



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPLICATION NO. 289 OF 2025**

Vikas V Khanolkar

..Applicant

**Versus**

The State of Maharashtra & Anr

...Respondents

Mr. Rajan Sorankar, with P.B. Kadam, for the Applicant

Mr.S.H. Yadav, APP, for the Respondent-State.

**CORAM: N. J. JAMADAR, J.**

**RESERVED ON : 4<sup>th</sup> AUGUST 2025**

**PRONOUNCED ON : 8<sup>th</sup> AUGUST 2025**

**ORDER:**

1. This is an Application under Section 407 of the Code of Criminal Procedure, 1973 (“the Code”) for transfer of a Criminal Case bearing No. 132/SW/2011 from the Court of learned Judicial Magistrate, First Class, 65<sup>th</sup> Court, Andheri to any other Court in Mumbai.

2. The Applicant is a practicing Advocate. In connection with the incidents which occurred over the parking of the car, the Applicant initially approached Vile Parle Police Station. However, only a NC Complaint No. 628 of 2011 was registered. Hence the Applicant was constrained to file compliant before the Magistrate for the offences

punishable under Section 350, 351, 504, 506(1) of the Penal Code, leading to Criminal Case bearing No. 132/SW/2011.

3. The Applicant asserted that the Accused, Shantanu Kasbekar (R2), tried to exert pressure on the Applicant to withdraw the complaint by approaching the Member of the Legislative Assembly, who represents the local constituency. The accused and the associates of local politician intimidated the Applicant and witnesses. The Applicant thus filed an Application on 29<sup>th</sup> August 2022 for cancellation of bail of the Accused on the ground of intimidating the witnesses and tampering with evidence.

4. The learned Magistrate, the Applicant alleges, rejected the said Application by adopting a prejudicial and biased approach towards the Applicant. The learned Magistrate threatened to impose costs of Rs.20,000/-. However, when the Applicant expressed shock and surprise, and pleaded not to impose costs, the learned Magistrate refrained from directing payment of costs, though in the order, the learned Magistrate recorded that the Application deserved to be dismissed with costs.

5. Attributing prejudice and bias to the learned Magistrate, the Applicant preferred an Application before the learned Chief Judicial Magistrate, Mumbai, for transfer of the said case from the 65<sup>th</sup> Court, Andheri to any other Magistrate.

6. By an order dated 20<sup>th</sup> July 2024, the learned Chief Judicial Magistrate rejected the Application finding no justifiable ground to apprehend bias and likelihood of injustice.

7. Being aggrieved, the Applicant preferred an Application for transfer before the learned Sessions Judge, Greater Bombay. By an order dated 12<sup>th</sup> November 2024, the learned Sessions Judge also rejected the Application for transfer.

8. Being further aggrieved, the Applicant has preferred this Application.

9. I have heard Mr. Rajan Sorankar, the learned Counsel for the Applicant, and Mr. Yadav, the learned APP, for the Respondent-State.

10. Mr. Sorankar, the learned Counsel for the Applicant, submitted that the Applicant is not as much aggrieved by the rejection of the application for cancellation of bail as by the disposition of the learned Magistrate towards the Applicant and the conduct of the proceedings in the said case. Mr. Sorankar submitted that the learned Magistrate, while deciding the said Application for cancellation of bail, verbally threatened to dismiss the Complaint. Initially, the learned Magistrate had declared that the Application would be rejected with costs of Rs.20,000/-. However, upon the pleas of the Applicant, the Magistrate refrained from imposing the costs.

11. Mr. Sorankar further submitted that when the Applicant lost faith in the fair and impartial conduct of the trial by the concerned Magistrate, the Applicant filed an Application for transfer of the proceeding before the learned CJM. Despite being informed about the said development, the learned Magistrate insisted the Applicant to lead evidence and that betrayed extreme bias and prejudice of the learned Magistrate. Therefore, the Applicant has a genuine apprehension that he may not get justice.

12. Mr. Sorankar would urge that, once it was brought to the notice of the learned Magistrate that a transfer application was filed, the learned Magistrate ought not to have proceeded with the trial further. In such a situation, according to Mr Sorankar, further proceedings are vitiated. To lend support to this submission, Mr. Sorankar placed reliance on a judgment of the Gujarat High Court in the case of **Gafurbhai Daudbhai & Anr Vs State.**<sup>1</sup>

13. I have given anxious consideration to the submission of Mr. Sorankar and carefully perused the material on record.

14. The starting point of the apprehension of bias appears to be the decision on the Application for cancellation of bail, preferred by the Applicant. In the order dated 12<sup>th</sup> December 2023 passed by the learned Magistrate, it is recorded that the Applicant refrained from disclosing the names of the concerned persons who allegedly exerted pressure, did

1 (1970) 11 GLR 649.

not disclose the date and time of the alleged attempts to influence the witnesses and tampering with the evidence and did not place on record the material to substantiate the claim that telephone calls were made and WhatsApp messages were sent to exert pressure on the Applicant.

