2025:AHC-LKO:64620

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

TRANSFER APPLICATION (CRIMINAL) No. - 87 of 2025

Vikas Gupta @ Monu Gupta

.....Applicant(s)

Versus

State Of U.P. Through Principal Secretary Home Lucknow And Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Sunil Kumar Sinha
Counsel for Opposite Party(s)	:	G.A.

Court No. - 13

HON'BLE SAURABH LAVANIA, J.

1. Heard learned counsel for the parties.

2. Present application has been filed seeking transfer of Session Trial No. 376 of 2007 (State vs. Gaurav Singh and others), arising out of Case Crime No. 359 of 2006, under Sections 364A, 302, 201 I.P.C. Police Station-Mohanlalganj, District-Lucknow pending in the Court of Additional Sessions Judge, Court No. 9, Lucknow to any other competent court of jurisdiction.

3. Main ground seeking transfer of the case in issue of the learned counsel for the accused-applicant is to the effect that the trial Court vide order dated 30.05.2025 rejected the application preferred by the accused-applicant in terms of Section 311 CrPC after observing that the case is at the stage of 313 CrPC. Thereafter, the matter was fixed for examining the said witness on 17.06.2025. Thus, in nutshell, the basis of the transfer of the case in issue passing an order dated 30.05.2025 alleged to be unjustified and discriminatory.

4. The accused-applicant challenged the order dated 30.05.2025 before this Court my means of an application under Section 482 CrPC which is pending consideration.

5. This application has been filed with a prayer to transfer the Session Trial

No. 376 of 2007 (State vs. Gaurav Singh and others), arising out of Case Crime No. 359 of 2006, under Sections 364A, 302, 201 I.P.C. Police Station-Mohanlalganj, District-Lucknow pending in the Court of Additional Sessions Judge, Court No. 9, Lucknow to any other competent court of jurisdiction and in view of the prayer sought, this Court finds it appropriate to take note of the observations made in this regard by the Constitutional Courts.

6. Mere suspicion by the party that he will not get justice would not justify transfer. There must be a reasonable apprehension to that effect. There must be a reasonable apprehension to that effect. A judicial order made by a Judge legitimately cannot be made foundation for a transfer of case. Mere presumption of possible apprehension should not and ought not be the basis of transfer of any case from one case to another. It is only in very special circumstances, when such grounds are taken, the Court must find reasons exist to transfer a case, not otherwise. Reference can be made to the judgment(s) passed in the case of ***Rajkot Cancer Society vs. Municipal Corporation, Rajkot, AIR 1988 Guj 63; Pasupala Fakruddin and Anr. vs. Jamia Masque and Anr., AIR 2003 AP 448; and Nandini Chatterjee vs. Arup Hari Chatterjee, AIR 2001 Cul 26;*** as also the judgment dated 12.11.2014 passed in ***Transfer Application (Civil) No. 519 of 2014 (Amit Agarwal vs. Atul Gupta).***

7. A Judge is not expected to remain silent during course of hearing and not to express any opinion. A sphinx like attitude is not expected from a Presiding Officer. There has to be an effective discussion and effective attempt to conciliate or to clarify the misunderstanding or to get the issues clear, so that the issues can be settled or a just and proper decision can be arrived at. If in that process the Presiding Officer would make a statement it should not be misunderstood as an expression of decision. Judges' opinions during hearing of case do not automatically justify transfer. ***[Smt. Sangeetha S. Chugh vs. Ram Narayan V. and others, AIR 1995 Kar 112 and Official Assignee, Madras vs. Inspector-General of Registration, Bangalore and Anr., AIR 1981 Mad 54; Gujarat Electricity Board & Anr. vs. Atmaram Sungomal Poshani; AIR 1989 SC 1433 (1436).]*** Certain observations made by a Judge in an earlier case can never be made a ground for transfer of the case as held in ***G. Lakshmi Ammal vs. Elumalai Chettiar and Ors, AIR 1981 Mad 24.*** The allegations of bias of Presiding Officer, if made the basis for transfer of case, before exercising power under Section 408 Cr.P.C., the

Court must be satisfied that the apprehension of bias or prejudice is bona fide and reasonable. The expression of apprehension, must be proved /substantiated by circumstances and material placed by such applicant before the Court. It cannot be taken as granted that mere allegation would be sufficient to justify transfer.

