

# Sanjay Banerjee vs The State Of Uttarakhand Home ... on 14 January, 2020

**Bench: Uday Umesh Lalit, Indu Malhotra**

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IN THE SUPREME COURT OF INDIA  
CRIMINAL ORIGINAL JURISDICTION

Transfer Petition(s)(Criminal)

No(s).

435-436/2

SANJAY BANERJEE

Petitio

VERSUS

THE STATE OF UTTARAKHAND HOME DEPARTMENT  
SECRETARY & ORS.

Respond

O R D E R

The transfer petitions have been filed praying for following principal relief:

“Transfer of Sessions Trial No.120/2014 titled as “State of Uttarakhand vs. Aaina Roy & Ors.” arising out of FIR No.81/2013 pending before the Ld. 5th Additional Sessions Judge, Dehradun (UK) and Sessions Trial No.16/2014 titled as “State of Uttarakhand vs. J.P. Joshi & Anr.” arising out of FIR No.358/2013 pending before the Ld. 5 th Additional Sessions Judge, Dehradun (UK) to the Competent Court of any State of India outside the State of Uttarakhand” It must be stated that earlier Transfer Petition (Crl) Nos.

107-108 of 2014 was preferred in this Court by one Aaina Roy seeking transfer of very same Sessions Trials. Ms. Anitha Shenoy, Senior Advocate was appointed as amicus curiae and in her report dated 25.8.2014 certain circumstances were culled out by the amicus curiae which would lead to an apprehension of bias and mis-

18:01:38 IST Reason:

carriage of justice.

It was submitted by her as under:

“1. The respondent/accused is the Additional Secretary (Home), State of Uttarakhand (though presently under suspension) and the police department comes under the control and supervision of the said Department. The respondent/accused in his complaint to the Senior Superintendent of Police, Dehradun dated 17.11.2013 has stated that he is an officer in the Home Department, State of Uttarakhand. The Directorate of Prosecution also comes under the supervision of the Home Department. The Additional Secretary (Home), is next only to the Senior most officer, namely, the Secretary of Home Department. Therefore, there is a reasonable apprehension that the police and the prosecution may not act in an un-biased manner, which will lead to mis-carriage of justice, In fact, some of the factors in these set of cases sought to be transferred are indicative of bias namely:-

\* A plain reading of the charge-sheets filed in Crime No.81/2013 filed by the respondent/accused against the petitioner and in Crime No.358/2013 filed by the petitioner against the respondent/accused indicates that a very detailed and strong case has been prepared against the petitioner herein by the police, while on the other hand the charge-sheet against the respondent/accused is bare and bereft of any detail.” However, the aforesaid Transfer Petition (Crl.) Nos. 107- 108/2014 came to be withdrawn by the learned counsel appearing for Aaina Roy. Thereafter, the present transfer petitions were filed.

Considering the allegations and assertions made in the transfer petitions, while issuing notice on 08.12.2016, this Court passed the following order:

“Issue notice, returnable within four weeks.

In the meantime, there shall be stay of further proceedings in Sessions Trial No.16/2014 titled as State of Uttarakhand vs. J.P. Joshi & Anr. and Sessions Trial No.120/2014 titled as State of Uttarakhand vs. Aaina Roy & Ors. pending before the Court of 5th Additional Sessions Judge, Dehadun, Uttarakhand.” It is a matter of record that despite the aforesaid order of stay, three accused persons were arrested on 05.10.2017 and they remained in custody till 28.10.2017.

It must be mentioned that by order dated 27.09.2019, Mr. Gopal Sankarnarayanan, learned Senior Advocate was appointed as amicus curiae to assist this Court and by subsequent order dated 7.11.2019, the amicus curiae was directed to be given all facilities when he desired to visit Dehradun in order to be apprised of the ground situation in the matter. After his visit, learned amicus curiae filed a report dated 02.12.2019 stating, inter alia:-

“2.3 Separately, my visit to the Sessions Court in Dehradun on 23rd November, 2019 revealed the following facts:

\* The records of the two Sessions Trial Cases are contained in five bulky files/paper-books going into more than 2000 pages. These comprise all the pleadings, orders, applications for bail, documentation for bond, etc. of each case. Almost all of these records are in Hindi and remain untranslated. I have taken the liberty of un-officially translating crucial parts of it for the purpose of this Report.

\* S.T. No.16/2014 – The examination of the witnesses commenced on 12.11.2014 and continued till 18.03.2016 during which 24 Prosecution witnesses have been examined. Thereafter, both the accused have given their Section 313 Cr.P.C. statements, A-1 to 65 questions and A-2 to 64 questions. It is significant that the Prosecutrix who is PW-1 was examined over a period of 6 days from 18.9.2014 to 15.12.2014 and turned decidedly hostile. She denies that there was any sexual misconduct or misbehaviour by the accused and instead alleges that she was set up to commit a fraud at the behest of her co-accused in the other case.

