

A.F.R.



2026:AHC-LKO:45578

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

TRANSFER APPLICATION (CRIMINAL) No. - 79 of 2026

Satyendra Nath Shukla

.....Applicant(s)

Versus

State of U.P. Thru. Addl. Chief Secy. Home U.P. Lko. and another

.....Opposite Party(s)

Counsel for Applicant(s)	: Sushil Kumar Singh, Ayush Singh
Counsel for Opposite Party(s)	: G.A., Ayodhya Prasad Mishra A.p. Mishra, Rituraj

Court No. - 14

HON'BLE SUBHASH VIDYARTHI, J.

1. Heard Sri Sushil Kumar Singh, the learned counsel for the petitioner, Sri Rajiv Kumar Verma, the learned A.G.A.-I appearing on behalf of the State and Sri Ayodhya Prasad Mishra, who has put in appearance on behalf of the opposite party no.2 and filed his vakalatnama, which is taken on record.
2. By means of the instant petition filed under Section 407 Cr.P.C. the petitioner has challenged the validity of an order dated 29.06.2026, passed by the Session Judge, Lucknow, allowing Transfer Application bearing Criminal Misc. Case No.783 of 2026, filed by the opposite party no.2 for transferring Session Trial No. 2707 of 2024 titled State Vs. Anshuman Pandey arising out of F.I.R. No.416 of 2013, Police Station Gomti Nagar, District Lucknow from the Court of Additional Session

Judge/Special Judge ATS, Lucknow to the Court of Additional Session Judge, Court No. 4/Special Judge Gangsters Act, Lucknow.

3. Briefly stated, facts of the case are that the opposite party no.2 filed an application under Section 408 Cr.P.C. seeking transfer of Session Trial No. 2707 of 2024 from the Court of Additional Session Judge/Special Judge ATS, Lucknow to the Court of Additional Session Judge, Court No. 5/Special Judge, Gangsters Act, Lucknow, on the ground that previously the Court of Additional Session Judge/Special Judge ATS, Lucknow was presided by Shri Abhinay Kumar Mishra, H.J.S. and he has recorded the testimony of as many as nine prosecution witnesses. Thereafter, Shri Abhinay Kumar Mishra, H.J.S. got transferred to the Court of Additional Session Judge, Court No. 4/Special Judge Gangsters Act, Lucknow, i.e., within the same Sessions Division. Shri Shashwat Pandey, HJS took over the Court of Additional Session Judge/Special Judge ATS, Lucknow.
4. It was stated in the transfer application that Shri Abhinay Kumar Mishra HJS had conducted substantial proceedings in the trial and he is presiding over the Court of Additional Session Judge, Court number 5/Special Judge Gangsters Act, Lucknow within the same Session Division. The continuance of trial before the Presiding Officer who has already heard substantial part of the matter, would advance the cause of fair trial, judicial continuity, proper appreciation of evidence and judicial economy. The opposite party no.2 relied upon a decision rendered by a Division Bench of this Court in the case of **Punjab Singh Vs. State of U.P.**: 1983 Cr.L.J. 205.
5. The applicant-complainant filed an application for impleadment in the transfer application, which was allowed. The learned counsel for the applicant opposed the transfer application by submitting that the Court where the trial has been transferred has already recorded the testimony of PW-10 and no useful purpose would be served by sending the case to some other Court. It was also submitted that the applicant has not leveled

any allegation of bias against the Presiding Officer of the transferee Court, the prosecution evidence is complete and the transferee Court has jurisdiction to conclude the trial.

