

THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CRL.) NO. 409 OF 2020

IN THE MATTER OF:

STATE OF UTTAR PRADESH

.... PETITIONER

VERSUS

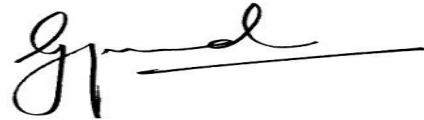
JAIL SUPERINTENDENT (ROPAR) & ORS.

.... RESPONDENTS

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In connection to Case Crime No. 05 of 2019 under Sections 386 and 506 IPC registered at Police Station Mathaur, District Mohali, State of Punjab on 08.01.2019, the Learned Judicial Magistrate-I Mohali issued a production warrant under Section 267 of the Code of Criminal Procedure. The Senior Superintendent of District Jail, Banda, without seeking permission from the Court of Special Judge (MP/MLA) Allahabad gave custody of Respondent No.3 to the Ld. Court of judicial Magistrate, Mohali on 22.01.2019 in utter disregard to the provisions of Section 267(2), hence, a departmental inquiry is pending against the Superintendent of District Jail, Banda. The Learned Judicial Magistrate-I Mohali instead of sending back Respondent No.3 to Banda Jail, sent him to District Jail Roopnagar, Punjab on 24.01.2019. A large number of warrants have been issued by the Ld. Special Judge (MP/MLA) Court Allahabad to bring Respondent No.3 from District Jail Roopnagar and produce him before the said Court at Allahabad, but all the efforts of securing the custody of Respondent No.3 proved to be in vain as on each occasion the Jail Superintendent refused to give the custody of Respondent No.3 on ground of ill health of Respondent No.3. The conduct of the Respondent no.3 is evident from the fact that he has

not even applied for default bail in FIR No. 05 of 2019 in past two years even though the charge sheet has not been filed by the State of Punjab.

Looking at the chain of events and chronology it appears that the transfer of custody of Respondent No.3 is meticulously planned and raises a strong suspicion of conspiracy to delay the proceedings before the Special Judge (MP/MLA), Allahabad. Under the aforesaid circumstances, the Petitioner has approached this Hon'ble Court invoking its extraordinary jurisdiction to pass the order of transfer of Respondent No.3 to District Jail Banda, Uttar Pradesh to do complete justice in the facts and circumstances of the present case. The Petitioner has also prayed for transfer the Case No. 05 of 2019 titled as State of Punjab v. Mukhtar Ansari pending before Judicial Magistrate Mohali, State of Punjab to the Court of Special Judge (MP/MLA) Allahabad, Uttar Pradesh.

B. SUBMISSIONS:

1. The Writ petition filed by the State is maintainable under Article 32.

1.1 This Hon'ble Court was faced with the issue whether a Writ Petition is maintainable under Article 32 being filed by the

Union of India, while concluding that the writ petition at the instance of the Union of India is maintainable, this Hon'ble Court in Union of India v. V. Sriharan, (2016) 7 SCC 1 held that "5. Having considered the objections raised on the ground of maintainability, having heard the respective counsel on the said question and having regard to the nature of issues which have been referred for consideration by this Constitution Bench, as rightly contended by the learned Solicitor General, we are also convinced that answer to those questions would involve substantial questions of law as to the interpretation of Articles 72, 73, 161 and 162, various entries in the Seventh Schedule consisting of Lists I to III as well as the corresponding provisions of the Penal Code and the Criminal Procedure Code and thereby serious public interest would arise for consideration and, therefore, we do not find it appropriate to reject the reference on the narrow technical ground of maintainability. We, therefore, proceed to find an answer to the questions referred for consideration by this Constitution Bench."

It is submitted that this Hon'ble Court in the aforesaid judgment entertained the Petition filed by the Union of India as there existed dispute between Centre and State bearing

directly on fundamental rights. In the present case the dispute is between two states affecting the fundamental right to speedy trial which is implicit in Article 14, 19(1) (a) and 21 of the Constitution of India.

- 1.2 It is submitted that there exists no explicit or implicit bar for filing a Petition under Article 32 by the State as long as there exists a requirement of order/direction to be passed by the Hon'ble Court to ensure the protection of fundamental rights enshrined under Part III of the Constitution of India.

Article 32 in the Constitution of India:

"32. Remedies for enforcement of rights conferred by this Part

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part

(3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution"

It is submitted that under Clause 2 of Article 32 this Hon'ble Court has power not restricted only to issuance of Writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari but has the power to issue any directions or orders too ensuring the enforcement of the fundamental rights. It is submitted that there is no restriction specified as to who per se can file a petition for the enforcement of fundamental rights of the citizens under Article 32, thus, anyone including the State can also approach this Hon'ble Court seeking reliefs pertaining to the enforcement and protection of the Fundamental Rights.

