

matter was taken on board on 13.06.2022. The learned Judge directed the petitioner and his Advocate to decide the petition on the next day i.e. on 14.06.2022, as the matter will be listed on the next date. On 14.06.2022 the learned judge directed that the matter be registered in the registry. The petitioner was present. However, the attendance was not recorded. On 15.06.2022, the matter was to be heard in the first session but it was ordered to be taken in the second session. In the second session the learned Judge adjourned the matter instead of insistence of Advocate that the time period of provisional cash bail has expired on 17.06.2022 and it may be extended. On the same day the learned judge gave new date in the said matter i.e. 18.06.2022. On 18.06.2022 in spite of exemption application with medical certificate, the learned judge insisted not to pass order in the application for modification of relaxation sought in the Misc. Application without presence of the accused. The CBI then moved application for cancellation of bail granted to the petitioner. The said application was allowed and bail granted to the petitioner was cancelled. The petitioner has reason to apprehend that she may be denied justice. The learned Judge is prejudiced.

3. Mr. Pavaskar, learned counsel for the petitioner submitted that, in the light of the aforesaid factual aspects, there is reasonable

apprehension that the learned judge is biased against the petitioner. He also pointed out the observations made in order dated 16th March, 2022 passed by the Special Judge under PML Act, Court Room No.16, more particularly in Paragraph – 8 of the said order and submitted that the grievance was made by the husband of the petitioner about the conduct of the CBI. The petitioner was initially not made an accused. Her husband was in custody. After the grievance was made against the CBI Officer, the petitioner was impleaded as an accused. The application for transfer was rejected by the learned Sessions Judge vide order dated 6th August, 2022. However, learned Judge has not considered the apprehension expressed by the petitioner for transferring the proceedings. It is submitted that what is required in reasonable apprehension for a litigant she would not fair trial on account of bias. Hence, the order passed by the learned Sessions Judge may be set aside and the proceedings pending before the Court be transferred to any other competent authority having jurisdiction.

4. Learned counsel for Respondent – CBI submitted that, no case is made out for transferring the proceedings. The bail granted to the petitioner was cancelled. It is further submitted that the Sessions Court has rejected the application by assigning the reasons. There is no material to exercise powers under Section 407

of Cr.P.C. for transferring the proceedings pending before the concerned Court to any other Court. He relied upon the decision of the Apex Court in the case of State of Punjab V/s. Davinder Pal Singh Bhullar & Ors. dated 07.12.2011 passed in Criminal Appeal No.753 - 755 of 2009. Learned counsel adverted to the observations made by the apex Court in Paragraphs – 13 & 14 of the said decision, wherein the reference was made to the decision of the Hon'ble Supreme Court in the case of **Bhajan Lal, Chief Minister, Haryana V/s. M/s. Jindal Strips Ltd & Ors. (1994) 6 SCC 19** and wherein it was observed that there may be some consternation and apprehension in the mind of a party and undoubtedly, he has a right to have fair trial, as guaranteed by the Constitution. The apprehension of bias must be reasonable, i.e. which a reasonable person can entertain. Even in that case, he has no right to ask for change of Bench, for the reason that such an apprehension may be inadequate and he cannot be permitted to have the Bench of his choice. The observations in Bhajan Lal's case (supra) were quoted, wherein it was observed that, bias is the second limb of natural justice. Prima facie no one should be judge in what is to be regarded as '*sua causa*', whether or not he is named as a party. The decision-maker should have no interest by way of gain or detriment in the outcome of a proceedings. Interest may

take may forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with the subject-matter, from a close relationship or from a tenuous one. In Paragraph – 14, the apex Court had considered several decisions and it was observed that the principle in these cases is derived from the legal maxim – *nemo debet esse judex in causa propria sua*. It applies only when the interest attributed is such as to render the case his own cause. This principle is required to be observed by all judicial and quasi-judicial authorities as non-observance thereof, is treated as a violation of the principles of natural justice. The failure to adhere to this principle creates an apprehension of bias on the part of the Judge. The question is not whether the Judge is actually biased or, in fact, has really not decided the matter impartially, but whether the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision.

5. I have perused the documents on record and the impugned order dated 6th August, 2022 passed by the learned Sessions Judge rejecting the application for transferring the proceedings as prayed by the petitioner. The learned Sessions Judge having considered the submissions of both the sides had observed that the strong grievance against the judicial officers is only because he has passed

the orders, the applicant had not complied the condition of bail. The applicant had challenged the said order before the High Court only because the order is set aside by the High Court, the order passed by the trial Court cannot be termed as passed with bias mind. Only because the order passed by the Court is against the applicant, the matter cannot be transferred to any other Court. There is no reason to deviate from the decision dated 6th August, 2022. I do not find any reason to come to the conclusion that the court has strong bias against the petitioner. There is no reason to apprehend that petitioner would not get fair trial. Learned counsel for petitioner had pointed out the observations made in Paragraph – 8 of order dated 16th March, 2022 passed by the Court while dealing with the application preferred by the husband of the petitioner. On account of grievance, if any of the petitioner against the CBI officers, no bias can be attributed to the learned Judge. In these circumstances no case is made out for granting relief prayed in this petition. Hence, I pass the following order :

ORDER

Writ Petition No. 3109 of 2022 stands rejected and
disposed of accordingly.

(PRAKASH D. NAIK, J.)