6. The learned Session Judge allowed the transfer application on the ground that Shri Abhinay Kumar Mishra, H.J.S. has recorded the testimony of as many as nine prosecution witnesses and keeping in view the provisions contained in Section 326 Cr.P.C. and the law laid down by the High Court in the case of **Punjab Singh** (Supra).
7. Assailing the validity of the aforesaid transfer order, the learned counsel for the applicant has submitted that Section 326 Cr.P.C. specifically provides that after transfer of a Presiding Officer, the subsequent incumbent will have the jurisdiction to decide the trial and Section 326 Cr.P.C. does not provide that after transfer of the presiding officer, in case he is posted in another Court in the same Sessions Division, the trial should be transferred to his Court. The learned counsel for the applicant has submitted that **Punjab Singh** (supra) was decided keeping in view the provisions contained in Section 350 of the Criminal Procedure Code, 1898, which had since been repealed. Section 326 of Cr.P.C., 1973 which has replaced Section 350 of Cr.P.C. of 1898, does not contain the provisions which was there in Section 350 Cr.P.C., 1898.
8. He has placed reliance on the judgments of the Hon'ble Supreme Court in the cases of **Ranbir Yadav Vs. State of Bihar**: (1995) 4 SCC 392 and **Bhaskar alias Prabhaskar and others Vs. State represented by Inspector of Police, Vellore, Taluk Police Station, Vellore**: (1999) 9 SCC 551. He has also placed reliance on judgment of a coordinate Bench of this Court in the case of **Anil Kumar Agarwal Vs. State of U.P.**: (2015) 89 ACC 723: 2014 SCC OnLine All 16193.
9. The undisputed facts of the case, so far as are relevant for adjudication of this transfer application are not in dispute. The learned counsel for the parties agree that the trial commenced in the Court of Additional Session

Judge/Special Judge ATS, Lucknow while this Court was presided over by Shri Abhinay Kumar Mishra, H.J.S. The testimony of PW-1 to PW-9 was recorded while the aforesaid Court was presided over by Shri Abhinay Kumar Mishra. Thereafter, he got transferred to the Court of Additional Session Judge, Court No.4/Special Judge, Gangsters Act, in Lucknow Sessions Division itself. Shri Shashwat Pandey, H.J.S. got posted in the Court of Additional Session Judge/Special Judge ATS, Lucknow and he took over the trial from the stage attained by his predecessor. Thereafter the Court recorded the testimony of PW-10. The transfer application was moved on 14.05.2026 on the ground that continuation of trial before the Presiding Officer who had already heard a substantial part of the matter, would advance the cause of fair trial, judicial continuity, proper appreciation of evidence and judicial economy.

10. In **Punjab Singh v. State of Uttar Pradesh** (supra) a Division bench of this Court held that: -

“29. Section 326 thus deals with part-heard cases and provides for the powers of the Judge and the procedure to be followed by him in respect thereof with reference to the situations arising therein. The part-heard case in an inquiry or trial has to reach a stage where the Judge has heard and recorded the whole or any part of the evidence therein, and thereafter if the Judge ceases to exercise jurisdiction therein and is succeeded by another Judge who has or would exercise such jurisdiction, namely, the jurisdiction to continue the trial, he may act on the evidence recorded by his predecessor or may record the evidence himself, and then conclude the trial. In this regard, if the succeeding Judge finds it necessary that he should re-summon the witnesses or any of them, he may do so, and after such further examination, cross-examination or re-examination as he may permit, the witness or witnesses may be discharged.

* * *

31. It is the right of an accused that his case should be decided by a Judge who has heard and recorded the evidence. Thus, unless the jurisdiction of the Judge to continue the trial is taken away expressly or by necessary implication either under a statutory provision or an

order passed to that effect by a competent authority, the Judge shall continue to exercise the jurisdiction to continue a part-heard trial, and he would not be deemed to have been divested of it merely because a change has taken place in his designation. If this be not the true rule, successive changes in the designation of Additional Sessions Judges would result in successive change of hands in the trial of part-heard cases, which does not seem to be the intention of the legislature behind the provisions of Section 326.”