- 1.3 It is submitted that the principal purpose of criminal justice administration is to preserve and protect the Rule of Law, which implies, enforcement of law, maintenance of order, just, fair and speedy trial, punishment of offenders, rehabilitation of offenders and a solace to victims of crimes. The interest of Respondent No. 3 to avoid the criminal court proceedings pending against him in the State of Uttar Pradesh would amount to denial of justice to the victims in those cases. The administration of criminal justice is bestowed upon the State on behalf of the victims of crime –primary secondary and tertiary - on the premise that *a crime against a citizen is a*

crime against the State the petitioner has an onerous and foremost duty to ensure that its citizen uphold their trust and belief in the administration of justice under the aegis of State. It is submitted that fundamental rights enshrined under Part 3 of the Indian Constitution impose a mandate on the State to enforce them effectively and hence the Petitioner State has sought the majestic authority of this Hon'ble Court being the guardian of fundamental rights of citizens to exercise its extraordinary jurisdiction in the present case.

2. **The Petitioner has locus standi to seek transfer of Case No. 05 of 2019 titled as State of Punjab v. Mukhtar Ansari pending before Judicial Magistrate Mohali, State of Punjab to the Court of Special Judge (MP/MLA) Allahabad, Uttar Pradesh, as the Petitioner is "party interested" under Section 406 of Code of Criminal Procedure.**

- 2.1 The Petitioner is definitely a "party interested" as this Hon'ble Court has made it clear in many judgments that the term "Party interested" has to be given wide connotation. This Hon'ble Court in *K. Anbazhagan v. Supdt. of Police*, (2004) 3 SCC 767 held that "12. *The second leg of argument, what*

appears to be an argument of despair, is of locus standi of the petitioner. In point of fact this question need not detain us any longer because on 28-2-2003 this Court had already granted permission to the petitioner to file the petition. No application has been taken out to revoke the permission so granted. Therefore, this question becomes mere academic. However, since the question involved is of public importance, we proceed to answer the question. Mr V.A. Bobde, learned Senior Counsel appearing for Respondents 3 and 4 in CC No. 7 of 1997 and Respondent 3 in CC No. 2 of 2001 contended that in view of the provision of sub-section (2) of Section 406 Cr.PC the petition is maintainable only when motion is moved by the Attorney General or by the "party interested". According to the counsel, it is the "party interested" and not a "person interested" and, therefore, only the Attorney General or the "party interested" has locus standi to file application and the petitioner not being a party to the proceeding is not a "party interested", and has no locus standi to file the present petition. We are unable to accept this submission for more than one reason. It will be noticed that the "party interested" has not been defined under Cr.P.C. The words "party interested" are of a wide import and, therefore, they have to be given a wider

meaning. If it was the intendment of the legislature to give restricted meaning then it would have used words to the effect "party to the proceedings". In this behalf the wording of Article 139-A of the Constitution of India may be looked at. Under Article 139-A the transfer can be if "the Supreme Court is satisfied on its own motion or on an application made by the Attorney General of India or by a party to any such case". (emphasis supplied) Also if the provisions of Chapter XXIX of the Criminal Procedure Code are looked at, it is seen that when the legislature intended a "party to the proceedings" to have a right of appeal it specifically so stated. The legislature, therefore, keeping in view the larger public interest involved in a criminal justice system, purposely used words of a wider import in Section 406. Also, it is a well-settled principle of law that statutes must be interpreted to advance the cause of statute and not to defeat it. The petitioner being a political opponent, is vitally interested in the administration of justice in the State and is a "party interested" within the meaning of sub-section (2) of Section 406 Cr.P.C. Even otherwise, Mr Subramanian Swamy was the original complainant. He supports these transfer petitions."

2.2 It is submitted that the said FIR alleges that extortion calls were made by "some Ansari" from phone number 6390407709 on 07.01.2019 at 7:09PM. In response to such allegation, the Respondent State of Punjab has arrested the accused Mukhtar Ansari and brought him from Banda Jail to Ropar. It is submitted that on 07.01.2019 accused Mukhtar Ansari was lodged inside the Banda Jail, and hence the State of Uttar Pradesh is a very much an interested party to know as to how phone calls have been made by him from inside the Jail premises. There has been no investigation by the State of Punjab from the jail authorities at Banda, U.P on basis of which it could be concluded that alleged extortion calls had been made by accused Mukhtar Ansari from within the jail premises in the State of Uttar Pradesh. The mobile number was not even listed in the name of Mukhtar Ansari. The Government of Uttar Pradesh has also suspended its Senior Superintendent of District Jail, Banda, who had given custody to the police from Punjab on 22.01.2019 in FIR No. 05 of 2019 without seeking permission from the Court of Special Judge (MP/MLA), Allahabad and against the provisions of Section 269(2) of Cr.P.C. The State of Uttar Pradesh is a very much an interested party to find out how the nexus has taken place amongst the

functionaries of the State of Punjab with the conduits of the accused gangster and history sheeter Mukhtar Ansari as also the suspended officials of the State of U.P in the said FIR.

