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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 21st AUGUST, 2024

IN THE MATTER OF:

+ **CRL.M.C. 6487/2024**

HARJEET SINGH MENDIRATTA

.....Petitioner

Through: Mr. Rajesh Kalia, Ms. Kalpana,
Advocates

versus

STATE NCT OF DELHI AND ANR.

.....Respondents

Through: Mr. Yudhvir Singh Chauhan, APP for
the State.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

CRL.M.A. 24822/2024 (Exemption)

Allowed, subject to all just exceptions.

CRL.M.C. 6487/2024 & CRL.M.A. 24821/2024

1. Petitioner has approached this Court challenging the Order dated 27.07.2024, passed by the learned Principal District & Sessions Judge, Saket Courts in T.P.(CRL.) No.32/2023, dismissing an application filed by the Petitioner herein under Section 408 Cr.P.C. seeking transfer of Case CTC No.463048/2016, from the Court of Ms. Shilpi Singh, learned MM-02, Saket Courts, to some other Court.

2. The facts of the case, as stated by the Petitioner, reveals that the Petitioner and the Respondent No.2 are siblings. It is stated that the mother



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of the Petitioner and the Respondent No.2 passed away intestate on 14.11.2005. She was survived by her two sons, including the Petitioner herien and two daughters, including the Respondent No.2 herein. It is stated that the Mother of the Petitioner and the Respondent No.2 left behind a leasehold property, being a shop Bearing No. G-23. Triveni Commercial Complex, Sheikh Sarai, Ph-I, New Delhi (hereinafter referred to as the '*property in question*'). It is stated that Respondent No.2 made two attempts to mutate the property in question on the basis of Relinquishment Deeds which, according to the Petitioner, was fraudulently prepared. It is the case of the Petitioner that the Relinquishment Deed dated 17.06.2006 could not be registered due to the objections raised by the Petitioner before the concerned Sub Registrar. It is stated that despite the fact that the Relinquishment Deed dated 17.06.2006 was not registered, another Relinquishment Deed dated 04.07.2006 was fraudulently prepared by Respondent No.2 and which was registered before Sub-Registrar-V, Mehrauli on the basis of a special Power of Attorney of Petitioner, which is alleged to have been executed by the Petitioner in favour of his elder brother - Gurjeet Singh Mendiratta, a fact is denied by the Petitioner. It is stated that Respondent No.2 applied for mutation of the property in question on 13.07.2006 on the basis of said forged Relinquishment Deed dated 04.07.2006. It is stated that the Petitioner filed various complaints against Respondent No.2 before various authorities like the DDA, Police, etc. It is stated that Respondent No.2 filed a counter complaint against the Petitioner on 06.09.2006. It is stated that the Petitioner herein filed a Suit for partition, being CS(OS) No. 1773/2006, before this Court seeking partition and an interim order was passed by this Court in favour of Petitioner. It is stated



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that Respondent No.2 prepared a forged and fabricated Will of their mother dated 18.07.2005 and filed a probate case, being Probate Case No. 558/2006 (new PC No.42303/2016). It is stated that the said Probate case was dismissed by the learned ADJ-Central, Tis Hazari Court vide judgment dated 23.05.2017. It is stated that the said Order was challenged by Respondent No.2 by filing an appeal, being FAO No. 421/2017, before this Court. It is stated that the Petitioner herein filed FIR No. 145/07 dated 06.03.2007 for offences under Sections 177/182/468/471/120B IPC against Respondent No.2 and his brother Gurjeet Singh Mendiratta and others. It is stated that in counter to the FIR lodged by the Petitioner, the Respondent No.2 lodged an FIR against the Petitioner herein, being FIR No. 145/07, dated 21.03.2007 registered at Police Station Malviya Nagar. It is stated that proceedings under Sections 107/150 CrPC were initiated against the Petitioner before the Ld. Special Executive Magistrate, Amar Colony. It is stated that Respondent No.2 also filed a composite complaint under Section 156(3) Cr.P.C, being Ct.C. No. 463048/2016 titled 'Sonia Mendiratta Vs. Harjeet Singh Mendiratta' before the learned Magistrate. It is stated that the Petitioner herein was summoned by the learned Magistrate for offences under Sections 451, 341, 323, 506 IPC. It is the case of the Petitioner that the learned Magistrate has acted in an unfair and biased manner. The grounds raised by the Petitioner for transfer of the case has been summarised by the learned Principal District and Sessions Judge in the impugned Order and the same reads as under:

“3) The petitioner / accused has preferred the Instant petition on the following grounds:

a) learned Trial Court had given ill treatment to



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learned Counsel for the accused / petitioner herein during the cross examination of CW2 and directed the petitioner/accused to leave the Court:

b) learned trial court is showing personal interest in the matter giving unfair advantage to the complainant / respondent and her advocate by conducting trial on their instructions;

c) learned trial court is biased and has some vested interest in the matter as she has given unfair advantage to the respondent and her advocate however, humiliated and insulted the petitioner and his counsel in open court; and

d) learned trial Court has recorded adverse remarks against learned Counsel for the accused in the open Court due to which he has refused to appear in the trial court;

e) the actions of the learned trial court is arbitrary and prejudiced with a pre-set mind to give undue and unfair advantage to the respondent and her counsel.”

3. A perusal of the grounds shows that the Petitioner is aggrieved by the alleged ill-treatment met out to his counsel in the proceedings and an apprehension that the Court is biased and has a vested interest in the case.

4. Material on record and more particularly the reply filed by the Respondent No.2 shows that about nine petitions have been filed by the Petitioner herein seeking transfer her case before various Courts. A table giving details of the transfer petition filed by the Petitioner reads as under:

S. No.	Nature of Application	Date of Judgment	Decision
1	TP (C) 143/2011	22.10.2011	Dismissed by the Court of Ms.



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	filed a complaint against Shri Rajenderkumarshastri. ADJ. Delhi in which he sought the transfer of the case to some other court		Sunita Gupta, District & Session Judge
2	TP (Crl) 377/2011 Filed a complaint against Sh. PRASHANT SHARMA : MM SAKET in which he sought the transfer of the case to some other court	17.10.2012	Dismissed by the Court of Ms. Sunita Gupta, District & Session Judge
3	TR.P.(C.) 91/2011 CM application 22790/2011 filed against the order passed by HON'BLE MS. JUSTICE SUNITA GUPTA DISTRICT & SESSION JUDGE	07.02.2012	Dismissed without any notice to me Petition dismissed by Delhi High Court
4	TP (CRL) 11/2018 COMPLAINT AGAINST MS ANJANI MAHAJAN MM, SAKET which he sought the transfer of the case to some other court (SONIA MENDIRATTA VS HARJEET SINGH MENDIRATTA	18.07.2018	Dismissed by the Court of Ms. Asha Menon, District & Session Judge (South)
5	TP (CRL) 10/2019 COMPLAINT AGAINST MS ANJANI	11.04.2019	Dismissed by the Court of Ms. Asha Menon, District &



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	MAHAJAN : MM, SAKET which he sought the transfer of the case to some other court (HARJEET SINGH MENDIRATTA VS CMD, PNB)		Session Judge (South)
6	TP (C) 52/2018 filed a complaint against MS. Shunali Gupta: ADJ, Saket in which he sought the transfer of the case to some other Court	18.12.2018	Allowed by the Court of Ms. Asha Menon District & Session Judge (South)
7	TP (CRL) 33/2022 COMPLAINT AGAINST MS SHILPI SINGH: MM, SAKET which he sought the transfer of the case to some other court (SONIA MENDIRATTA VS HARJEET SINGH MENDIRATTA)	23.11.2022	Dismissed by the Court of Shri Narottam Kaushal, Principal District & Session Judge (South)
8	Misc (CRL) 183/2022 TRANSFER PETITION U/S 410 CRPC COMPLAINT AGAINST MS SHILPI SINGH : MM, SAKET which he sought the transfer of the case to some other court (SONIA MENDIRATTA VS HARJEET SINGH MENDIRATTA)	FILED ON 31.03.2023	Dismissed by CMM Puneet Pahwa, Saket 31.03.2023



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9	Misc (CRL) 182/2022 TRANSFER PETITION U/S 410 CRPC COMPLAINT AGAINST MS SHILPI SINGH : MM, SAKET which he sought the transfer of the case to some other court (HARJEET SINGH MENDIRATTA VS CMD PNB) 2 ND TIME	FILED ON 31.03.2023	Dismissed by CMM Puneet Pahwa, Saket 31.03.2023
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5. The learned Principal District and Sessions Judge, after perusing the material on record, noted that the Petitioner has filed transfer petitions earlier as well. The learned Principal District and Sessions Judge was of the opinion that a perusal of the Orders passed by the learned Magistrate does not show that the Magistrate has conducted trial in a biased manner by not adhering to the legal procedure.

