AND:

THE STATE THROUGH
ASHOK NAGAR P.S
KALABURAGI,
NOW REPRESENTED BY
THE ADDL. SPP,
HCKB AT KALBRG

…RESPONDENT

(BY SMT. ANITA M. REDDY, HCGP)

THIS CRL.P IS FILED U/S.407 OF CR.P.C. PRAYING TO TRANSFER SC NO.164/2019, WHICH IS PENDING ON THE FILE III ADDL. DISTRICT AND SESSIONS JUDGE KALABURAGI FOR TRYING / CONCLUDING / DISPOSAL OF THE SAID CASE, TO SOME OTHER CRIMINAL / SESSIONS COURT, COMING UNDER THE JURISDICTION OF PRINCIPAL DISTRICT AND SESSIONS JUDGE KALABURAGI, IN VIEW OF THE REASONS AS STATED ABOVE.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 01.09.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THIS COURT MADE THE FOLLOWING:

ORDER

This petition is filed by the petitioners/accused under Section 407 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') praying to transfer the Sessions Case No.164/2019 pending on the file of III Additional District and Sessions Judge, Kalaburagi, for trying/concluding/disposal of the case to some other

Sessions Court coming under the jurisdiction of the Principal District and Sessions Judge, Kalaburagi.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court. The petitioners are accused No.1 to 3 and the respondent is complainant-State.

3. This petition is filed by accused persons being aggrieved by rejection of transfer petition under Section 409 of Cr.P.C. by the learned Principal District and Sessions Judge, Kalaburagi (for short 'Trial Court') in Crl.Misc.No.459/2023 dated 27.03.2023.

4. It is contended that based on the complaint lodged by the complainant, a case has been registered against the accused persons for the offence punishable under Section 302 read with Section 34 of IPC. Later, the Investigating Officer has investigated the matter and filed charge-sheet against the accused persons for the offences punishable under Sections 302 and 120B read with Section

34 of IPC and the matter was committed to III Additional District and Sessions Judge, Kalaburagi for trial.

5. The prosecution to prove its case, examined in all 18 witnesses as PWs.1 to 18, marked the documents as per Exs.P1 to P29 and 11 material objects as MOs.1 to 11 before the trial Court and the evidence of prosecution witnesses has been completed on 25.02.2020 and the statement of accused has been recorded under Section 313 of Cr.P.C. by the trial Court and accused also examined on oath as DW.1 on 26.03.2022. Later on, the matter was set down for final arguments and on 08.09.2022 and 20.09.2022, the prosecution recalled PW.18 and he was examined on 02.11.2022 and again the Trial Court recorded the statement of accused under Section 313 of Cr.P.C.

6. The learned counsel for the accused contended that, at the time of recording further evidence of PW.18, the trial Court rejected the relevant admissible questions put to PW.18 in his cross-examination. However, the Trial

Court has not allowed the counsel for accused and the Court has not recorded the relevant questions and admissions given by PW.18 in his cross-examination. Therefore, the learned counsel for accused filed an application under Section 311 of Cr.P.C. for recalling of PW.18 and the same was allowed with cost of Rs.1,000/- on 21.12.2022 and later, PW.18 was examined.

7. It is contended that, though there was exchange of words between counsel and the Presiding Officer of the trial Court (for short 'the Presiding Officer'), but, the trial Court has not recorded in the order sheet as to what was happened between the counsel and the Presiding Officer, hence, the learned counsel for accused aggrieved with the attitude and behavior of the Presiding Officer has indirectly expressing in favour of the prosecution for which the accused persons are not having any faith on the Presiding Officer, therefore, the accused have filed a petition for transfer of the case. Further, the case was adjourned on the request of the learned Public Prosecutor on time to

time, but, the Court blamed the counsel for accused that, he is dragging the matter. In fact, the accused persons are in judicial custody since 2019 and the Court ought not to have allowed the application for recalling of PW.18 by the prosecution. It is contended that, the counsel for accused asked some relevant questions to PW.18, regarding arrest of accused persons on 19.01.2019 in Crime No.13/2019 of University police station, Kalaburagi and PW.18 has clearly admitted those questions, but, the trial Court was not ready to record the same and the Court were insisted the counsel to repeat once again, the same questions, thereafter, the witness was alerted and answered in the affirmative.