3. **There is no specific provision for transfer of an under trial prisoner under Code of Criminal Procedure or Jail Manual still this Hon'ble Court can pass an order of transfer of Respondent No.3 to District Jail Banda, Uttar Pradesh considering the facts situation of the present matter by exercising jurisdiction under Article 142 of the Constitution of India.**

- 3.1 It is submitted that this Hon'ble Court in *Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2005) 3 SCC 284 held that "25. A bare perusal of the aforementioned provision would clearly go to show that there does not exist any provision for transfer of an under trial prisoner. The prayer for inter-State transfer of a detenu came up for consideration before this Court in *David Patrick Ward v. Union of India* [(1992) 4 SCC 154: 1992 SCC (Cri) 814] wherein a preventive detention matter the petitioner therein was lodged in Naini Jail at Allahabad. The petitioner made a prayer for his transfer to Tihar Jail, Delhi

inter alia on the ground that the Consular Officers had the right to visit a national of the sending State who is in prison or under detention in terms of Article 36 of the Vienna Convention on Consular Relations. The authorities of Naini Jail having indicated that whenever visits are desired by the officers of the British Consular Relations, proper arrangement therefor would be made, this Court refused to concede to the said request. But, this decision is a pointer to the fact that in an appropriate case, such request can also be made by an under trial prisoner or a detenu and there being no statutory provisions contrary thereto, this Court in exercise of its jurisdiction under Article 142 of the Constitution may issue necessary direction. Thus, this Hon'ble Court in the present case may also transfer Respondent No.3 to District Jail Banda, Uttar Pradesh in exercise of its residuary power under Article 142 of the Constitution of India.

- 3.2 It is submitted that when there does not exist any provision for transfer of an under trial prisoner, the action of Judicial Magistrate-I, Mohali of sending Respondent No.3 to District Jail, Roopnagar instead of sending Respondent No.3 back to District Jail, Banda, when Respondent No.3 was produced in

pursuance of warrant issued under Section 267 of the Code of Criminal Procedure, amounts to transferring the under trial prisoner. It is submitted that the aforesaid exercise is transgress of power vested under Section 267 of the Code. It is further submitted that allowing such action would create a havoc in the criminal justice system as whenever an accused/ under trial will be produced in compliance of Section 267 of Cr.P.C., there shall be fear of detaining the person in the said jurisdiction and not sending back. Such a situation is highly detrimental for the smooth functioning of criminal justice system and it creates mistrust between the State machineries as happened in the present case. Therefore, it is not an ordinary case but has far reaching effect, such illegality must be checked so that such situation does not arise in future where the two states are confronted. In the aforesaid circumstances this Hon'ble Court must not refrain from exercising its jurisdiction under Article 32 and Article 142 of the Constitution of India to ensure the ends of justice.

- 3.3 It is submitted that this Hon'ble Court in cases where the transfer of an under trial is found to be imperative has ordered to transfer the detenu from one jail to other jail in other State. It is submitted that this Hon'ble Court in Kalyan Chandra

Sarkar (supra) has also held that "23. *Therefore, in our opinion, a convict or an under trial who disobeys the law of the land, cannot contend that it is not permissible to transfer him from one jail to another because the Jail Manual does not provide for it. If the factual situation requires the transfer of a prisoner from one prison to another, be he a convict or an under trial, courts are not to be a helpless bystander when the rule of law is being challenged with impunity. The arms of law are long enough to remedy the situation even by transferring a prisoner from one prison to another, that is by assuming that the Jail Manual concerned does not provide such a transfer. In our opinion, the argument of the learned counsel, as noted above, undermines the authority and majesty of law. The facts narrated hereinabove clearly show that the respondent has time and again flouted the law even while he was in custody and sometimes even when he was on bail. We must note herein with all seriousness that the authorities manning Beur Jail and the doctors concerned of Patna Medical College Hospital, for their own reasons, either willingly or otherwise, have enabled the respondent to flout the law. In this process, we think the authorities concerned, especially the authorities at Beur Central Jail, Patna, are not in a position to control the*

illegal activities of the respondent. Therefore, it is imperative that the respondent be transferred outside Bihar."

