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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **TR.P.(CRL.) 20/2025 & CRL.M.A. 6633/2025**
NPetitioner

Through: Ms. Bonita Singh and Ms. Guninder
Kaur Gill, Advocates.

versus

STATE OF NCT OF DELHI THROUGH PRINCIPAL
SECRETARY HOME & ORS.Respondents

Through: Mr. Digam Singh Dagar, APP for
State.
WSI Clara Toppo, P.S. Tilak Marg.
Mr. Rajiv Mohan, Mr. Prakhar
Bhardwaj and Mr. Chandveer
Shyoran, Advocates for R-3.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
03.04.2025

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1. The Petitioner is the Complainant in FIR No. 111/2024 dated 6th November, 2024 under Sections 64 (1) and 123 of the Bharatiya Nyaya Sanhita, 2023¹, registered at P.S. Tilak Marg. Respondent No. 3 is the accused in the said FIR. Upon completion of the investigation, a chargesheet was filed and the matter was committed to the Court of Additional Sessions Judge² Special FTC, Patiala House Courts³, New Delhi and the same has been numbered as SC No. 41/2025.

¹ "BNS"

² "ASJ"

³ "PHC"



2. Respondent No. 3 was arrested and remanded to judicial custody on 21st November, 2024. He has since moved an application seeking regular bail before the ASJ, which was registered as IA No. 1/2025. The Petitioner, being the Complainant in the underlying FIR, is actively contesting the said application.

3. The arguments in the bail application were heard on 12th February, 2025, and the matter was posted for orders on 13th February, 2025. Significantly, one day prior, on 11th February, 2025, the Petitioner, through her counsel, moved an application seeking a copy of the CCTV footage of the place of the incident. The said application was disposed of *vide* the same order dated 12th February, 2025, with a direction to the Investigating Officer to provide the footage to the Complainant's counsel.

4. On the following day – i.e., 13th February, 2025, the Petitioner moved a fresh application [IA No. 3/2025] seeking deferment of the pronouncement of the bail order on the ground that she had received the CCTV footage only the previous day and wished to make further submissions on its basis. The Presiding Judge took note of the request, issued notice to counsel for the accused, and scheduled the matter for hearing on 14th February, 2025 at 12:30 PM.

5. In parallel, the Petitioner also filed a transfer application seeking transfer of SC No. 41/2025, including the pending bail application, to another court of competent jurisdiction. The said application was taken up on 14th February, 2025 by the Principal Judge, Family Court, who was then officiating as the Principal District and Sessions Judge, Patiala House Courts. By an order passed on that day, the Principal Judge directed that the pronouncement of the bail order be stayed till the next date of hearing.



Further, the Court also directed the proceedings in the SC No. 41/2025 also be stayed till 15th February, 2025 at 02:00 PM.

6. On 15th February, 2025, the matter could not be taken up for effective hearing. Thereafter, it was adjourned on a couple of occasions. Arguments on the transfer application were eventually heard on 18th February, 2025, and the bail order continued to remain deferred in the interim.

7. Subsequently, the transfer petition was finally disposed of by a detailed order dated 24th February, 2025 which is impugned in the present petition. By the said order, the Principal Judge, Family Court declined to transfer the matter to another Presiding Judge.

8. In the above background, the Petitioner has now invoked the jurisdiction of this Court under Section 447 of the Bharatiya Nagarik Suraksha Sanhita, 2023⁴, challenging the order dated 24th February, 2025 passed by the officiating principal District & Sessions Judge⁵, and for transfer of SC No. 41/2025 as well as the bail application [IA 1/2025], currently pending before the ASJ, PHC to another competent Sessions Court.

9. Ms. Bonita Singh, counsel for Petitioner, makes several submissions for seeking transfer of the said case, as noted hereinafter -

9.1. The record of the proceedings, particularly the orders passed during the bail hearing, do not accurately reflect the sequence of events. The Advocate of the Complainant as well as the Public Prosecutor had pointed out to the Presiding Officer on 12th February, 2025 that neither of them had been provided with a copy of the relevant CCTV footage from the place of

⁴ “BNSS”

⁵ “Impugned order”



the incident on the fateful day the offence took place. In such circumstances, the Advocate of the Complainant had sought the relevant CCTV footage one day prior, on 11th February, 2025, and thereafter, during the course of hearing on 12th February, she sought supply of the said footage, so as to present arguments and rebuttal in a proper and comprehensive manner. This request was declined by the Presiding Officer and the Advocate was told to rely on the findings in the chargesheet regarding the CCTV footage and address the arguments on the same day.

9.2 The Presiding Officer permitted the counsel for the accused to play the CCTV footage directly before the Court without supplying a copy to either the prosecution or the Complainant. Moreover, only selective portions of the footage were shown, rather than the entire recording.