11. The learned Counsel for the petitioner has relied upon the law laid down by the Hon’ble Supreme Court in **Ranbir Yadav** (Supra). In that case, Mr Jethmalani, the learned counsel appearing for all the appellants had submitted that the High Court had no power to transfer the case from the 10th Court to the 5th Court and that too by an administrative order at a stage when, admittedly, the trial had already commenced. He submitted that as per Section 194 of the Code, the power of the High Court to direct a particular court to try a case could be exercised only at the initial stage where trial was yet to commence and not thereafter. He next contended that the Section 407 Cr.P.C. empowered the High Court to transfer a case, but such a power could be exercised judicially only after complying with the requirements thereof and hearing the parties. As, admittedly, the High Court did not exercise such judicial power, the order of transfer whereby the 5th Court acquired jurisdiction, must be held to be void and ineffective. The order of transfer passed by the High Court was not produced before the Hon’ble Supreme Court and the Hon’ble Supreme Court noted that, had it been produced, the Court would have known the facts and circumstances which prompted the High Court to pass that order and clearly apprehended the source of power. However, from the material on record, it appeared that the order was passed by the High Court in its administrative jurisdiction. The Hon’ble Supreme Court held that: -

“12. ... Under Article 227 of the Constitution of India every High Court has superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction and it is trite that this power of superintendence entitles the High Court to pass orders for administrative exigency and expediency. In the

instant case it appears that the High Court had exercised the power of transfer in the context of the petition filed by some of the accused from jail complaining that they could not be accommodated in the courtroom as a result of which some of them had to remain outside. It further appears that the other grievance raised was that the court was so crowded that even clerks of the lawyers were not being allowed to enter the courtroom to carry the briefs. Such a situation was obviously created by the trial of a large number of persons. If in the context of the above facts, the High Court exercised its plenary administrative power to transfer the case to the 5th Court, which, we assume had a bigger and better arrangement to accommodate the accused, lawyers and others connected with the trial no exception can be taken to the same, particularly by those at whose instance and for whose benefit the power was exercised....”.

Mr Jethmalani, however, contended that administrative power could not be exercised at a stage when judicial power was not only available and operational but was equally effective and efficacious. He contended that, if the former was not contained, the latter would be nugatory. The Hon’ble Supreme Court rejected this contention by holding that: -

“13. We are unable to share the above view of Mr Jethmalani. So long as power can be and is exercised purely for administrative exigency without impinging upon and prejudicially affecting the rights or interests of the parties to any judicial proceeding we do not find any reason to hold that administrative powers must yield place to judicial powers simply because in a given circumstance they coexist. On the contrary, the present case illustrates how exercise of administrative powers were more expedient, effective and efficacious. If the High Court had intended to exercise its judicial powers of transfer invoking Section 407 of the Code it would have necessitated compliance with all the procedural formalities thereof, besides providing adequate opportunities to the parties of a proper hearing which, resultantly, would have not only delayed the trial but further incarceration of some of the accused. It is obvious, therefore, that by invoking its power of superintendence, instead of judicial powers, the High Court not only redressed the grievances of the accused and others connected with the trial but did it with utmost dispatch.”

In **Ranbir Yadav** (Supra), the Hon’ble Supreme Court referred to the legislative history behind Section 326 of the Code. In the Code of 1898 the corresponding section was Section 350 and, so far as was material

for the purposes of the case, read as under [Prior to its amendment by Act 26 of 1915]:

*“(1) Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, **ceases to exercise jurisdiction therein, and is succeeded by another Magistrate** who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself or **he may re-summon the witnesses and recommence the inquiry or trial.**”*

Provided as follows:

(a) in any trial the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and reheard;

(b) the High Court or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was held, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.”

(emphasis supplied by the Hon’ble Supreme Court)

The Hon’ble Supreme Court noted that the Legislature added the following sub-section to Section 350(1) by Section 4 of Act XVIII of 1923: -

“(3) When a case is transferred under the provisions of this Code from one Magistrate to another, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter within the meaning of sub-section (1).”

