

AFR

HIGH COURT OF CHHATTISGARH, BILASPURTPCR No. 21 of 2017

Smt. Sunita Saluja W/o Late Shri Jashwant Saluja Aged About 42 Years R/o Lawan Road Baloda Bazar, Tahsil Balodabazar, District Baloda Bazar Bhatapara Chhattisgarh (Complaint) --- **Petitioner**

Versus

1. State of Chhattisgarh through the Superintendent of Police, Baloda Bazar District Balodabazar Bhatapara Chhattisgarh,
2. The Station House Officer, Police Station City Kotwali, Baloda, Baloda Bazar District Balodabazar Bhatapara Chhattisgarh,
3. Ramgopal Soni Investigation Officer/ Station House Officer Police Station Palari, Baloda Bazar District Balodabazar Bhatapara Chhattisgarh ,
4. Dheeraj Markam, S/o Shri Rohit Markam, Aged About 40 Years R/o Utai, P. S. Utai, Tahsil District Durg Chhattisgarh, At Present Inspector, Police Station Baloda Bazar Chhattisgarh (Accused).
5. Sandeep Singh S/o Shri K. S. Thakur, Aged About 35 Years R/o Behind The Old Collector Office, Ward No. 17, Janjgir, District Janjgir Chhattisgarh. At Present Trainer Sub Inspector, Police Station Baloda Bazar Chhattisgarh (Accused),
6. Lomesh Sahu S/o Dwarika Prasad Sahu, Aged About 25 Years R/o Kasdol, P. S. Kasdol, District Balodabazar Bhatapara Chhattisgarh At Present Constable No. 992, Police Station Baloda Bazar Chhattisgarh (Accused).
7. Ku. Leela Sahu, D/o Sonchand Sahu, Aged About 23 Years R/o Sasha, P. S. Palari, District Baloda Bazar At Present Women Constable No. 492, Police Station Baloda Bazar Chhattisgarh (Accused)
8. Pawan Kumar Dahariya, Court Moharrier of Second Additional District And Session, Judge, Baloda Bazar District Balodabazar Bhatapara Chhattisgarh --- **Respondents**

For the applicant : Mr. Prakash Tiwari and Mr. Palash Tiwari, Advocates

For the State//r-1 & R-2 : Mr. Ashish Shukla, Govt. Advocate

For Respondent No.4 : Mr. Ashish Shrivastava, Advocate

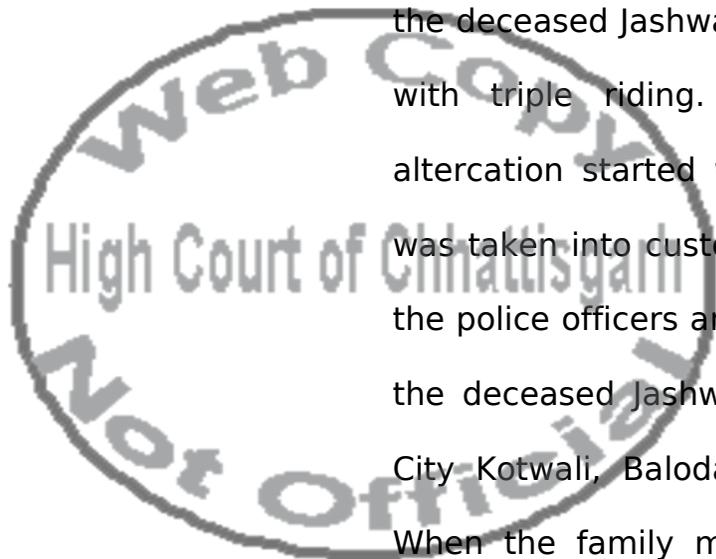
For respondent No. 5 : Mr. Sumit Singh, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

