



**IN THE HIGH COURT OF UTTARAKHAND AT**  
**NAINITAL**

**Transfer Application No.14 of 2026**

Shiv Kumar Saini

-- Appellant

**Versus**

State Of Uttarakhand

2: Dharam Singh Rawat

--Respondents

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Present:-

Mr. B.S. Kathayat, learned counsel for the applicant.

Mr. Chitrarth Kandpal, learned Brief Holder for the State.  
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**Hon'ble Siddhartha Sah, J. (Oral)**

By means of the present transfer application under Section 447 of the BNSS, the applicant has sought the transfer of Criminal Case No. 300 of 2025, "State Vs. Shiv Kumar Saini", pending in the Court of the Judicial Magistrate, Gopeshwar, District Chamoli, to the Court of the Learned Judicial Magistrate, Roorkee, District Haridwar.

2. The main grounds on which the transfer is being sought are:

- i. The applicant is required to travel to Gopeshwar and faces considerable hardship, particularly as his wife is suffering from serious breathing problems and requires



constant care and assistance. Under such circumstances, frequent travel causes grave inconvenience and adversely affects the health and well-being of his wife as well as the applicant.

ii. The applicant himself is suffering from serious spinal pain as well as a heart problem and has been advised by his doctor to avoid long-distance travel. In view of his medical condition, attending proceedings at a distant place causes extreme physical hardship and may further aggravate his condition.

iii. The distance between Roorkee and Gopeshwar (District Chamoli) is roughly 260 kilometres from Roorkee. Therefore, it would be an arduous and long journey through difficult hilly terrain, and travelling to Gopeshwar at this stage of the hearing would be physically exhausting for the applicant. He is also not financially sound enough to bear the repeated expenses of long-distance travel, lodging, and other incidental costs.



3. Learned counsel for the respondent/State based upon written instructions has opposed the transfer application and would submit that, in the trial, P.W.1, P.W.2, and P.W.3 have already been examined, and there are a total of 12 witnesses, who are mainly residents of District Chamoli. It is also stated in the written instructions that during the trial, the personal presence of the accused/applicant is not necessary, and on most occasions, the appearance of the accused has been through counsel. Only on special occasions, such as for recording the statement of the accused under Section 313 of the Cr.P.C. and at the time of delivery of the judgment, the personal appearance of the accused/applicant would be expected. On the remaining dates, the personal appearance of the accused can be exempted through his counsel. Therefore, except on the special occasions aforesaid, the personal presence of the applicant on other dates does not appear to be necessary.

4. So far as the first ground is concerned, the learned counsel for the State would submit that, so far as the alleged medical condition of the wife of the applicant is concerned, the same is purely personal in nature and does not furnish a legal ground for the transfer of the criminal proceedings from one competent court to



another. The alleged ailments of the applicant are unsupported by any conclusive medical opinion certifying that he is permanently incapable of undertaking travel or attending court proceedings. It is also contended that, whenever any genuine medical difficulty arises, the applicant is always at liberty to move an exemption application before the learned trial court, which may be considered in accordance with law. Therefore, the alleged medical grounds do not justify the transfer of the entire criminal proceedings.

5. It is further contended in the counter affidavit that the transfer of the case from Gopeshwar to Roorkee would compel the prosecution witnesses, investigating officials, and concerned authorities to repeatedly travel long distances, thereby causing serious administrative inconvenience and delay in the conclusion of the trial, as the trial of the case is in progress before the Judicial Magistrate, Gopeshwar, Chamoli. It is submitted that the power of transfer is an extraordinary power and is required to be exercised sparingly and only in exceptional circumstances. The applicant has failed to make out any such case warranting the exercise of extraordinary jurisdiction.



6. In rejoinder, learned counsel for the applicant would submit that the convenience of the applicant/accused has to be seen, inasmuch as, if the trial is allowed to continue in Gopeshwar, the applicant will suffer, whereas, if the trial is transferred to Roorkee, the prosecution will suffer. He would, thus, submit that, if it is to be considered as per the provisions of Section 447 of the BNSS, then the convenience of the applicant has to be seen, and therefore, the transfer application deserves to be allowed.

7. After having heard the submissions of learned counsel for the parties and going through the record, it is evident from the record that the main ground on which the transfer is being sought is that the applicant is facing certain medical issues and the distance between Roorkee and Gopeshwar is 260 kilometres, and it is burdensome as well as against the medical advice of the doctors.

8. On the other hand, learned counsel for the State, on instructions, has submitted that the personal presence of the applicant is not necessary except on certain occasions, such as recording of the statement under Section 313 Cr.P.C. and at the time of delivery of the judgment.



9. In such circumstances, where the applicant is facing certain medical issues and the distance between Roorkee and Gopeshwar is a very long distance, the difficulty being faced by the accused/applicant can be overcome by permitting the applicant to appear through video conferencing. Thus, the difficulty on account of the medical condition and the long distance to be travelled would be averted. Moreover, the presence of the applicant is not necessary on other dates except when he would be required to be present personally at the time of recording of his statement under Section 313 Cr.P.C. and at the delivery of the judgment.

10. Thus, in view of the aforesaid, no ground is made out for the transfer as being sought by means of the present transfer application. The transfer application is, accordingly, rejected, with the observation that if the applicant/accused requests the court to permit him to appear online through video conferencing, the same shall be permitted.

**(Siddhartha Sah, J.)**

14.08.2026

BS