

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

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.07 OF 2016**

Sumaira Akbar Abdulali

**...Applicant**

V/s.

The State of Maharashtra & Ors.

**...Respondents**

Mr. Mihir Desai, Senior Counsel i/b. Mr. Vijay Hiremath a/w.  
Devyani Kulkarni, Advocate for the Applicant.

Mr. Rajendra Sorankar, Advocate for Respondent Nos.2 to 9.

Mr. S.V. Gavand, APP for the Respondent/State.

**CORAM : A.M.BADAR J.**

**DATED : 15<sup>th</sup> FEBRUARY 2019**

**P.C. :**

1. This is an application for transfer of criminal case bearing No.325 of 2010 filed by the State against respondent Nos.2 to 9 after investigation of Crime No.13/2010 registered on the basis of report lodged by the applicant, who is the Trustee of Aawaaz Foundation.

2. It is averred by the State in the subject criminal case that

when First Informant/Sumaira Abdulali alongwith Mr.V. Balnarayan and Mr. Jagatdip, Journalist from Time of India had been to Bankotkhadi on 16.06.2010 for inspection in pursuant to the permission granted by the Division Bench of this Court on 30.07.2009 in Public Interest Litigation Nos.138 of 2006 and 112 of 2006 as well as 82 of 2007, they were assaulted by the accused persons on the way back to Mumbai. The accused persons attempted to snatch camera which contains recording of illegal sand mining at Bankotkhadi.

3. According to the applicant/First Informant after framing of the charge in Criminal Case No.325 of 2010, she was summoned by the Court of the learned Judicial Magistrate First Class, Mahad for adducing evidence on 08.09.2015. However, on that day, she was threatened in the premises of the Court by some of the accused persons with a view to intimidate her so as to prevent her from deposing before the Court. This compelled her to leave the Court premises. According to the applicant/First Informant, she will not get fair trial in the Court of the learned Judicial Magistrate First Class, Mahad, District Raigad as she was threatened by some

of the accused persons when she attended the Court for adducing evidence.

4. I have heard the learned Senior Counsel appearing for the applicant/First Informant, so also the learned Counsel appearing for respondent Nos.2 to 9/original accused. The learned Additional Public Prosecutor appears for the Respondent/State.

5. The applicant/First Informant is not espousing her own cause, but as a Trustee of Aawaaz Foundation, which filed the public interest litigation in respect of illegal sand mining in several districts of the State, she is taking care of environment as well as societal interest.

6. It is seen from the averment made in the application, so also from the press report that the applicant may not get fair trial in free atmosphere in the Court of the learned Judicial Magistrate First Class, Mahad, District Raigad as all accused persons are resident of Mahad, whereas the applicant is resident of Mumbai. Atleast the incident of 08.09.2015 gives such impression to the litigant. At this stage it needs to mention that assurance of a fair

trial is the first imperative of the dispensation of justice and the central criterion for deciding whether the trial needs to be shifted or not from a particular place. One of the principles of the administration of justice is that the justice should not only be done but it should be seem to be done.

7. The learned Counsel for the respondents/accused in such situated has fairly acceded to the suggestion of this Court that the trial of the subject crime can be conveniently held at the Court of the learned Judicial Magistrate First Class at Alibaug, District Raigad rather than the Court at Mahad. That would be convenient for both the parties. In this view of the matter, the following order:

### **ORDER**

(i) Criminal Case No.325 of 2010 between the parties is transferred from the file of the learned Judicial Magistrate First Class, Mahad, District Raigad to the file of the learned CJM, Alibaug, District Raigad.

(ii) The learned Chief Judicial Magistrate may try the case himself or he may assign the same to any of the Court of the learned Judicial Magistrate First Class at Alibaug, District Raigad.

(iii) Considering the fact that the criminal case is of the year 2010, the learned trial Court would expedite the hearing of the said case.

(iv) With this order, the application stands disposed of.

**(A.M.BADAR J.)**