4. The present case is a fit case for exercising the extraordinary jurisdiction vested upon this Hon'ble Court.

4.1 The fallacious plea of the Respondent No.3 (accused Mukhtar Ansari) that he does not want to come to Uttar Pradesh as his life is under threat, is contrary to the plea of the Respondent nos. 1 & 2 (State of Punjab) which contends that the accused Respondent no.3 is unable to travel due to medical reasons. Clearly, the true reason is to delay the process of law by one means or the other.

4.2 The conduct of the Respondents is evident from the fact that neither accused Respondent no.3 has applied for default bail in FIR No. 05 of 2019 in past two years nor the Respondent nos.1 & 2 have filed the charge sheet even after two years of lodging the accused in its jail at Ropar.

4.3 The Hon'ble High Court has specifically directed production of accused Respondent no.3 before the Trial Court on each date without fail vide order dated 15.10.2014 passed by the High Court of Allahabad in T.P CrI. 64 of 2008. The notorious acts of

the accused Respondent no.3 to delay trial have also been taken note by the Hon'ble High Court of Allahabad on various occasions. While adjudicating a Transfer Petition Crl. No. 64 of 2008, the Hon'ble High Court recorded the laxity in proceedings of Sessions Trial no. 201 of 2007 under sections 147/148/149/302 of the accused Mukhtar Ansari.

- 4.4 It is further appalling that the accused Respondent no.3 Mukhtar Ansari has been operating his illegal activities in the state of Uttar Pradesh from within the jail maintained by the Respondent State of Punjab. It is submitted that on 05.04.2020 an FIR no. 04 of 2020 under section 419, 420, 467, 468, 471, 120 B IPC & Sec 7 Arms Act has been registered in Police Station Dakshin Tola, Mau, U.P and that on 06.10.2020 an FIR no. 160/2020 under section 3(1) of the Arms Act has been registered against accused Mukhtar Ansari at Tarwan Police Station Azamgarh and that the accused is also required for investigation at the said police stations at Uttar Pradesh in the said cases besides more than 30 other FIRs pending against him in the State.
- 4.5 The diseases as well as medical problems mentioned in the counter affidavits are not new and the accused Respondent

No. 3 has been suffering from these problems since the year 2008 according to the medical certificate from Superintendent District Jail Ghazipur. In fact, the Respondent No. 3 while suffering from the same medical problems of Low backache, Bronchial Asthma, Hypertension, slip disc, lumber spondylitis, diabetes, Gout, he has been attending Vidhan Sabha proceedings at Lucknow. In any event, these medical problems are not serious in nature for which he was also getting medical treatment and care while he was in Uttar Pradesh Banda Jail. The accused Respondent No. 3 is only seeking ways and means to avoid case proceedings against the him knowing fully well that he is likely to be convicted in the said cases. These facts clearly establish that the present case is a fit case for exercising the extraordinary jurisdiction vested upon this Hon'ble Court.

- 5 **Respondent No.1 has denied to produce Respondent No.3 in pursuance to summons issued under Section 267 of the Code of Criminal Procedure by taking the advantage of contingencies mentioned under Section 269 of the Code of Criminal Procedure, defeating the entire object of Chapter XXII "Attendance of persons**

confined or detained in prisons”, i.e. to ensure speedy trial and not to stall the trial in the garb of contingencies mentioned under Section 269.

- 5.1 It is submitted that the mandate of Section 269 of the Code of Criminal Procedure is that in case the prisoner is unfit to be produced on account of being sick, he has to be produced before the authority issuing summons under Section 267 as soon as the prisoner recovers. It is submitted that the Hon'ble Patna High Court while discussing the requirement of Section 267 of the Code of Criminal Procedure in Md. Shahabuddin v. State of Bihar, 2008 SCC OnLine Pat 1141 : (2009) 2 PLJR 156 held that *"9. For instance, Section 269 Cr.P.C. provides that if an accused in respect of whom production warrant has been issued is sick or unfit to move, obviously he cannot be possibly produced before the other court. However, if detenu recovers, the officer-in-charge of prison would be obliged to facilitate such production. Similarly 269(b) states that if an accused is facing trial or under remand pending trial it may not be possible to facilitate his production before another court in contingencies, which may be for some limited period. The provision does not bestow unfettered power to abstain from carrying out direction issued by other courts for limited*

purpose of remand under Section 267 Cr.P.C. as the whole exercise at the most is likely to take about 36 hours. The terms contingency generally refers to an event that may happen or may not happen. It is a precautionary measure to meet any sort of eventualities. Therefore, the provision does not inhibit an officer-in-charge, from carrying out the orders of a court for limited purpose of remand under Section 267 of the Cr.P.C. if there are intervening days between the dates on which one can be easily produced before another court. The prayer of petitioner is not that he should be shifted to Muzaffarpur Jail from Siwan Jail for his trial at Muzaffarpur."