8. It is contended that, the Presiding Officer had lost his temper and in loud voice told the counsel that, it will be taken in record and asked to produce all the statements and charge-sheet papers in respect of Crime No.13/2019, then the counsel for accused submits that when the witnesses admitted the documents, it is not necessary to

produce the documents, therefore, the Presiding Officer felt insulted and started abusing the counsel for accused in singular words expressing that, the Court will not allow to cross-examine for more than 5 minutes and the case was adjourned to afternoon session and in the afternoon, the Presiding Officer insulted the counsel for accused in the presence of more than 100 advocates and thereby, the Presiding Officer has misbehaved in the open Court.

9. It is contended that, on 15.02.2023, accused No.1 was examined as DW.1 and on the same day, in the afternoon session, the Public Prosecutor submitted his final arguments and case was posted to 01.03.2023 for arguments of defence side. In the mean while, SLP (Crl.) No.10803/2022 was listed before the Hon'ble Supreme Court. Therefore, the counsel for accused intimated the trial Court on 27.02.2023 by filing an advancement and adjournment application and accordingly, on 01.03.2023, the counsel requested the trial Court to adjourn the matter on 18.03.2023, but, the same was rejected and the matter

was adjourned to 03.03.2023. On 03.03.2023, the counsel for accused came to Kalaburagi from New Delhi and sought an adjournment to post the matter on 18.03.2023, but, the learned Presiding Officer, directed the counsel for accused to conclude the argument on day to day basis only, stating that this is a custody matter. It is contended that, by looking to the conduct and expression of the Presiding Officer, he has taken very much interest to dispose off the case and due to exchange of words between the counsel and the Presiding Officer on previous dates of hearing, the accused persons are not having faith on the Court and contends that, they will not get justice, as the Presiding Officer since beginning talking in favour of the prosecution, hence, the counsel prayed to allow the petition and transfer the case in S.C.No.164/2019 to any other Sessions Court for disposal.

10. In support of his oral contentions, the learned counsel relied upon the following decision:

i. Budhya and others vs. State of Uttar Pradesh reported in 1990 CRI. L. J. 64.

ii. Alekh Dutta vs. Khetramohan Sahu reported in (1970) 04 OHC CK 0003

11. The learned High Court Government Pleader contended that, petition filed by the petitioners is not maintainable in law or on facts; the petitioners have made allegations against the Presiding Officer, in spite of granting sufficient opportunities to the learned counsel for the accused/petitioners; the allegations made in the petition are trivial issues, the counsel for accused is making false allegations against the Presiding Officer, hence, the Court may pass appropriate orders in this regard.

12. Having heard the learned counsel for the petitioners, the learned High Court Government Pleader for respondent - State and on perusing the materials available on record, the following point that would arise for Court consideration as under:

"Whether the trial Court has not conducted S.C.No.164/2019 in a fair manner as contended by the petitioners, thus, the said case required to be transferred from III Additional District and Sessions Judge, Kalaburagi to any other District and Sessions Court for disposal of the case in accordance with law?

13. Admittedly, the accused persons have filed this petition under Section 407 of Cr.P.C. for transfer of S.C.No.164/2019 from the file of the III Additional District and Sessions Judge, Kalaburagi to any other District and Sessions Court. The main allegation of the accused persons against the Presiding Officer is that the counsel has already argued in the case before the earlier Presiding Officer, but, the said Presiding Officer was transferred and present Presiding Officer is conducting the present case. As per the contents of the petition, accused persons have taken contention that, once the prosecution had filed an application under Section 311 of Cr.P.C. to recall of PW.18 and it was allowed without cost, but, when the counsel for

accused has filed a similar application for recall of PW.18, it was allowed with cost. It is further alleged that though the counsel for accused made genuine grounds to adjourn the case, the trial Court did not consider it and has not granted an adjournment to the counsel.