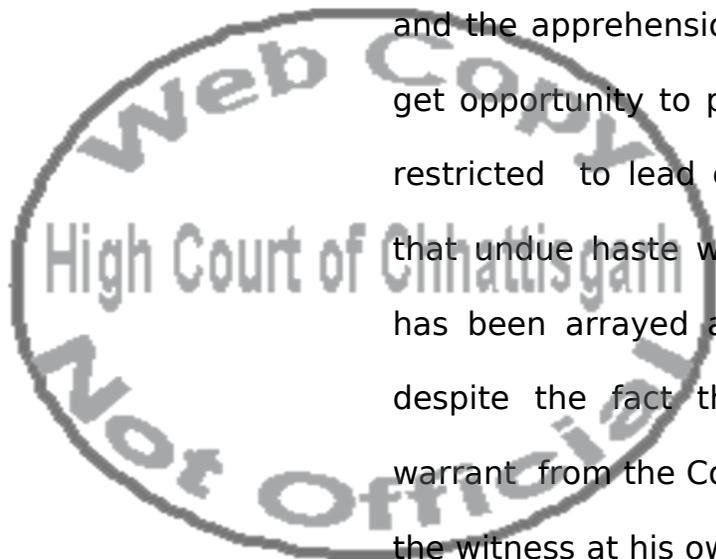
07.03.2018

1. Heard.
2. In this petition filed u/s 407 of the Code of Criminal Procedures, the petitioners for transfer of criminal case bearing Sessions Trial No. 57/2017 pending before the Second Additional Sessions Judge, Baloda Bazar to any other Court of Sessions Judge, Raipur or nearby area in the State.
3. The petition is preferred by one Sunita Saluja wife of late Shri Jashwant Saluja who died in police custody on 09.04.2017. As per the case of prosecution on 09.04.2017 at about 7 p.m., the deceased Jashwant Saluja was travelling on a motorcycle with triple riding. When they were stopped, certain altercation started with the Police officers and the vehicle was taken into custody and little scuffle took place between the police officers and the friends of deceased. Subsequently the deceased Jashwant Saluja was taken to police station, City Kotwali, Baloda Bazar and was kept in confinement. When the family members of deceased after hearing the news went to the police station they saw that deceased was brutally beaten by police persons and eventually succumbed to the injuries on 09.04.2017 itself in the District Hospital Baloda Bazar. The FIR was registered and Crime No.159/2017 was lodged under Section 302 read with section 34 of IPC. On the basis of FIR, the Police Inspector and the Constables were arrested and after investigation, the charge sheet was filed. During the course of trial, an application was preferred by the wife of deceased Smt. Sunita, petitioner herein, seeking permission to engage a counsel by her to



argue the case on her behalf in addition to the counsel appointed by the prosecution. The said application was dismissed with an observation that the petitioner may submit final arguments at the time of final adjudication. Before this Court certain affidavits of the witnesses have been filed that the witnesses were pressurized to give evidence in a way which favours the accused.

4. Mr. Prakash Tiwari and Mr. Palash Tiwari, learned counsel appearing for the petitioner would submit that looking to the manner in which the witnesses are being pressurized, there is every likelihood of tampering the evidence of witnesses and the apprehension looms large that the victim would not get opportunity to place her case properly as she would be restricted to lead evidence before the Court. He submits that undue haste was shown by one of the constable who has been arrayed as respondent No.8 in this petition and despite the fact that there being no order for bailable warrant from the Court, the bailable warrants were issued to the witness at his own instance. It is contended that it would show the nature of favouritism shown by the prosecution agency. He has further gone through the affidavit of one Dilip Kurree and submits that particular mobile number is mentioned wherein he received phone calls and he was pressurized not to give evidence against the accused. Thereafter, the ASI Ishwar Toppo who was posted in P.S. Citi Kotwali, Baloda Bazar along-with other 3 police officers went to the house of witness and pressurized him to give a favourable statement in favour of the accused. He, therefore, submits that under the circumstances, the



Sessions Trial which is pending before the Second Addl. Sessions judge, Baloda Bazar may be transferred to any other Sessions Court.

5. Per contra, learned State Counsel and also counsel for the accused vehemently oppose the arguments. It is contended by the State that false averments have been made by the petitioner as the witness whose affidavit has been filed has been examined before the Court and nothing was divulged. The counsels further submit that even the petitioner has been given right to place the final arguments in the form of written submission at the end of the trial, therefore, no prejudice is caused.

6. Mr. Ashish Shrivastava, counsel for respondent no.4 would submit that the statement of the witnesses would demonstrate the fact that no pressure was exerted on the witnesses, consequently, the case may not be transferred. He further submits that the judicial enquiry report which was also called for has been enclosed, as such the grievance was redressed by the court below itself.

7. Counsel for respondent No.5 would submit that since the petitioner only wants the case to be transferred, it may not be transferred and no compelling reasons exist in this case to transfer the case.

8. Heard the parties.

9. A perusal of the petition would reflect that the petition is filed by the wife of deceased for transfer of Sessions Trial to any other Sessions Court at Raipur or a nearby place. The allegations have been made that the police administration is trying to conclude the trial and fast track the same by

pressurizing the witnesses who are eye-witnesses in this case. A perusal of the petition would show that a particular cell phone numbers have been given with an allegation that the Additional Superintendent of Police made a call to witness Munna @ Madan and Dilip Kumar Kurre from his mobile no.9753178565. The reply of the State is completely silent about such serious allegations, instead, in reply it is stated that the State reserves the right to file a detailed para-wise reply if the occasion arises. This Court fails to understand the averment made in reply as to who has to decide the particular time of occasion which would have come up to file detailed reply. As a result, those serious allegations remain unrebutted.