The next legislative change in Section 350 of the Code of 1898 was brought about by Act 26 of 1955. By that, in sub-section (1) of the section for the words “or he may re-summon the witnesses and recommence the inquiry or trial” and the proviso, the following proviso was substituted: -

“Provided that if the succeeding Magistrate is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, he may re-summon any such witness and after such further examination,

cross-examination, and re-examination, if any, as he may permit, the witness shall be discharged.”

When the Code of 1898 was repealed and replaced by the Code of 1973, Section 350 was renumbered as 326 without any textual change. However, later on by the Criminal Procedure Code (Amendment) Act, 1978 the section was amended to vest the power and discretion exercisable thereunder by a Magistrate to a Judge also. With the amendments detailed above Section 326 read, at the time the trial in question took place, and still reads as follows:

“326. (1) Whenever any Judge or Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another Judge or Magistrate who has and who exercises such jurisdiction, the Judge or Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself:

*Provided that if the succeeding Judge or Magistrate is of opinion that **further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged.***

(2) When a case is transferred under the provisions of this Code from one Judge to another Judge or from one Magistrate to another Magistrate, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter, within the meaning of sub-section (1).

*(3) ***”*

(emphasis supplied by the Hon’ble Supreme Court)

The Hon’ble Supreme Court concluded that: -

“20. From a comparative reading of sub-section (1) of Section 350 as it stood prior to its amendment in 1955 and as it stands since then with the change in its numeral and inclusion of the word ‘Judge’ therein we find that the discretion earlier given to the Presiding Officer of the Court to act on the evidence recorded by his predecessor or partly recorded by his predecessor and partly recorded by him still remains. But so far as the other option is concerned, while earlier he could re-summon the witnesses and recommence the inquiry or trial — which necessarily meant a de novo trial — he can now only re-summon a witness who has already been examined for further examination and discharge him after such further examination, cross-examination and re-examination, if any. It is evident therefore that now the Magistrate or Judge can

exercise his judicial discretion only for further examination of a witness already examined and not for fresh examination of witnesses for a fresh trial. Obviously, keeping in view the inevitable frequent changes in the office of the Magistrate and Judge and in order to provide a speedy trial the legislature has taken away the well-established right of the accused to claim a de novo trial and that of the court to so direct by express words of the amending statute of 1955....”

In the case of **Bhaskar @ Prabhaskar** (Supra), the Hon'ble Supreme Court has held that: -

“15. The archaic concept was that the very same judicial personage who heard and recorded the evidence must decide the case. That concept was in vogue for a long time. But over the years it was revealed in practice that fossilisation of the said concept, instead of fostering the administration of criminal justice, was doing the reverse. Very occasionally the judicial officer of one Court was changed and was replaced by another. As evidence had to be recorded afresh by the new officer under the old system, witnesses who were already examined in the cases at the cost of considerable strain and expenses — not only to them but to the exchequer — were resummoned and re-examined. The litigation cost thereby inflicted on the parties used to soar up. The process would have to be repeated over again if such next judicial personage also was changed. Eventually it was learnt that the object sought to be achieved by such repetitions, when compared with the enormous cost and trouble, was not of much utility. Hence the legislature wanted to discontinue the aforesaid antediluvian practice and decided to afford option to the successor judicial officer. The legislature conferred such option only on the Magistrates at the first instance and at the same time empowered them to re-examine the witnesses already examined if they considered such a course necessary for the interest of justice. As the new experiment showed positive results towards fostering the cause of criminal justice the Law Commission recommended that such option should advisedly be extended to Judges of all other trial Courts also.”