14. On perusal of the order sheet maintained by the trial Court in S.C.No.164/2019, the said case was registered on 17.10.2019 for the offences under Sections 302 and 120B read with Section 34 of IPC. The order sheet reveals that, accused No.1 was remanded to judicial custody on 25.01.2019 and accused No.3 was remanded to judicial custody on 19.01.2019 and accused No.2 remained absconding and hence, a separate split up C.C.No.5570/2019 has been registered against him. On 27.01.2020, learned counsel Sri NKB appeared on behalf of accused Nos.1 to 3. On 24.02.2020, charge was framed and the matter was posted for fixing the date for trial. On 17.12.2020, the summons were issued to the witnesses. On 25.01.2021, though PWs.1 and 2 were

present before the Court, the counsel for accused sought an adjournment, hence, the matter was deferred at the cost of Rs.1,000/- and PWs.1 and 2 were cross-examined on 29.01.2021 and from 01.03.2021 till 02.02.2022, in all 18 witnesses have been examined and on 02.03.2022, the accused persons have filed an application under Section 311 of Cr.P.C. to recall PW.17 and it was allowed with cost of Rs.1,000/- and the matter was posted too 14.02.2022 for cross-examination of PWs.17 and 18. On 17.02.2022, PW.17 has been fully examined and PW.18 has been partly examined and on 18.02.2022, PW.18 has been fully examined and since the prosecution closed its side of evidence, the matter was posted for recording the statement of accused persons under Section 313 of Cr.P.C. and on 25.02.2022, statement of the accused under Section 313 of Cr.P.C. were also recorded and the matter was set down for final argument on 03.03.2022. On 03.03.2022, the Trial Court heard the arguments of learned Public Prosecutor and the matter was posted to 11.03.2022 for submission of the arguments of defence

counsel. Again on 21.03.2022, the counsel for accused filed an application under Section 311 of Cr.P.C. for reopening of case and to adduce the defence evidence and said application was allowed by the Trial Court. On 25.03.2022, accused No.1 was examined as DW.1 and the matter was posted to 26.03.2022 for cross-examination of DW.1 and on 26.03.2022, the evidence of accused was closed. Again, the learned Public Prosecutor submitted his arguments and the counsel for defence sought time, therefore, the matter was posted on 11.**03.**2022 for defence arguments. On 11.04.2022, 02.05.2022, 14.06.2022, 11.06.2022, 21.06.2022, 12.07.2022, 21.07.2022 and 03.08.2022, the learned Public Prosecutor as filed an application under Section 311 of Cr.P.C. to recall PW.18. On 30.10.2022, the said application was allowed and PW.18 was recalled for further examination-in-chief and on 02.11.2022, PW.18 further examined in full and again further statement of the accused under Section 313 of Cr.P.C. was recorded by the Trial Court on 07.11.2022 and the matter was set down for arguments.

At this stage again, the learned counsel for accused has filed an application under Section 311 of Cr.P.C. to recall PW.18 and the said application was allowed on 30.11.2022 with cost of Rs.1,000/- and the matter was adjourned to 21.12.2022. On 21.12.2022, the counsel for accused has filed another application for recalling the order dated 30.11.2022 and later, the counsel submits that he is ready to deposit the previous penalty of Rs.1,000/- and thus, PW.18 was recalled and the matter was posted on 30.12.2022.

15. On 30.12.2022, the trial Court noted that the defence counsel is unnecessarily arguing and wasting the valuable time of the Court and other matters are pending, hence, further cross-examination of PW.18 was deferred till 3.00 p.m. on the same day and in the afternoon session, PW.18 was present and fully cross-examined by the defence counsel and the matter was posted for final arguments on 12.01.2023. On 12.01.2023, again the counsel for accused filed one more application under

Section 311 of Cr.P.C. On 04.02.2023, again the trial Court allowed the said application of the accused, accordingly, DW.1 was recalled for adducing further evidence and on 15.02.2023, accused No.1 was cross-examined as DW.1 and the defence has closed its side. Thus, the matter was posted for further arguments. Again the matter was posted on 01.03.2023 at the request of counsel for accused. On 01.03.2023, the counsel Sri NKB remained absent and the learned Public Prosecutor submits before the Trial Court stating that, his senior counsel had been to the Hon'ble Apex Court, hence, sought for long time. Thus, an application was filed under Section 309 of Cr.P.C. for adjournment and the matter was posted to 03.03.2023 for defence arguments. On 03.03.2023, learned counsel Sri NKB for accused sought time. On 03.03.2023, the counsel for accused did not submitted his arguments, therefore, noting the absence of counsel for accused and considering the fact that accused Nos.1 and 2 are in judicial custody, hence, the trial Court has not granted time to address the oral arguments on the