9.3 Pertinently, at the time of hearing of the arguments on the bail application, the Presiding Officer made certain personal remarks/comments towards the Petitioner (complainant) and her husband which made her feel deeply uncomfortable. In support of this plea, the Petitioner has placed on record additional documents in the present proceedings, including a 'note/submissions' detailing the specific remarks/ comments allegedly made by the Presiding Officer during the hearing on 12th February, 2025.

9.4 The Petitioner has also submitted complaints/ representations against the Presiding Officer to the Hon'ble the Chief Justice of this Court on 15th February, 2025 and subsequently, to the Hon'ble the Chief Justice of India on 24th March, 2025 regarding the personal remarks/comments made by the Presiding Officer.

10. On the other hand, Mr. Rajiv Mohan, counsel for Respondent No. 3, strongly controverts all the allegations advanced by the Petitioner on the



following grounds:

10.1 Mr. Mohan was personally present during the hearing conducted on 12th February, 2025 – i.e., on the date when the alleged comments were made by the Presiding Judge. He categorically and strenuously denies that the Presiding Judge made any such comments against the Complainant or her husband on any occasion.

10.2 While acknowledging that, as counsel for the accused, Mr. Mohan made submissions to assail the credibility of the Complainant's case and to highlight its inherent improbabilities. Mr. Mohan maintains that such arguments were limited to the merits of the matter and did not involve or provoke any inappropriate observations by the Presiding Judge. The Presiding Judge never made comments as alleged by the Petitioner. It is asserted that the allegations now raised by the Petitioner are unfounded and misrepresent the tenor of the proceedings.

10.3 The maintainability of the present petition under Section 447(3) of the BNSS, is also challenged on the ground that it is unsupported by a proper affidavit as required under Section 333 of the BNSS.

10.4 This Court ought not exercise its jurisdiction to transfer the proceedings in the present case, as such an order would amount to casting aspersions on the impartiality of the Presiding Judge, which would have the effect demoralizing the Judge or amount to being a comment on his integrity and standing. Such an order of transfer, if passed by this Court even if innocuously worded, maybe be injurious to the reputation of the Presiding Judge.

10.5 The Petitioner has not made any specific or substantiated allegation of prejudice or bias against the Presiding Judge. In the absence of any cogent



or credible material on record to suggest that the Judge exhibited such conduct during the proceeding, it would be improper for this Court to exercise the jurisdiction by directing transfer of the case. To support this submission, reliance is placed on a decision of this Court in ***Directorate of Enforcement v. Ajay S. Mittal***⁶, wherein this Court had examined the precedents on this issue and had cautioned that transfer of cases on flimsy grounds may encourage parties to question a Judge's impartiality in future matters.

10.6 Without prejudice to the above submissions, Mr. Mohan states that he has full faith in the judicial system and would have no objection if the matter were to be assigned to another Judge. However, such a course of action should not be construed as a concession or admission of any impropriety, nor should it be perceived as casting any aspersion on the impartiality or integrity of the current Presiding Judge.

11. This Court has given its anxious consideration to the submissions advanced by both sides. The present case emanates from an FIR registered under Section 64(1) of the BNS, alleging an offence of rape. Proceedings in such matters requires sensitivity to ensure that the prosecutrix does not get re-traumatized during the course of the proceedings⁷. The sensitivity of the Presiding Judge in the adjudication of such cases is no doubt essential, however, in the present case, on the basis of material on record, the Court is not in a position to conclusively determine whether or not the Presiding Judge actually made such alleged comments during the course of the hearing on 12th February, 2025. Allegations of this nature, unless supported by clear

⁶ 2024 SCC OnLine Del 4047

⁷ *Aparna Bhat v. State of Madhya Pradesh*, AIR 2021 SC 1492



and convincing material, fall into a zone of evidentiary ambiguity that cannot form the basis of a finding either way.

12. It is nonetheless pertinent to note that on 13th February, 2025, the Petitioner submitted an application being IA No. 3/2025 seeking deferment of hearing on the bail application as the CCTV footage had been submitted to the Complainant and her counsel, one day prior – i.e., on 12th February, 2025. This deferment was sought only on the ground that the Complainant wished to address arguments on the CCTV footage. The said application was filed after the hearing on 12th February, 2025, in which the impugned comments were allegedly made by the Presiding Judge. The Court has perused the application and, upon a specific query, Ms. Bonita Singh was unable to point to any grievance raised therein concerning the alleged remarks made by the Presiding Judge.

13. Furthermore, Mr. Mohan, a senior counsel of this Court representing the accused, has categorically denied that any such comments were made by the Presiding Judge during the hearing. At present, therefore, the record contains no material beyond the Petitioner's assertion, which stands in direct contradiction to the statement made by the counsel for the accused.

14. However, it is also noted that the Petitioner has formally raised her grievance regarding the alleged remarks by the Presiding Judge by submitting representations to the Hon'ble the Chief Justice of India as well as the Hon'ble the Chief Justice of this Court. While the merits of those complaints fall outside the scope of these proceedings, they are expected to be examined independently and in accordance with law, in due course.

