

MHCC050003672022



IN THE BOMBAY CITY CIVIL COURT AT BOMBAY
BORIVALI DIVISION, DINDOSHI (BRANCH)

TRANSFER APPLICATION NO.3 OF 2022
(IN CC NO.2575/SS/2020)

Ms. Kangana Ranaut

...Applicant

V/s.

1. Mr. Javed Akhtar

...Respondent No.1

2. The State of Maharashtra

...Respondent No.2

Shri Rizwan Siddiqui, Advocate for applicant.

Shri J. Bhardwaj, Advovate for Respondent No.1.

Shri P.K.Mahajan, Addl.PP for the State/Respondent No.2.

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MHCC050005202022



**TRANSFER APPLICATION NO.5 OF 2022
(IN CC NO.441/SW/2021)**

Ms. Kangana Ranaut

...Applicant

V/s.

The State of Maharashtra
at the instance of Ld.Metropolitan
Magistrate, 10th Court, Andheri.

...Respondent

Shri Rizwan Siddiqui, Advocate for applicant.

Shri P.K.Mahajan, Addl.PP for the State/Respondent.

CORAM: His Honour Additional Sessions Judge
Shridhar M. Bhosale
(C.R.No.1)

DATE : 9th March, 2022.

:ORAL ORDER :
(Common order)

1. The applicant has filed Transfer Application No.3/2022 to transfer CC No.2575/SS/2020 from the Court of Metropolitan Magistrate, 10th Court, Andheri, Mumbai to any other court. Whereas in Transfer Application No.5/2022 relief is sought to transfer criminal complaint bearing 441/SS/2021 to any other court.

2. In short, respondent No.1 has filed complaint under Section 499, 500 of Indian Penal Code (hereinafter referred as 'IPC') bearing CC No.2575/SS/2020. After recording verification statement of respondent

No.1, complaint was sent for inquiry under Section 202 of Code of Criminal Procedure(hereinafter referred as 'Cr.P.C.')

to the police station. After the receipt of the report from the police station, Ld. Metropolitan Magistrate, 10th Court, Andheri has taken cognizance and issued process under Section 499, 500 of IPC. It is contended that offence under Section 499 and 500 of IPC are bailable, non-cognizable and compoundable. Pursuant to the process issued, applicant received summons expressly directing her to be present before the court in person or through her pleader. Therefore, abiding by the said summons, applicant was duly represented by her advocate on 1.3.2021. However, though applicant has appeared through her advocate, Ld. Metropolitan Magistrate issued bailable warrant against applicant. It is contended that thus Ld. Metropolitan Magistrate miserably failed to take note of the fact that the said complaint is to be tried by Magistrate as 'summons triable complaint' as per provisions of Chapter XX of Cr.P.C.

3. Pursuant to the bailable warrant issued by Ld. Magistrate, applicant was present in-person before Ld. Magistrate alongwith her advocate on 25.3.2021 and then bailable warrant issued by Magistrate was cancelled. However, on the very same day, advocate for applicant filed application under Section 205 of Cr.P.C. seeking permanent exemption, however instead of hearing and adjudicating said application, Magistrate has forced the applicant to file exemption application on each and every date of hearing and the absence of applicant was exempted for only for that particular day, without recording reasons as to why the presence of applicant is required for next date. It is contended that Ld. Magistrate has on two different occasions i.e. 27.7.2021 and 14.9.2021 threatened to issue an 'arrest warrant' against the applicant to secure her presence before him for

bailable and non-cognizable offence in presence of media personnel. The said open threats for issuing an arrest warrant against the applicant has been captured by various media personnel on both occasions, but the same was recorded by Ld. Magistrate only in one roznama dated 14.9.2021.

