



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
: NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 365 OF 2024

PETITIONER : Kailash Amarprem @ Amarsingh Rathod,
Aged 46 years, Occu. Lawyer,
R/o Dwarka Nagari, Shrirampur,
Pusad, Tq. Pusad, Dist. Yavatmal.

VERSUS

RESPONDENTS : 1] Premsingh Devsingh Rathod,
Aged 57 years, Occu. Service,

2] Ankush S/o Premsingh Rathod,
Age 22 years, Occu. Education

3] Ashutosh S/o Premsingh Rathod,
Age 24 years, Occu. Education,

4] Sau. Mirabai Premsingh Rathod,
Aged 50 years, Occu. Housewife,

5] Ku. Bhagyashri Premsingh Rathod,
Aged 26 years, Occu. Education.

All R/o Dwarka Nagari, Shrirampur,
Pusad, Tq. Pusad, Dist. Yavatmal
now at Digras, Tal. Digras, Dist. Yavatmal

6] State of Maharashtra,
through Police Station Officer,
Police Station, Vasant Nagar,
Pusad, Dist. Yavatmal.

Mr. R. R. Vyas, Advocate for the petitioner.
Mr. Amol Mardikar, Advocate for respondent nos.1 to 5
Mr. Ganesh Umale, A.P.P. for respondent no.6/State

CORAM : G. A. SANAP, J.
DATED : NOVEMBER 25, 2024.

ORAL JUDGMENT

1. **RULE.** Rule made returnable forthwith. Heard finally by the consent of the learned advocates for the parties.

2. In this writ petition, the petitioner, who is the informant in Crime No. 234/2020, registered at Vasant Nagar police station, Pusad, has challenged two orders passed by the learned Principal District and Sessions, Judge, Yavatmal, namely the order dated 27.03.2024 with regard to transfer of Sessions Trial No. 15/2022 and another order dated 27.03.2024 for transfer of Criminal Revision Application No. 10/2022, pending on the file of learned Additional Sessions Judge, Pusad to the Court of Additional Sessions Judge, Darwha.

3. Respondent nos.1 to 5 are the accused in Sessions Trial No. 15/2022. The petitioner is the practicing advocate at Pusad. The application bearing Other Misc. Criminal Application No. 28/2023 for transfer of the Sessions Trial was made on the premise that the petitioner being the practicing advocate at Pusad bar, the members of

the Pusad Advocates' Bar Association have shown reluctance to appear on behalf of the accused. The accused were, therefore, required to avail the services of the Advocates from Yavatmal at the time of their bail application.

4. The Cri. Revision Application No.10/2022, has been filed against the order of rejection of the application made by the petitioner for further investigation in the said crime i.e. Crime No. 234/2020. It is submitted that since the accused are not getting proper legal assistance from the lawyers at Pusad, they are required to avail the services of the advocates from Darwha. According to the accused, on account of reluctance shown by the advocates at Pusad bar to appear on their behalf, they have been denied a fair trial at Pusad. Therefore, the accused filed an application bearing Other Misc. Criminal Application No. 35/2023 before the Principal District and Sessions Judge, Yavatmal for transfer of Cri. Revision Application No. 10/2022 from the Court of Additional Sessions Judge, Pusad to the Court of Additional Sessions Judge, Darwha.

5. The transfer applications were opposed by the petitioner contending that there is no substance in the contention. The accused

have engaged an advocate to represent them. It is also contended that there is no other allegation of bias or interference in disposal of the case at the behest of the petitioner.

6. I have perused the orders passed by the learned Principal District and Session Judge, Yavatmal. I have also gone through the applications made by the accused. The applications have been made principally on the ground that the petitioner is a practicing advocate. He has good relations with the Advocates practicing at Pusad. The members of Pusad Bar are not ready to represent the accused. It is further contended that at the stage of bail application, they had engaged a lawyer from Yavatmal. Perusal of the applications does not show that they have made a grievance that the petitioner has been interfering in the administration of justice or trying to influence the outcome of the case. The only ground raised is that the advocates at Pusad are not willing to represent the accused and therefore, on that count they would not get a fair trial. In this context, it would be necessary to peruse the observations made by the learned Judge. Learned Judge has recorded in the impugned order that the applicant, who is one of the accused, is apprehending interference in a fair trial inasmuch as the petitioner/

informant is a practicing lawyer. Learned Judge has further observed that the informant being a practicing advocate at Pusad Court, the apprehension put forth seeking transfer would be fully justified.

7. Before I proceed to appreciate the submissions advanced on behalf of the parties, it is necessary to mention at the cost of repetition that there is no allegation of bias against the learned Additional Sessions Judge, Pusad. Similarly, there is no allegation that the petitioner being a practicing advocate at Pusad is interfering, in any manner, in the administration of justice. The application is conspicuously silent about the allegation of interference in the administration of justice and as such the outcome of the proceeding by the petitioner.

8. It is to be noted that the power of transfer under Sections 406 or 408 of the Code of Criminal Procedure needs to be invoked sparingly. Before exercising the power, the Court must be satisfied that the justice is in peril. The Court must be fully satisfied that impartial trial is not possible. It is also equally important to verify that the apprehension of not getting a level-playing field, is based on some

credible material and not just on conjunctures and surmises. The learned Judge, in view of this position was required to appreciate the facts stated in the applications and come to a just conclusion.

9. The application made by the petitioner for further investigation was rejected by the Court. He filed a revision against the said order. The revision is pending before the learned Additional Sessions Judge, Pusad. It is not the allegation of the accused that the petitioner being an Advocate is interfering in the administration of justice in any manner. It is not the case of the applicant that the advocate engaged by them practicing at Darwha is not equally competent. It is also not their case that the Advocate engaged from Darwha Bar to represent them is not discharging his duties to their satisfaction. It is also not their case that the advocate engaged from Darwha bar would be influenced by the petitioner. In my view, before passing the order for transfer, the learned Judge was required to consider these facts. The transfer of a proceeding from one Court to the another Court can be made only when the Court is satisfied that fair trial is in peril. It has come on record that accused no.3 is none other than the ex-employee of the District Court at Pusad. I am informed

that he has retired from service one year back.

10. In my view, considering all these facts, it would not be just and proper to transfer the case from the Court at Pusad to the Court at Darwha. Transfer of the case with certainty can cause inconvenience to the witnesses. The respondents/accused have engaged an Advocate of their choice. It is not their case that on account of the reluctance of the advocates from Pusad Bar, they are without legal assistance. In my view, in the backdrop of these facts, the learned Judge was not right in granting the prayer made on behalf of the accused for transfer. In view of the above, the orders passed by the learned Judge dated 27.03.2024 transferring Sessions Trial No. 15/2022 and Cri. Revision No. 10/2022 from the Court of Additional Sessions Judge, Pusad to the Court of Additional Sessions Judge, Darwha, are required to be quashed and set aside.

11. Accordingly, The Criminal Writ Petition is allowed.

The orders dated 27.03.2024 passed by the learned Principal District and Sessions Judge, Yavatmal, in Other Misc. Criminal Application Nos. 28/2023 and 35/2023, are quashed and set aside.

12. The petition stands disposed of. Rule is made absolute in the aforesaid terms.

(G. A. SANAP, J.)

Diwale