to Mukhtar Ansari from District Mau. In his report, the District and Sessions Judge, Mau said that Accused Mukhtar Ahmad Ansari, who was sitting Member of Legislative Assembly at the relevant point of time from Sadar Constituency, Mau and now Ex-MLA, belongs to the said place and on each and every date of hearing of his case, thousands of his supporters come to the court and create an atmosphere of terror and fear. Mukhtar Ansari is having criminal history of heinous offences and District Mau and nearby districts are his area of influence, where his reign of terror runs. Because of his terror, fear and the atmosphere in the court created by him and his supporters on each and every date of hearing, the entire administration, including the police, feels insecure. His supporters totally paralyse the court proceedings. A copy of the letter moved by the District and Sessions Judge, Mau requesting for transfer of six session trials of Mukhtar Ansari from District Mau, has been placed on record with the application (Annexure-3)

9. This Court while granting interim order dated 19.1.2023, called for a report from the District Judge, Ghazipur.

10. Sri Ratnendu Kumar Singh, learned AGA does not dispute the averments regarding terror, fear, influence and authority of the

complainant, Mukhtar Ansari and his family members and, he has submitted that this Court may pass an appropriate order as it may deem fit and proper. He has further submitted that the State will ensure safety and security of the witnesses as per the Witness Protection Scheme, 2018, if the present case is transferred from District Ghazipur.

11. Sri Upendra Upadhyaya, learned counsel for the complainant, Mukhtar Ansari, has submitted that the accused are trying every trick in the book to see the trial does not get concluded at an early date. The accused are being helped by the State machinery. It is further submitted that this Court has directed the trial to get concluded within one year and, therefore, at this stage, it would not be in the interest of justice to transfer the trial.

12. With the rejoinder affidavit, an FIR registered at Case Crime No.0023 of 2023, under Sections 147, 148, 149 and 302 IPC dated 20.1.2023 has been placed on record in respect of the same incident against Mukhtar Ansari and other co-accused. The said FIR has been lodged by the father of Manoj Kumar Rai, a private security man of Mukhtar Ansari. It has been said that it was the Mukhtar Ansari, who had killed Manoj Kumar Rai, for which the applicant and other co-accused are facing trial.

13. It is submitted that the circumstances, which were taken note of by the Supreme Court while transferring the trial of the present case outside District Ghazipur, are very much present even today and, if the trial is not transferred and the application is not allowed, it would be impossible to get the trial decided in free and fair manner.

14. I have considered the submissions advanced on behalf of the learned counsel for the parties and perused the record.

15. The Supreme Court itself had earlier transferred the trial of the present case outside the District Ghazipur vide order dated 22.4.2013 passed in Transfer Petition (Criminal) No.337 of 2006. There can be no dispute regarding the terror, fear, influence, command and reach of the complainant, Mukhtar Ansari, who is alleged to be dreaded criminal, gangster and one of the biggest Bahubali of India. There is every likelihood of an untoward incident in District Court,

Ghazipur when hundreds of supporters, including dreaded criminals gather in the court premises on each and every date of the trial proceedings. The presence of hundreds of persons inside the court is not only a threat to the general public, but also to the presiding officer. Therefore, this Court finds that the fair trial in the case would be an impossibility in District Court, Ghazipur, which is mandate of Article 21 of the Constitution of India. To ensure fair trial and maintain peaceful and congenial atmosphere inside the court, particularly when the State has no objection for transferring the trial from Ghazipur to outside the court, this Court deem it appropriate to transfer the present case from district Ghazipur to another district.

16. Thus, the present application is allowed and Session Trial No.304 of 2009 (State Vs. Brijesh Kumar Singh and others), arising out of Case Crime No.251 of 2001, under Sections 147, 148, 149, 302, 307, 427 and 120-B IPC and Section 7 of Criminal Law Amendment Act, Police Station Mohamdabad, District Ghazipur is transferred from the Court of Special Judge, M.P./M.L.A., District Ghazipur to M.P./M.L.A. Court at Lucknow. The State will ensure and take precaution that no untoward incident take place during trial inside or outside the court premises. District Judge, Lucknow will also ensure adequate provisions for security inside and outside the court with the help of administration and ensure security, sanctity, peaceful and congenial atmosphere during the court proceedings."

7. The present application has been filed seeking transfer of Session Trial No. 721 of 2023 (State Vs. Sarfaraj @ Munni and others) arising out of Case Crime No. 23 of 2023 U/s 147, 148, 149, 302, 34 IPC, P.S. Mohammadabad, District Ghazipur from Special Judge M.P./M.L.A. Court District Ghazipur to M.P./M.L.A. Court, District Lucknow. It is submitted while placing para 16 of the affidavit in support of the transfer application that the admitted fact is that both the cases are related to the same incident and are cross cases and the trial of one of the cases has already been transferred to the M.P./M.L.A. Court at Lucknow by order dated 03.03.2023 by this Court. Hence, in the interest of justice, the trial of the present case may also be transferred to the Court concerned at Lucknow.

8. Learned counsel for the applicant submitted that the hearing of the present matter was being deferred on the ground that the Transfer Petition (Criminal) No. 250-253/2024 (Sarfaraz @ Munni ETC. Vs. State of Uttar Pradesh and others ETC.) was filed before the Apex Court

but the said transfer application pertained to the prayer of transfer of the proceedings to Court outside the State of Uttar Pradesh and the said petitions were dismissed vide order dated 20th August, 2024 passed by the Apex Court. The order has been placed before the Court which reads as under:

"Heard Mr. Kapil Sibal, learned Senior Counsel appearing for the applicant(s)/petitioner(s). The State of Uttar Pradesh is represented by Ms. Garima Prasad, learned Additional Advocate General. Mr. Ranjit Kumar, learned Senior Counsel appears for respondent No.2 in T.P.(Crl.) No.253/2024.