8. In ***Ajay Kumar Pandey, Advocate, (1998) 7 SCC 248,*** the Hon'ble Apex Court said that superior Courts are bound to protect the Judges of subordinate Courts from being subjected to scurrilous and indecent attacks, which scandalise or have the tendency to scandalise, or lower or have the tendency to lower the authority of any court as also all such actions which interfere or tend to interfere with the due course of any judicial proceedings or obstruct or tend to obstruct the administration of justice in any other manner. No affront to the majesty of law can be permitted. The fountain of justice cannot be allowed to be polluted by disgruntled litigants. The protection is necessary for the courts to enable them to discharge their judicial functions without fear.

9. This Court also made similar observations in ***Smt. Munni Devi and others vs. State of U.P. and others, 2013(2) AWC 1546*** and in para 10, said:-

> *"Be that as it may, so far as the present case is concerned, suffice is to mention that the Constitution makers have imposed constitutional obligation upon the High Court to exercise control over subordinate judiciary. This control is both ways. No aberration shall be allowed to enter the Subordinate Judiciary so that its purity is maintained. Simultaneously Subordinate Judiciary can not be allowed to be attacked or threatened to work under outside pressure of anyone, whether individual or a group, so as to form a threat to objective and independent functioning of Subordinate Judiciary."*

10. In assessing whether a case for transfer of the proceedings has been made out, it would, at the outset, be appropriate to advert to the locus classicus on the subject of the case. In ***Gurcharan Das Chadha Vs. State of Rajasthan : (1966) 2 SCR 686.***

> *"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 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 the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt rel*evant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension."

11. These sentiments have been placed, in no uncertain terms, in the judgment of the Hon'ble Apex Court in ***Jawant Singh Vs. Virender Singh 1995 Supp (1) SCC 384*** thus:

> *"It is most unbefitting for an advocate to make imputations against the Judge only because he does not get the expected result, which according to him is the fair and reasonable result available to him. Judges cannot be intimidated to seek favourable orders...."*

12. In a subsequent decision in ***Chetak Construction Ltd. Vs. Om Prakash & Ors., (1998) 4 SCC 57***7 the Hon'ble Apex Court while adverting to these observations held thus:-

> *"Indeed, no lawyer or litigant can be permitted to browbeat the court or malign the presiding officer with a view to get a favourable order. Judges shall not be able to perform their duties freely and fairly if such activities were permitted and in the result administration of justice would become a casualty and rule of law would receive a setback. The Judges are obliged to decide cases impartially and without any fear or favour. Lawyers and litigants cannot be allowed to "terrorize" or "intimidate" Judges with a view to "secure" orders which they want. This is basic and fundamental and no civilised system of administration of justice can permit it. The court certainly, cannot approve of any attempt on the part of any litigant to go "forum-shopping". A litigant cannot be permitted "choice" of the "forum" and every attempt at "forum-shopping" must be crushed with a heavy hand."*

13. In ***R.K. Anand Vs. Registrar, Delhi High Court (2009) 8 SCC 106,*** the Hon'ble Apex Court made certain observations which, though in the context of a recusal, are of significance:-

> *"In the order the Judge concerned further observed: "The path of recusal is very often a convenient and a soft option. This is especially so since a Judge really has no vested interest in doing a particular matter. However, the oath of office taken under Constitution of India enjoins the Judge to duly and faithfully and to the best of his knowledge and judgment, perform the duties of office without fear or favour, affection or ill will while upholding the Constitution and the laws. In a case, where unfounded and motivated allegations of bias are sought to be made with a view of forum hunting / Bench preference or brow-beating the court, then, succumbing to such a pressure would tantamount to not*

fulfilling the oath of office."

14. The Hon'ble Apex Court in the case of ***Kulwinder Kaur v. Kandi Friends Education Trust reported in (2008) 3 SCC 659,*** observed as under:-

> *"23. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by courts. They are balance of convenience or inconvenience to the plaintiff or the defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; "interest of justice" demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the court feels that the plaintiff or the defendant is not likely to have a "fair trial" in the court from which he seeks to transfer a case, it is not only thepower, but the dutyof the court to make such order."*

15. Hon'ble Apex Court in ***Abdul Nazar Madani v. State of T.N. MANU/SC/0349/2000 : (2000) 6 SCC 204*** has held that:-

> *"...The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. No universal or hard-and-fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the Petitioners alone who approached the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society."*