4. Therefore, being aggrieved with the said act of Ld. Metropolitan Magistrate, 10th Court, Andheri, applicant has preferred application under Section 410 of Cr.P.C. before Ld. Chief Metropolitan Magistrate for transfer of case bearing No.2575/SS/2020. Said application came to be rejected on 21.10.2021 by Ld. Chief Metropolitan Magistrate. Thereafter applicant has preferred Revision Application bearing No.251/2021 under Section 397 of Cr.P.C. before the Sessions Court at Dindoshi, which came to be rejected by order dated 31.12.2021 on technical grounds. It is contended that only when the applicant's advocate mentioned to Ld. Metropolitan Magistrate that the applicant has filed Transfer application before Ld. Chief Metropolitan Magistrate court as the same is recorded in the roznama dated 20.9.2021, Ld.Metropolitan Magistrate is now willing to entertain and hear the application for permanent exemption which is pending since 2021 till date.

5. It is contended that in view of above facts, the acts of Ld. Metropolitan Magistrate are arbitrary, bias and unjust behaviour. According to him, despite being aware of the fact that applicant has complied with the summons issued by Ld.Magistrate and duly represented by her advocate deliberately issued bailable warrant. Further Ld. Metropolitan Magistrate failed to adjudicate upon application for permanent exemption filed by the applicant on

25.3.2021 and forcing the applicant to file a fresh exemption application. It is contended that on perusal of the acts of Ld. Metropolitan Magistrate, it is prima facie evident that he is absolutely biased towards the applicant as he is not following procedure of law and guidelines issued by Hon'ble Supreme Court of India and Hon'ble High Court in summons triable cases. Further he is not hearing and disposing of the application for permanent exemption and forcing the applicant to file fresh exemption applications on each date. He is not adjudicating on the issue of giving specific written reasons as to why the criminal proceeding in the preset defamation matter cannot be proceeded with, in absence of applicant. Further besides it Ld. Magistrate is giving open threats to the applicant that he may issue arrest warrant against her if she does not appear on the next date without giving any specific reason in writing. On these counts, applicant seeks transfer of CC No.2575/SS/2020 from 10th Court, Ld. Metropolitan Magistrate, Andheri to any other court.

6. Whereas in the Transfer application No.5/2022, it is contended that in the month of September-2021 applicant has filed Warrant triable criminal complaint bearing No.441/SW/2021 against accused person i.e. Javed Akhtar before Ld. Metropolitan Magistrate, 10th Court, Andheri, Mumbai under Section 383, 384, 387, 503, 506 and 509 r/w Section 30 and 44 of IPC. It is contended that said matter is pending before Ld. Metropolitan Magistrate. However, because of the reasons as specifically mentioned in previous transfer application i.e. Transfer Application NO.3/2022, applicant felt that Megistrate is already biased towards her for some unknown reason as the same is evident in the summons triable complaint of defamation, in which she is an accused and accused is complainant. Therefore, she has filed

application under Section 410 Cr.P.C. before Ld.Chief Metropolitan Magistrate, which came to be dismissed by order dated 18.12.2021. It is contended that there will be grave miscarriage of justice if Ld. Metropolitan Magistrate, 10th Court is allowed to continue to hear and adjudicate both the proceedings.

7. Respondent No.1 has filed reply and strongly resisted both the transfer applications. It is contended that applicant has unsuccessfully challenged the process issued by Ld. Metropolitan Magistrate, 10th Court, on five occasions. It is contended that applicant has approached to the Hon'ble High Court by filing petition for quashing the complaint filed by respondent No.1, but same came to be dismissed. It is contended that after process was issued on 1.2.2021 and summons was issued returnable on 1.3.2022, but applicant did not appear nor exemption was sought. Hence, bailable warrant was issued by Ld. Metropolitan Magistrate. Thereafter on 25.3.2021, applicant appeared before the court and sought bail, which was granted. Further on 26.3.2021, exemption was moved, which was also allowed. Thereafter, applicant has filed Revision petition before Sessions Court Dindoshi challenging said proceeding. However, said revisions came to be dismissed on 5.4.2021. Thereafter, due to SOP on account of Covid-19 on three dates board was discharged by Ld. Metropolitan Magistrate. On 25.6.2021, exemption application was filed by applicant, which was allowed. Moreover on next date i.e. on 27.7.2021 applicant preferred application for exemption on ground of travelling to Budapest for shooting, which also came to be allowed. Then on 1.9.2021 by consent of parties matter adjourned to 14.9.2021. On 14.9.2021 again exemption was sought by applicant on medical ground and respondent No.1 has filed application to issue Non-bailable warrant against

