



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (APPLN) NO.53/2023
XYZ (Complainant) In Sessions Case No.10/2017, Before the
Sessions Court, Bhandara

..VS..

State of Maharashtra, through PSO PS Bhandara, Tahsil and District
Bhandara

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri J.M.Gandhi, Counsel for the Applicant.
Shri V.A.Thakare, Additional Public Prosecutor for the State.
Shri Nilesh Nagpure, Advocate h/f Shri A.V.Band, Counsel for NA Nos.2 &
3.

CORAM : **URMILA JOSHI-PHALKE, J.**

CLOSED ON : **03/04/2025**

PRONOUNCED ON : **21/04/2025**

1. This application is filed by the applicant seeking transfer of Sessions Case No.10/2017 from the court of learned Sessions Judge-2 at Bhandara to the Sessions Court at Nagpur headed by lady Presiding Officer.

2. The application is filed on the ground that the applicant is the victim of the offences under Sections 354, 366, 376(2)(n), 323, 504, 506, and 341 read with 34 of the IPC and

3 and 25 of the Arms Act.

3. Heard learned counsel Shri J.M.Gandhi for the applicant, learned Additional Public Prosecutor Shri V.A.Thakare for the State, and learned counsel Shri Nilesh Nagpure for non-applicant N.2.

4. As per the allegations, non-applicant No.2 Dr. Avinash Manohar Warjurkar, who is Ex-MLA, and non-applicant No.3 Ashish Nagdevte had cordial relations with the husband of the applicant and by taking undue advantage of the faith and trust ensured in him, they subjected the applicant for outraging the modesty and forceful sexual assault on her at hotel Ashoka at Bhandara by pointing out pistol at her and, thereafter, by taking her to a resort at Pench. On the basis of the said report, Crime No.189/2016 was registered against non-applicant Nos.2 and 3 and after due investigation, chargesheet has been filed against them.

5. The applicant has received the summons to remain present before the trial court for recording her evidence and it revealed to her that her residential house is under unwarranted

vigil and constant watch is kept on her and her activities by the accused and, therefore, she could not gather the courage to go to Bhandara to attend the proceedings. She has also received phone call from a lady police constable to remain present. However, she could not remain present. She is having apprehension at the hands of the accused as to endangering her life and limb. She is also having apprehension due to non-applicant No.2, who is influential person, there would not be a fair trial and, therefore, she approached this court for transfer of the sessions trial from the Sessions Court at Bhandara to the Sessions Court at Nagpur.

6. The another ground raised by the applicant is that the distance between Bhandara to Nagpur is 65 kilometers and it is convenient for her to attend the proceedings.

7. The another ground raised is that no lady Presiding Officer is available at Bhandara and, therefore, matter be transferred to lady Presiding Officer for the trial.

8. Learned counsel for the applicant submitted that assurance of fair trial is imperative of dispensation of justice.

The offences like sexual assaults are to be tried by the lady Presiding Officers. There is apprehension of endangering of her life and limb and for all these reasons the proceedings be transferred to the Sessions Court at Nagpur.

9. In support of his contentions, learned counsel for the applicant placed reliance on following decisions:

1. State of Punjab vs. Gurmit Singh and ors, reported in (1996)2 SCC 384, and

2. Nahar Singh Yadav and anr vs. Union of India and ors, reported in (2011)1 SCC 307.

10. The application is strongly opposed by learned Additional Public Prosecutor for the State as well as learned counsel for non-applicant Nos.2 and 3. It is submitted that as far as fair trial is concerned, the due care is already taken by giving the protection to the applicant. The prosecution ensures as to the fair trial and protection of the witnesses in terms of the provisions of the Maharashtra Witness Protection and Security Act, 2017. As to the other ground is concerned, it is submitted that the law says that preferably, wherever lady officers are available, the cases of sexual assaults are to be tried

by the said lady officers. Therefore, the ground mentioned is not sufficient to allow the application. It is submitted that mere vague statement is not sufficient to apprehend that there is apprehension or endanger to the life of the applicant and she would not get a fair trial. In view of that, it is prayed for rejection of the application.

11. In support of his contentions, learned Additional Public Prosecutor for the State placed reliance on following decisions:

1. Mrs.Maneka Sanjay Gandhi and anr vs. Mrs.Rani Jethmalani, reported in (1979)4 SCC 167,

2. Jatinderveer Arora and ors vs. State of Punjab, reported in (2022)15 SCC 676;

3. Mohd.Akhtar vs. State of Jammu and Kashmir, reported in (2018)5 SCC 497, and

4. Jahid Shailkh and ors vs. State of Gujarat and anr, reported in (2011)7 SCC 762.

12. The application is filed under Section 407 of the CrPC.

13. It is well settled that powers under Section 407 of the CrPC must be exercised sparingly and only in deserving

cases when fair and impartial trial influenced by external factors is not at all possible. For transfer of trial from one court to another, there should be satisfactory material about the existence of such factors which would make it impossible to conduct a fair trial. General allegations of tampering or apprehension of not getting a fair and impartial trial, which is not having a foundation of any reasons, are not sufficient to consider the transfer application. For transfer of the proceeding from one court to another, there has to be sufficient material to conclude that if the trial is conducted at the place, fair trial would not be possible and some prejudice would be caused to the witnesses or the victims therein.