12. In **Anil Kumar Agarwal** (Supra) the earlier Presiding Officer of the Court of Special Judge Anti-Corruption (UPSEB) recorded the testimony of all 26 prosecution witnesses and 8 defence witnesses and then the case was listed for writing of judgment. At this stage he got transferred. The successor Judge had the jurisdiction to try the offences concerned, he also recorded evidence of some of the witnesses of defence and also

decided some applications left to be decided by his predecessor. After relying on the decisions in the cases of **Bhaskar, Punjab Singh & Ranbir Yadav and** (Supra) without giving any specific answer to the question formulated, the Court found no merit in the transfer application, for the apparent reason that the transfer Court had jurisdiction to decide the trial.

13. In **Anil Kumar Agarwal** (Supra), this Court had proceeded on the premise that “the main controversy is on the issue; Whether transferred Judge have ‘ceased to exercise jurisdiction in that case’?” There can be no dispute that the successor Judge will have the jurisdiction to decide the case, as the jurisdiction is vested in ‘the Court’ and not vested in ‘the Presiding Officer’.
14. In the present case, the Session Judge has exercised the power of transfer of trial conferred by Section 408 Cr.P.C., which reads as follows: -

“408. Power of Sessions Judge to transfer cases and appeals. - (1) Whenever it is made to appear to a Sessions Judge that an order under this sub-section is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division.

(2) The Sessions Judge may act either on the report of the lower Court, or on the application of a party interested, or on his own initiative.

(3) The provisions of sub-sections (3), (4), (5), (6), (7) and (9) of Section 407 shall apply in relation to an application to the Sessions Judge for an order under sub-section (1) as they apply in relation to an application to the High Court for an order under sub-section (1) of Section 407, except that sub-section (7) of that section shall so apply as if for the words “one thousand rupees” occurring therein, the words “two hundred and fifty rupees” were substituted.”

15. The transfer was neither sought on the ground that the transferee Court has no jurisdiction to decide the same nor has the case been transferred on the ground. Therefore, the judgments relied upon by the learned Counsel for the petitioner have no relevance for examining the validity

of the transfer order passed by the Sessions Judge. The grounds pressed in the transfer application were that continuation of trial before the Presiding Officer who has already heard substantial part of the matter would advance the cause of fair trial, judicial continuity, proper appreciation of evidence and judicial economy.

16. The learned Session judge came to a conclusion that transferring the trial to another Court of Additional Session Judge in the same Sessions Division, which is presided by a Presiding Officer, who has recorded the testimony of as many as nine prosecution witnesses, deserves to be transferred to the Court presided by the same Presiding Officer.
17. The applicant - complainant has challenged the aforesaid order by filing an application under Section 407 Cr.P.C., sub-sections (1) and (2) whereof provide as follows: -

“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."

18. When an applicant files an application before the Sessions Judge for transfer of a case under Section 408 CrPC and that application is rejected, the applicant can approach the High Court by filing a transfer application under Section 407 CrPC, as is specifically mentioned in the proviso appended to Sub-section (2) of Section 407. However, when a transfer application filed under Section 408 CrPC is allowed by the Sessions Judge, the person aggrieved by the transfer order cannot challenge the same by filing another application under section 407 CrPC. The validity of a transfer order can only be challenged by invoking the inherent powers of the High Court, as acknowledged by Section 482 CrPC, which reads as follows: -

"Section 482 - Saving of inherent power of High Court

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

19. Although the applicant ought to have challenged the transfer order by filing a petition under Section 482 CrPC and not under Section 407 CrPC, instead of rejecting the transfer application on this technical ground after detailed submissions on merit of the application have already been advanced, this Court finds it appropriate to examine the merits of the transfer application in exercise of its inherent powers acknowledged by Section 482 CrPC.