applicant, which was kept in abeyance by Ld. Metropolitan Magistrate. Then on 16.9.2021 applicant has filed complaint against respondent at 10th Court, Andheri, Mumbai under Section 383, 384, 387, 503, 506 and 509 r/w Section 30 and 44 of IPC. Further on 15.11.2021, on the ground of ill-health exemption was obtained by applicant, which was granted by the court. Again on 13.12.2021, exemption was granted by Ld. Metropolitan Magistrate whereas on 4.1.2022 applicant was absent again.

8. It is contended that applicant was not present on twelve dates when the matter was listed. It is contended that attendance of the applicant was required for sole purpose of recording of plea under Section 251 of Cr.P.C. It is contended that applicant is trying to somehow delay the proceeding and unsuccessfully challenging the procedure followed by Ld. Metropolitan Magistrate, 10th Court. It is further contended that applicant has also filed transfer petition before the Hon'ble Supreme Court under Diary No.5224/2021 seeking transfer of the complaint case bearing CC No.2575/SS/2020 pending before 10th Court, Ld. Metropolitan Magistrate, Andheri Mumbai. However, as petition had some defects and as per the procedure, said petition had to be re-filed after clearing the defects within a period of 90 days, which was not done. It is contended that none of the ground raised by way of present application were mentioned in the said petition and thus, it clearly goes to show that present petition is an orchestrated tactics to delay the proceedings before Ld. Metropolitan Magistrate.

9. It is contended that applicant has moved application under Section 205 of Cr.P.C. for seeking exemption from personal appearance before Ld. Metropolitan Magistrate, 10th Court, the reply to which has

already been filed, however, the applicant for the reasons best known to her, not proceeded to argue said application. Whereas owing to the absence of the applicant, trial has not commenced. It is contended that thus applicant has miserably failed to demonstrate her reasonable ground to entertain present transfer application.

10. Respondent No.1 in TA No.5/2022 also filed his reply and resisted the said transfer application. It is contended that since filing of the complaint, matter has been adjourned for four dates and complainant i.e. applicant was absent and was moved applications for exemption which were allowed.

11. I have also called the report of the Ld. MM. Perused the applications and documents. Heard Ld. Advocate for Shri Siddiqui for applicant and Ld. Advocate Shri Bhardwaj for respondent No.1. Perused the detailed written notes of filed by both the parties in TA No.3/2022.

12. Ld. Advocate for applicant has much put grievance about seeking personal presence of the applicant though after issuance of the process, summons subsequently states that she can appear through her advocate and though she appeared through her advocate, Ld. MM has issued bailable warrant and insisted for her appearance and gave threats to remain present, otherwise Non-bailable warrant would be issued. Further he also vehemently submitted that Ld. MM has not followed the procedure which is prescribed by catena of judgments by Hon'ble Supreme Court of India and Hon'ble High Court in respect of exemption in summons cases for appearance of accused. He further submitted that thus Ld. MM is not following provisions of law as well as guidelines laid down by the Hon'ble Supreme Court of India and

Hon'ble High Court. He further submitted that though application under Section 205 of Cr.P.C. has been preferred for seeking permanent exemption, but same was not decided and on every date presence of applicant was sought and in absence compelled to file exemption application. He submitted that thus from these facts, it could be gathered that Ld.MM is biased towards the applicant. In support of the law as to presence of accused in summons case and/or for exemption under Section 205 of Cr.P.C. during the trial of summons case, he has placed hand upon the following judgments:

- i) Judgment in case of M/s Bhaskar Industries Ltd. V/s M/s. Bhiwani Denim & Apparels Ltd., AIR 2001 SC 3125
- ii) Judgment in case of U.P. Pollution Control Board V/s Mohan Meaking Ltd. & Ors., AIR 2000 SC 1456
- iii) Judgment in case of Sidharta Vashisht V/s State (NCT of Delhi), AIR 2010 SC 2352
- iv) Judgment in case of Bhaskar Sen V/s State of Maharashtra and Ors, 2004(4) ALL MR 606

