

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-40292-2021

DECIDED ON: 28th September, 2021

Naresh Yadav

.....PETITIONER

VERSUS

State of Haryana

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN.

Present: Mr. Yatish Goel, Advocate for
Mr. S.K. Agnihotri, Advocate for petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

AVNEESH JHINGAN, J (ORAL)

Due to COVID-19 situation, the Court is convened through video conference.

(2) This petition under Section 407 Cr.P.C. is filed seeking transfer of Session trial in Case No.341/2016 in FIR No. 146 dated 12.4.2016, under Sections 306/34 IPC, registered at Police Station Badshahpur, Gurugram, to any other Sessions Court in Gurugram. The challenge is to order dated 24.8.2021 of Sessions Judge, Gurugram, whereby transfer application was dismissed.

(3) The brief facts of case are that FIR was registered on the complaint of Vimal Kumar. Brother of complainant committed suicide and left a suicide note which was handed over to the police. During pendency of the trial, the petitioner was summoned under Section 319 Cr.P.C.

(4) Learned counsel for the petitioner contends that there is apprehension in the mind of the petitioner that he would not get justice from the Court of Additional Sessions Judge, Gurugram, before whom the case is pending for trial. The ground for apprehension is that extremely short dates are being granted which show harsh attitude; further that anticipatory bail was dismissed by same officer whereas High Court granted the bail. Further it is argued that the petitioner was summoned under Section 319 Cr.P.C. through Warrant of Arrest.

(5) The contention that the petitioner was summoned through arrest warrant does not enhance the case of the petitioner for transfer of trial. Petitioner had remedies in accordance with law if aggrieved of summoning order, there is nothing on record to show that petitioner availed his legal remedies against the summoning order.

(6) Granting of short adjournments by the trial Court causes no prejudice to the petitioner. As rightly stated in the impugned order passed by Sessions Judge, that the case being of 2016, short dates are being granted to ensure the timely conclusion of the trial.

(7) The rejection of anticipatory bail by the Officer and granting the same by the High Court forms no foundation for apprehension of the petitioner.

(8) It is settled law that transfer of the trial is not to be ordered as a matter of routine. The Court has to satisfy itself that levelled playing field is not being provided or that impartial trial is not possible.

(9) Supreme Court in ***Umesh Kumar Sharma Versus State of Uttarakhand and others 2020 AIR (SC) 5488***, has held that power of transfer of trial is to be sparingly used and transfer would be only ordered if Court is fully satisfied that impartial trial is not possible. The apprehension for seeking transfer should not be on conjectures and surmises. The relevant portions of the earlier decisions of the Supreme Court in **Umesh Kumar Sharma's case (supra)** are considered and reproduced in the judgment are quoted below:

15. In Abdul Nazar Madan v. State of T.N. & Anr. (2000) 6 SCC 204, Justice R.P. Sethi speaking for the Division Bench discussed the scope of power under section 406 CrPC, 1973 and observed:-

"7. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under section 406 CrPC, 1973. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. No universal or hard and fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts

•of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached 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."

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17. In **Captain Amrinder Singh v. Prakash Singh Badal & Ors. (2009) 6 SCC 260**, Justice P. Sathasivam, as he then was, speaking for the three judge Bench, on the issue of transfer of criminal cases, observed as follows: -

"48. The analysis of all the materials, the transfer of the case as sought for, at this stage, is not only against the interest of prosecution but also against the interest of the other accused persons, the prosecution witnesses and the convenience of all concerned in the matter.

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51. We have already pointed out that a mere allegation that there is an apprehension that justice will not be done in a given case alone does not suffice. Considering the totality of all the circumstances, we are of the opinion that in a secular, democratic Government, governed by the rule of law, the State of Punjab is responsible for ensuring free, fair and impartial trial to the accused, notwithstanding the nature of the accusations made against them. In the case on hand, the apprehension entertained by the petitioners cannot be construed as reasonable one and the case cannot be transferred on a mere allegation that there is apprehension that justice will not be done."

18. Let us now examine another precedent on transfer of criminal cases. In **Nahar Singh Yadav & Others v. Union of India & Ors. (2011) 1 SCC 307**, Justice D.K. Jain writing for the three Judge Bench discussed the scope of transfer under section 406 CrPC, 1973 in the following terms: -

"22. It is, however, the trite law that power under section 406 CrPC, 1973 has to be construed strictly and is to be exercised sparingly and with great circumspection. It needs little emphasis that a prayer for transfer should be allowed only when there is a well-substantiated apprehension that justice will not be dispensed impartially, objectively and without any bias. In the absence of any material demonstrating such apprehension, this Court will not entertain application for transfer of a trial, as any transfer of trial from one State to another implicitly reflects upon the credibility of not only the entire State judiciary but also the prosecuting agency, which would include the Public Prosecutors as well."

...(emphasis supplied)

- (10) No ground is made out for transfer of trial.
- (11) The petition is dismissed.

28th September, 2021
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned *Yes*
Whether reportable *Yes*