defence side. Hence, the argument has been taken as nil by rejecting the prayer with liberty to file written arguments within 7 days and hence, the matter was posted for judgment on 28.03.2023. On 01.04.2023, the counsel for accused have filed the present petition for transfer of the case from III Additional District and Sessions Judge, Kalaburagi to any other Sessions Court. Though stay is not granted by this Court, the Trial Court has not pronounced the judgment. It is not forthcoming in the record that the counsel for accused has submitted his written arguments within 7 days from 03.03.2023.

16. Under these circumstances, it is just and necessary to analyze Section 407 of Cr.P.C., which reads as under:

> *"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 copy of the grounds on which it is made; and no order shall be made on of 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.

17. In the light of the above proposition of law and the facts and circumstances of the present case, the accused have taken contention that, the Presiding Officer got prejudice in this case by not according ample opportunities to the counsel for accused to submit his oral argument. Though an application filed under Section 311 of Cr.P.C. was allowed, but, the same was allowed with cost of Rs.1,000/- twice and the similar application filed by learned Public Prosecutor was allowed without cost. Therefore, the accused persons have suspected that, they would not get fair justice at the hands of the present Presiding Officer, thus, prayed to transfer the case to any other Sessions Court.

18. Perused the order sheet maintained by the trial Court. The Trial Court in all occasions accorded fair opportunity to the counsel for accused and in all five occasions the counsel for accused has recalled the

witnesses after completion of the prosecution evidence and even after recording the statement of accused persons under Section 313 of Cr.P.C. On three occasions, learned Public Prosecutor submitted his arguments, but, the counsel for accused nowhere inclined to submit his final arguments before the trial Court. The entire order sheet clearly depicts that, the counsel for accused on one or the other occasions went on filing applications by one after another and the trial Court considering the fact that, complete opportunities to be accorded to the accused, accordingly, it has accorded. As per the order sheet dated 03.03.2023, since the counsel for accused was not ready to submit his arguments and therefore, the trial Court considering the age of litigation, as the matter pending since 2019 and accused Nos.1 and 2 are in judicial custody from January, 2019, adjourned the matter for judgment on 28.03.2023, however, the trial Court permitted the counsel for accused to file his written arguments within 7 days. Since the trial Court accorded opportunity to file written argument, the counsel for accused ought to have

filed his written arguments or submit his oral arguments on or before the date reserved for judgment, but, as per the records, it reveals that the counsel for accused has not submitted his oral arguments. It shows that the counsel for accused is not ready to submit his arguments, instead of it, he has filed a transfer petition before the learned Principal District and Sessions Judge, Kalaburagi, but, the learned Principal District and Sessions Judge rejected transfer petition filed by accused in Crl.Misc.No.459/2023 holding that, *"there is no substance in the allegation of accused persons and considering the fact that the case has been reached at the fag end and the matter was posted for judgment, at this stage, if case is transferred to some other Court, definitely it would cause damage to the moral of the trial Court".* The learned Principal District and Sessions Judge opined that the allegations made by the accused/petitioners against the Presiding Officer are without any basis.

19. The learned counsel for petitioners has relied upon the decision in the case of ***Budhya*** (supra), wherein, the Allahabad High Court at paragraph Nos.6 and 8 has held as under:

> *"6. From an over all survey and gleaning of the papers on record. What I gather is the fact that the case has got a chequered history. As has also been observed by the Sessions. Judge, that one party or the other has got objection with the case being tried by one or the other Addl. Sessions Judge posted at Basti and and hence the learned Sessions Judge was constrained in his report addressed to the register of this Court, to write observing therein that it would be desirable if this Court may transfer the case to any district other than Basti in the circumstance enumerated above. It is really a shocking state of affairs and my conscience is in consternation that both the parties did not feel satisfied with the Judges and Magistrates trying their case at Basti and on the other hand, they aspersed on them in some way or the other. I appreciate that there must be a justice oriented approach to a*

matter and it should assure fairness in the dispensation of justice. To criticise a Judge merely that one particular Judge appears to be learning in the favour of one party is reprehensible. I am really pained to notice that in a hotly contested case. parties are prone to resort to all types of aspersions on the Judges and Magistrates unmindful of its consequences visiting on the system. The parties must bear in that Judges are fire-tested impervious to any influences and avarice.

