

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2721 OF 2018

RADHESHYAM LAXMANRAO MOPALWAR)...PETITIONER

V/s.

THE STATE OF MAHARASHTRA & ORS.)...RESPONDENTS

Mr.A.H.H.Ponda with Mr.Niranjan Mundargi a/w. Mrs.Sweta Rathod, Mr.Shantibhushan Nirmal, Mr.Baburao Shinde and Mr.Prashant Mairale, Advocates for the Petitioner.

Mr.Sadanand Shetty a/w. Ms.Lakshmi Raman, Advocate for Respondent Nos.2, 3 and 4.

Ms.Anamika Malhotra, APP for the Respondent – State.

Mr.Bajirao Bhosale, Assistant Commissioner of Police, Crime Branch, Thane, present in court.

CORAM : A. M. BADAR, J.

DATE : 29th JUNE 2018

ORAL JUDGMENT :

1 Rule. Rule returnable forthwith. Heard finally by consent of all parties.

2 This petition is listed before this court as on 25th June 2018 Honourable Shri Justice P.D.Naik has passed an order of not placing this petition before His Lordship for hearing.

3 This is a petition under Article 227 of the Constitution of India by the First Informant for invoking the powers under Section 407 of the Code of Criminal Procedure for transferring Special MCOC Case No.1 of 2018 along with all pending bail applications therein for disposal from the court of the learned Special Judge under the MCOC Act presided over by Shri V.Y.Jadhav to any other Special court constituted under Section 5 of the MCOC Act, at Thane, or at Mumbai.

4 Brief facts, leading to the filing of the instant petition, as can be culled out from the record and those are as under :

(a) Petitioner Radheshyam Mopalwar is the First Informant at whose instance Crime No.I-380 of 2017 for offences punishable under Sections 384, 386, 387 read with 34 of the Indian Penal Code came to be registered against respondent

nos.2 to 4 at Police Station Kalwa, District Thane. Subsequently, with the approval of the Assistant Commissioner of Police, provisions of Sections 3(1(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crimes Act, 1999 (hereinafter referred to as MCOC Act for the sake of brevity) came to be added to the case diary of the crime in question. The charge-sheet filed on completion of investigation in pursuant to the said First Information Report (FIR) resulted in registration of the subject special case under MCOC Act.

- (b) According to the prosecution case, Petitioner/First Informant Radheshyam Mopalwar is a senior Indian Administrative Service (I.A.S.) Officer working as the Vice President and Managing Director of the Maharashtra State Road Development Corporation Limited. In the year 2013, while in the process of getting divorce from his wife Manisha Deshmukh, through intervention of Deputy Superintendent of Police Pravin Patil, he came in contact

with respondent no.2/accused no.1 Satish Mangle and his friend Mayuresh Raut. They acted as intervenor in the matter of divorce. Respondent No.2/Accused no.1 Satish Mangle runs a licensed Detective Agency under the name and style "Shirley Detective Agency".

- (c) In August 2016, some professional dispute between Respondent No.2/Accused no.1 Satish Mangle and his friend Mayuresh Raut, ultimately, resulted in lodging FIR by Respondent No.2/Accused no.1 Satish Mangle with Satara City Police Station for offences punishable under various Sections of the Indian Penal Code. Mayuresh Raut, Manisha Deshmukh and others were arraigned as accused in that crime. Subsequently, at the instance of family members of Respondent No.2/Accused no.1 Satish Mangle, some association working in the field of Anti Corruption Movement took out a procession on Mantralaya under leadership of one Prashant Bhise. That procession was also directed against Petitioner/First Informant Radheshyam

Mopalwar. Alleging that they were required to incur expenses for taking out procession on Mantralaya, Respondent No.2/Accused no.1 Satish Mangle, his wife Respondent No.3/Accused no.2 Shraddha Mangle and others started extending demand of Rs.50 to 60 lakh from the Petitioner/First Informant Radheshyam Mopalwar with a threat to his life. Petitioner/First Informant Radheshyam Mopalwar was, therefore, constrained to lodge the report of this incident, which has resulted in registration of Crime No.588 of 2016 with Police Station Bandra against the accused persons.