13. Further according to him, Ld. MM has given threat of issuance of Non-bailable warrant in presence of media persons and media has widely published said fact. He submitted that this act of Ld.MM is totally biased. He further submitted that even though application under Section 205 of Cr.P.C. is pending since long, same is not disposed off, but on each and every date, applicant was forced to file exemption application. He submitted that therefore, applicant has strong apprehension that she will not get fair justice from Ld.Magistrate. He submitted that complaint is filed by applicant against respondent, which is pending for verification, but considering grounds already raised in transfer application to the complaint by respondent

No.1 against applicant, applicant feels that it is also not proper to proceed before same court.

14. In support of his arguments, he placed reliance in the following judgments:

- i) Judgment in case of Gurcharan Dass Chadha V/s State of Rajasthan, AIR 1966 SC 1418, wherein it is held that:
“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 of the reasonableness of the apprehension the State of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension.”
- ii) Judgment in case of Captain Amarinder Singh V/s Prakash Singh Badal, (2009) 6 Supreme Court Cases 260, wherein it is held that:
“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.”

- iii) Judgment in case of Ashok Kumar Yadav and Ors. V/s State of Haryana and Ors, AIR 1967 SC 454, wherein it is held that:

“It is one of the fundamental principles of jurisprudence that no man can be a judge in his own cause and that if there is a reasonable likelihood of bias it is 'in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting". The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The basic principle underlying this rule is that justice must not only be done but must also appear to be done and this rule has received wide recognition in several decisions of the Supreme Court. It is also important to note that this rule is not confined to cases where judicial power stricto sensu is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. Justice is not the function of the courts alone; it is also the duty of all those who are expected to decide fairly between contending parties.”

- iv) Judgment in case of Dwarka Prasad Agarwal V/s B.D. Agarwal, (2003) 6 SCC 230, wherein it is held that:

“A party cannot be made to suffer adversely either indirectly or directly by reason of an order passed by any court of law which is not binding on him. The very basis upon which a judicial process can be resorted to is reasonableness and fairness in a trial. Under our Constitution as also the International Treaties and Conventions, the right to get a fair trial is a basic fundamental /human right. Any

procedure which comes in the way of a party in getting a fair trial would be violative of Article 14 of the Constitution of India.”

- v) Judgment in case of Zahira Habibulla Sheikh and Anr V/s State of Gujarat and Ors, (2006) 4 SCC 158, wherein it is held that:

“The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.”

15. Per contra, Ld.Advocate for respondent No.1 submitted that no case under Section 408 of Cr.P.C. is made out for seeking transfer of complaint from Ld.MM, 10th Court, Andheri, to any other Metropolitan Magistrate. He submitted that it is the applicant's own perception that the Ld.MM is biased as applicant asked to remain present only to get

complied with Section 451 of Cr.P.C. and for one or other ground without giving presence, applicant filing applications for exemption which are regularly granted and thus, there is no reason to believe that Ld.MM was biased. He further submitted that only because bailable warrant was issued by Ld.MM due to non-appearance of applicant, applicant has assumed herself that Ld.MM is biased. It is submitted that though application under Section 205 of Cr.P.C. has been filed on 25.3.2021, it is the the applicant who has not come forward to make submission and get decided the said application, whereas going on filing one after another petitions for transfer of proceedings. It is submitted that said application was listed for two dates, however applicant did not argue said application on either dates. He further submitted that applicant has deliberately remained absent for twelve dates and has moved exemption applications on seven dates only as on five dates Covid-19 SOP were in force. Thus, there is no any reason to conclude that Ld.MM has been forced applicant to file exemption application.