6. It is this Order which is under challenge in the present Petition.

7. The contentions of the Petitioner in the transfer Petition are twofold – one that the Petitioner and his Counsel have been ill-treated in Court and second that the Court is biased against the Petitioner.

8. A perusal of the abovementioned table shows that the Petitioner has filed transfer petitions seeking transfer of cases from the Court of five different judges. It cannot be said that every judge, against whom transfer petitions were filed by the Petitioner, is biased against the Petitioner.

9. This Court is of the opinion that mere allegation or apprehension of bias is not sufficient to make out a case of transfer of case under Section 408



Cr.P.C.

10. Section 408 Cr.P.C reads as under:

“Section 408. Power of Sessions Judge to transfer cases and appeals.

(1) Whenever it is made to appear to a Sessions Judge that an order under this sub-section is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division.

(2) The Sessions Judge may act either on the report of the lower Court, or on the application of a party interested, or on his own initiative.

(3) The provisions of sub-sections (3), (4), (5), (6), (7) and (9) of section 407 shall apply in relation to an application to the Sessions, Judge for an order under sub-section (1) as they apply in relation to an application to the High Court for an order under sub-section (1) of section 407 except that sub-section (7) of that section shall so apply as if for the words "one thousand rupees" occurring therein, the words "two hundred and fifty rupees" were substituted.”

11. The Apex Court has summarized the parameters of bias in State of W.B. v. Shivananda Pathak, (1998) 5 SCC 513, has observed as under:

“25. Bias may be defined as a preconceived opinion or a predisposition or predetermination to decide a case or an issue in a particular manner, so much so that such predisposition does not leave the mind open to conviction. It is, in fact, a condition of mind, which sways judgments and renders the judge unable to exercise impartiality in a particular case.

26. Bias has many forms. It may be pecuniary bias,



personal bias, bias as to subject-matter in dispute, or policy bias etc. In the instant case, we are not concerned with any of these forms of bias. We have to deal, as we shall presently see, a new form of bias, namely, bias on account of judicial obstinacy.

27. Judges, unfortunately, are not infallible. As human beings, they can commit mistakes even in the best of their judgments reflective of their hard labour, impartial things and objective assessment of the problem put before them. In the matter of interpretation of statutory provisions or while assessing the evidence in a particular case or deciding questions of law or facts, mistakes may be committed bona fide which are corrected at the appellate stage. This explains the philosophy behind the hierarchy of courts. Such a mistake can be committed even by a judge of the High Court which are corrected in the letters patent appeal, if available.

28. If a judgment is overruled by the higher court, the judicial discipline requires that the judge whose judgment is overruled must submit to that judgment. He cannot, in the same proceedings or in collateral proceedings between the same parties, rewrite the overruled judgment. Even if it was a decision on a pure question of law which came to be overruled, it cannot be reiterated in the same proceedings at the subsequent stage by reason of the fact that the judgment of the higher court which has overruled that judgment, not only binds the parties to the proceedings but also the judge who had earlier rendered that decision. That judge may have his occasion to reiterate his dogmatic views on a particular question of common law or constitutional law in some other case but not in the same case. If it is done, it would be exhibitiv of his bias in his own favour to satisfy his egoistic judicial obstinacy.



29. *As pointed out earlier, an essential requirement of judicial adjudication is that the judge is impartial and neutral and is in a position to apply his mind objectively to the facts of the case put up before him. If he is predisposed or suffers from prejudices or has a biased mind, he disqualifies himself from acting as a judge. But Frank, J. of the United States in Linahan, In re [138 F 2d 650] says:*

“If, however, ‘bias’ and ‘partiality’ be defined to mean the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial and no one will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions.... Much harm is done by the myth that, merely by ... taking the oath of office as a judge, a man ceases to be human and strips himself of all predilections, becomes a passionless thinking machine.”

