



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

CRIMINAL APPLICATION NO. 2739 OF 2024

Sandeep S/o Bandu Rathod And Others .. Applicants

Versus

The State of Maharashtra and another .. Respondents

Mr. H. I. Pathan, Advocate for the Applicants.

Mr. S. B. Jadhav, APP for Respondent No. 1.

Mr. S. D. Hiwrekar, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 13th JUNE, 2025.

P C. :-

. Heard the parties.

2. This application is filed seeking transfer of the proceedings pending in the Court of Georai to the Court at Pune. The application is filed by husband and his relatives. It is stated in the application that, when the applicants went to Georai to attend the Court they were threatened by the complainant i.e. wife and her relatives in the Court premises. Even NC was required to be lodged in the police station. The applicants apprehends that, in such case they will not get fair chance to face the trial.

3. The learned advocate Mr. Pathan for the applicants vehemently

argued that, fair chance to defend the case is very basic right of the accused. When the accused are threatened in the premises of the Court itself, that causes serious threat to their right to defend. He relies upon the newspaper cuttings and the complaint filed before the police to showing that the applicants were assaulted in the premises of the Court. He relies upon the judgment in the case of **Sonika Vishnudas Kadam Vs. Vishnudas Haribhau Kadam & Ors.** in Criminal Application No. 502/2022 (Bombay). In the said case, this Court has relied upon the judgments in the cases of (i) **Rajesh Talwar Vs. Central Bureau of Investigation and Ors.** reported in **(2012) 4 SCC 217**, (ii) **Jyoti Mishra Vs. Dhananjaya Mishra** reported in **(2010) 8 SCC 803** and also on paragraph No. 29 of the judgment in the case of **Nahar Singh Yadav Vs. Union of India** reported in **(2011) 1 SCC 307**. Paragraph No. 29 of the judgment reads as under :

"29. Some of the broad factors which could be kept in mind while considering an application for transfer of the trial are:

i) when it appears that the State machinery or prosecution is acting hand in glove with the accused, and there is likelihood of miscarriage of justice due to the lackadaisical attitude of the prosecution;

(ii) when there is material to show that the accused may influence the prosecution witnesses or cause physical harm to the complainant;

(iii) comparative inconvenience and hardships likely to be caused to the accused, the complainant/the prosecution and

the witnesses, besides the burden to be borne by the State exchequer in making payment of travelling and other expenses of the official and non-official witnesses;

(iv) a communally surcharged atmosphere, indicating some proof of inability of holding fair and impartial trial because of the accusations made and the nature of the crime committed by the accused; and

(v) existence of some material from which it can be inferred that some persons are so hostile that they are interfering or are likely to interfere either directly or indirectly with the course of justice."

(Emphasis added)

4. The learned advocate for the applicants further relies upon the judgment in the case Shama w/o Elias Shaikh Vs. The State of Maharashtra and Ors. in Criminal Application No. 535/2022 (Aurangabad) wherein, this Court had rejected the application of the wife. He thus submits that, clearly a case is made out to allow the transfer application.

5. As against this, the learned advocate Mr. Hiwrekar for respondent No. 2 vehemently opposes the prayer. He submits that, mere threat of assault is not sufficient ground to transfer the case. He relies upon the judgment in the case of Suman Shrirang Wadmare Vs. Kapil Ishwar Kagade and another reported in 2011 ALL MR (Cri.) 2831. He further relies upon the order passed by the Hon'ble Apex Court in Transfer Petition (Cri.) No. 442/2021 in the case of Dinesh Mahajan Vs.

Vishal Mahajan.

6. In the case of **Suman Shrirang Wadmare** (*supra*), this Court in paragraph No. 7 held that, when case is not covered within the provisions of Section 407 of the Code of Criminal Procedure (for short “Cr.P.C.”) the application cannot be allowed.

7. In the case of **Dinesh Mahajan** (*supra*), the Hon’ble Apex Court held that mere apprehension of threat of life is not sufficient ground to transfer a case without lodging a complaint or substantiating the said ground.

8. In the present case, though it is alleged that, the applicants were assaulted in the Court premises, however, no steps are taken except lodging NC. After lodging NC, no steps have been taken. In any case, this Court finds that, mere apprehension of assault or threat is not sufficient ground to transfer the case as the same is not covered under Section 407 of the Cr.P.C. Even from reading paragraph No. 29 in the case of **Nahar Singh Yadav** (*supra*), this Court finds that, the present case is not covered by any of the five factors laid down for consideration of application for transfer.

9. This Court, thus, is not inclined to allow the application. The Criminal Application, therefore, stands dismissed. No order as to costs.

10. It is made clear that, if the applicants have any apprehension, they are free to take steps as provided under law.

(KISHORE C. SANT, J.)

PS.B.