

A VENKATESAN BALASUBRAMANIYAN

v.

THE INTELLIGENCE OFFICER, D.R.I. BANGALORE

(Criminal Appeal No. 801 of 2020)

B NOVEMBER 20, 2020

**[ASHOK BHUSHAN, R. SUBHASH REDDY AND  
M. R. SHAH, JJ.]**

*Code of Criminal Procedure, 1973:*

- C ss. 167(2) and 439(2) – Two cases registered under NDPS Act – One case was of recovery of contraband from the car of the appellants-accused in Hyderabad – Another case was of recovery of contraband from the factory, in the State of Maharashtra from where the appellant-accused were transporting the contraband –
- D Combined complaint was submitted in respect of both the cases in the Court, in the State of Maharashtra – Default bail u/s.167(2) granted to appellants-accused by the court in Hyderabad on the ground that charge-sheet was not filed within 180 days – Thereafter, custody of the appellants-accused granted to the Court in Maharashtra in respect of the second case – Court in Maharashtra
- E found that combined complaint since was already filed within 180 days before it, default bail could not have been granted – Application before High Court by authority concerned u/s. 439(2) seeking cancellation of default bail – Bail cancelled by High Court – Appeal to Supreme Court – Held: The combined complaint having been filed well within 180 days, High Court did not commit any error in cancelling the default bail.
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**Dismissing the appeals, the Court**

- G HELD: 1. It is true that there were two offences, one at Hyderabad being at the instance of D.R.I., Hyderabad and another by the D.R.I., Bangalore. A combined complaint taking care of both the offences was filed before the Special Court, Omerga, Maharashtra wherein offences committed by the accused were also inquired and dealt with. There is ample material in the complaint that the transportation of narcotic substance started from Omerga, Maharashtra and was being allegedly to be taken
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to Chennai and intercepted at Hyderabad. The complaint gives the detailed facts including the journey and the interception of appellants at Hyderabad. [Para 12][951-D-F]

2. It was not even submitted that the Court where common complaint had been filed against the accused had no jurisdiction to inquire and try the offence. It was due to some miscommunication that at the time when Court passed the order on 12.07.2018, the factum of filing of combined complaint dated 06.07.2018 was not brought into the notice of Special Court, Hyderabad. Although, letter of the same date 12.07.2018 was received by Special Court, Hyderabad from Special Court, Omerga praying for custody of the appellants, which custody was also granted by the Special Court, Hyderabad on the next day, i.e., 13.07.2018. [Para 11][951-B-C]

3. All these facts were brought before the High Court in application filed under Section 439(2) Cr.P.C. The combined complaint having been filed on 06.07.2018, i.e., well within 180 days, the High Court did not commit any error in cancelling the default bail, granted to the appellants on 12.07.2018. [Paras 11 and 12][951-D, F]

4. It is open for the appellants to file regular bail application before Omerga Court under Section 439 Cr.P.C. afresh, which may be considered on merits. [Para 13][951-H]

*Pandit Dnyanu Khot v. State of Maharashtra and Ors.*,  
(2008) 17 SCC 745 – relied on.

Case Law Reference  
(2008) 17 SCC 745              relied on              Para 10

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 715 of 2020.

From the Judgment and Order dated 30.11.2018 of the High Court of Judicature at Hyderabad in Criminal Petition No. 10524 of 2018.

With

Criminal Appeal Nos.802 and 803 of 2020.

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A       Vikramjit Banerjee, ASG, M. Karpaga Vinayagam, Sr. Adv., Raj Narayanan, SCV Vimal Pani, A. Lakshminarayanan, Abhishek Kumar, Sanjay Kumar Tyagi, B. Krishna Prasad, Advs. for the appearing parties.

The Judgment of the Court was delivered by

**ASHOK BHUSHAN, J.**

B       1. Leave granted. These three appeals have been filed against the common judgment dated 30.11.2018 of the High Court of Judicature at Hyderabad in Criminal Petition No.10524 of 2018 filed by the respondent before the High Court. By the impugned judgment dated 30.11.2018, the petition filed by respondent Under Section 439(2) Cr.P.C.

C       has been allowed cancelling the bail granted to the appellants by order dated 12.07.2018 by Metropolitan Sessions Judge, Hyderabad.

