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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 460 of 2015

Manisha Sanjay Gondhawale ..Applicant.

Vs

Sanjay Vasant Gondhawale & others ..Respondents.

Mr R. M. Momin, Advocate for the Applicant.

Mrs P.P.Bhosale, APP for the State.

CORAM : A.R.JOSHI, J

DATE : 13TH AUGUST, 2015

P.C. :-

1) Heard learned counsel for the applicant. Also heard learned APP for the State. This is an application for transfer of a criminal proceeding i.e. Sessions Case No. 7 of 2014, pending before the Sessions Court at Sindudurg, to some other Court of a Competent Jurisdiction, at Ambajogai, District Beed.

2) The allegations in the application are that there would be an imminent threat to the life of the applicant who is original *de facto* complainant, if she attends the Court at Sindudurg for giving the evidence. As such, apparently, earlier she was to attend the court proceeding on a fixed date i.e. 21st July, 2015. On the way, she was accosted by some unidentified persons and was given threats of dire

consequences. As such she made correspondence with the concerned Sessions Court and also to the police station and prosecutor's office mentioning the circumstances. That time the applicant learnt that non-bailable warrant was issued against her as she could not attend the court proceeding on 21st July, 2015.

3) Earlier this application was partly heard by this Court on 7th August, 2015 and all the details mentioned during the arguments on behalf of the applicant were mentioned in the said earlier order and the report from the concerned Principal District and Sessions Judge, Sindhudurg was called. The said report is received by the office of the Court and is placed before the Court. It is taken on record. It is dated 11th August, 2015 mentioning the details that totally nine prosecution witnesses are already examined, including the Investigating officer, till 21st July, 2015. In the report, it is mentioned that despite summons the present applicant i.e. the complainant, she did not appear before the Court. Therefore, on 21st July, 2015 on the application by the learned APP for the State, non-bailable warrant was issued against the present applicant and the matter was fixed on 10th August, 2015. As mentioned earlier, vide order of this Court dated 7th August, 2015 operation of the NBW against the applicant was stayed in order to ascertain the factual

position. As on today the warrant issued against the applicant has been withdrawn by the Sessions Court at Sindudurg as it is specifically mentioned in the report dated 11th August, 2015.

4) Today, during the arguments, learned counsel for the applicant stated that in the charge-sheet there are about 23 witnesses and many other witnesses are required to be examined. He further stated that the panch witnesses who are already examined, have turned hostile.

5) Now, the question before this Court is (i) whether on the allegations as to threat to the life of the original complainant present applicant, the part heard sessions case is required to be transferred to another District or (ii) whether the specific directions can be given to the State Machinery to provide security for the applicant / complainant and any of her witnesses so that the concerned parties can reach the sessions court at Sindudurg and give evidence in the pending sessions case. In the considered opinion of this Court, the second option is appropriate under the fact situation of the case. Otherwise also though it is argued that some of the panchas have turned hostile, this factual position cannot be cured by transferring the matter from one District Court to another District Court, as it is not within the scope of this

Court under section 407 of Cr.P.C. to direct a *de novo* trial if at all there are such allegations of tampering with the prosecution witnesses. Needless to mention that such course for seeking appropriate directions from the Writ Court is also open to the applicant.

5) Now, coming back to the present application, in the opinion of this Court, there is nothing to transfer pending Sessions Case no. 7 of 2014 from Sessions Court at Sindudurg to any other Court. However, the directions are given to the concerned police station, which is prosecuting the matter on behalf of the complainant, to look into the applications filed by the applicant and grievance made by her regarding threats to her life at the hands of the accused persons in the said sessions case. Also, necessary action can be initiated by the learned Sessions Judge, if the situation so arise for giving police protection or otherwise to the complainant and any of her witnesses during the progress/trial of the sessions case No. 7 of 2014.

6) In the result, the present application is rejected for transfer of the proceeding i.e. Sessions Case No. 7 of 2014. However, directions are given to the concerned police station to provide police protection to the complainant appropriately so that she can attend the Court for giving her evidence.

- 7) So also the learned Sessions Judge, Sindudurg to look into the matter in view of earlier observations and to dispose of the said sessions case as expeditiously as possible in accordance with law. Office to communicate this order to the concerned Sessions Judge.
- 8) All the concerned to act upon an authenticated copy of this order.
- 9) The learned APP for the State to forward a copy of this order immediately to the concerned police station which is prosecuting the sessions case, for compliance.
- 10) Application is disposed of accordingly.

(A.R.JOSHI, J.)