

2025:PHHC:027053



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

**CRM-M-48399-2024
DECIDED ON: 11.02.2025**

DEEPAK KHANNA

.....PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Vishal Deep Goyal, Advocate
for the petitioner.

Mr. Jasjit Singh Rattu, DAG Punjab.

Mr. Aashish Soi, Advocate for respondent No.7.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Section 528 of BNSS, 2023 has been invoked for issuance of directions to transfer the enquiry of Complaint No. 2325-Peshi dated 27.08.2024 (Annexure P-3) moved to respondent No.4-Senior Superintendent of Police, Fatehgrah Sahib to District Ludhiana or other district of State of Punjab.

2. The learned counsel for the petitioner submits that Respondent No. 4 is acting against the petitioner under the influence of Respondent No. 7, a highly influential and politically active individual. It is further contended that Respondent No. 4 received a complaint dated 27.08.2024 and, without verifying its veracity, has repeatedly summoned the petitioner before Respondents No. 5

and 6. Despite the petitioner's repeated requests, the identity of the complainant has not been disclosed. The petitioner filed a representation on 03.09.2024, but no action has been taken on it to date. The petitioner now fears for her life and liberty.

3. Heard.

4. Before going into the merits of the case, it would be relevant to reproduce Section 407 Cr.P.C:-

“407. Power of High Court to transfer cases and appeals.

(1) Whenever it is made to appear to the High Court -

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto; or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order -
(i) that any offence be inquired into or tried by any Court not qualified under Sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or (iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative : Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application

for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case or appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose :Provided that such stay shall not affect the subordinate Court's power of remand under Section 309.

(7) Where an application for an order under sub-section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application, such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) *Nothing in this section shall be deemed to affect any order of Government under Section 197”.*

6. The main thrust of the submissions of the petitioner while seeking the transfer of the enquiry is that respondent No.7 is an influential and politically active person. It is alleged that the petitioner apprehends danger to him from the respondents.

7. The apprehension canvassed by the petitioner qua harassment at the hands of respondents is a bald plea without there being any concrete material available on record to substantiate the same.

8. Provisions of Section 407 of the Cr.P.C. being based on the principle of equity, it was incumbent upon the petitioner to do the equity herself first in order to seek equitable relief. The petitioner in view of her averments in the transfer petitions, has clearly not come to the Court with clean hands. It is trite law that a petition containing inaccurate averments, only to achieve ulterior purpose, amounts to an abuse of process of Court.

8. The Hon'ble Supreme Court in case of ***V. Chandrasekaran and Anr. v. Administrative Officer and Ors., 2012(4) RCR (Civil) 588*** has held as under:

"34. The appellants have not approached the Court with clean hands, and are therefore, not entitled for any relief. Whenever a person approaches a Court of Equity, in the exercise of its extraordinary jurisdiction, it is expected that he will approach the said court not only with clean hands but also with a clean mind, a clean heart and clean objectives. Thus, he who seeks equity must do equity. The legal maxim "Jure Naturae Aequum Est Neminem cum Alterius Detrimento Et Injuria Fieri Locupletiolem", means that it is a law of nature that one should not be enriched by causing loss or injury to another.

35. *The judicial process cannot become an instrument of oppression or abuse, or a means in the process of the Court to subvert justice, for the reason that the Court exercises its jurisdiction, only in furtherance of justice. The interests of justice and public interest coalesce, and therefore, they are very often one and the same. A petition or an affidavit containing a misleading and/or an inaccurate statement, only to achieve an ulterior purpose, amounts to an abuse of process of the Court.*

36. *In **Dalip Singh v. State of U.P. & Ors., (2010) 2 SCC 114**, this Court noticed an altogether new creed of litigants, that is, dishonest litigants and went on to strongly deprecate their conduct by observing that, the truth constitutes an integral part of the justice delivery system. The quest for personal gain has become so intense that those involved in litigation do not hesitate to seek shelter of falsehood, misrepresentation and suppression of facts in the course of Court proceedings. A litigant who attempts to pollute the stream of justice, or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.*

37. *The truth should be the guiding star in the entire judicial process. "Every trial is a voyage of discovery in which truth is the quest". An action at law is not a game of chess, therefore, a litigant cannot prevaricate and take inconsistent positions. It is one of those fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings."*

9. As a matter of fact, transfer of a case from one Court to another indirectly casts shadow on the competence and integrity of the Judge from whom the case is sought to be transferred. Therefore, mere presumption or possible apprehensions are not sufficient for seeking transfer and transfer can only be ordered on good and sufficient grounds. The power of transfer is to be exercised sparingly and only when justice is apparently in grave peril.

10. The Apex Court in the case of “Nahar Singh Yadav v. Union of India” (2011) 1 SCC 307; has mentioned some factors which could be kept in mind while considering an application for transfer of trial, which reads thus:-

“29. Thus, although no rigid and inflexible rule or test could be laid down to decide whether or not power under Section 406 CrPC should be exercised, it is manifest from a bare reading of sub-sections (2) and (3) of the said section and on an analysis of the decisions of this Court that an order of transfer of trial is not to be passed as a matter of routine or merely because an interested party has expressed some apprehension about the proper conduct of a trial. This power has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide credibility to the trial. 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.

11. From the perusal of afore-said factors, it is evident that the averment putforth by the petitioner posing danger to her life does not fall within the ambit of parameters as discussed above.

12. The right to a fair trial is a fundamental right under Article 21 of the Constitution of India and its importance cannot be emphasised enough. However, in present case, to obtain transfer of complaint the petitioner is required to show circumstances from which it can be inferred that he entertains a reasonable apprehension. This apprehension cannot be imaginary and cannot be a mere allegation.

13. In view of the above findings, wherein, it is held that the petitioner has not come to the Court with clean hands and has pleaded deliberate false averments in the present petition, hence, he does not deserve any compassion.

14. Accordingly, the present petition stands dismissed.

11.02.2025

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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No