D       2. The facts and issues in these appeals being similar, it shall be sufficient to refer to the pleadings in **Criminal Appeal arising out SLP (Crl.) No.1452 of 2019- Venaktesan Balasubramaniyan Vs. The Intelligence Officer** for deciding all these appeals, brief facts of which are as under:-

2.1   On 11.01.2018, car bearing No. KA 39 M 2117 was intercepted by Directorate of Revenue Intelligence (hereinafter referred to as "D.R.I."), Hyderabad at toll plaza, Kamkole Village, Munnipalli Mandal, Sangareddy District, Telangana in which appellants (driver and two men) were travelling. The appellants along with other two persons introduced themselves on being asked as to whether they have secreted anything illegal in the car, the appellants replied in negative. The Officers searched the car and found false casing behind the rear seats on the side walls of the boot of the car with metal doors. The appellants opened the door and few transparent packets with off-white coloured packets were found in the casing attached to the walls of the boot. The appellants told that packets were of Narcotic drug, which were loaded in the car by a person named Suraj at Omerga, Osmanabad District Maharashtra,

F       which were to be delivered at Chennai. The Officers in presence of Panchas and the appellants opened the packet and tested the materials in the packet. The appellants were taken to the office of D.R.I., Hyderabad. The total quantity of packets (Methaqualone) weighed to be 45.874 Kgs.

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- 2.2 On 12.01.2018, the appellants were arrested in exercise of power conferred under Section 42 of NDPS Act, 1985 (hereinafter referred to as “Act, 1985”). The D.R.I. officers prepared a crime report against all the accused-appellants for commission of offence under Sections 22, 28 and 29 of NDPS Act and produced them before the VI Additional CMM, Hyderabad. The duty Magistrate on 12.01.2018 allowed the application for remand and the appellants were remanded till 25.01.2018. On 25.01.2018, the appellants-accused persons were produced before the Special Sessions Judge Court, D.R.I., Hyderabad. Remand of the appellants was extended from time to time. On 10.07.2018 the appellants were remanded only for two days since 180 days prescribed for filing charge sheet were coming to an end on 12.07.2018. A
- 2.3 On 12.07.2018, since 180 days had expired, the appellants filed bail application. Learned Special Sessions Judge, Hyderabad granted bail to the appellants under Section 167(2) Cr.P.C. On 12.07.2018, a letter was received from the Additional Sessions Judge, Omerga, Maharashtra asking to handover the custody of appellants to D.R.I., Bangalore as they were required to appear before the Additional Sessions Judge, Omerga, Maharashtra in Special Case (NDPS) No.17 of 2018. The Sessions Court, Hyderabad granted the custody of three accused on 13.07.2018 to the D.R.I., Bangalore. D.R.I., Bangalore produced the appellants before Additional Sessions Judge, Omerga, Maharashtra on 14.07.2018 where they were remanded till 27.07.2018. B
- 2.4 On 02.08.2018, D.R.I., Bangalore filed application before the Special Court, Hyderabad to transfer the records in the Hyderabad case to Omerga Sessions Court. On 24.08.2018, the Special Sessions Judge, Hyderabad transferred the records to the Omerga Court. When Special Court, Omerga, Maharashtra came to know that the appellants-accused have already been granted bail on 12.07.2018 before which date charge sheet was already filed before the Omerga Court on 06.07.2018 which was taken on file on 11.07.2018 C
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- A A show cause notice was issued to D.R.I., Bangalore to give explanation. The D.R.I., Bangalore filed an application for cancellation of bail under Section 439(2) Cr.P.C. in the High Court by filing Criminal Petition No. 10524 of 2018. The High Court by the impugned order dated 30.11.2018 cancelled the bail granted under Section 167(2) Cr.P.C. dated 12.07.2018. Aggrieved against the order dated 30.11.2018, these appeals have been filed by the three accused-appellants.
- C 3. This Court on 22.02.2019 noticed that only one of the appellants, i.e., Villayutham Nagu, has been released in pursuance of the bail order dated 12.07.2018, interim order was passed in the special leave petition filed by Villayutham Nagu alone and other two appellants being still under custody, notices were issued in all the matters.
- D 4. We have heard Shri M. Karpaga Vinayagam, learned senior counsel for the appellants. Shri Vikramjit Banerjee, learned Additional Solicitor General has appeared for the respondent.
- E 5. Learned senior counsel for the appellants submits that before the Special Judge, Hyderabad when the case was taken on 12.07.2018 neither any charge sheet was filed before the Special Court Hyderabad nor any information was given to the Special Court that any charge sheet has been filed in Omerga Court, Maharashtra. No complaint under Section 36A(d) of NDPS Act having been filed by 12.07.2018 by which period, 180 days had lapsed, the learned Special Court had granted default bail on 12.07.2018 to all the appellants. The accused were entitled for default bail under Section 167(2) Cr.P.C. Learned Senior counsel submits
- F that instead of filing an application for cancellation of the bail before the Special Court under Section 439(2) Cr.P.C., the respondent approached before the High Court under Section 439(2) Cr.P.C. When the bail order was passed by the Special Court, D.R.I., Bangalore ought to have informed the Special Court seeking the cancellation of the bail by giving explanation as to why the fact of filing combined complaint was not
- G informed to the Special Court. It is submitted that recovery of contraband from accused by the D.R.I. Hyderabad is entirely different from the Omerga case, which is relating to the recovery of the contraband manufactured at the factory situated at Omerga. The appellants are to be charged only for the offence of possession and the transport. The
- H appellants have no role to play with reference to the manufacture of

