

2025:PHHC:077477



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

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**CRM-M-24005-2025
DECIDED ON: 05.05.2025**

ASHWANI SHARMA

.....PETITIONER

VERSUS

STATE OF PUNJAB

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Vinod K. Kataria, Advocate
for the petitioner.

SANDEEP MOUDGIL, J

1. Jurisdiction of this court has been invoked under section 447(2) read with section 528 BNSS, 2023 for the transfer of the case no. CHI-397-2019 CNR No. PBMO030024522019 from the FIR No. 63 dated 11.04.2017 under sections 420,465,467,468,471,120-B IPC registered at Police station city Moga from the court of Ld. CJM Shilpi Gupta, Moga to another criminal court in the same session division of Moga or any other appropriate order as may deem fit by this Hon'ble court.

2. Factual matrix of the case unfolds that the petitioner along with his brothers have some ancestral property at Theog District: Shimla and with motive to grab their property, a fake Special Power of Attorney in favour of accused was prepared at Moga, Punjab by the accused Rampal, Mohinder Pal, Nonu and Nishu r/o Theog and after knowing that, the petitioner lodged an FIR No. 63 dated

11.04.2017 u/s 420, 465, 467,468,471,120-B IPC at Police Station City Moga and after investigation , the challan was presented on 29.07.2019 against the above said accused and during the investigation, supplementary challan was presented u/s 173(8) Cr.P.C on 18.09.2019 against accused Bhagat Singh Thakur, Parmod Kalia, Palas Ram and Rajdeep Sharma and others. Charges were framed on 07.03.2022 and now the case has been fixed for prosecution evidence for 12.05.2025.

3. Counsel for the petitioner contends that since the trial was not being conducted by the CJM Shilpi Gupta, as per procedure prescribed under the Cr.P.C, the complainant-petitioner filed the application for the transfer of case to any of the Ld. Court of Moga which was dismissed by the Ld. Session judge vide order dated 21.04.2025. He further contends that the Ld.Sessions Judge has not considered the submissions in the proper judicial manner wherein the Session Judge ought to have summoned the Trial Court record to verify that the Ld.CJM has not been conducting the case as per the procedure and ruled of the Act.

4. He further argues that the Session Judge has failed to appreciate the fact that as per record, the applications dated 15.09.2023, 11.12.2023 for exemption of personal appearance of the accused were neither filed by the Advocate nor by the accused themselves, rather signed by Ram Pal Sharma, one of the accused only and later the applications filed on 02.08.2023, 11.10.2023, 12.01.2024, 07.02.2024, 05.03.2024, 18.03.2024, 18.04.2024 for the exemption of other accused are signed by the their advocate and Ram Pal Sharma only that too without any document or authority letter from the other accused. He further argues that the order of allowing the exemption of the accused is not as per the procedure laid down in section 205 Cr.P.C (228 BNSS) and as per the section 273

Cr.P.C (308 BNSS) wherein the prosecution evidence has to be recorded in the presence of the accused unless personal appearance is exempted and in this case, no proper procedure has been adopted for the exemption and evidence has been recorded in absence of most of the accused.

5. Heard counsel for the petitioner at length.

6. Having perused the order of the trial court, this court is of the considered view that no illegality or infirmity can be found in the order of the Session judge dated 21.04.2025 wherein it has been rightly held that although the presence of the accused may be exempted, but not even a single date has been wasted by the accused by moving application and defence counsel has examined each and every prosecution witness on time, without seeking any adjournment and without raising any objection qua the identity of the accused or regarding the identity of any document.

Further, the trial court has recorded the entire evidence and has procured the documentary evidence from Shimla, and the case is only fixed for recording evidence of complainant and his brother Vinod Kumar and since the complainant has come to know that trial has almost come to an end and will be decided on the basis of documentary evidence received from Shimla, therefore has filed this frivolous application only to deviate the trial from reaching its conclusion.

7. The court is sanguine of the fact that seeking transfer of criminal trial at the drop of a hat is not recognised by the courts or by any tenet of law. 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 the conduct of the trial by a Presiding officer. Rather, this power would have to be exercised cautiously and

in exceptional situations, where it becomes necessary to do so to provide complete justice and credibility to the trial. It is worthwhile to extract the view of the Apex Court in *“Usmangani Adambhai Vahora vs State of Gujarat and Ors, AIR 2016 SC 336”* wherein it is emphasized that simply because an accused or the opposite party has filed an application of the transfer of trial, a Judge is not required to express his disinclination. He is required under law to do his duty and not to succumb to the pressure put by a party by making callous allegations and he is not expected to show unnecessary sensitivity to such allegations.

8. In the light of the above discussions, this court is of the strong view that the petition is based on vague allegations against the CJM, Shilpi Gupta, Moga and therefore does not find any justifiable reason for interference in the order dated 21.04.2025 passed by District and Sessions Judge, Moga.

9. The petition being sans merit is hereby dismissed.

10. Ordered accordingly.

05.05.2025

Anuradha

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No