15. In light of the above facts, the present matter raises an unusually delicate situation. The Petitioner, who is the prosecutrix in an offence of



rape, has submitted formal representations to both the Hon'ble the Chief Justice of this Court and the Hon'ble the Chief Justice of India, alleging that certain comments made by the Presiding Judge during the course of the bail hearing were inappropriate and personally distressing to her. While this Court does not express any view on the truth or falsity of those allegations, particularly since the afore-noted complaints are presently pending consideration, it cannot remain oblivious to the broader impact of the circumstances on the fairness of the ongoing proceedings.

16. In a prosecution involving allegations of sexual assault, it is of utmost importance to ensure that the prosecutrix does not feel re-traumatised or inhibited in her engagement with the justice delivery process. In the present case, the Petitioner has, in unequivocal terms, expressed a loss of confidence in the Presiding Judge and has taken the extraordinary step of submitting formal complaints before the highest constitutional authorities within the judicial hierarchy. The Supreme Court in *Gurucharan Dass Chadha v. State of Rajasthan*⁸ has emphasised that if a petitioner demonstrates circumstances whereby it is inferred that he/she has a reasonable apprehension that justice will not be done, the case ought to be transferred to another Court. This is because of the well settled principle of law that justice should not only be done but it should be seen to be done. The relevant portion of the said judgment is as follows:

"13 ...The law with regard to transfer of cases is well-settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is

⁸ AIR 1966 SC 1418



*one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. **The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension.***

[Emphasis Supplied]

17. Further observing that the right of a fair trial is the foundation of the justice system and sine qua non of Article 21 of the Constitution, the Supreme Court in ***K. Anbazhagan v. Superintendent of Police***⁹, observed as follows:

*“30. 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.** In the present case, the circumstances as recited above are such as to create reasonable apprehension in the minds of the public at large in general and the petitioner in particular that there is every likelihood of failure of justice.”*

[Emphasis Supplied]

18. In the present case, given the serious allegations, whether ultimately found to be baseless or otherwise, levelled by the Petitioner against the Presiding Judge, this Court is of the considered view that the perception of impartiality stands compromised. As such, there is reasonable apprehension in the mind of the Petitioner that justice may not be done in case the matter is tried by the current Presiding Judge. Therefore, insisting that the

⁹ (2004) 3 SCC 767



Petitioner continue to participate in proceedings before the same Judge may, albeit unintentionally, undermine her confidence in the adjudicatory process.

19. In view of these developments, and without venturing into the merits of the allegations levelled by the Petitioner, this Court is of the considered opinion that it may not be appropriate for the matter to continue before the same Presiding Judge.

20. It is also important to note that the Court is also mindful that such orders must not become precedent or a tool for forum-shopping. Transfers should not be allowed lightly, lest they invite unwarranted and unverified allegations that undermine the authority of a judicial officer. However, what makes the present case distinct is not the allegation alone, but the fact that the prosecutrix has gone so far as to initiate formal proceedings against the Judge, while continuing to remain actively engaged in the pending trial. In these peculiar and narrowly confined facts, the Court is persuaded that the ends of justice would be better served if the matter is heard by a different Judge, so that both the prosecutrix and the judicial process are insulated from any further strain.

21. It is important to emphasise that this Court does not, even for a moment, doubt the impartiality, competence, or integrity of the Presiding Judge. Judicial officers discharge their duties with a sense of responsibility and are bound by the oath of office to act without fear or favour. The observations made in this order must not be construed, in any manner, as casting aspersions on the professional conduct or ethical standards of the Presiding Officer concerned. The present decision is rendered purely in the interest of maintaining public confidence in the fairness of the judicial process and ensuring that the prosecutrix, in a case involving sensitive



allegations, feels assured that her concerns, whether ultimately substantiated or not, are being addressed in a manner that is procedurally just and emotionally sensitive.

22. Before parting, this Court considers it necessary to address the Petitioner's argument regarding the Petitioner's alleged misrepresentation about the listing of the bail application for orders, as observed in the impugned order dated 24th February, 2025. In the considered opinion of the Court, since the present decision directs that the matter be placed before another Judge of competent jurisdiction, any findings or conclusions on whether such misrepresentation occurred, particularly in the context of the Petitioner seeking an opportunity to address submissions on the CCTV footage, would be academic and unnecessary for the purposes of the present order. The Court, therefore, refrains from commenting on that controversy.

23. In light of the foregoing, the SC No. 41/2025 and all pending applications including IA No. 1/2025 in FIR no. 111/2024, registered at P.S. Tilak Marg, is directed to be transferred before another Court of competent jurisdiction.

24. Copy of this order be sent to the Principal District and Sessions Judge, Patiala House Courts for information and compliance.

25. Accordingly, the present petition is disposed of, along with pending application(s).

SANJEEV NARULA, J

APRIL 3, 2025

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