contraband in the factory at Omerga. The seizure of the contraband was made by the D.R.I., Hyderabad on 11.01.2018 only during the time between 12 PM to 3:30 PM at Hyderabad whereas the recovery of contraband from the factory at Omerga was made by the D.R.I., Bangalore only on 11.01.2018 at 4.30 PM and on 12.01.2018. It is further submitted that when the Special Court was not informed either on 10.07.2018 or 12.07.2018 that any charge sheet has been filed on 06.07.2018, no error was committed by Special Court in granting the default bail under Section 167(2) Cr.P.C.

6. Learned Additional Solicitor General refuting the submissions of the learned senior counsel for the appellants contends that the appellant's Car was intercepted at Hyderabad on basis of specific and credible information that huge quantity of NDPS substance being illegally manufactured in premises of M/s. Pragati Electrical Work Omerga, which is being transported to Chennai. A total of 45.874 Kgs of NDPS substance from the appellants was seized on the basis of specific intelligence. In the voluntary statements of accused Nos. 5, 6 and 7 (appellants), recorded under Section 67 of the Act, 1985 in connection with the seizure of 45.874 Kgs. of substance, they have stated that started from Omerga for Chennai. It is submitted that a combined charge sheet has been filed taking into consideration the entire sequence of events including the seizure of 45.874 Kgs. NDPS substance by D.R.I., Hyderabad in which present appellants are accused Nos. 5, 6 and 7. It was due to non-communication of information of combined complaint having been filed on 06.07.2018, the order was passed by the Special Court on 12.07.2018 granting default bail whereas on the same day, a letter was received by Special Court, Hyderabad where the Special Court, Omerga has asked for the custody of the accused. All the appellants filed a bail petition on 18.07.2018 before the Omerga Court under Section 439 Cr.P.C., which bail application was subsequently withdrawn on 25.09.2018. On 31.10.2018, upon fulfilling the conditions by one of the accused, Villayutham Nagu, the learned Omerga Court was pleased to release the said accused on 31.10.2018 and rest of the two accused are still in Osmanabad Jail. The High Court rightly cancelled the bail, which was earlier granted by the learned Special Judge and the combined complaint having been filed on 06.07.2018, which was also taken on file on 11.07.2018, the appellants were not entitled for grant of default bail under Section 167(2) Cr.P.C.