16. In the case of ***Captain Amarinder Singh v. Parkash Singh Badal and Ors. MANU/SC/0797/2009 : (2009) 6 SCC 260,*** while dealing with an application for transfer petition preferred Under Section 406 Code of Criminal Procedure, a three-Judge Bench of Hon'ble Supreme Court has opined that for 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. It

has also been observed therein that mere an allegation that there is an apprehension that justice will not be done in a given case alone does not suffice. It is also required on the part of the Court to see whether the apprehension alleged is reasonable or not, for the apprehension must not only be present but must appear to the Court to be a reasonable apprehension. In the said context, Hon'ble Supreme Court has held thus:-

> *"19. Assurance of a fair trial is the first imperative of the dispensation of justice. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that the public confidence in the fairness of a trial would be seriously undermined, the aggrieved party can seek the transfer of a case within the State Under Section 407 and anywhere in the country Under Section 406 Code of Criminal Procedure.*
>
> *20. However, the apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary. Free and fair trial is sine qua non of Article 21 of the Constitution. If the criminal trial is not free and fair and if it is biased, judicial fairness and the criminal justice system would be at stake, shaking the confidence of the public in the system. The apprehension must appear to the court to be a reasonable one."*

17. In ***Lalu Prasad alias Lalu Prasad Yadav v. State of Jharkhand MANU/SC/0796/2013 : (2013) 8 SCC 593,*** Hon'ble Apex Court, repelling the submission that because some of the distantly related members of the trial Judge were in the midst of the Chief Minister, opined that from the said fact it cannot be presumed that the Presiding Judge would conclude against the appellant. From the said decision, following passage is reproduced hereinunder:-

> *"Independence of judiciary is the basic feature of the Constitution. It demands that a Judge who presides over the trial, the Public Prosecutor who presents the case on behalf of the State and the lawyer vis-a-vis amicus curiae who represents the accused must work together in harmony in the public interest of justice uninfluenced by the personality of the accused or those managing the affairs of the State. They must ensure that their working does not lead to creation of conflict between justice and jurisprudence. A person whether he is a judicial officer or a Public Prosecutor or a lawyer defending the accused should always uphold the dignity of their high office with a full sense of responsibility and see that its value in no circumstance gets devalued. The public interest demands that the trial should be conducted in a fair manner and the administration of justice would be fair and independent."*

18. In the case of ***Rajesh Talwar vs. CBI [(2012) 4 SCC 217]*** the Hon'ble Apex Court held as under: -

> *"46. Jurisdiction of a court to conduct criminal prosecution is based on the provisions of the Code of Criminal Procedure. Often either the complainant or the accused have to travel across an entire State to attend to criminal proceedings before a jurisdictional court. In some cases to reach the venue of the trial court, a complainant or an accused may have to travel across several States. Likewise, witnesses too may also have to travel long distances in order to depose before the jurisdictional court. If the plea of inconvenience for transferring the cases from one court to another, on the basis of time taken to travel to the court conducting the criminal trial is accepted, the provisions contained in the Criminal procedure Code earmarking the courts having jurisdiction to try cases would be rendered meaningless. Convenience or inconvenience inconsequential so far are as the mandate of law is concerned. The instant plea, therefore, deserves outright rejection."*

19. The aforesaid laws would clearly emphasize on sustenance of majesty of law by all concerned. Seeking of the transfer of criminal trial at the drop of a hat is not recognized by the courts or by any tenent 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. 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 as held in ***Nahar Singh Yadav and Anr. v. Union of India and Ors. MANU/SC/0964/2010 : (2011) 1 SCC 307],*** the apprehension with regard to the miscarriage of justice should be real and substantial.

20. It is also worthwhile to extract the view of the Hon'ble Supreme Court in ***Usmangani Adambhai Vahora Vs. State of Gujarat and Ors,*** reported in ***MANU/SC/0014/2016 (AIR 2016 SC 336),*** wherein it is emphasized that simply because an accused or a party has filed an application for transfer, 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.

21. In the case of ***Rohit Yadav and Another vs. State of U.P. and Another*** reported in ***2016 SCC OnLine All 3052*** the transfer of the case was sought broadly on two grounds; First ground was to the effect that father of first informant is a Member of District Court Bar Association Jhansi, as such, he is exercising great pressure on the Members of Bar Association, Jhansi as well as Presiding Officer of Sessions Court, Jhansi. Second ground was to

the effect that the first informant is a political leader as well as student leader of Bundelkhand Degree College and at present, he is President of the students union. This Court, upon due consideration, rejected the said application. The relevant observations of this Court in the judgment passed in the case of ***Rohit Yadav (supra)*** on reproduction read as under:-