8. In the result the transfer application is allowed. The entire case and all proceedings including the bail matters springing out of case Crime No. 134 of 1989 under Sections 147, 148, 149, 307, 302, 504 and 506, I.P.C.P.S. Dudhiya District Basti pending in the court of Addl. Munsif Magistrate, Basti as well as in the Court of Special Sessions Judge, Basti or wherever else it may be pending. (State v. Budhiya alias Budhi Ram and other), are hereby transferred to the Court of Sessions Judge, Gorakpur. The Sessions Judge, Gorakhpur may either try the case himself or send it to some other Court of Competent

jurisdiction within his sessions. Division for trial and disposal. On receipt of the record of the case the Sessions Judge Gorakhpur shall send the file of the case to the Chief Judicial Magistrates Gorakhpur for committal proceedings subject to the above this application is finally disposed of."

20. The learned counsel for petitioners also relied upon the decision in the case of ***Alekh Dutta*** (supra), wherein, the Orissa High Court at paragraph No.3 has held as under:

"3. Section 526, Code of Criminal Procedure sets out various ground for transfer of which two grounds are of wide amplitude. The ground in Clause (a) of Sub-section (1) of Section 526 is that where a fair and impartial trial cannot be had in any criminal Court it would be a case for transfer. This ground, as is normally understood, is that where on account of adverse attitude of the Court in which the criminal proceeding is pending, there is reasonable apprehension in the mind of the

accused that he would not have a fair and impartial trial. I do not see any reason why this ground should not include a case where there is no allegation against the Court, but that the situation created by the complainant is such that the accused will entertain a reasonable apprehension that he would be able to conduct his defence effectively. Clause (d) of Sub-section (1) of the section is also a ground of wide amplitude. It provides that where the general convenience of the parties and witnesses was rants it, a transfer of the case from one Court to another may be ordered; and Clause (e) provides that a similar order for transfer may be made where it is expedient for the ends of justice that the transfer be so made."

21. The Hon'ble Apex Court in the case of ***Capt. Amarinder Singh vs. Prakash Singh Badal and Others*** in Transfer Petition (Criminal) No.235/2008, at paragraph Nos.9 to 13 held as under:

"9) In K. Anbazhagan vs. Superintendent of Police & Ors. (2004) 3 SCC 767, this Court had an occasion to consider the transfer of a criminal trial from the State of Tamil Nadu to another State, a two Judge Bench, after going into the factual details, particularly, the change of Government attitude of the public prosecutor and finding that there is justifiable and reasonable apprehension of miscarriage of justice as well as likelihood of bias, allowed the Transfer petition pending on the file of XIth Additional Sessions Judge (Special Court No. 1) Chennai, State of Tamil Nadu to the State of Karnataka. While directing the transfer this Court permitted the State of Karnataka in consultation with the Chief Justice of the High Court of Karnataka to appoint a senior lawyer having experience in criminal trials as Public Prosecutor to conduct those cases. In the same order, the Court observed that the public prosecutor will be at liberty to apply that the witnesses who have been recalled and cross-examined by the accused, who have resiled from the previous

statement, may be again recalled. The Court further observed that the public prosecutor would be at liberty to apply to the Court to have these witnesses declared hostile and seek permission to cross-examine them.

10) In Abdul Nazar Madani vs. State of Tamil Nadu and Anr. (2000) 6 SCC 204, the issue dealt with was for transfer of criminal case from one State to another. In the said decision it was reiterated that the purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of case within the State under Section 407 and anywhere in the country under Section 406 Cr.P.C. 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. However, 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. After perusing the figures furnished and considering all the materials, it was concluded that the transfer petitions were totally misconceived and dismissed the same.