- (d) According to the prosecution case, on 1st August 2017, Respondent No.2/Accused no.1 Satish Mangle caused broadcasting of an audio clip in the programme on TV Channel ABP Majha reflecting corruption by Petitioner/First Informant Radheshyam Mopalwar. This resulted in conducting enquiry by the authorities of the State. As per version of the prosecution, then Respondent No.2/Accused

no.1 Satish Mangle started meeting political heavyweights. He started leveling defamatory accusations against Petitioner/First Informant Radheshyam Mopalwar. He made several complaints against Petitioner/First Informant Radheshyam Mopalwar to various agencies such as Central Bureau of Investigation, Enforcement Directorate, Income Tax Authorities, Anti Corruption Bureau and State Government etc. This, according to the prosecution, was in order to extort hefty amount of money from Petitioner/First Informant Radheshyam Mopalwar.

- (e) As alleged by the prosecution, on 23rd October 2017, through one of the acquaintance named Mishra, there was meeting between Petitioner/First Informant Radheshyam Mopalwar with respondent no.2 Satish Mangle and respondent no.3 Shraddha Mangle and others, whereat, a demand of Rs.10 crore was made to the Petitioner/First Informant Radheshyam Mopalwar by threatening that Respondent No.2/Accused no.1 Satish Mangle is having

several audio clips which are containing material that would defame Petitioner/First Informant Radheshyam Mopalwar as well as his political bosses. On the very same day, at about 12 noon, again there was meeting at Shangrila Resort where the demand for Rs.10 crore was reiterated by the accused persons with a threat to publish the audio clips containing incriminating material against the Petitioner/First Informant Radheshyam Mopalwar. Then on 31st October 2017 again there was a meeting at J.W.Marriott Hotel between Petitioner/First Informant Radheshyam Mopalwar and Respondent No.2/Accused no.1 Satish Mangle, Respondent No.3/Accused no.2 Shraddha Mangle and others. Demand of Rs.10 crore was again made by them from Petitioner/First Informant Radheshyam Mopalwar and the Petitioner/First Informant Radheshyam Mopalwar got the conversation recorded. Accused persons then decided to accept the amount of Rs.1 crore from Petitioner/First Informant Radheshyam Mopalwar on 2nd November 2017.

- (f) Petitioner/First Informant Radheshyam Mopalwar then reported the matter to the Anti Extortion Cell of Thane. Necessary action for laying trap was taken by summoning panch witnesses. The trap came to be laid and Respondent No.2/Accused no.1 Satish Mangle came to be apprehended red handed while accepting the amount of extortion at his own house. This is how the crime in question came to be registered, investigated and made subject matter of the trial before the learned Special Judge at Thane.
- (g) It is seen that during the course of investigation, respondent nos.2 and 3 have filed application for releasing them on bail. Those were pending before the learned Special Judge under MCOC Act from 16th December 2017. In between the pendency of those bail applications, Annual General Transfers of the Judicial Officers came on 24th April 2018 and Shri Bhosale the learned Special Judge, who was dealing with the matter, was transferred. Shri V.Y.Jadhav is the present Presiding Officer where those bail applications along

with the special case is pending for adjudication. He assumed the charge of the special court under MCOC Act at Thane from 4th June 2018.

- (h) Bail applications moved by respondent nos.2 to 4 were fixed for hearing on the file of the learned Special Judge under the MCOC Act on 7th June 2018. On that date, arguments of applicants/accused were heard and the matter was adjourned to 8th June 2018, and thereafter, to 11th June 2018.
- (i) Feeling bias attitude of the learned Presiding Officer on these dates, the Petitioner/First Informant Radheshyam Mopalwar approached the learned Sessions Judge, Thane, by an application under Section 408 read with 409 of the Code of Criminal Procedure for seeking transfer of Special MCOC Case No.1 of 2018 along with all bail applications moved therein from the Special MCOC court presided over by Shri V.Y.Jadhav to some other court of competent

jurisdiction. After calling say of the respondents therein, the learned Sessions Judge after hearing the parties rejected the said application for transfer of the case and that is how Petitioner/First Informant Radheshyam Mopalwar has invoked extra ordinary jurisdiction of this court by filing the instant petition before this court under Article 227 of the Constitution of India.

