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THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.16777 of 2024 (O&M)
Date of Decision: 27.11.2024

Manjeet Kaur Grewal

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Munish Jolly, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

RAJESH BHARDWAJ, J. (ORAL)

CRM-38569-2024

Instant application has been filed for placing on record
additional affidavit along with annexures.

For the reasons recorded in the application, the same is
allowed and additional affidavit along with annexures P-43 to P-53 are
ordered 41837 be taken on record.

CRM-41837-2024

Instant application has been filed for placing on record
additional annexures.



For the reasons recorded in the application, the same is allowed and additional annexures as Annexures P-54 and P-55 are ordered to be taken on record.

CRM-M-16777-2024

1. Present petition has been filed praying for calling for and examining records of FIR No.117, dated 06.05.2002, Police Station Sarabha Nagar Ludhiana in case No.CHI35782 of 2013 pending for 04.04.2024; setting aside the order dated 16.08.2023 (Annexure P-14) passed by the learned Sessions Judge, Ludhiana in TA No.411 of 2023 and for setting aside the order dated 21.07.2023 (Annexure P-11) passed by the learned Chief Judicial Magistrate, Ludhiana in CRM-23211 of 2023 and allow application dated 02.05.2023 (Annexure P-10). Further prayer has been made for directing the learned trial Court for deciding three applications each dated 12.04.2023 of the petitioner for the attachment of property (Annexure P-6), forfeiture of security (Annexure P-7) and for taking action against sureties (Annexure P-8) of Kiran Sharma accused, proclaimed person as per law and for bringing on record the whereabouts of accused Harbhajan Singh Gill without any further delay.

2. Notice in this case was issued by this Court and the status reports have been filed by the Commissioner of Police, Ludhiana. Besides this, this Court directed the learned Sessions Judge and the Presiding Officer to file the status report which have also been received by this Court.



3. Learned counsel for the petitioner has raised various issues regarding the proceedings being carried out by the learned trial Court. He has submitted that being aggrieved by the conduct of learned Presiding Officers, the petitioner filed an application for transfer of the trial, however the same was declined by the learned Chief Judicial Magistrate, Ludhiana vide her order dated 21.07.2023. He has submitted that being aggrieved, he assailed the same before the learned Sessions Judge, Ludhiana, however the same was also dismissed by the learned Sessions Judge vide his order dated 16.08.2023. It has further been submitted by learned counsel for the petitioner that evidence of the petitioner was being recorded in violation of the settled principles of the Evidence Act and thus, she was being compelled to answer in 'Yes' or 'No'. He has also submitted that the petitioner is facing humiliation in the open Court. He has submitted that three applications each dated 12.04.2023 filed by the petitioner for attachment of the property, forfeiture of the security and for taking action against the sureties of Kiran Sharma, who is a proclaimed person, are also pending adjudication despite a long time. He has thus submitted that in the facts and circumstances, trial of the case deserves to be transferred to some other Court. He has submitted that the petitioner filed the petitions for transfer of the same, however the same have been dismissed by the trial Court as well as by the learned Sessions Judge as mentioned above. He has thus submitted that in the overall facts and circumstances, the petition deserves to be allowed by transferring the trial of the case to some other Court.



4. Learned counsel for the State has vehemently opposed the submissions made by learned counsel for the petitioner. He has drawn the attention of this Court to the status report filed. He has submitted that after a thorough, fair and impartial investigation, the challan was filed before the learned trial Court. He has submitted that accused, namely, Sukhdev Singh was declared proclaimed offender vide order dated 19.03.2005 by the learned trial Court and thereafter efforts are being made to arrest him, however he is not found residing in the given address. He has submitted that the necessary action in pursuance to the order passed regarding declaring Sukhdev Singh, as proclaimed offender is being carried out. He has further drawn the attention of this Court to the status report filed that accused, Kiran Sharma, who was on bail, was granted permission by the trial Court to travel to Canada from 18.02.2020 to 17.05.2020 vide order dated 15.02.2020, however later on she failed to appear before the Court and thus she was declared proclaimed person by the Court vide order dated 23.06.2022. Hence the necessary action was initiated for apprehending her. He has further submitted that as on date, accused, Kiran Sharma has already been arrested and produced before the Court on 03.05.2024. He has submitted that the prosecution is discharging its duties in accordance with law and would continue with the same. He has thus submitted that the petition filed by the petitioner being devoid of any merit, deserves to be dismissed.

5. The Court has heard learned counsel for the parties and with their able assistance has perused the record of the case.



6. For proper adjudication of the case, report from the trial Court has also been received. On perusal of the same, it is apparent that co-accused, Kiran Sharma, who was declared proclaimed person did not appear before the Court in terms and conditions of the order passed by the trial Court whereby she was allowed to travel abroad. She was declared a proclaimed person and thereafter she was arrested by the police and produced before the Court on 03.05.2024. During the pendency of the present petition, the Court was apprised that all the three applications filed by the petitioner already stand adjudicated upon and the same has been recorded by this Court in the order dated 07.05.2024. The Court has appreciated the report sent by the learned Presiding Officer. The same would reveal that the trial is being conducted as in accordance with law. It is also transpired from the report filed that at some stages, the complainant herself was not cooperative and had sought adjournments which resulted in delay of the trial.

7. Needless to say that grievances of the petitioner regarding adjudication of the applications already stand redressed. The precise duty of the trial Court is to carry out the judicial proceedings as per the mandate of the law irrespective of the interest of either party. The transfer of trial from one Court to another cannot be based on the choice of litigant. The petitioner has failed to produce anything on the record to substantiate her allegations against the Presiding Officer which would warrant the transfer of the trial.



8. Hon'ble the Supreme Court in "***Capt. Amarinder Singh vs. Parkash Singh Badal***", 2009(6) SCC 260 held as under:

- "12. It is a well-established proposition of law that a criminal prosecution, if otherwise, justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political mandate of the informant or the complainant. However, if justifiable and reasonable apprehension of miscarriage of justice and likelihood of bias is established, undoubtedly, the proceeding has to be transferred elsewhere by exercise of power under Section 406 Cr.P.C. For a transfer of a criminal case, there must be a reasonable apprehension on the part of the party to a case that justice will not be done. It is one of the principles of administration of justice that justice should not only be done but it should be seen to be done. On the other hand, mere allegations that there is apprehension that justice will not be done in a given case does not suffice. In other words, the court has further to see whether apprehension alleged is reasonable or not. The apprehension must not only be entertained but must appear to the court to be a reasonable apprehension.
13. Assurance of a fair trial is the first imperative of the dispensation of justice. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that the public confidence in the fairness of a trial would be seriously undermined, the aggrieved party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 Cr.P.C. However, the apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary. Free and fair trial is sine qua non of Article 21 of the Constitution. If the criminal trial is not free and fair and if it is biased, judicial fairness and the criminal justice system would be at stake, shaking the confidence of the public in the system. The apprehension must appear to the Court to be a reasonable one."

9. Thus this Court finds no infirmity in the impugned orders passed by the trial Court and the Appellate Court in rejecting the applications filed by the petitioner for transfer of the trial. Resultantly,



the prayer of petitioner regarding transfer of trial is declined and the impugned orders passed dated 16.08.2023 and 21.07.2023 are affirmed. However the trial Court is requested to proceed with the trial in accordance with law.

27.11.2024
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(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No