

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

921 CRIMINAL WRIT PETITION NO.1775 OF 2022

**TULSHIRAM VINAYAK MADKE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. Pankaj A. Bharat, Advocate for the petitioner
Mr. S. W. Mundhe, APP for the respondents/State
Mr. S. R. Andhale, Advocate for respondent Nos. 2 to 4

CORAM : KISHORE C. SANT, J.

DATE : 21st DECEMBER, 2022

P. C.

1. Heard the learned advocates for the parties.
2. Mr. Andhale, appeared suo-moto for respondent Nos. 2 to 4 and undertakes to file vakalatnama within two weeks.
3. In this petition, the petitioner is challenging the order of rejection arising out of application by which the learned Sessions Judge has rejected the application under Section 408 of the Code of Criminal Procedure seeking transfer of the case at the instance of informant in Sessions case No. 231/2021. The respondents are being prosecuted for the offence punishable under Section 302 of the Indian Penal Code. All the accused are in jail. The case was initially registered for the offence

punishable under Section 306. But later on Section 302 came to be added.

4. The informant filed Misc. Application and same is pending before the court of Additional Sessions Judge, Ahmednagar. Only ground raised in the application is that accused persons are influential persons and there is pressure upon the witnesses not to depose against respondents-accused. It is for this reason, transfer is sought to court other than the Court at Ahmednagar. The learned Additional Sessions Judge, Ahmednagar in paragraph No. 4 observed the Presiding Officer has already passed an order giving police protection to the informant. The learned Sessions Judge before whom the trial is going on is holding the trial on day-to-day basis. However, same could not be done. In the application other prejudice shown is that the learned trial judge is making hurry in the matter and therefore, accused would be benefited and that is stated to be cause of action for filing an application for transfer of the case.

5. Learned APP supports the order stating that the court has rightly passed the order in the interest of informant by giving police protection. When the court is trying to finish the matter as early as possible, which in fact is in the interest of justice. If the trial is delayed, it may cause injustice to the parties.

6. Mr. Andhale, learned advocate for the respondent Nos. 2 to 4 submits that all the accused persons are in jail. The application is filed only with a view to prolong the trial as trial is proceeding on day-to-day basis. This witness has to appear only when his evidence is to be recorded. Thus, informant has to appear only on 2-3 occasions for recording his evidence. Therefore, there is no substance in the ground that witnesses are being pressurized. He submits that sufficient care can be taken by the trial court, if such application is received from any of the witnesses.

7. Considering the above, this court finds that no perversity, illegality is committed by the learned Sessions Judge while passing the order. Thus, this court finds that there is no substance in the criminal writ petition and thus, same is dismissed and disposed off.

[KISHORE C. SANT, J.]

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