5 Heard Mr.Ponda, the learned counsel appearing for Petitioner/First Informant Radheshyam Mopalwar at sufficient length of time. The learned counsel took me through the entire roznama of the special case and argued that though the bail applications were filed on 16th December 2017, those were pressed for the first time on 12th April 2018 and 23rd April 2018. Roznama shows that two full days were taken by the learned advocate appearing for the accused persons to work out the bail applications before the learned Special Judge, as the charge-sheet is running more than 1100 pages. In submission of the learned counsel appearing for the petitioner, arguments of the Special

Public Prosecutor could not be heard because, infact, the Presiding Officer was on vacation from 5th May 2018, so also, he was under orders of transfer. Hence, though this fact is not reflected in the roznama of the Special court, these are the reasons which prevailed for adjournments in the subject special case. Mr.Ponda, the learned counsel, argued that, events which transpired from 7th June 2018 before the learned Special Judge dealing with the special case, would reflect bias attitude of the Presiding Officer, entitling the petitioner to get the special case transferred. On 7th June 2018, bail applications were heard hurriedly in fifteen to twenty minutes time by keeping them back, at 4.30 p.m. The learned counsel for applicants/accused concluded arguments in just 20 to 30 minutes time. Though the court time was over, the learned Judge was insisting the Public Prosecutor to work out the matter on that day itself, despite the fact that the charge-sheet was running into 1140 pages. No sufficient time for working out the matter was granted to the Public Prosecutor and when the Investigating Officer tried to intervene, he was also humiliated. This resulted in requiring the Petitioner/First Informant

Radheshyam Mopalwar to move an application for permission to assist the prosecution separately along with another application for adjournment. However, thereafter also, the learned Special Judge has not granted sufficient time to the prosecutor as well as to the First Informant to contest the bail applications and these facts indicate bias attitude requiring transfer of the special case to some other court. On behalf of the petitioner, reliance is placed on judgment in the matte of Satish Jaggi vs. State of Chhattisgarh and Others¹, P.K.Ghosh, I.A.S. And Another vs. J.G.Rajput², Lalu Prasad alias Lal Prasad Yadav vs. State of Jharkhand³ and K. Anbazhagan vs. Superintendent of Police and Others⁴ to buttress the contention that case for transfer is made out by the petitioner in the facts and circumstances reflected from the record, as the petitioner apprehends that free and fair trial would not be available to him before the said court.

6 I have heard Ms.Anamika Malhotra, the learned APP appearing for the State. On instructions of the Police Officer

1 (2007) 3 Supreme Court Cases 62

2 (1995) 6 Supreme Court Cases 744

3 (2013) 8 Supreme Court Cases 593

4 (2004) 3 Supreme Court Cases 767

present in the court, she argued that bail applications were, infact, taken up for hearing at 4.45 p.m. on 7th June 2018 and the learned advocate for the accused persons concluded his arguments at 5.30 p.m. of that day. Thereafter, the Presiding Officer insisted the Special Public Prosecutor to commence and conclude her arguments on the very same day, though the learned Special Public Prosecutor was requesting for adjournment. The learned APP further argued that, with reluctance, the Presiding Officer had adjourned the matter. Except making these submissions, Ms.Malhotra, the learned APP, did not choose to controvert other submissions made by the learned counsel for Petitioner/First Informant.

7 I have heard Mr.Sadanand Shetty, the learned counsel appearing for respondent nos.2 to 4/original accused. He vehemently argued that for transferring a criminal case from the file of one Presiding Officer to another Presiding Officer, cogent reasons are required to be demonstrated. The learned counsel further argued that after 23rd April 2018, adjournments were

sought by the Public Prosecutor. He further argued that, infact, in the order passed by the learned Special Judge below Exhibit 14 i.e. adjournment application of the Petitioner/First Informant Radheshyam Mopalwar, the learned Presiding Officer has observed that the learned Special Public Prosecutor is ready to conduct the matter, and therefore, it cannot be said that the learned Special Public Prosecutor was seeking adjournment in the matter. The learned counsel for the respondent nos.2 to 4 placed reliance on the judgment in the matter of Amarinder Singh vs. Prakash Singh Badal and Others⁵, Usmangani Adambhai Vahora vs. State of Gujarat and Ors.⁶ and Nahar Singh Yadav and Ors. vs. Union of India (UOI) and Ors.⁷ to substantiate his submissions that powers of transfer of cases are required to be exercised sparingly and with great circumspection. Such powers are to be exercised only when reasonable apprehension of bias is established by the party seeking transfer of the case.

