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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 6978 OF 2016

Nitin s/o Gopinath Bhailume,
Age: 26 years, Occ: Education,
R/o. Pirvasti, Kopardi,
Tq. Karjat, Dist. Ahmednagar. ..APPLICANT

VERSUS

1. The State of Maharashtra
Through Police Inspector,
Police Station Karjat,
Tq. Karjat, Dist. Ahmednagar.
2. Shivram s/o Gorakh Sudrik,
Age: 23 years, Occ: Agri.,
R/o. Tukai Lawan, Kopardi,
Tq. Karjat, Dist. Ahmednagar. ..RESPONDENTS

Mr S.G. Magre, Advocate for applicant;
Mr A.B. Girase, Public Prosecutor for respondent
No.1;

CORAM : A.S. CHANDURKAR, J.

DATE : 23rd DECEMBER, 2016

ORAL ORDER :

Heard.

2. By the present application filed under
Section 407 of the Code of Criminal Procedure, the
applicant, who is an accused and facing trial in

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Sessions Case No. 342 of 2016, seeks transfer of those proceedings to any other Court within jurisdiction of this Court.

3. The learned Counsel for the applicant submitted that after the aforesaid offence came to be registered, the atmosphere in the district of Ahmednagar is surcharged and for the said reason, it is not likely that trial would be held in a free and fair atmosphere. It is submitted that on 17th July, 2016 when the applicant was taken by the police machinery to the Court for the first time, there was an attempt to abuse and assault him. It is then submitted that there is likelihood of bias against the present applicant considering the nature of allegations against the applicant. The learned Counsel for the applicant by relying upon the decision of the Hon'ble Supreme Court in G.X. Francis and others vs Banke Bihari Singh and another, AIR 1958 SC 309 and judgment of the Allahabad High Court in Budhya and others vs State of U.P., 1990 CRI.L.J. 64 submitted that a case for

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transfer of the proceedings has been made out.

4. The application is opposed by the learned Public Prosecutor for the respondent No.1. It is submitted that the trial has already commenced and about four witnesses have been examined by the prosecution. It is submitted that the grounds raised in the application are not sufficient to transfer the proceedings and the present application has been moved merely on the basis of unfounded apprehension. It is submitted, on instructions, that the applicant had filed an application below Exhibit-52 before the Sessions Court seeking transfer of the trial but on 21st December, 2016 the said application was withdrawn. It is submitted that present application therefore does not deserve to be entertained.

5. I have heard the learned Counsel for the respective parties and I have perused the averments made in the application. The prayer for transfer is sought to be supported on the basis of incident

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dated 17th July, 2016 on which day it is stated that the applicant was abused and was tried to be assaulted. It is on this basis, an apprehension has been expressed that the conduct of the trial would not be free and fair. Except the aforesaid incident, there is no other justification in seeking transfer.

6. After considering the averments made in the application, I do not find that the applicant has made out a case under Section 407(1)(a) of the Code of Criminal Procedure that fair and impartial trial would not be conducted. In G.X Francis and others (supra) after considering the consent of both sides, Hon'ble Supreme Court was pleased direct the transfer of the trial. In the present case, such prayer is opposed by the prosecution. The observations in Budhya and others (supra) do not support the case of the present applicant.

7. After considering the averments made in the present application coupled with the fact that

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subsequent application moved below Exhibit-52 has been withdrawn by the applicant, I am not inclined to favourably consider the present application. The application stands rejected.

(A.S. CHANDURKAR, J.)

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