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- A        7. We have considered the submissions of the learned counsel for the parties and have perused the records.
- B        8. The appellants' car by which they were travelling from Omerga to Hyderabad on 11.01.2018 was intercepted by the D.R.I. officials of Hyderabad Zonal Unit near the Kamkole near Hyderabad and from the possession of the appellants 45.874 Kgs of narcotic substance was recovered. Appellants in the statement recorded under Section 67 of NDPS Act have stated that they have started from Omerga to Chennai in the car in which the narcotic substance was being transported. The remand of the appellants was extended from time to time till 12.07.2018
- C        by Special Court, Hyderabad. On 11.01.2018, recovery of narcotic substance was also made at Omerga in the factory premises of M/s Pragati Electrical Work, MIDC Omerga, Maharashtra, on which D.R.I. has registered a case and a combined complaint dated 06.07.2018 was submitted by Intelligence Officer, D.R.I., Bangalore before the Special Court, Omerga. Complaint under Section 36A(1)(d) of NDPS
- D        Act for offences under Section 8(c) punishable under Section 21(c), 22(c), 23(c), 28 and 29 read with Section 38 of the NDPS Act has been filed dated 06.07.2018 by Intelligence Officer, D.R.I. in Omerga Court. The appellants have been made accused Nos. 5, 6 and 7 in the complaint. The combined complaint has been brought on the record by the respondent alongwith additional documents in which with regard to accused Nos. 5, 6 and 7, i.e., appellants in these appeals, apart from other allegations and facts, following has been stated in paragraphs 110 and 111:-
- E        “**110.** The complainant submits that, accused No. 5, 6 and 7 i.e. Shri Villautham Nagu (**A5**), Shri Venkatesan Balasubramaniyan (**A6**) and Shri Vijay Kumar L (**A7**), who were possessing / carrying the “**Ketamine Hydrochloride**” a psychotropic substance in commercial quantity in their car bearing No. KA-39-M-2117 from Omerga to Chennai and the same was seized on 11.01.2018. Hence, they had committed an offence under Section 8(c) and 9A are liable to be punished under Section 21(c), Section 22(c), Section 23(c) read with Section 28, Section 29 and Section 38 of the NDPS Act, 1985.
- F        **111.** Ketamine Hydrochloride seized from accused No. 5, 6 and 7 under Mahazar dated 11.01.2018, under Mahazar dated 11/ 12.01.2018 and under 11.02.2018 have been submitted to the

Hon'ble Court vide various Memos in a sealed cover are liable for confiscation under the provisions of Section 60, 61, 62 and 63 of the NDPS Act. This Hon'ble Court may be pleased to pass appropriate order relating to the confiscation of the above said goods in terms of Section 63 of the NDPS Act.

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Sl. No.	Quantity	Remarks
01.	45.874 Kgs	Seized under Mahazar dated 11.01.2018
02.	500 Grams	Seized under Mahazar dated, 11/12.01.2018
03.	9.65 Kgs	Seized under Mahazar dated 11.06.2018

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9. The High Court in the impugned judgment noted that charge sheet having been filed on 06.07.2018, i.e., well within the stipulated period of 180 days, the accused could not have been granted the benefit under Section 167 Cr.P.C. In paragraph 8, following has been observed by the High Court:-

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“8. .... It can be culled out from the record that filing of the single charge sheet on 06.07.2018 before the Additional Sessions Court, Omerga, was not brought to the notice of the Metropolitan Sessions Court, Hyderabad for whatever reason may be. Since the factual aspect remains that the charge sheet was filed on 06.07.2018 i.e., well within the stipulated period of 180 days, the respondents-accused are not entitled for the benefit under Section 167(2) Cr.P.C. Under these circumstances, the respondents-accused are entitled for bail in accordance with the provisions laid down under the NDPS Act read with Sections 437 and 439 Cr.P.C. and accordingly they are entitled to work out the remedies under the said provisions.”

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10. It is true that the bail granted under Section 167(2) Cr.P.C. could have been cancelled under Section 439(2) Cr.P.C.. This Court in **Pandit Dnyanu Khot Vs. State of Maharashtra and Ors., (2008) 17 SCC 745** while considering the case where bail granted under Section 167(2) Cr.P.C. was cancelled under Section 439(2) Cr.P.C. by learned Sessions Judge after noticing the facts upheld the order under Section 439 Cr.P.C. cancelling the bail. Paragraphs 7, 8 and 9 of the judgment are as follows:-