- 5.2 It is submitted that as per the chart of medical reports of Respondent No.3 as produced by the Respondents in their Counter Affidavits there are gaps of many days between the medical check-ups of Respondent No.3. For instance, on 24.04.2019 the PGIMR, Department of Neurology by the medical Officer, District Jail, Rupnagar advised bed rest of six weeks upto 07.06.2019. Thereafter Respondent No. 3 was shown to the Doctor on 12.07.2019, i.e. almost after a month, there is nothing which precluded the Respondent No.1 from producing respondent No.3 before the Special Judge

(MP/MLA), Allahabad in regard to the summons issued under Section 267 of the Code of Criminal Procedure.

- 5.3 It is submitted that there is nothing on record to show that Respondent No.3 was provided the physiotherapy as suggested by the PGIMR on several occasions. When the Respondent No.1 and 2 have shown the Medical Certificates of Respondent No.3 they were ought to have produced the evidence showing that Respondent was treated by a physiotherapist regularly as advised. This creates cloud of suspicion on the conduct of Respondent No.1 and 2.
- 5.4 It is submitted that Respondent No.3 has appeared in different matters before other Courts during the purported medical advice of strict bed rest. It only shows that Respondent No.3 has been not produced before the Special Judge (MP/MLA), Allahabad only on purpose so that the trial can be further delayed. Respondent was taken to Delhi High Court on 16.01.2020 and before the CBI Court on 27.05.2019 even though the PGIMER Department of Neurology on 24.04.2019 had advised accused strict bed rest for 6 weeks upto 07.06.2019. This shows that Respondent No.3 was fit to travel on many days. However, Respondent No.1 chose to fulfil the

obligation under Section 269 but miserably failed to fulfil the mandate of Chapter XXII of the Code of Criminal Procedure.

6. **The transfer of RespondentNo.3 is imperative from District Jail Roopnagar, State of Punjab to District Jail Banda, Uttar Pradesh and the appearance securing through video conferencing would not serve the purpose in view of the fact that the attendance could not be secured at several occasions in past, as a result the Special Judge (MP/MLA) Allahabad is not able to complete the trial expeditiously.**

- 6.1 It is submitted that no doubt appearance through video conferencing has proved to be a boon specifically during the time of pandemic, however, the criminal justice system does warrant the physical presence of the accused during the trial as under Section 280 Cr.P.C. the demeanour of witness is also to be seen by the Court. Moreover, Respondent no.3 has wrongly stated that he has been throughout appearing before the Courts in Uttar Pradesh on VC after orders have been passed permitting VC. In fact, various orders passed by the Courts show that accused did not appear on the dates fixed either because "VC could not get connected" or "date could not

be known” and eventhat the ingenuous excuse that “accused Mukhtar Ansarinot well, hence could not join VC”. A detailed summary of cases and dates on which the attendance of Respondent No.3 could not be secured in provided in the Rejoinder Affidavit filed by the Petitioner.


7. The contention of Respondent No.3 that he has risk to his life is unsustainable and cannot be a ground for not handing over the custody of Respondent No.3.

7.1 The plea of Respondent No. 3 that he has risk to his life due to his rivalry with another accused Brijesh Singh is without any substance. It is submitted that the said accused Brijesh Singh is also lodged in the Jails in the State of Uttar Pradesh since past more than ten years. His bail applications have also been rejected by the Courts. Further, it is submitted that Respondent no.3 had sought transfer of criminal cases to the Delhi NCR on the ground of danger to his life in Transfer Petition No. 3044 of 2020, however, the same was dismissed by this Hon’ble Court. It is submitted that being a history sheeter, gangster and a hard core criminal, Respondent no.3 has expectedly rivalry with many other criminals, however, the

same cannot be a ground to escape the clutches of law and seek refuge in another federal State.

7.2 The Respondent No.3 had been safely lodged in the Banda Jail in Uttar Pradesh for 15 years duly protected by the Jail authorities and given full medical and health care. The Petitioner State of Uttar Pradesh is duty bound to provide all safety and protection to accused Respondent No. 3 and as such the alleged fear of Respondent no.3 is imaginary, ill-founded and deserves to be rejected.

Filed by:



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Dated: 23.02.2021

Place: Delhi