11) In Sri Jayendra Saraswathy Swamigal (II) T.N. vs. State of T.N. & Ors. (2005) 8 SCC 771, this Court has held that if there is reasonable apprehension on the part of a party to a case that justice may not be done, he may seek transfer of the case. It also held that the apprehension and parties must be a reasonable one and the case cannot be transferred on a

mere allegation that there is apprehension that justice will not be done.

12) It is a well-established proposition of law that a criminal prosecution, if otherwise, justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political mandate of the informant or the complainant. However, if justifiable and reasonable apprehension of miscarriage of justice and likelihood of bias is established, undoubtedly, the proceeding has to be transferred elsewhere by exercise of power under Section 406 Cr.P.C. For a 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 is one of the principles of administration of justice that justice should not only be done but it should be seen to be done. On the other hand, mere allegations that there is apprehension that justice will not be done in a given case does not suffice. In other words, the court has further to see whether

apprehension alleged is reasonable or not. The apprehension must not only be entertained but must appear to the court to be a reasonable apprehension.

13) 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 Cr.P.C. 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."

22. In view of the facts and circumstances of the present case and in view of the decisions cited supra, it appears that any party can seek the transfer of case within the State under Section 407 of Cr.P.C. The apprehension of not getting a fair and impartial trial is required to be reasonable and not imaginary based upon conjunctures and surmises. The cases cannot be transferred on mere allegations that, there is apprehension that justice will not be done. For transfer of criminal case, there must be a reasonable apprehension on the part of the party to a case that justice will not be done. It is one of the principles of administration of justice that, justice should not only be done but it should be seen to be done. On the other hand, mere allegations that there is apprehension that justice will not be done in a given case does not suffice.

23. On perusal of Section 407 of Cr.P.C., it appears that assurance of fair trial is the first imperative of the dispensation of justice and the purpose of the criminal trial is to dispense fair and impartial justice, uninfluenced by

extraneous considerations. However, the apprehension of not getting a fair and impartial trial is to be reasonable and not imaginary. Free and fair trial is *sine qua non* of Article 21 of the Constitution of India. If the criminal trial is not free and fair and if it is biased, judicial fairness and 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.

24. Whereas, in the instant case, the trial Court accorded opportunities to the accused, but, the counsel for accused made allegations that, the Presiding Officer not accorded opportunities, but, the entire order sheet clearly depicts that, the trial Court has accorded opportunities in all fairness.

25. Taking into consideration the entire facts and circumstances of the case and the materials on record, I am of the view that the petitioners have not made out a case that, they have reasonable apprehension of not availing justice from the Presiding Officer. I have already

pointed out that mere allegation of apprehension that justice will not be done, in a given case alone does not suffice. I am satisfied that the Presiding Officer is conscious of his power and how to conduct fair trial in accordance with law.

26. Admittedly, the case is of the year 2019 and accused persons are in judicial custody since January, 2019 and the trial has been completed in the month December, 2022 itself, hence, the trial Court proceeded to dispose off the matter considering the fact that it is a custody matter, but, the accused persons have instead of co-operating in disposal of the matter, made general allegations against the Presiding Officer without any basis, in order to protract the matter.

27. Admittedly, the counsel for accused is also an Officer of the Court and he is duty bound to assist the Court of law and the seven lamps of advocacy is equally applicable to him viz., the lamp of honesty, the lamp of courage, lamp of industry, the lamp of wit, the lamp of

eloquence, the lamp of judgment and the lamp of fellowship. Therefore, the counsel ought to have submit his final arguments in between 04.03.2022 to 28.03.2023. It shows that the matter was pending for final arguments for more than a year, but, the counsel for accused himself was not ready to submit his arguments, on the contrary, he recalled the witnesses on five occasions and now instead of submitting his arguments, making false allegations against the Presiding Officer. Hence, the present petition is totally misconceived. Accordingly, the following:

ORDER

In view of the observation made above, the petition is disposed off.

The trial Court is directed to accord one more fair opportunity to the learned counsel for accused to submit his oral/written arguments on a particular date to be fixed by the trial Court, then the matter could be post for

judgment and dispose off the case within an outer limit as prescribed under the provisions of Cr.P.C.

Sd/-
JUDGE

SRT
List No.: 2 Sl No.: 1