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- A      “7. In the present case, against the accused, FIR for the offences punishable under Sections 302, 307, 147, 148, 149, 324 and 323 IPC and Section 27 of the Arms Act was registered. The accused were arrested on 28-10-2000 and were produced before the Judicial Magistrate. They filed an application under Section 167(2) CrPC on 25-1-2001 for releasing them on bail on the ground that charge-sheet was not submitted within the stipulated time and the court released them on bail on the same date by exercising jurisdiction under Section 167(2) CrPC. The State filed an application on 31-1-2001 under Section 437(5) and Section 439(2) CrPC before the Sessions Judge, Kolhapur for cancellation of bail. Before the said application could be finally disposed of, the accused preferred an application Ext. 8 submitting that an application under Sections 437(5) and 439(2) was not maintainable before the Sessions Court and the State ought to have approached the learned Magistrate for cancellation of the bail. That application was rejected by the learned Additional Sessions Judge by order dated 3-3-2001. Thereafter, the learned Additional Sessions Judge by judgment and order dated 2-5-2001 allowed the said application and set aside the order passed by the Judicial Magistrate on the ground that the accused were released on the 89th day, that is, before expiry of 90 days.
- B      8. In our view, it appears that the High Court has committed basic error in not referring to the provisions of Section 439(2) CrPC which specifically empower the High Court or the Court of Session to cancel such bail. Section 439(2) reads as under:
- F      “439. *Special powers of High Court or Court of Session regarding bail.—(1)\*\*\**
- (2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.”
- G      9. The proviso to Section 167 itself clarifies that every person released on bail under Section 167(2) shall be deemed to be so released under Chapter XXXIII. Therefore, if a person is illegally or erroneously released on bail under Section 167(2), his bail can be cancelled by passing appropriate order under Section 439(2) CrPC. This Court in *Puran v. Rambilas* [(2001) 6 SCC 338] has also clarified that the concept of setting aside an unjustified, illegal
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or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation.” A

11. It is not even submitted before us that Omerga Court where common complaint has been filed against the accused had no jurisdiction to inquire and try the offence. It was due to some miscommunication that at the time when Court passed the order on 12.07.2018, the factum of filing of combined complaint dated 06.07.2018 was not brought into the notice of Special Court, Hyderabad. Although, letter of the same date 12.07.2018 was received by Special Court, Hyderabad from Special Court, Omerga praying for custody of the appellants, which custody was also granted by the Special Court, Hyderabad on the next day, i.e., 13.07.2018. All these facts were brought before the High Court in application filed under Section 439(2) Cr.P.C. and the High Court has rightly cancelled the bail order dated 12.07.2018. We do not find any error in the order of the High Court cancelling the bail order dated 12.07.2018. B C D

12. It is true that two offences, one at Hyderabad being at the instance of D.R.I., Hyderabad namely D.R.I. 48 of 2018 was registered and another case Special NDPS No. 17 of 2018 by the D.R.I., Bangalore, Zonal Unit. A combined complaint taking care of both the offences was filed before the Special Court, Omerga as noted above wherein offences committed by the accused were also inquired and dealt with. There is ample material in the complaint that the transportation of narcotic substance started from Omerga, Maharashtra and was being allegedly to be taken to Chennai and intercepted at Hyderabad. The complaint, which has been brought on the record gives the detailed facts including the journey and the interception of appellants at Hyderabad. The combined complaint having been filed on 06.07.2018, i.e., well within 180 days, the High Court did not commit any error in cancelling the default bail granted to the appellants on 12.07.2018. E F

13. We, thus, are of the view that there is no ground for interfering with the impugned judgment /order of the High Court. We have noted above that regular bail application under Section 439 Cr.P.C. was filed before the Omerga Court by the appellants, which was withdrawn on 25.09.2018, we are of the view that it is open for the appellants to file regular bail application before Omerga Court under Section 439 Cr.P.C. afresh, which may be considered on merits without being influenced by G H

- A any observations made by the order passed by the High Court in the impugned judgment or observations made by us. We further observe that bail application to be filed by the appellants under Section 439 Cr.P.C. be considered and decided expeditiously. The order dated 12.07.2018 having been set aside by the High Court, which order having been confirmed by this Court, the appellant, Villayutham Nagu is to surrender before the Special Court, Omerga. All the appeals are dismissed subject to liberty granted to the appellants as above.
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Kalpana K. Tripathy

Appeals dismissed.

JATINDERVEER ARORA & ORS.

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v.

STATE OF PUNJAB

(Transfer Petition (Criminal) No. 452 of 2019)

NOVEMBER 25, 2020

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[HRISHIKESH ROY, J.]

*Code of Criminal Procedure, 1973:*

s. 406 – Power under – Scope of – Held: Powers u/s. 406 must be exercised sparingly and only in deserving cases – Each case has to be decided on its own facts – Apprehension of not getting a fair and impartial trial cannot be founded on general allegations – Consideration for transfer cannot be just the convenience of the petitioner, but also of the complainant, witnesses and the prosecution – The transfer would also reflect on the credibility of the judiciary – Facts of the present case do not show that situation in the State was not conducive for a fair trial for the prosecution and warrant transfer of the case to another State – However, State is directed to ensure safe conduct of proceedings at the trial courts and to provide adequate security to the petitioners.