5 (2009) 6 SCC 260

6 AIR 2016 SC 336

7 AIR 2011 SC 1549

8 I have carefully considered the submissions so
advanced and also perused the material placed on record.

9 This is a case wherein the petitioner/First Informant is seeking transfer of the trial of the special case initiated at his instance from the file of the learned Special Judge under the MCOC Act to any other court of competent jurisdiction, alleging bias attitude of the Presiding Officer which came to be noticed by him. It is one of the principles of administration of justice that justice should not only be done, but it should be seen to have been done. It is said that assurance of a fair trial is the first imperative of dispensation of justice and the central criterion for the court to consider when such requests are made to it. State of mind of a person who entertains the apprehension of bias and reasonable perception of the affected parties are relevant considerations in such matters in order to ensure the continuance of public confidence in the credibility and impartiality of the judiciary. The proper approach, in this case, would be not to look at the mind of the learned trial Judge for ascertaining whether he is

biased, but to look at the mind of the petitioner/First Informant to ascertain whether he apprehends bias, and that too, reasonably. While acceding to such request, the court is required to examine whether apprehension of bias on the part of the litigant/petitioner is honest, bonafide and reasonable. The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely. This doctrine is explained by the Honourable Apex Court in the matter of **Ranjit Thakur vs. Union of India**⁸. Paragraphs 16 to 21 of the said judgment can be reproduced with advantage and they read thus :

“16 It is the essence of a judgment that it is made after due observance of the judicial process; that the Court or Tribunal passing it observes, at least the minimal requirements of natural justice, is composed of impartial persons acting fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality is a nullity and the trial "coram non-judice". (See Vassiliadas v. Vassiliades-AIR 1945 PC 38).”

⁸ (1987) 4 Supreme Court Cases 611

“17 As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the judge is not to look at his own mind and ask himself, however, honestly. "Am I biased? "but to look at the mind of the party before him.”

“18 Lord Esher in *Allinson v. General Council of Medical Education and Registration*, (1894) 1 Q.B. 750 at 758 said:

"The question is not, whether in fact he was or was not biased. The Court cannot inquire into that In the administration of justice, whether by a recognized legal court or by persons who, although not a legal public court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the administration any person who is to A take part in it should not be in such a position that he might be suspected of being biased.""

“19 In Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon, [1969] 1 Q.B. 577, at 599, Lord Denning M.R. observed:

".. in considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be nevertheless if right minded persons would think that in the circumstances there was a real likelihood of bias on his part, then he should not sit".”

“20 Frankfurter, J. in Public Utilities Commission of the District of Columbia v. Pollak (343 US 451 at 466) said:

“"The judicial process demands that a judge move within the frame work of relevant

legal rules and the court covenanted modes of thought for ascertaining them. He must think dispassionately and submerge private feeling on every aspect of a case. There is a good deal of shallow talk that the judicial robe does not change the man within it. It does. The fact is that on the whole judges do lay aside private views in discharging their judicial functions. This is achieved through training, professional habits, self-discipline and that fortunate alchemy by which men are loyal to the obligation with which they are interested. But it is also true that reason cannot control the subconscious influence of feelings of which it is unaware. When there is ground for believing that such unconscious feelings may operate in the ultimate judgment or may not unfairly lead others to believe they are operating, judges refuse themselves. They do not sit in judgment .. ”.

21 Referring to the proper test, Ackner L.J. in *Regina v. Liverpool City Justices, ex-parte Topping* [1983] 1 WLR 119 said:

"Assuming, therefore, that the magistrates had applied the test advised by Mr. Pearson : 'Do I feel prejudiced?' then they would have applied the wrong test, exercised their discretion on the wrong principle and the same result, namely, the quashing of the conviction would follow."

10 Let us test the facts established on record of this case on the touchstone of this requirement of bonafide, reasonable and honest apprehension of bias.

11 In the transfer application moved by the Petitioner/First Informant Radheshyam Mopalwar there are categorical averments to the effect that on 7th June 2018, after 4.30 p.m., the learned Special Judge has readily and hastily heard arguments of the applicants/accused persons and directed the DGP (Special Public Prosecutor) to argue the bail applications on the very same day. Further averments found in paragraphs 7, 8 and 10 of the Transfer Application filed before the learned Sessions Judge, Thane, read thus :

“7 The Ld. DGP had to beg for an adjournment and while doing so, she clearly sought a week time because the senior police officers who investigated the offence were not available for following week i.e. 11th to 16th June 2018.”