[See also Griffith and Street, Principles of Administrative Law (1973 Edn.), p. 155; Judicial Review of Administrative Action by de Smith (1980 Edn.), p. 272; II Administrative Law Treatise by Davis (1958 Edn.), p. 130.]

30. *These remarks imply a distinction between prejudging of facts specifically relating to a party, as against preconceptions or predispositions about general questions of law, policy or discretion. The implication is that though in the former case, a judge would disqualify himself, in the latter case, he may not. But this question does not arise here and is left as it is.”*

12. Similarly, the Apex Court in State of Punjab v. Davinder Singh Bhullar, (2011) 14 SCC 770, while discussing on the concept of bias and the



test of real likelihood of bias, has observed as under:

“31. The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and whether the adjudicator was likely to be disposed to decide the matter only in a particular way. Public policy requires that there should be no doubt about the purity of the adjudication process/administration of justice. The Court has to proceed observing the minimal requirements of natural justice i.e. the Judge has to act fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality, is a nullity and the trial coram non iudice. Therefore, the consequential order, if any, is liable to be quashed.”

13. Similarly, in Chandra Kumar Chopra v. Union of India, (2012) 6 SCC 369, while holding that plea of bias cannot be a facet of one's imagination, the Apex Court has held as under:

“25... mere suspicion or apprehension is not good enough to entertain a plea of bias. It cannot be a facet of one's imagination. It must be in accord with the prudence of a reasonable man. The circumstances brought on record would show that it can create an impression in the mind of a reasonable man that there is real likelihood of bias. It is not to be forgotten that in a democratic polity, justice in its conceptual eventuality and inherent quintessentiality forms the bedrock of good governance. In a democratic system that is governed by the rule of law, fairness of action, propriety, reasonability, institutional impeccability and non-biased justice delivery system constitute the pillars on which its survival remains in continuum.”

14. The Apex Court in S. Parthasarathi v. State of A.P., (1974) 3 SCC 459, has held as under:



“16. The tests of “real likelihood” and “reasonable suspicion” are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision [see per Lord Denning, H.R. in Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon [(1968) 3 WLR 694 at 707]] We should not, however, be understood to deny that the Court might with greater propriety apply the “reasonable suspicion” test in criminal or in proceedings analogous to criminal proceedings.”

15. The Apex Court in Usmangani Adambhai Vahora v. State of Gujarat, (2016) 3 SCC 370, after considering various judgments, has held as under:

“7. So far as apprehension is concerned, it has to be one which would establish that justice will not be done. In this context, we may profitably refer to a passage from a three-Judge Bench decision in Gurcharan Das Chadha v. State of Rajasthan [Gurcharan Das Chadha v. State of Rajasthan, AIR 1966 SC 1418 : 1966 Cri LJ 1071] , wherein it has been held : (AIR p. 1423, para



13)

“13. ... The law with regard to transfer of cases is well settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension.”

8. This Court in *Abdul Nazar Madani v. State of T.N.* [*Abdul Nazar Madani v. State of T.N.*, (2000) 6 SCC 204 : 2000 SCC (Cri) 1048] has ruled that : (SCC pp. 210-11, para 7)

“7. ... 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.”

9. In Amarinder Singh v. Parkash Singh Badal [Amarinder Singh v. Parkash Singh Badal, (2009) 6 SCC 260 : (2009) 2 SCC (Cri) 971] , while dealing with an application for transfer petition preferred under Section 406 CrPC, a three-Judge Bench has opined that for 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 has also been observed therein that merely an allegation that there is an apprehension that justice will not be done in a given case alone does not suffice. It is also required on the part of the Court to see whether the apprehension alleged is reasonable or not, for the apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension. In the said context, the Court has held thus : (SCC p. 273, paras 19-20)

“19. 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 CrPC.

20. 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.”