16. In support of his arguments, he placed reliance in following judgments:

- i) Judgment in case of Satender Kumar Antil V/s Central Bureau of Investigation and Anr in Petition(s) for Special Leave to Appeal (Crl.) No(s). 5191/2021 by the Hon'ble Supreme Court of India
- ii) Judgment in case of Inder Mohan Goswami & Ors V/s State of Uttaranchal & Ors, AIR 2008 SC 251
- iii) Judgment in case of Usangani Adambhai Vahora V/s State of Gujarat and Ors, AIR 2016 SC 236
- iv) Judgment in case of Captain Amarinder Singh V/s Prakash Singh Badal And others(supra)

17. In connection with TA No.3/2022, Ld.MM has submitted his report and had denied all the allegations. Whereas according to him, he has followed due procedure of law and invoking power under sub-section (2) of Section 205 of Cr.P.C., forced appearance of applicant-accused. According to him, he has never called any media person, but it is the applicant-accused's lawyer who has come alongwith media persons in the court. Whereas in the remark in respect of TA 5/2022, Ld.MM has made request to this court that he has no objection to transfer this application to any other court, but having apprehension that due to conduct of advocate for applicant, in case matter is transferred, said issue of transfer will be placed in other way.

18. I have given thoughtful consideration of the submissions of both the parties.

19. The transfer of CC No.2757/SS/2020 is sought on the following grounds:

- i) Not following procedures of law and guidelines of the the Hon'ble Supreme Court of India and Hon'ble High Court in summons trial case, which especially deals with the issue, that the criminal proceeding in summons trial cases can be proceeded with even in absence of accused if accused is duly represented by an advocate.
- ii) Ld.MM has not hearing and disposing off application for permanent exemption of the applicant since March-2021 and forcing applicant to file fresh exemption applications on each date of hearing.
- iii) Application is not adjudicating on the issue of giving

specific written reasons as to why in the complaint which is related to defamation, matter cannot be proceeded with, in absence of applicant, even when advocate for applicant has specifically mentioned in writing in exemption application that, the plea can be recorded in absence of applicant through her advocate.

- iv) Giving open threat to the applicant before media persons in the court that he may issue arrest warrant against her if she does not appear on next date without giving specific reason in writing.

20. Whereas transfer of Complaint case No.441/SW/2021 is on the fact of having biased mind of Ld.MM due to reasons mentioned in the TA No.5/2022.

21. I would like to state that if the sequence of events related to the proceedings as taken place between the parties is taken into consideration, it could be gathered that after process was issued under Section 499 and 500 of IPC, applicant has given appearance first through her advocate and after issuance of bailable warrant she herself has appeared and got released on bail. Applicant has challenged said proceeding before the Hon'ble High Court, but could not succeed. On consideration of documents, much less, roznamas placed by both the parties, it could be seen that whenever applicant-accused has remained absent and her advocate has filed application, same was granted by Ld.MM and it was never rejected. Whereas application of respondent for issuance of non-bailable warrant was not considered by the Ld.MM and exemption was granted. Therefore, it could be inferred that ultimately Ld.MM sought presence of applicant-accused. Moreover,

whether Ld.MM was followed provisions of law or precedent laid down by the Hon'ble Apex Court and Hon'ble High Court, has to be dealt with in a proceedings in which such order has been challenged. Even otherwise, if submission of Ld.Advocate for applicant is considered merely because Ld.MM has not followed the settled law is not sufficient to conclude biasness on his part, in the circumstances, according to Ld.MM, Section 205(2) of Cr.P.C. empowers him to seek attendance of accused. Whether such power is exercised judiciously and discretion was exercised properly is again a question which has to be dealt with in another angle, but is not sufficient to conclude biasness on the part of Ld.MM.

22. No doubt, it appears that application for permanent exemption was moved on 25.3.2021 and since then it is pending for decision, but it could be also gathered that thereafter due to Covid-19 SOP, the courts has to deal with only urgent matters and even the Magistrate has not insisted during those days presence of applicant. Moreover, the roznama speaks that even applicant-accused has not shown anxiety to get decided said application and it may possible that as applicant had already taken recourse either under Section 410 or 408 of Cr.P.C. and also moved petition before the Hon'ble Supreme Court of India to get transfer said proceeding from 10th Court of Ld.MM. No doubt, Ld.MM ought to have decide said application expeditiously, but the record also not speaks that Ld.MM was not ready to decide said application or deliberately adjourned the same. The contentions of applicant that on every date he was insisting for exemption application on her absence is a judicial order as application for permanent exemption was not decided and only on that point, it cannot be assumed or presumed that Ld.MM was biased. Moreover, applicant in

such circumstances, was having every remedy to approach the appropriate court for challenging the said order.

