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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **TR.P.(CRL.) 92/2016**

C L BHOLA & ANR

..... Petitioner
Through: Mr. Vikas Pahwa, Sr. Adv. with Mr
Vaibhav Sharma, Karan Khanuja,
Tushar Sharma and Zakir Hussain,
Advocates

versus

C B I

..... Respondent
Through: Ms. Rajdipa Behura, SPP with Ms.
Garima Singh and Mr. Philomon
Kani, Adv. for CBI with IO Vikas
Pannu

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
06.01.2017

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The petitioner has preferred the present transfer petition to seek the transfer of case titled CBI v. C.L. Bhloa & Ors. in FIR/RC bearing RC DAI 2002 A 0018 u/s 13(1)(e) and 13(2) of the Prevention of Corruption Act registered at PS ACB/CBI, which is presently pending in the court of Sh. Jitender Kumar, learned Special Judge, PC Act, Karkardooma Courts to another learned Special Judge at Dwarka or Rohini Courts.

The petition has been preferred by the petitioners, who are husband and wife aged 73 and 68 years respectively. They are co-accused in the said

case along with their son. The petitioners seek transfer on the ground that the petitioner no.1 is a heart patient who has undergone a by-pass surgery. Both the petitioners being senior citizen are ill, and suffering from various ailments. They are residing at Janakpuri and the distance between Janakpuri and Karkardooma courts where the trial is presently proceeding is about 50 kms one way. Thus, they have to travel for about 100 kms. on a daily basis to be able to attend the case. In this background, they seek transfer of the case to another competent court at Rohini or Dwarka courts.

A reply has been filed on behalf of the CBI. Along with the reply, the order passed by the learned Special Judge on 23.12.2016 has been placed on record, whereby permanent exemption has been granted to the petitioners from personal appearance before the court on account of their illness.

Mr. Pahwa submits that in the present case, notice was issued on 20.12.2016. The trial court was informed of the said development and since then, the trial court has fixed the matter practically on a day to day basis. The matter was fixed on 22.12.2016, 23.12.2016, 24.12.2016, 26.12.2016 (25.12.2016 was a holiday), 02.01.2017 (27th December to 1st January were holidays), 03.01.2017, 04.01.2017 and 06.01.2017 (05.01.2017 was a holiday). Mr. Pahwa submits that the court has now fixed the case for 07.01.2017, 10.01.2017 and 11.01.2017. He submits that such haste shown by the court, particularly after the issuance of notice in the present petition, raises concern in the mind of the petitioners.

Mr. Pahwa submits that the petitioners have been attending most of the hearings and are keen to attend the hearings in the case, since it involves their liberty and reputation. Merely to say that they are personally exempted is no answer, since they wish to attend the case hearings, as and when they

are held, to defend themselves.

On the other hand, Ms. Behura submits that only about 22 witnesses remain to be examined and it is likely that the said list may be further curtailed. She submits that the trial court is proceeding expeditiously for disposal of the old case and to transfer the same would put brakes on the progress of the case as the court to which the matter is transferred would take time to get acquainted with the facts of the case. It would also lead setting up of a bad precedent.

Under section 407 Cr PC, this court may transfer the case, inter alia, on the ground that it will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice. The respondent does not dispute the fact that the petitioners are residing in Janakpuri and the trial is proceeding at Karkardooma. It is also not in dispute that the distance one has to travel from Janakpuri to Karkardooma is about 50 kms one way. The age of the petitioners is also not in dispute, and their medical condition is also not disputed.

In my view, merely because the petitioners have been permanently exempted from personal appearance before the trial court, their problem with regard to the difficulty faced by them to attend their case is not resolved. Every accused is entitled to, and normally would have interest in, remaining present in court to see that the trial is conducted fairly and his counsel represents his case competently. Thus, it is not enough to say that the petitioners have been exempted from personal appearance and, therefore, long distance between the place of residence of the petitioners and the court is of no significance.

Mr. Pahwa has pointed out that the petitioners have sought exemption from personal appearance only on a handful of occasions, and on most occasions they have personally remained present before the court. The examination of 22 witnesses by the CBI still remains to be undertaken. The defence is yet to lead its evidence. Thereafter, the statements u/s 313 Cr PC would have to be recorded; final arguments heard, and; judgment pronounced by the court. There is always a possibility of fresh application being moved for examination of further witnesses by the State, or subsequently even by the accused.

Looking to the special circumstances of the case, as taken note of herein above, I am inclined to allow the present petition as transfer would tend to the general convenience of the accused. Accordingly, the trial in the aforesaid case stands transferred to the learned Special Judge, Dwarka Courts forthwith. The matter be placed before the learned District & Sessions Judge, Dwarka Courts who shall assign the case to a competent court. The court to which the case is transferred shall proceed from the same stage at which the case is transferred expeditiously. The petitioners shall cooperate and neither seek, nor be granted any undue adjournments.

The petition stands disposed of in the aforesaid terms.

Dasti.

VIPIN SANGHI, J

JANUARY 06, 2017

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