> *"24. Vague and vexatious accusation without an element of truth on the working of Trial Court not supported either by fact or circumstances will notipso factobe sufficient ground for transfer of a case. Transfer of a case can be made only when the same is reasonably required under facts and circumstances of a case. If allegations made for transfer are straightway discovered or found to be affecting adversely interest of justice instead of supporting it then the same will tantamount to erosion of judicial process itself and any claim so made for transfer can be, in that eventuality, termed unreasonable and uncalled for transfer of a case cannot be asked by making ostentatious, baseless and whimsical personal apprehensions. Normally such attempts should be strongly deprecated and discouraged. While considering the entirety of the matter in hand, it is obvious that this transfer application has not been moved with any fair motive but appears to be well thought attempt to somehow occasion delay in conclusion of the trial. If the applicants are apprehensive of their personal security then they may bring relevant facts to the notice of the trial Court itself. More so the record reflects that the wife of applicant No. 1 Rohit Yadav has moved bail application on behalf of minor son Chahat Yadav and has sought release of her (minor) son in her custody. This particular fact reveals that wife of applicant No. 1 is able to do Parvi of a case in the Court. More so applicant No. 2 is already on bail and it cannot be said that he is absolutely unable to do Parvi of the cases (two sessions trials) pending before the Sessions Court Jhansi. Personal inconvenience and personal apprehension of applicants as claimed by them are found to be not based on reasonable and substantive grounds as such would not justify transfer of the sessions trials. Further if the transfer application is moved with an ulterior motive to occasion or cause delay in disposal of the trial itself then that application is highly misconceived and cannot be allowed as that would adversely affect interest of justice. In catena of decisions, this tendency to seek transfer on frivolous and vague grounds has been deprecated repeatedly. Consequently, the grounds urged in support of the transfer application for transferring the aforesaid sessions trial are without any force and are liable to be turned down.*
>
> *25. Accordingly, the instant transfer application is rejected."*

22. The Hon'ble Apex Court in the case of ***Afjal Ali Sha @ Abjal Shaukat Sha vs. State of West Bengal & Ors. 2023 SCC OnLine SC 282*** observed as under:-

> *"C.2. GROUNDS FOR TRANSFER*
>
> *26. Coming to the second limb of the contentions raised on behalf of the parties, we may*

firstly notice some of the well-defined contours in relation thereto. It has by now been well established that a well-founded apprehension that justice will not be done is a prerequisite for transfer of the case. Tracing the power of transfer of a case, we are reminded of Lord Hewart's dictum in Rex v. Sussex Justices stating that "It is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done".

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, to obtain the transfer of a case, 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.

The power of transfer under Section 406, CrPC is to be exercised sparingly and only when justice is apparently in grave peril. This Court has allowed transfers only in exceptional cases considering the fact that transfers may cast unnecessary aspersions on the State Judiciary and the prosecution agency. Thus, over the years, this Court has laid down certain guidelines and situations wherein such power can be justiciably invoked.

In ***Amarinder Singh v. Parkash Singh Badal,*** this Court observed as follows:

"19. Assurance of a fair trial is the first imperative of the dispensation of justice. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that the public confidence in the fairness of a trial would be seriously undermined, the aggrieved party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 CrPC."

In ***Nahar Singh Yadav v. Union of India*** after analysing the case-law, this Court enumerated the basic principles of the power of transfer under Section 406, CrPC as follows:

"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."

30. In ***R. Balakrishna Pillai v. State of Kerala,*** *this Court noted the crucial separation of powers between the judiciary and the executive and held that "Judges are not influenced in any manner either by the propaganda or adverse publicity. Cases are decided on the basis of the evidence available on record and the law applicable."*

31. The convenience of parties and witnesses as well as the language spoken by them are also relevant factors when deciding a transfer petition, as has been noted by this Court in a catena of judgments.

32. In some of the recent decisions including in ***Neelam Pandey v. Rahul Shukla,*** *this Court has viewed that transfer of a criminal case from one state to another implicitly reflects upon credibility of not only the State Judiciary but also of the prosecution agency."*

23. Upon due consideration of the facts of the case and also the submissions advanced by the learned counsel for the applicant as also the observations made by the Constitutional Courts on the issue of transfer of a case from one Court to another Court as also the ground(s)/reason(s) for seeking transfer of the case in issue, this Court finds no force in the application for the reason that an order passed by a Judge cannot be made foundation for transfer of a case.

24. Accordingly, present application is ***rejected***. No order as to costs.

October 16, 2025
Vinay/-

(Saurabh Lavania,J.)