“8 Despite these pleading the Ld. Special judge coerced the Ld. DGP to argue the case on very next date i.e. 8.08.2018 at 11.00 am sharp without fail. The undue haste and force shown by the Ld. Special judge creates serious doubts in the mind of the all concerned as to fairness and unbiasesness of the special judge. Under such circumstances the applicant herein became extremely anxious and was desirous of assisting the Ld. DGP by pointing out more facts and circumstances from the voluminous charge-sheet, as the time granted by the special judge was very short for the Ld. DGP. This was especially in view of the fact that investigation officer was not available for assisting the DGP.”

“10 During the course of submissions before the Ld. Special judge, the counsel of the applicant faced a very hostile and extremely reluctant judge who literally refused even to

consider granting sufficient time, especially when no harm or prejudice would have been caused to the rights of the accused, who had not completed their arguments for bail application for last more than 6 months. It was only after serious arguments and requests, the Ld. Special judge granted an adjournment, but that too only for a day and posted that case for arguments on Monday i.e. 11.06.2018 at 11.00 a.m. This was despite the facts that, Ld. DGP, counsel for the applicant herein and the I.O. Shri Bajirao Bhosale, requested the Ld. Special judge to post the case for arguments on 18.06.2018. The Ld. Special judge went to extent of browbeating and insulting the I.O. by telling him that, he should not submit anything to the court and his presence is irrelevant.”

12 Petitioner/First Informant Radheshyam Mopalwar further averred in the Transfer Application that all these circumstances warranted him to prefer an application before the learned Special Judge requesting him to grant sufficient time to ably assist the learned DGP (Special Public Prosecutor).

13 It needs to be noted here that these averment made in the Transfer Application on affidavit by the Petitioner/First Informant were not at all controverted by the State by a filing counter affidavit before the learned Sessions Judge, Thane. On the contrary, the learned Special Public Prosecutor had given following say before the learned Sessions Judge, Thane, on the said Transfer Application :

“It is submitted that, application is filed by the original complainant, hence appropriate order may please be passed in the interest of justice, considering the provision of MCOC Act.”

This position emerging on record shows that the prosecuting agency i.e. the State, is accepting the fact that the factual position of the events which took place before the learned Special Judge, Thane, on 7th June 2018, 8th June 2018 and 11th June 2018, as stated by the petitioner/First Informant are correct. By giving such say, the State has tacitly supported the cause of the petitioner/First Informant before the learned Sessions Judge, Thane.

14 Respondent No.2/Accused no.1 Satish Mangle filed his reply to the Transfer Application and has stated that on 7th June 2018 the bail application came to be re-argued by the learned defence counsel and the application was adjourned for advancing arguments of the learned Special Public Prosecutor. He further stated in his reply that on 8th June 2018, the applicant (First Informant) had filed his appearance through his lawyer and sought adjournment. The matter was then adjourned to 11th June 2018 for advancing arguments by the learned Special Pubic Prosecutor. In this factual scenario, it is established that bail applications were, on earlier occasion, extensively heard by the earlier Presiding Officer. Time of two days i.e. 12th April 2018 and 23rd April 2018 was consumed by applicants/accused to advance arguments on bail applications. As against that, on 7th June 2018 the bail applications were kept back till 4.30 p.m. and then those were taken up for hearing. Uncontroverted averments in the Transfer Application moved by the petitioner/First Informant are to the effect that arguments of the applicant/respondent no.2 were hastily heard. It is also clear that only time of about 45

minutes was taken for completing arguments for applicants/accused before the new Presiding Officer. Then the learned Special Public Prosecutor was insisted to work out the application on the very same day, though apparently, the court time was over. This is the stand taken by the learned APP, even before this court, by stating that, infact, the learned Special Public Prosecutor before the trial court was insisted by the learned Presiding Officer to work out the matter on the very same day, after conclusion of arguments by the learned counsel for applicants/accused at 5.30 p.m. It needs to be noted here that the charge-sheet is running into more than 1100 pages, and as such, the Presiding Officer ought not to have insisted the Special Public Prosecutor to start and conclude the arguments on 7th June 2018 itself. What happened thereafter, is also reflected from uncontroverted averments made in the Transfer Application. The learned Special Public Prosecutor was insisting for grant of time on 8th June 2018 also and was requesting to post the matter after one week as the Investigating Officer was not available in the following week. Uncontroverted averments made in the Transfer