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**Dismissing the tranfser petitions, the Court**

**HELD:** 1. For transfer of trial from one Court to another, the Court must be fully satisfied about existence of such factors which would make it impossible to conduct a fair trial. General allegation of surcharged atmosphere is not however sufficient. The apprehension of not getting a fair and impartial trial, cannot be founded on certain grievances or convenience of the accused but the reasons have to be more compelling than that. No universal Rules can however be laid down for deciding transfer petitions and each case has to be decided in the backdrop of that case alone. One must also be mindful of the fact that when trial is shifted out from one State to another, it would tantamount to casting aspersions on the Court, having lawful jurisdiction to try the case. Hence powers under Section 406 CrPC must be exercised sparingly and only in deserving cases when fair and impartial trial uninfluenced by external factors, is not at all

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- A possible. If the Courts are able to function uninfluenced by public sentiment, shifting of trial would not be warranted. [Para 11] [962-B-D]

*Maneka Sanjay Gandhi v. Rani Jethmalani (1979) 4 SCC 167 : Abdul Nazar Madan v. State of T.N. & Anr. (2000) 6 SCC 204 : [2000] 3 SCR 1028;*

- B *R. Balakrishna Pillai v. State of Kerala (2000) 7 SCC 129 : [2000] 3 Suppl. SCR 26; Zahira Habibullah H. Sheikh v. State of Gujarat (2004) 4 SCC 158 : [2004] 3 SCR 1050; Sri Jayendra Saraswathy Swamigal (II), T.N. v. State of T.N. (2005) 8 SCC 771 : [2005] 4 Suppl. SCR 556; Captain Amrinder Singh v. Prakash Singh Badal & Ors. (2009) 6 SCC 260 : [2009] 9 SCR 194; Nahar Singh Yadav & Others v. Union of India & Ors. (2011) 1 SCC 307 : [2010] 13 SCR 851; Umesh Kumar Sharma v. State of Uttarakhand (2020) SCC OnLine SC 845 - relied on.*

2. The projection of surcharged atmosphere is not borne out by the corresponding reaction of the petitioners, who are out on bail. Being residents of Punjab, they continue to reside at their usual place and are going about their routine affairs. If their

- E threat perceptions were genuine, they could not have gone about their normal ways. For this reason, the Court is inclined to believe that the atmosphere in the State does not justify shifting of the trial venue to another State. [Para 13][962-G; 963-A]

- F 3. While there is a specific instance of one of the defence lawyer disassociating himself from the case on personal ground, the two regular lawyers continue to defend the accused without any break or difficulty. This would suggest that petitioners defence is not being compromised in Punjab and they are receiving adequate legal assistance. [Para 5][960-B-C]

- G 4. The solitary instance pertaining to one of the petitioners is banked upon by all the other petitioners without any basis. The order sheet of the proceedings reflects clearly that the Magistrate administered caution and duly satisfied himself to

ensure that legal procedures were followed and statement was A  
free and not under pressure. [Para 6][960-D-E]

5. Insofar as the death of one of the accused in jail is concerned, the projection of the State is that he was murdered by jail inmates undergoing life imprisonment in some other cases and for this incident FIR is registered, chargesheet has been filed and trial has commenced. It is not possible at this stage to say if this incident has any link with the other cases or it is a standalone event. Barring this issue, none of the petitioners have raised any grievances before the court or before the police and inference must accordingly will have to be drawn against their transfer plea. [Para 14][963-C-D]

6. The sacrilege incidents occurred in 2015 and it has been more than 2 years since the petitioners were arrayed as accused in the cases. During this long period, no complaint has been made by the petitioners of any threat to their security or to their associates. The zimni orders of the Trial Court does not reflect any *bias* faced, either by the accused or their family. [Para 14] [963-B-C]

7. The matter emanates from the State of Punjab and the accused, the witnesses and the prosecutors are all from the State. If the trial is shifted out, all of them will face difficulties. The State's pleading shows that those accused who have a threat implication, have been provided personal security by the district police. Elaborate arrangements have been made on orders of the State's DGP and on the trial date, additional force are deployed in the concerned Courts, to ensure safety of the petitioners and all other stakeholders. [Para 8][961-D-E]

