

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.374 OF 2016

Prabhakar C. Gawas

.... Applicant

versus

Union of India & Anr.

... Respondents

Mr.Ayaz Khan i/b. Zehra Charania, advocate for the applicant.

Ms. Rebecca Gonsalvez, advocate for respondent No.1.

Ms. V.S. Mhaispurkar, APP for the State/respondent.

CORAM : A.M.BADAR, J.

DATE : 21st NOVEMBER, 2016

P.C. :

1. By this application u/s 407 of Cr.P.C. the applicant/accused is praying for transfer of NDPS Special Case No.32/16 between the parties pending on the file of Learned Special Judge for NDPS Cases at Thane to the file of the Special Judge for NDPS Cases at Mumbai.

2. Heard learned counsel appearing for the applicant/accused. By drawing my attention to the complaint in NDPS Special Case No.32/16, the learned counsel argued that factory of the present applicant accused ultimately was searched
Nesarikar

on 05/12/2016 and it is alleged that bulk quantity of 58 grams of THC and CBN (a psychotropic substance) came to be seized from the said factory in presence of two independent panch witnesses.

3. Learned counsel for the applicant/accused argued that in the case in hand though the seizure was from the factory located at Mahad in District Raigadh, the complaint resulting in registration of Special Case No.32/16 by the Intelligence Officer of NDPS Control Bureau, Mumbai, came to be registered at Sessions Court, Thane and same is pending on the file of learned Special Judge at Thane. Learned counsel argued that convenience of parties is one of the relevant factor and as the applicant/accused is resident of Mumbai and as the prosecuting agency is also from Mumbai, it would be convenient for both parties to have the trial of the said special case at Mumbai. Learned counsel further argued that even at Sessions Court, Alibaug, there is only one Judge, who deals with the cases under NDPS Act. Transferring the case at Alibaug, District Raigad, would cause inconvenience to the applicant/accused as the case may not be disposed of in near future.

4. Learned counsel appearing for the respondent No.1 NDPS Control Bureau opposed the prayer for transfer of special

case to the Sessions Court, at Mumbai, but fairly accepted the position that as the seizure was within Raigad District, the special case can be transferred to the Court of Sessions at Alibaug, in District Raigad for its trial by Special Judge for cases under NDPS Act.

5. I have carefully considered the rival submissions. As per provisions of section 177 of Cr.P.C., every offence is required to be ordinarily enquired into and tried by a Court within whose local jurisdiction it was committed. In the case in hand, according to pleadings in the complaint itself, offence alleged against present application has been committed in his factory named as Rohan Chemicals located at Mahad in District Raigad. As such normal place of trial of the alleged offence would be before learned Special Judge for case under NDPS Act in Aligbaug, District Raigad, where the Sessions Court is situated. Mere convenience of the accused alone cannot be a criteria for transfer of case from out of the local jurisdiction of the Court, where it needs to be tried. At the same time, as the offence has allegedly been committed within territorial limits of the Special Judge for NDPS Cases at Alibaug, it would not be proper to continue trial of the NDPS Special Case No.32/16 at Thane. Hence the order :

ORDER

- (1) The application is partly allowed.
- (2) NDPS Special Case No.32/16 arising out of F No.NCB/BZU/CR-03/2015, between the parties is transferred from the file of the Special Judge for cases under NDPS Act, Thane, to the file of the Special Judge for cases under NDPS Act at Alibaug, District, Raigad.
- (3) It is seen from the cause, title of the present application that applicant/accused is 73 years of age. He is senior citizen and as such the learned Special Judge for cases under NDPS Act, at Alibaug, would consider expediting the trial against the present applicant.

(A.M. BADAR, J.)