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

Judgment Reserved on: 10th April, 2019

Judgment Pronounced on: 12th April, 2019

+ TR.P.(CRL.) 43/2018

SACHIN JINDAL & ANRPetitioner

Through: Mr. Harshit Jain, Advocate.

Versus

STATERespondent

Through: Mr. Rajat Katyal, APP for State

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J

TR.P.(CRL.) 43/2018

1. The present petition has been filed under Section 407 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the 'Cr.PC') read with Section 482 of Cr.P.C for setting aside order dated 02.07.2018 passed by the District & Sessions Judge, Rohini Courts whereby his application for transfer of the Session Case No. 58093/2016 pending before the court of Shri Jitender Kumar Mishra, Ld. ASJ/Special Judge (NDPS), North District, Rohini Courts to another court has been dismissed.
2. Mr. Harshit Jain learned Counsel for the petitioner contended that the present transfer petition has been filed because Shri Jitender Kumar Mishra, Ld. ASJ/Special Judge (NDPS), North District, Rohini Courts has abused his judicial position by passing an unjustified order on 16.05.2018. He further contended that on the date of

recording of the evidence of the accused the matter was adjourned for another day solely on the ground that the questions were not ready, which unnecessarily delayed the trial proceedings and has caused prejudice to the petitioner.

3. He further contended that due to the biased conduct of the Presiding Officer the petitioners are apprehensive of not getting a fair and impartial trial.
4. On the other hand, Mr. Rajat Katyal, learned APP appearing for State contended that the present petition is a total abuse of process of law and has only been moved to delay the trial.
5. Heard learned counsel for the parties and also perused the relevant material on record including the order dated 16.05.2018.
6. At the outset, it is worth mentioning that the Hon'ble Supreme Court of India in ***Harita Sunil Parab Versus State Of NCT of Delhi and Others*** reported in **2018 6 SCC 358**, while discussing the principles on the apprehension of not getting a fair and impartial trial has laid down various parameters, which the courts should outline while dealing with such transfer petitions. The germane portion of the judgment is extracted below:

“7. In Gurcharan Das Chadha vs. State of Rajasthan, (1966) 2 SCR 678, dealing with the issue for transfer of a case, it was observed:

“13....The law with regard to transfer of cases is well-settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a

transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the State of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension.”

8. *The apprehension of not getting a fair and impartial enquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. No universal or hard and fast rule can be prescribed for deciding a transfer petition, which will always have to be decided on the facts of each case. Convenience of a party may be one of the relevant considerations but cannot override all other considerations such as the availability of witnesses exclusively at the original place, making it virtually impossible to continue with the trial at the place of transfer, and progress of which would naturally be impeded for that reason at the transferred place of trial. The convenience of the parties does not mean the convenience of the petitioner alone who approaches the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society.”*

7. From the perusal of the above judgment, it is evident that a case can only be transferred if there is a reasonable apprehension on the ground that justice will not be done. Hence the apprehension of not getting a fair and impartial trial is mandatory to be reasonable and not imaginary, based upon conjectures and surmises.
8. Returning to the facts of the present case, the petitioner alleged that the Learned Special Judge closed the prosecution evidence and adjourned the matter for shorter dates, without hearing and giving a reasonable and proper opportunity to the petitioner. As the matter was continuously adjourned (*from 17.04.2018 to 26.04.2018 and further to 16.05.2018*) on the ground that the questionnaire under Section 313 of Cr.P.C was not ready, attention was drawn towards order dated 16.05.2018, which reads as under:-
- “ Statement of accused Sachin Jindal U/s 313 Cr.PC recorded partly. Further statement could not be recorded as questions are not ready.
Put up for recording remaining statement of accused Sachin Jindal and statement of accused Shilpi Jindal on 02.06.2018”*
9. The aforesaid conduct of the Trial Court has created apprehension in the mind of the petitioner that he will not be subjected to a free and fair trial. Keeping in mind the facts of the present case and applying the principles laid down by the Apex Court, the grounds urged by the petitioner are totally misconceived and do not make a case for transfer of the petition.
10. The trial court shall however ensure that the questionnaire U/s 313

Cr.P.C is prepared and the statement U/s 313 Cr.P.C is completed in one day convenient to the trial court.

11. Accordingly the present petition stands disposed of.
12. Copy of the order be sent to District & Sessions Judge (Rohini Courts) for information.

Crl. M. A. No. 12824/2018 (Stay)

In view of the order passed in the petition, the interim order dated 07.08.2018 stands vacated.

Application stands disposed of.

SANGITA DHINGRA SEHGAL, J.

APRIL 12, 2019

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