*10. In **Lalu Prasad v. State of Jharkhand** [**Lalu Prasad v. State of Jharkhand**, (2013) 8 SCC 593 : (2013) 4 SCC (Civ) 103 : (2013) 4 SCC (Cri) 406 : (2014) 1 SCC (L&S) 137] , the Court, repelling the submission that because some of the distantly related members were in the midst of the Chief Minister, opined that from the said fact it cannot be presumed that the Presiding Judge would conclude against the appellant. From the said decision, we think it appropriate to reproduce the following passage : (SCC p. 600, para 20)*

“20. Independence of judiciary is the basic feature of the Constitution. It demands that a Judge who presides over the trial, the Public Prosecutor who presents the case on behalf of the State and the lawyer vis-à-vis amicus curiae who represents the accused must work together in harmony in the public interest of justice



uninfluenced by the personality of the accused or those managing the affairs of the State. They must ensure that their working does not lead to creation of conflict between justice and jurisprudence. A person whether he is a judicial officer or a Public Prosecutor or a lawyer defending the accused should always uphold the dignity of their high office with a full sense of responsibility and see that its value in no circumstance gets devalued. The public interest demands that the trial should be conducted in a fair manner and the administration of justice would be fair and independent.”

The aforesaid passage, as we perceive, clearly lays emphasis on sustenance of majesty of law by all concerned. Seeking transfer at the drop of a hat is inconceivable. An order of transfer is not to be passed as a matter of routine or merely because an interested party has expressed some apprehension about proper conduct of the trial. The power has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide credibility to the trial. There has to be a real apprehension that there would be miscarriage of justice. (See Nahar Singh Yadav v. Union of India [Nahar Singh Yadav v. Union of India, (2011) 1 SCC 307 : (2011) 1 SCC (Cri) 39] .)

11 [Ed. : Para 11 corrected vide Official Corrigendum No. F.3/Ed.B.J./1/2016 dated 18-1-2016.] . In the instant case, we are disposed to think that apprehension that has been stated is absolutely mercurial and cannot remotely be stated to be reasonable. The learned Single Judge has taken an exception to the remarks given by the learned trial Judge and also opined about non-examination of any witness by him. As far as the first aspect is concerned, no exception can be taken to it. The learned Sessions



Judge, while hearing the application for transfer of the case, called for remarks of the learned trial Judge, and in such a situation, he is required to give a reply and that he has done. He is not expected to accept the allegations made as regards his conduct and more so while nothing has been brought on record to substantiate the same. The High Court could not have deduced that he should have declined to conduct the trial. This kind of observation is absolutely impermissible in law, for there is no acceptable reason on the part of the learned trial Judge to show his disinclination. Solely because an accused has filed an application for transfer, he is not required to express his disinclination. He is required under law to do his duty. He has to perform his duty and not succumb to the pressure put by the accused by making callous allegations. He is not expected to show unnecessary sensitivity to such allegations and recuse himself from the case. If this can be the foundation to transfer a case, it will bring anarchy in the adjudicatory process. The unscrupulous litigants will indulge themselves in court hunting. If they are allowed such room, they do not have to face the trial before a court in which they do not feel comfortable. The High Court has gravely erred in this regard.”

16. Mere perception of suspicion or apprehension of bias is not sufficient to entertain a plea of transfer. A perusal of the grounds raised by the Petitioner for transfer of the case or in the present Petition, does not show that the Judge overseeing the proceedings was biased in any manner against the Petitioner. This Court is of the opinion that the present Petition is only a method to put pressure on the Judge hearing the case of the Petitioner. This Court cannot ignore the fact that Order transferring a case from one Court to another or from one Judge to another casts an aspersion on the Judge and on



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his/her reputation. Withdrawing cases from a Judge on mere allegations of biasness without there being a reasonable belief will be prejudicial to the independence of judiciary. Learned Principal District and Sessions Judge is the best person to take a decision as to whether the case should be transferred or not and after looking into the facts and circumstances of the present case, the conduct of the Petitioner, the allegations made by the Petitioner and the Order sheets of the Magistrate Court, the learned Principal District and Sessions Judge has come to the conclusion that the Magistrate is not acting in a biased manner and the apprehension of biasness claimed by the Petitioner is completely unwarranted.

17. In view of the above, this Court, while sitting in revisionary jurisdiction, is not inclined to interfere with the decision taken by the learned Principal District and Sessions Judge as nothing has been brought out in the present Petition which would persuade this Court to interfere with the Order passed by the learned Principal District and Sessions Judge, which is a well reasoned Order.

18. Accordingly, the Petition is dismissed, along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

AUGUST 21, 2024

Rahul