2. Notice in this case was issued on 26.02.2024, with the following order:-

"3. The counsel would point out that Case Crime No. 251 of 2001 (Annexure P/1) was immediately registered on the incident which occurred on 15.07.2001. The three petitioners herein are the injured witnesses or eye-witnesses of the said crime and the trial in the case is not over yet.

4. For the very same incident on 15.07.2001, a fresh complaint is filed after two decades on 20.01.2023, leading to registration of the FIR No. 23 of 2023 with contrary version.

5. The senior counsel refers to the allegations in the first FIR filed immediately after the shoot out to point out that an entirely different twist is given of the said incident of 15.07.2001, in the recent FIR where the witnesses and the injured witnesses are now surprisingly categorised as accused.

6. These witnesses in course of the trial have received threats from the side of the accused in the case and accordingly it is argued that if trial from the recent second FIR filed is allowed to commence in the same atmosphere where the witnesses are facing constant threats to their lives, the rights of the witnesses, who are now made accused in the 2001 incident, will

be irreversibly prejudiced. The apprehension of the petitioners is that their right to secure a fair trial will be severely compromised. The counsel highlights the obligation of the State to ensure a fair trial.

7. Issue notice, returnable in four weeks.

8. Dasti notice to the Standing Counsel for the State, in addition."

3. Adverting to the above, Mr. Kapil Sibal, learned Senior Counsel would argue that witnesses in these cases were threatened and therefore they are turning hostile one after another. He would also project that the State machinery are trying hard for acquittal of the accused in the Crime No.251/2001. For this only, the cross case being Case Crime No.23 of 2023 was registered two decades after the alleged incident on 15.07.2001.

4. On the other hand, Ms. Garima Prasad, the learned Additional Advocate General, and Mr. Ranjit Kumar, learned Senior Counsel would submit that the evidence of the material witnesses is already over and PW 10 (Md. Zafar @ Chanda) was the last material witness. The remaining witnesses are formal/official witnesses. It is further submitted that only two witnesses PW 9 (Parvez Khan @ Junaid) and PW 10 (Md. Zafar @ Chanda) have turned hostile.

5. We have considered the submission made by the learned counsel for the parties. It is also noticed that similar transfer applications filed by the co-accused were rejected by this Court on 07.02.2020, 26.03.2021 and 06.09.2021 respectively.

6. In considering transfer of trial from a Court in one state to another State, one has to be circumspect as the decision will be seen as a reflection on the reputation of the Court and its functioning. There is no allegation against any Judicial Officer in the State where these matters are being tried. In any case, we expect the courts to function independently without being bothered by any of the surrounding circumstances.

7. In the above facts and having noted that similar pleas of the co-accused for transfer of

proceedings to Court outside the State of Uttar Pradesh were rejected on multiple occasions by this Court, we are disinclined to grant relief in these Transfer Petitions. Accordingly, the Transfer Petitions are dismissed. Pending application(s), if any, stand closed."

9. It is submitted that since the position of law well settled that cross cases or cases of the same incident should be tried together as has been held by the Apex Court in the cases of Nathilal and others Vs. State of U.P. and another) : 1990 (Supp) SCC 145 and in the case of Sudhir and others Vs. State of Madhya Pradesh : (2001) 2 SCC 688 (para 8). It is submitted that the trial of the present case be also transferred to the Court of Special Judge, M.P./M.L.A. Court at Lucknow. It is submitted that the stage of trial as of now is that the statement of PW-1 is being recorded. It is submitted that as such the present transfer application be allowed.

10. Learned counsel for the State also submitted that the present case and the case which has been transferred vide order dated 03.03.2023 of this Court are of one and the same incident. It is submitted that in the fitness of things and looking to the law on the subject, it would be expedient in the interest of justice that the matter be decided by the same Court.

11. After having heard learned counsels for the parties and perusing the records, it is evident that the Session Trial No. 304 of 2009 (State Vs. Brijesh Kumar Singh and others) was ordered to be transferred from the Court of Special Judge, M.P./M.L.A. Court, District Ghazipur to M.P./M.L.A. Court at Lucknow vide order dated 03.03.2023. The incident of the present case is also the same.

12. In the fitness of things, looking to the arguments as advanced and the legal position, the present transfer application is allowed. The case of Session Trial No. 721 of 2023 (State Vs. Sarfaraj @ Munni and others) arising out of Case Crime No. 23 of 2023 U/s 147, 148, 149, 302, 34 IPC, P.S. Mohammadabad, District Ghazipur be transferred from Special Judge M.P./M.L.A. Court District Ghazipur to M.P./M.L.A. Court at Lucknow.

13. A further direction to the State regarding the precautions from untoward incident taking place during trial as directed in the order dated 03.03.2023 shall also be undertaken in this case."

10. In view of the facts that another session trial arising out of same case crime number has been transferred by this Court vide order dated 03.10.2024 from the court of Special Judge, MP/MLA, District Ghazipur to MP/MLA Court at Lucknow, the present petitions are also allowed and trial of the present matters is directed to be transferred to MP/MLA Court at Lucknow.

11. Further caution to the State in para-13 of the said order is extended in the present matters also.

(Smit Gopal,J.)

Order Date :- 7.2.2025

Naresh