Application also show that when the Investigating Officer requested the learned Presiding Officer to post the case for arguments on 18th June 2018, the learned Special Judge went to the extent of browbeating and insulting the Investigating Officer by telling him that the Investigating Officer should not submit anything to the court, and that his presence is irrelevant. In the opening paragraph of this judgment, I have set out facts leading to the prosecution of the accused persons in order to demonstrate that the matter before the court was a sensitive and important matter, and therefore, in my view, these uncontroverted averments reflected in the Transfer Application point out reasonable apprehension of bias in the petitioner/First Informant, who had also appointed a watching lawyer and his presence is also marked in the roznama maintained by the learned Special Judge, right from the beginning. These circumstances surfacing on record are sufficient to assume apprehension of bias and its bonafideness. The matter is required to be viewed by using the armchair of the litigant/petitioner who seeks transfer. By looking at his mind, it is necessary to determine the apprehension and

likelihood of bias. What is relevant is not to look into the mind of the learned Judge concerned, but to look into the mind of the party, who applies for transfer, and to determine whether his apprehension of bias is genuine or not. In the case in hand, record shows that when two days were required for finishing the arguments on bail applications by the learned counsel for applicants/accused before the erstwhile Presiding Officer, on 7th June 2018, arguments of applicants/accused on the very same bail applications were over in about 45 minutes, by about 5.30 p.m. of 7th June 2018, and the learned Special Public Prosecutor was then insisted by the learned Presiding Officer to commence the argument and to complete them. The charge-sheet is running more than 1100 pages. The court time was about to be over. On the next day, even the Investigating Officer was silenced when he wanted to plead for time. In these given set of facts, in my considered opinion, apprehension of the petitioner/First Informant that he will not have fair and impartial trial, appears to be honest and reasonable. The learned Presiding Officer might be trying to finish off the old pending bail applications without bias

towards none, but the events that took place in those three days are sufficient to conclude that apprehension expressed by the petitioner/First Informant is bonafide, honest and reasonable. I may make myself clear by putting on record that the subject matter is examined to ascertain real likelihood of bias from the angle of the petitioner/First Informant. Observations made in this judgment should not be construed to mean that the finding is recorded that the learned Presiding Officer is biased.

15 In the matter of Nahar Singh Yadav (supra) the Honourable Apex Court has held that powers under Section 406 of the Code of Criminal Procedure are required to be construed strictly, sparingly and with great circumspection. In the case in hand, in order to show that justice is really done, apprehension of bias in the mind of the affected party needs to be eliminated. Similarly, in the matter of Amarinder Singh (supra) the Honourable Apex Court has held that if justifiable and reasonable apprehension of miscarriage of justice and likelihood of bias is established, undoubtedly, the proceeding has to be transferred

elsewhere by exercise of power under Section 406 of the Code of Criminal Procedure. The facts stated hereinabove are sufficient to establish reasonable apprehension of miscarriage of justice inferred by the petitioner/First Informant and even endorsed by the prosecuting agency by not countering the averments made in the Transfer Application, either before the learned Sessions Judge or before this court. In the matter of **Usmangani Adambhai Vahora (supra)** the Honourable Apex Court has placed reliance on earlier judgments in the matter of **Gurucharan Dass Chadha vs. State of Rajasthan**⁹ as well as on **Abdul Nazar Madani vs. State of T.N.**¹⁰, wherein, law regarding apprehension of bias is explained by stating that such apprehension should be reasonable and not imaginary based on conjectures and surmises. However, facts of the instant case, crystallized on record due to uncontroverted pleadings made in the Transfer Application, reflect that apprehension of the petitioner/First Informant is reasonable, genuine and honest. In the result, I proceed to pass the following order :

9 AIR 1966 SC 1418

10 (2000) 6 SCC 204

ORDER

- i) The petition is allowed.
- ii) Special Case bearing No.1 of 2018 pending before the Special Court under the MCOC Act, at Thane, presided over by Shri V.Y.Jadhav is transferred to the file of the Special Court under MCOC Act at Thane, presided over by Special Judge S.B. Bahalkar, District Judge-4 and Additional Sessions Judge, Thane, who is reported to be the Additional Special Judge under the MCOC Act. However, if it is found that the said learned Judge is not presiding over the Special Court at Thane under the MCOC Act, then the learned Sessions Judge, Thane, is requested to assign the subject special case to other special court under the MCOC Act, at Thane.
- iii) The petition is accordingly disposed of.

(A. M. BADAR, J.)