**15.** It is trite that there is a significant difference between rejection of an Application for bail, at the initial stage, and cancellation of bail already granted. Very strong grounds were required to deprive the accused of liberty secured by an order of bail. The Application for cancellation of bail preferred by the Applicant was indeed bereft of particulars. The order of rejection of the Application for bail justifiably makes a reference to the infirmities in the Application and the unsustainability of the prayer for cancellation of bail. Such a judicial order cannot bear the weight of allegations of bias against the Presiding Officer.

**16.** It is true, the order records that the Application deserved to be rejected with costs. However, it is a matter of fact that the learned Magistrate did not impose any costs on the Applicant. Even if the case of the Applicant that, the learned Magistrate initially declared that the Application would be rejected with costs of Rs.20,000/- and later on refrained from imposing the costs, is taken at par, yet, that would underscore the judicial restraint exercised by the learned Magistrate and can hardly be construed as an act of bias.

17. The Court was anxious to consider whether there are allegations which would justify reasonable apprehension of bias that the Applicant may not get justice. As Mr. Sorankar repetitively submitted that the learned Magistrate while rejecting the Application for cancellation of bail, verbally declared that he would dismiss the complaint, I have carefully perused the first Application for transfer preferred by the Applicant before the learned CJM, on 30<sup>th</sup> March 2024.

18. Suffice to note that, the allegation that the learned Magistrate verbally declared that he would dismiss the complaint is conspicuous by its absence in the Application for transfer. A qualified statement was made that while rejecting the Application, the learned Magistrate indirectly tried to give an impression that the Applicant had filed a bogus complaint.

19. At this stage, the profile of the party who apprehends the bias and injustice, deserves to be kept in view. The Applicant is a practicing Advocate. Surely, the Applicant is not a person who is uninitiated into the dynamics of judicial process. The Applicant appeared to have the standing and experience to appreciate that an adverse judicial order, in itself, necessarily does not imply that the judicial officer has a grudge or bias against the party against whom the order operates.

**20.** The second limb of the submission of Mr. Sorankar that the subsequent conduct exhibited by the learned Magistrate justified the apprehension of bias, also does not merit acceptance unreservedly.

**21.** The time-line assumes significance. The Application for cancellation of bail was rejected 12<sup>th</sup> December 2023. First transfer application was filed before the learned CJM on 30<sup>th</sup> March 2024. On 12<sup>th</sup> June 2024, the Applicant filed an Application not to proceed with the trial. Despite the objection on behalf of the Accused, the learned Magistrate allowed the Application subject to payment of costs of Rs.1,000/-. The record further reveals that the Applicant eventually led the evidence on 1<sup>st</sup> October 2024.

**22.** Mr. Sorankar sought to press into service the act of imposition of costs as a manifestation of bias. I am unable to persuade myself to agree with the submission of Mr. Sorankar. In the totality of circumstances, the Court cannot lose sight of the fact that the complaint was lodged in the year 2011. The learned Magistrate's insistence for leading evidence of the complainant as a period of more than 13 years had already elapsed, cannot be said to be an act of unwarranted haste. The insistence to lead evidence, in such an old case, can hardly be construed as a manifestation of prejudice or bias. Moreover, as noted above, having regard to the situation of the Applicant, he ought not to have entertained such an apprehension of

bias, either on account of imposition of costs or insistence for leading evidence, in a decade and half old case.

**23.** The reliance on the judgment of Gujarat High Court in the case of **Gafurbhai Daudbhai & Anr (Supra)** does not advance the cause of submission on behalf of the Applicant. It is imperative to note that, the said judgment was delivered by the Gujarat High Court by considering the provisions in sub-Section (8) of Section 526 of the Code of Criminal Procedure 1898 (Old), which did cast a duty upon the Magistrate to adjourn the case for a sufficient period when an Application for transfer was made. In that context, the Gujarat High Court held that the action of the learned Magistrate in recording evidence during the pendency of the transfer application before the Sessions Court and the High Court had vitiated the entire proceeding against the accused. Such a provision has not been made in the Code of Criminal Procedure, 1973.

**24.** Moreover, it does not appear that the learned Magistrate did not give adequate opportunity to the Applicant as the Application for cancellation of bail was rejected on 12<sup>th</sup> December 2023 and the evidence of the Applicant was recorded on 1<sup>st</sup> October 2024.

**25.** Looking from any perspective, this is not a fit case to transfer the trial from the Court of Judicial Magistrate, First Class, 65<sup>th</sup> Court, Andheri to any other Court, in Mumbai.

**26.** Hence the Application deserves to be rejected.

**: O R D E R :**

- (i) The Application stands rejected.
- (ii) No costs.

**[N. J. JAMADAR, J.]**