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via Video-conferencing

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P. (CRL.) 926/2020**

FAHRUL NAIM BIN MOHD NOOR Petitioner
Through: Mr. S. Hari Haran, Advocate.
versus

STATE OF NCT OF DELHI & ANR. Respondents
Through: Mr. Rahul Mehra, SSC (Criminal)
for GNCTD/Respondents Nos.1
and 2 with Mr. Chaitanya Gosain,
Advocate

QUORUM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER
% **16.07.2020**

Crl. M.A. No.9305/2020

The applicant is a Malaysian national aged about 17 years, who is arrayed as accused at serial No.27 in charge-sheet No. 34 filed in the case arising from FIR No. 63/2020 dated 31.03.2020 registered under sections 3 of the Epidemic Disease Act 1897 read with sections 51/55 of the Disaster Management Act 2005 and sections 188/259/270/120-B/271 IPC at PS: Crime Branch. There were a total of 122 Malaysian nationals who were accused in the charge-sheet and the applicant is the only minor among them.

2. Mr. S. Hari Haran, learned counsel for the applicant submits that after some directions/suggestions were issued by this court *vidé* order

dated 01.07.2020, 121 accused persons entered plea-bargains, whereupon the learned Metropolitan Magistrate (MM) was pleased to impose a fine of Rs.7,000/- on each of the accused; and sent the matter back to learned CMM for further proceedings. It is submitted that by order dated 13.07.2020, the learned CMM took on record the orders passed by the learned MM on the plea-bargain applications and has closed proceedings against the said 121 accused.

3. However, insofar as the applicant is concerned, during the proceedings it transpired that the applicant is a juvenile, as evidenced by his passport and confirmed by the Malaysian High Commission. By reason thereof the applicant could not be proceeded against in the court of the learned CMM; and upon directions of the learned CMM, the I.O. filed the charge-sheet against the applicant before the Juvenile Justice Board (JJB)-I, Kingsway Camp, Delhi for further consideration.

4. The applicant, as a juvenile in conflict with law (JCL) appeared before the JJB-I *via* video-conferencing, but it turned-out that the Board was not in a position to pass any final order due to lack of quorum, by reason of vacancies on the Board ; and the matter accordingly stands adjourned to 30.07.2020.

5. It is submitted that in the meantime the Malaysian High Commission has made arrangements for repatriation of the other 121 accused persons to Malaysia on 17.07.2020 *i.e.* tomorrow since proceedings against them stand closed.

6. In this backdrop, Mr. Hari Haran submits that the applicant finds himself in a quandary in that, though he is willing to enter a plea-bargain

on the same lines as the other 121 accused, by reason of vacancies and lack of quorum at JJB-I, the applicant's matter cannot proceed. By reason thereof, the applicant, who is a juvenile, would be left behind in India when all other persons who had come with him would return to their country.

7. It is accordingly prayed that this court may, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution either drop the proceedings against the applicant ; or, in exercise of its inherent powers under section 482 Cr.P.C. transfer the matter to JJB-IV, Vishwas Nagar, Delhi, which is stated to be the only JJB where quorum is available.

8. Mr. Rahul Mehra, learned Senior Standing Counsel (Criminal) for GNCTD submits that in the spirit with which directions/suggestions were issued by this court in respect of all Malaysian nationals, who were subject matter of the FIR, in principle the State has no objection to the proceedings against the applicant, who is a minor, being dealt with expeditiously in the same way.

9. On instructions from the Department of Women & Child Development, Government of NCT of Delhi, on point of fact, Mr. Mehra submits that it is correct that there is lack of quorum by reason of vacancies at JJB-I and only the Principal Magistrate is presently available; which would delay a final decision in the matter before that Board. He accordingly concurs with the submissions made on behalf of the applicant, especially since only this one juvenile appears to have

been left behind while 121 compatriots are on their way back to Malaysia.

10. Insofar as legal provisions are concerned, Mr. Hari Haran points-out that section 22 of the Juvenile Justice (Care and Protection of Children) Act 2015 ('JJ Act', for short) specifically excludes the application *only* of Chapter VIII of the Cr.P.C. insofar as proceedings against a juvenile are concerned ; but otherwise, the general provisions of Cr.P.C. are adopted in proceeding against juveniles.

11. Counsel further submits that section 407 Cr.P.C. which confers powers upon the High Court to transfer cases *inter alia* reads as under:

"Section 407. Power of High Court to transfer cases and appeals.-

(1) Whenever it is made to appear to the High Court-

* * * * *

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order-

* * * * *

(ii) that any particular case, or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

* * * * *

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal

Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.”

12. Mr. Hari Haran submits that there is no other JJB within the jurisdiction or sessions division of the District & Sessions Judge (HQ) to which the applicant may seek transfer by filing an application before the said court.

13. Counsel further points-out that since there is no specific provision even under section 407 Cr.P.C. which covers the transfer of proceedings from one JJB to another, the inherent powers of the High Court under section 482 Cr.P.C. would come into play, to be exercised in the interests of justice.

14. In view of the foregoing, in exercise of powers under section 482 Cr.P.C. and noticing that section 407 Cr.P.C. does empower the High Court to transfer cases but that *there is no specific provision* under section 407 Cr.P.C. which deals with transfer of cases under the JJ Act from one JJB to another, *nor is there any bar to such transfer*, this court is persuaded to exercise its inherent powers under section 482 Cr.P.C. to direct that the case against the applicant arising from the charge-sheet filed in FIR No. 63/2020 be transferred forthwith from JJB-I, Kingsway Camp to JJB-IV, Vishwas Nagar to be dealt with expeditiously, in accordance with law.

15. The application stands disposed of.

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CrI. M.A. No.7745/2020 (for interim relief)

16. Since the proceedings before the learned CMM stand concluded and the matter stands closed, nothing further survives in this petition and the same is accordingly disposed of.

17. Pending applications, if any, also stand disposed of.

18. The date of 22.07.2020 given earlier stands cancelled.

ANUP JAIRAM BHAMBHANI, J

JULY 16, 2020

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