14. In the light of the settled legal position, if the grounds raised in the application are considered, it mentions that the applicant was severally threatened with dire consequences and her husband and son were also threatened. It is further contended that her residential house is under unwarranted vigil and under the constant watch and third ground raised is that no lady officer is available at Bhandara to conduct the trial of the applicant and, therefore, the matter be

transferred to the Sessions Court at Nagpur. As far as the first ground is concerned, except the statement made by the applicant, no specific instances, on the basis of which she had apprehension, are mentioned in the application. It is a general statement made by the applicant in the application. Considering the status of non-applicant No.2, who is Ex-MLA, the protection is already given to the applicant as to her safety. Thus, proper care is already taken to protect the applicant to ensure the fair trial.

15. Learned counsel for the applicant has taken assistance of the decision of the Hon'ble Apex Court in the case of **State of Punjab vs. Gurmit Singh and ors** *supra* wherein Section 327 of the CrPC is referred which states about the exception to the general rule of an open trial. It is imperative on every court to follow the provision especially sub-section (2) of Section 327 of the CrPC and it casts a duty on the Court to conduct the trial of rape cases etc. invariably "in camera". The said judgment also shows that wherever possible, it may also be worth considering whether it would not be more desirable that the cases of sexual assaults on the females are tried by lady

Judges, wherever available, so that the prosecutrix can make her statement with greater ease and assist the Courts to properly discharge their duties.

16. Thus, wherever possible, the trials of sexual assault's victims are be conducted before Lady Judges. Therefore, on the sole ground of non-availability of lady officer, it would not be sufficient to transfer the case from the Sessions Court at Bhandara to the Sessions Court at Nagpur.

17. There is no dispute that a criminal trial is a judicial examination of evidence and it should be conducted by assuring both the sides as to the fundamental requirement of a fair trial. An impartial and uninfluenced trial is the fundamental requirement of a fair trial, the first and the foremost imperative of the criminal justice delivery system.

18. It is well settled that power under Section 407 of the Cr.P.C. has to be construed strictly and is to be exercised sparingly and with great circumspection. A prayer for transfer should be allowed only when there is a well-substantiated apprehension that justice will not be dispensed impartially,

objectively and without any bias. In the absence of any material demonstrating such apprehension, this Court will not entertain application for transfer of a trial, as any transfer of trial from one State to another implicitly reflects upon the credibility of not only the entire State judiciary but also the prosecuting agency. 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. Mere allegation, that there is apprehension that justice will not be done in a given case, does not suffice. The apprehension has to be reasonable one.

19. The above said aspect is considered by the Hon'ble Apex Court in the case of **Mrs.Maneka Sanjay Gandhi and anr vs. Mrs.Rani Jethmalani** *supra* wherein also it is held that the assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the Court to consider when motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or the like minor grievances.

20. In the case of **Jatinderveer Arora and ors vs. State of**

Punjab *supra* also, it is held by the Hon'ble Apex Court that for transfer of trial from one Court to another, the Court must be fully satisfied about existence of such factors which would make it impossible to conduct a fair trial. General allegation of surcharged atmosphere is not however sufficient. The apprehension of not getting a fair and impartial trial cannot be founded on certain grievances or convenience of the accused but the reasons have to be more compelling than that. No universal Rules can however be laid down for deciding transfer petitions and each one has to be decided in the backdrop of that case alone.

21. In the light of the above said facts, it reveals that though the applicant has alleged of apprehension, no complaint has been lodged by her either to authorities or before the court as to her apprehension. Thus, mere apprehension of threat of life is not sufficient ground to transfer the case without substantiating the said ground. Allowing such type of applications would open flood gates where all cases are being tried for offences under Section 376 of the IPC and would require to be transferred to special courts dealing with POCSO

and or presided over by woman Judge. It is, of course, expected that the Presiding Officers whoever may be male or female are expected to handle such cases in a sensitive manner having due regard to the directions by the Hon'ble Apex Court. Considering the same, the protection is already given to the applicant under the provisions of the Maharashtra Witness Protection and Security Act, 2017 to ensure that she should not be deprived from fair trial. However, it is made clear that the investigating agency shall provide requisite security as also with regard to non-disruption of the trial by any persons.

22. In view of the aforesaid discussion, as this court does not find any ground to transfer the proceeding, the application requires to be rejected and the same is **rejected**.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!