8. Out of the six cases, the trial in one case is at the stage of final arguments. The other five cases are at the stage of evidence or charge stage. It will therefore not be fair to the prosecution, the State and the witnesses who are yet to testify, to shift the proceeding without compelling reasons as it will inevitably delay the trial. Convenience of all parties should be looked at and not just the party which is seeking transfer. [Para 15] [963-E-F]

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- A      **9. In relation to the FIR in respect of one of the accused, application with prayer to shift the case from JMIC, Phul to any other Court in Bhatinda was filed by the complainant. The accused had opposed the transfer application. In such circumstances, the contrary plea for shifting of trial venue made before this Court, would suggest that the Petitioners have taken conflicting stand on shifting of trial venue before different forums. [Para 16] [963-G-H]**

Sri Jayendra Saraswathy Swamigal (II), T.N. v. State of T.N. (2005) 8 SCC 771 : [2005] 4 Suppl. SCR 556;  
C      Zahira Habibullah H. Sheikh v. State of Gujarat (2004)  
        4 SCC 158 : [2004] 3 SCR 1050 – distinguished.

- D      **10. From the available material, the Court cannot reasonably conclude that the situation in Punjab is not conducive for a fair trial for the petitioners. The few instances may suggest heightened feelings amongst different groups, but they do not call for transfer of proceedings to another State. [Para 18] [964-D-E]**

- E      **11. Moreover, it cannot just be the convenience of the petitioner but also of the Complainant, the Witnesses, the Prosecution. The larger issue of trial normally being conducted by the jurisdictional Court must also weigh on the issue. When relative convenience and difficulties of all the parties involved in the process are taken into account, the conclusion is inevitable that no credible case for transfer of trial to alternative venues outside the State of Punjab is made out, in the present matters.**  
F      [Para 19][964-E-F]

- G      **12. The transfer of trial from one State to another would inevitably reflect on the credibility of the State's judiciary. Except for compelling factors and clear situation of deprivation of fair justice, the transfer power should not be invoked. The present bunch of cases are not perceived to be amongst such exceptional categories. [Para 21][965-A]**

- H      **13. The alternative plea that if the Trials cannot be shifted to Delhi, they should be shifted to Chandigarh, was not the pleaded case of the Petitioners. The suggested alternate venue is Punjab's capital and even though Chandigarh is an Union**

Territory, the population pattern in the city is like the rest of Punjab. Such alternative plea on the grounds pleaded in these matters cannot therefore be countenanced. [Para 20][964-G-H] A

14. Nonetheless, the State as assured to this Court, must make all arrangement to ensure safe conduct of proceedings at the trial courts and also provide adequate security to the petitioners and their associates as might be warranted from the security perspective. [Para 22][965-B] B

Case Law Reference

(1979) 4 SCC 167	relied on	Para 10	C
[2000] 3 SCR 1028	relied on	Para 10	
[2000] 3 Suppl. SCR 26	relied on	Para 10	
[2004] 3 SCR 1050	relied on	Para 10	D
[2005] 4 Suppl. SCR 556	relied on	Para 10	
[2009] 9 SCR 194	relied on	Para 10	
[2010] 13 SCR 851	relied on	Para 10	
[2005] 4 Suppl. SCR 556	distinguished	Para 17	E
[2004] 3 SCR 1050	distinguished	Para 17	

CRIMINAL ORIGINAL JURISDICTION: Transfer Petition (Criminal) No. 452 of 2019. F

Petitions filed under Section 406 of the Code of Criminal Procedure, 1973 read with Order XXXIX of the Supreme Court Rules, 2013 for transfer of Chi No. 3/2019.

With

Transfer Petition (Criminal) Nos. 458, 459, 460, 461 and 462 of 2019. G

Ms. Monalisa Kosaria, B.Shravanth Shanker, Ms. Jaspreet Gogia, Karanvir Gogia, Ms. Shivangi Singhal, Advs. for the appearing parties.