10. Further the record would show that the statement of Dilip Kumar, son of Shankarlal Kurre has been placed on record. The affidavit dated 10.11.2017 has been filed on 14.12.2017. In the affidavit, witness Dilip Kumar who is said to be the eye witness has deposed that on 02.11.2017 at about 6.41 p.m., he had received a call from Mobile No.97531-78565 and he was pressurized not to give the evidence against the accused. Thereafter, again it is deposed that Assistant Sub-Inspector Ishwar Toppo alongwith other 3 police persons came to his house and pressurized him to change his statement and also made call from his Mobile No. 98261 17944. The statement of the witnesses was recorded on 10.11.2017 itself and it shows that the examination-in-chief was recorded and the cross examination could not be completed. Thereafter by an interim order of this Court dated 16.11.2017, the trial before the court below was

stayed. Therefore, as appears, the examination-in-chief of eye-witness has been recorded and cross examination and re-examination remains to be recorded. The order sheet dated 03.11.2017 which is placed on record contains an endorsement in the margin of note that the bailable warrant has been issued along-with summons. The order sheets of the court do not show that any order for issuance of the bailable warrant was ordered for. Therefore, the affidavit of an eye-witness who has clearly deposed of exerting pressure in particular Mobile number has not been clearly rebutted. The Court cannot also undermine the social fabric of India as it exists today about the relations of public at large with Police as the element of fear is not foreign.

11. The Courts have held that in such cases the aggrieved person can always approach a Court for transfer of a case. The relevant statutory provisions of Cr.P.C. on the subject are set out below:

“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, it may order, (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.”

12. A bare reading indicates that Section 407 enacted with a view to enable the parties to criminal cases to make an application for transfer in case that party apprehends that he cannot get fair and impartial enquiry or trial. The elementary rule of interpretation is that 'Animus Imponentis' i.e.

intention of law givers has to be ascertained. At the same time there is another maxim 'Ut Res Magis Valeat Quam Pereat" which connotes that a statute or any enacting provision must be construed to make it more effective. The Parliament has employed the word fair and impartial trial with obvious object that accused should not be prejudiced. The law requires that an application for transfer can be moved when the applicant apprehends that he would not get equal treatment with the opposite party (herein the victim) or that the personal feelings of the Court would influence his judgment. The Courts are deemed to have inherent power to direct the change of venue in order that a victim may have fair and impartial trial. Change of venue can be had only upon some ground specified in the Statute. The right of the victim to a change of venue upon the ground of inability to obtain a fair trial in the country where the indictment is found or because of local prejudice and excitement is universally recognized.

13. It has been held in the case of **Rajinder Singh @ Manu And anr. Vs State Of West Bengal (2004 CRLJ 4023)** thus in para 19:-

“19. It is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done . Confidence in the administration of justice is an essential element of good Government, and reasonable apprehension of failure of justice in the mind of the litigant public should, therefore, be taken into serious consideration. Courts should not fail to remember that it is their duty no less to preserve an outward appearance of impartiality than to

maintain the internal freedom from business. Transfer in certain cases is made not because the party approaching the Court will not have a fair and impartial trial but because the party has reasonable apprehension that it will not have such a trial.”

14. Further in the case of **Kanaklata Vs. State (NCT of Delhi) and Others {(2015) 6 SCC 617}** the Supreme Court has held thus in para 7 :-

“7.The present appears to be one such case where despite the safeguards provided by the High Court's observations, the apprehension of the complainant continues to subsist. We do not think that such apprehension is wholly misconceived nor can it be dubbed as forum shopping in disguise. The earlier order passed by the trial Court is so strongly worded that it could in all likelihood give rise to a reasonable apprehension in the mind of the complainant which cannot be lightly brushed aside.

..... xxx xxx xxx.....

The question is whether the apprehension of the complainant is reasonable for us to direct a transfer. Justice must not only be done but must seem to have been done.”

15. In the case in hand, this Court cannot ignore the fact that the petition has been filed by the widow of deceased who has suffered the custodial death of her husband. The statement of one of the eye-witnesses Dilip Kumar Kurre who has filed the affidavit shows that he was pressurized to give a statement in a particular way favouring the accused also cannot be shelved. In the facts of the case, the accused persons who are the police personnel and the remaining witnesses are residing at the place of Baloda Bazar wherein the trial is pending, therefore, the indictment cannot be overruled. When the nature of allegations are so made, this

Court cannot sit on the fence to wait for secondary debate to remove the apprehension in the mind of victim after the conclusion of the trial.

16. If the facts are looked into from the angle of victim that she/he would suffer injustice because the fight is against the entire department of Police, the apprehension holds the sway in favour of transfer of the case from the venue. The ratio that justice not only to be done to the accused but also seems to be done equally applies to the victim also. Considering the facts situation of the case, I am of the opinion that the case may be transferred to a competent Sessions Court of Raipur. Accordingly, it is directed that Sessions Trial No. 57/2017 (*State of Chhattisgarh Vs. Dheeraj Markam and others*) pending before the Court of Second Addl. Sessions Judge, Baloda Bazar is transferred to the competent Sessions Court of Raipur.

17. It is further observed that no adverse remark has been made against the trial Court and transfer of case should not be construed as an adverse opinion and remark on the trial Court.

18. With such observation, this petition stands disposed.

Sd/-
GOUTAM BHADURI
JUDGE