20. In **Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque**, (2005) 1 SCC 122, defining the nature and scope of the power under Section 482 observed that: -

*“8....The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. **It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice.** It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle “quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest” (when the law gives a person anything, it gives him that without which it cannot exist). **While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.** It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”*

21. Section 407 (1) Cr.P.C. confers jurisdiction upon the Sessions Judge to transfer any particular case from one Criminal Court to another Criminal Court in his sessions division if it is expedient for the ends of justice. The Sessions Judge has recorded this satisfaction and has transferred the trial to the Court of Additional Session Judge, Court No.4/Special Judge Gangsters Act, which also has jurisdiction over the trial irrespective of the person who is presiding the Court. Therefore, this Court can interfere in the impugned transfer order only if the order occasions an abuse of the process of law or it defeats the ends of justice.
22. An order passed by the Session Judge in exercise of the jurisdiction conferred upon him by Section 407 (1) Cr.P.C. after giving an opportunity of hearing to the parties and after dealing with their submissions, cannot be said to be an order obtained by or resulting in an abuse of the process of law.
23. There is no dispute that the Court in which the trial was originally proceeding and the Court to which the transferred, both have jurisdiction to decide the trial. The learned Sessions Judge has passed the impugned transfer order keeping in view the fact that the Court of Additional Sessions Judge/Special Judge ATS, Lucknow was presided by Shri Abhinay Kumar Mishra, H.J.S., who recorded the testimony of PW-1 to PW-9 and thereafter he got transferred to the Court of Additional Sessions Judge, Court Number 4/Special Judge Gangsters Act in the same Sessions Division, as the learned Sessions Judge has formed the view that completion of trial by the same Presiding Officer, who is available in a Court of competent jurisdiction in the same Sessions Division, will secure the ends of justice in a better manner.
24. When the Court of learned Additional Session Judge/Special Judge ATS, Lucknow and the Court of Additional Session Judge, Court No.4/Special Judge Gangsters Act, both have jurisdiction over the trial, the Session Judge has discretion to allocate the trial to any of the two Courts having jurisdiction over the matter. Upon the transfer application having been

filed, the Sessions Judge invited a report from the Presiding Officer of the transferee Court Sri. Abhinay Kumar Mishra. He stated in his report that while he was the Presiding Officer of the Court of Additional Sessions Judge / Special Judge ATS, he had recorded the testimony of some prosecution witnesses but the prosecution evidence had not completed and at this stage he got transferred to the Court of Additional Sessions Judge / Special Judge Gangsters Act. He stated that the matter was pending at the stage of prosecution evidence and he had not heard the submissions of the parties.

25. It is settled law that the Courts should give due consideration to the demeanor of the witnesses. When the trial commenced and continued till recording of deposition of PW-9 before a particular Presiding Officer in the Court of Additional Session Judge/Special Judge ATS, Lucknow and the Presiding Officer of that Court had the advantage of watching the demeanor of nine prosecution witnesses, which include all the witnesses of fact, and thereafter that Presiding Officer was transferred to another Court in the same Sessions Division, if the learned Sessions Judge found it appropriate to transfer the trial to the Court of Additional Sessions Judge presided by a Presiding Officer who has recorded the deposition of PW-1 to PW-9, then the Session Judge has not committed any error or illegality and the transfer order does not defeat the ends of justice, warranting interference by the High Court in exercise of its inherent power.
26. Interference with the impugned transfer order would neither serve the purpose of giving effect to any order under the Code nor does the impugned order lead to the abuse of process of court that must be prevented. The impugned also does not in any way defeat the ends of justice. Therefore, in absence of there being any error or illegality in the impugned order dated 29.06.2026, passed by learned Sessions Judge, Lucknow in Transfer Application/Criminal Misc. Case No.783 of 2026 in relation to Sessions Trial No.2707 of 2024 (Crime No.416 of 2013, Police Station Gomti Nagar, Lucknow) and the transfer order not

defeating the ends of justice, there is no good ground to interfere in the transfer order by means of invoking the inherent powers of this Court.

27. The petition lacks merit and the same is accordingly **dismissed**.

(Subhash Vidyarthi,J.)

Order Dated: 07.07.2026
Ram.

Whether the order is speaking – Yes
Whether the order is reportable – Yes

(Subhash Vidyarthi,J.)