It is on the basis of this volte-face that the accused was granted bail on 02.02.2015.

\* S.T. No.120/2014 – Two of the accused are absconding in this case, and the trial proceeded against the others. Due to an order of this Hon'ble Court dated 24.08.2015 that was passed while rejecting a bail SLP, the trial was directed to be completed within 9 months. Thereafter, by way of an order dated 8.8.2016, further time was granted to complete the trial. In all, 34 witnesses for the prosecution have been examined from 09.10.2015 to 09.12.2016, usually for between one to three days each. Only PW-34 Mamta Vohra who is Investigating Officer has been examined on as many as 13 separate dates." Apart from what the learned amicus curiae has adverted to, two features of the matter are quite notable. It is accepted that the concerned persons, namely, J.P. Joshi, Rajesh Kotiyal and Richa Kotiyal held positions of some standing in the Government of Uttarakhand. Secondly, it is quite apparent that despite the order of stay granted by this Court on 08.12.2016, three persons were arrested on 05.10.2017, statedly in compliance of a warrant issued by a Competent Court. If the proceedings were completely stayed as a result of order granted by this Court and charge-sheets were already filed, the only possible way in which the warrants could be executed was to secure the presence of the concerned accused at the time when the proceedings were taken up by the Trial Court. If there were warrants which were already in existence, the police ought to have reported to the concerned Court that the trial could not go on as a result of interim order passed by this Court. Considering the entirety of the matter, in our view, ends of justice require that Session Trial Nos.16 and 120 of 2014 which are presently pending consideration before the 5th Additional Sessions Judge, Dehradun, be transferred to a competent Court in Delhi. We order accordingly. We also direct, the Distt. & Sessions Judge, Patiala House Courts to assign the matter to the concerned Judge who may deal with the matter as expeditiously as possible and conclude the proceedings within six months. It is further directed that the prosecution shall be undertaken by one of the regular prosecutors appointed by the State of Delhi. Since the trials have been transferred, we give liberty to the concerned accused to make an appropriate request for recall of such witnesses for further cross examination as is deemed appropriate. Any such request made on behalf of the accused shall be considered purely on merits by the concerned court. It is represented by Mr. Ajay Veer Pundir, learned advocate that a petition under Section 482 Cr.P.C. is presently

pending in the High Court of Uttarakhand pertaining to certain issues arising out of these trials. We give liberty to the petitioner therein to withdraw the petition which is presently pending in the High Court of Uttarakhand and file a fresh one in the High Court of Delhi, if so advised.

Subject to the aforesaid, the trials shall be undertaken from the stage at which the proceedings are transferred to the transferee court.

In the end, we must express our sincere appreciation and gratitude for the efforts put in by both the learned amicus curiae i.e. Ms. Anitha Shenoy and Mr. Gopal Sankaranarayanan. The Transfer Petitions are disposed of accordingly.

.....J. (UDAY UMESH LALIT) .....J. (INDU MALHOTRA ) New Delhi January 14,,2020.

ITEM NO.45

COURT NO.6

SECTION XVI-A

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

IA 19842/2016,116527/2017,116532/2017, in Transfer Petition(s) (Criminal) No(s). 435-436/2016 SANJAY BANERJEE Petitioner(s) VERSUS THE STATE OF UTTARAKHAND HOME DEPARTMENT SECRETARY & ORS.Respondent(s) (Mr. Gopala Sankarnarayanan, Ld. Senior Advocate ( amicus curiae). report has been filed.

IA No. 116532/2017 - APPROPRIATE ORDERS/DIRECTIONS IA No. 116527/2017 - INTERVENTION/IMPLEADMENT IA No. 19842/2016 - STAY APPLICATION) Date : 14-01-2020 These matters were called on for hearing today. CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT HON'BLE MS. JUSTICE INDU MALHOTRA For Petitioner(s) Moh. Fuzail Khan, Adv.

Mr. Umair Ahmad Siddiqui, Adv. Mr. Rajeev Singh, AOR Mr. Yogesh Kr., Adv.

For Respondent(s) Mr. Joginder Tuli, Adv.

Ms. Joshini Tuli, Adv.

Mr. Harish Plant, Adv.

Mr. Anis Ahmed Khan, AOR Mr. Jatinder Kumar Bhatia, AOR Mr. Ashutosh Kr. Sharma, Adv.

Dr. Ajay Veer Pundir, Adv.

Ms. Anu Gupta, AOR Mr. Chirag Joshi, Adv.

Mr. Ghanshyam Joshi, AOR UPON hearing the counsel the Court made the following  
O R D E R The Transfer Petitions are allowed in terms of the signed order.

Pending applications, if any, also stands disposed of.

(INDU MARWAH)  
COURT MASTER

(SUMAN JAIN)  
BRANCH OFFICER

(signed order is placed on the file)