23. In respect of presence of media persons and threats, to which applicant-accused has referred some of twitts, digital news on TV, enewspapers. It is to be noted that both applicant and respondent are celebrities. Now a days, we know whenever any proceeding against any celebrity has been filed in court of law or in any police station several media persons used to collect the news for their media house. It has been specifically denied by Ld.MM that he has given any threat, But report states that media persons were present. It is a general practice that court gives some times oral directions, it does not mean that it is a threat.

24. It is worth to note that after this petition is filed to transfer CC No.2575/SS/2020, subsequently transfer application came to be filed by applicant to transfer complaint filed by applicant against respondent No.1 in which Ld.MM's report was called. Prior to it, on two occasions applications moved before Ld.MM for transfer under Section 410 of Cr.P.C. and Ld.MM has also called his report. In report to the transfer petition No.5/2022 Ld.MM has given no objection to transfer case keeping reservation about the consequence of said order. Thus, it appears that by frequent transfer applications, Ld.MM has also intend to get relieve himself from the said proceeding. However in this respect, I would like to refer observations of the Hon'ble Supreme Court in case of Usmangani Adambhai Vahora(supra), wherein it is held that:

“Solely because an accused has filed an application for transfer, he is not required to express his disinclination. He is required under law to do his duty. He has to perform his duty and not to succumb to the pressure put

by the accused by making callous allegations. He is not expected to show unnecessary sensitivity to such allegations and recuse himself from the case. If this can be the foundation to transfer a case, it will bring anarchy in the adjudicatory process. The unscrupulous litigants will indulge themselves in court hunting. If they are allowed such room, they do not have to face the trial before a court in which they do not feel comfortable.”

25. It is well settled that the assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when application for transfer is made is not the hypersensitivity. Moreover, 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 a case. The apprehension of not getting 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, the court may transfer case to another court where it feels that holding of fair and proper trial is conducive. Therefore, the analysis of all the materials, the transfer of the case as sought for, is not only to be viewed in favour or against either of the parties. Moreover, mere allegation that there is apprehension that justice will not be done in the given case, alone does not suffice. In absence of any material demonstrating the apprehension that justice will not be done, without any bias, such application for transfer cannot be entertained. Therefore while assurances of fair trial needs to be respected, plea for transfer of case should not be entertained on mere apprehension.

26. Therefore, considering over all material only because court has not decided the application under Section 205 of Cr.P.C., in the circumstances that one after another transfer petitions were filed and only presence of applicant-accused is sought, no material to conclude that Ld.MM was dealing with the matter without fairness and had any biasness against applicant. Therefore, in my considered opinion, applicant has not made out case under Section 408 of Cr.P.C. to transfer both the cases. Accordingly, I pass the following order.

ORDER

Transfer Application No.3 of 2022 and Transfer Application No.5 of 2022 are rejected and disposed off accordingly.

9.3.2022

(Sridhar M. Bhosale)
2nd Addl. Principal Judge
Sessions Court,
Dindoshi, Mumbai.

Date of dictation : 9.3.2022
Date of transcription by steno : 10.3.2022
Signed on : 15.3.2022

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

15.3.2022 at 5.55 p.m.	Mrs.S.A.Kapare (H.G.STENOGRAPHER)
UPLOAD DATE AND TIME	NAME OF STENOGRAPHER
Name of the Judge (With Court Room No.)	H.H.2nd A.P.J. Shridhar M. Bhosale Court Room No.1
Date of pronouncement of Judgment/Order	9.3.2022
Judgment/Order signed by P.O. on	15.3.2022
Judgment/Order uploaded on	15.3.2022