

Date of decision: 02.07.2025

DALJIT SINGH

...PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

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...RESPONDENTS

Present: Mr. Pratap Singh Gill, Advocate for the petitioner(s).

Mr. Nitesh Sharma, DAG, Punjab.

Mr. Lokesh Garg, Advocate for
Mr. Kushagra Mahajan, Advocate
for respondent Nos.2 to 5.

HARPREET SINGH BRAR, J. (ORAL)

1. This order of mine shall dispose of both the aforementioned cases together they arise out of the same FIR. For the sake of brevity, facts are borrowed from **CRM-M-45786-2024** titled as ***Daljit Singh v/s State of Punjab and others.***

2. This is the second petition filed under Section 447 of Bharatiya Nagarik Suraksha Sanhita, 2023 (in short, BNSS) seeking transfer of the trial



stemming from FIR bearing No.89 dated 04.09.2018 registered under Sections 420, 467, 471, 468 and 120-B of IPC at Police Station Khilchiyan, District Amritsar (Annexure P-4) pending before learned Sub-Divisional Judicial Magistrate, Ajnala to District Tarn Taran or any other place outside District Amritsar.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner had lodged the FIR (*supra*) against the respondents for preparing a forged Will in the name of petitioner's late uncle, namely, Manjit Singh, in order to usurp the property of the deceased. He further contends that respondents No.2 to 4 are Advocates, practicing in the same district where FIR (*supra*) is pending. For this reason, no Advocate from the said district is willing to represent the petitioner, which has caused great prejudice and inconvenience to him. As such, it is prayed that the trial in FIR(*supra*) may be transferred to a nearby district.

4. Mr. Lokesh Garg, Advocate for Mr. Kushagra Mahajan, Advocate has put in appearance on behalf of respondents No.2 to 5 and filed his *vakalatnama* in CRM-M No.45786 of 2024 and memo of appearance in CRM-M No.45787 of 2024, which are taken on record. Registry is directed to tag the same at the appropriate place.

5. Learned counsel for respondents No.2 to 5 opposes the prayer made by the petitioner on the ground that attending the trial on each and every date, in some other district would cause great inconvenience and hardship to the private respondents.

6. Learned State counsel submits that ASI Rajwinder Singh had inquired into the assertion that no Advocate was willing to represent the



petitioner against the private respondents and found the same to be correct. However, the Advocates of Ajnala Bar Association had refused to record any statements in this regard.

7. Having heard learned counsel for the parties, both the petitions are taken up for disposal. It has been brought to the notice of this Court that the petitioner is facing genuine difficulty in securing legal representation in district Amritsar, owing to the fact that respondents No.2 to 4-accused are practicing as Advocates in the same district where the trial is currently pending. As such, local lawyers are either reluctant or unwilling to accept a brief against fellow members of the Bar. The current circumstances have seriously impeded the petitioner's right to a fair trial and his effective participation in the proceedings, creating a reasonable apprehension of denial of effective access to justice.

8. The inability of a litigant to secure effective legal assistance due to reluctance caused by undue influence or creation of a hostile environment by the opposite party, especially where the accused is an Advocate practicing in the same Court, compromises the foundational principles of fair trial. It is trite law that the inability to engage a legal counsel owing to reluctance caused by local factors may constitute a valid ground for transfer of trial under Section 407 Cr.P.C. (now Section 447 BNSS). In ***Zahira Habibullah Sheikh vs. State of Gujarat (2004) 4 SCC 158***, a two Judge bench of the Hon'ble Supreme Court opined that a free trial would necessarily involve creation of a neutral atmosphere where parties can participate freely by availing effective legal assistance. Speaking through Justice Arijit Pasayat, the following was observed:



"36. The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining truth has to be fair to all concerned. There can be no analytical, all-comprehensive to exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will be not correct to say that it is only the accused who must be fairly dealt with. That would be turning Nelson's eyes to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. **Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated.** If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial." (emphasis added)

Further, a three Judge bench of the Hon'ble Supreme Court in ***Maneka Sanjay Gandhi and another vs. Rani Jethmalani (1979)4 SCC 167*** speaking through Justice V.R. Krishna Iyer, the following was opined:

"2. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy



availability of legal services or like mini- grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.

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4. Now to the next ground. **The sophisticated processes of a criminal trial certainly require competent legal service to present a party's case. If an accused person, for any particular reason, is virtually deprived of this facility, an essential aid to fair trial fails. If in a certain court the whole Bar, for reasons of hostility or otherwise, refuses to defend an accused person - an extraordinary situation difficult to imagine, having regard to the ethics of the profession - it may well be put forward as a ground which merits this Court's attention.** Popular frenzy or official wrath shall not deter a member of the Bar from offering his services to those who wear unpopular names or unpalatable causes and the Indian advocate may not fail this standard..."(emphasis added)

9. While dealing with transfer of the trial from Tamil Nadu to a different State due to apprehension of political interference a two Judge bench of the Hon'ble Supreme Court in ***K. Anbazhagan vs. Superintendent of Police and others (2004) 3 SCC 767***, speaking through Justice H.K. Sema, observed as follows:



"23. Free and fair trial is sine qua non of Article 21 of the Constitution. It is trite law that justice should not only be done but it should be seen to have been done. If the criminal trial is not free and fair and not free from bias, judicial fairness and the criminal justice system would be at stake shaking the confidence of the public in the system and woe would be the rule of law. It is important to note that in such a case the question is not whether the petitioner is actually biased but the question is whether the circumstances are such that there is a reasonable apprehension in the mind of the petitioner."

10. Adverting to matter at hand, since the petitioner is unable to secure profitable legal representation in Amritsar, this Court finds it appropriate to transfer the trial to another district by invoking Section 447 of the BNSS, in the interest of justice.

11. In view of the above discussion, both the abovementioned petitions are allowed in the following terms:

(i) The trial in FIR bearing No.89 dated 04.09.2018 registered under Sections 420, 467, 471, 468 and 120-B of IPC at Police Station Khilchiyan, District Amritsar (Annexure P-4) pending before learned Sub-Divisional Judicial Magistrate, Ajnala, as well as the application bearing No.CRM-81-2024 for cancellation of bail pending before learned Additional Sessions Judge, Amritsar are ordered to be transferred to the jurisdiction of learned Sessions Judge, Hoshiarpur.

(ii) Learned Sessions Judge, Amritsar is directed to transfer the record pertaining to the aforesaid case to learned Sessions Judge,



Hoshiarpur, who will assign the same to the Court of competent jurisdiction at Hoshiarpur.

(iii) The parties are directed to appear before the learned trial Court at Hoshiarpur within a period of 04 weeks from today.

12. Nothing observed hereinabove shall be construed as expression of an opinion by this Court on the merits of the case. The learned trial Court is directed to adjudicate upon the present case, strictly in accordance with law, without being prejudiced by any observations made by this Court.

13. A photocopy of this order be placed on the file of other connected case.

July 02, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No