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- A        The Judgment of the Court was delivered by  
**HRISHIKESH ROY, J.**
1. These petitions are filed under Section 406 of the Code of Criminal Procedure, 1973 (for short “the CrPC”) read with Order XXXIX of the Supreme Court Rules seeking transfer of Trial of criminal cases pending before the Courts at Bhatinda, Moga and Faridkot districts to competent Court in Delhi or to any nearby State, out of Punjab.
- 2.1 Mr. Ranjit Kumar, the learned Senior Counsel for the petitioners submits that as the matters relate to alleged sacrilege of the holy book, Shri Guru Granth Sahibji in different places in Punjab, deep anguish and bitterness is generated amongst a particular religious group, who form majority of the population in the State of Punjab and therefore the accused who are members of the *Dera Sacha Sauda* sect, are facing bias and prejudice and are unlikely to get a fair trial in the face of strong presumption of culpability.
- D        2.2 According to the petitioners, the situation in Bhatinda and other places is communally surcharged where, fair trial is a near impossibility. In support of such contention, the Senior Counsel refers to the murder of the accused Mohinder Pal Singh Bittoo on 22.06.2019 inside the Nabha Central jail, which according to Mr. Kumar, clearly shows the threat to the lives of other co-accused in the hands of the radical elements in the State.
- F        2.3 Moreover, public appeals have been made to socially boycott the accused and also to those dealing with them, such as lawyers, doctors and taxi drivers and these developments would indicate the serious difficulties faced by the accused in conducting their defence.
- G        2.4 The learned Senior Counsel submits that a forced statement under Section 164 CrPC was obtained from the petitioner Jatinderveer Arora and this would suggest that in Punjab, an unbiased prosecution cannot be ensured.
- G        2.5 The mass gathering in the court premises where these cases are listed on the given dates, is highlighted by the Senior Counsel to emphasize the threat to the life of the accused since adequate arrangement and security has not been provided by the State.

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3.1 Representing the State of Punjab, Mr. Harin P Raval, learned Senior Counsel on the other hand argues that no case for transfer is made out by the petitioners. The Senior Counsel submits that although petitioners speak of surcharged atmosphere and threat to their life in Punjab, after getting bail, they continue to reside and conduct their affairs in their respective place without any threat or hindrance. The State Counsel then submits that petitioners have not suffered any prejudice in conducting their defence as the same two lead counsels continue to represent them since beginning. That apart, no specific instance, of denial of medical or transportation service or legal assistance is brought to the Court's notice, notwithstanding the so called public appeal made by few people.

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3.2 According to the State's lawyer, the petitioners have suppressed material facts. Moreover, one solitary incident of Section 164 CrPC statement of one of the petitioners i.e. Jatinderveer Arora (CHI No.3/ 2019) is being relied upon by the other petitioners to project prejudice although they are involved in other cases. It is then pointed out that Jatinderveer Arora while in judicial custody, volunteered to record his statement for which he was produced on 22.11.2018 before the JMIC, Phul but on that date, he developed cold feet and was taken back and the learned Magistrate directed the SSP, Bhatinda to ensure safety to the accused. Later, on 01.12.2018, the same person voluntarily recorded his statement before the Magistrate and this is now part of the court records. On that occasion, the concerned Magistrate administered caution and satisfied himself that the petitioner was not pressurized or threatened and made a voluntary disclosure.

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3.3 On the security front, Mr. Raval submits, on instruction from State DGP, that fool proof arrangements will be made and security will be provided, to allay all apprehensions of the petitioners.

3.4 The difficulties for the witnesses and the prosecution, if the trial venue is to be shifted out of Punjab, is also highlighted from the respondents side.

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4. The question to be answered here is whether the situation in Punjab is so communally surcharged that the petitioners will be deprived of fair trial, if they are to be conducted within the State. According to the petitioners, the situation in the State is surcharged and non-conducive

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- A for them. Yet, as can be seen, the petitioners have not moved out and continue to reside in the usual place of residence in the State and doing their work/business in a routine manner. No specific instance of prejudice has been brought to this Court's notice on account of social boycott call or appeal to the Medical professionals or taxi operators, to deny co-operation. Most particularly, no complaint is lodged before the court or to the authorities about any threat or intimidation.
- B 5. While there is a specific instance of one of the defence lawyer disassociating himself from the case on personal ground, the two regular lawyers Mr. K.S. Brar and Mr. R.K. Rana continue to defend the accused since January, 2019 without any break or difficulty. This would suggest that petitioners defence is not being compromised in Punjab and they are receiving adequate legal assistance.
- C 6. The case materials reflect that one of the petitioners, Jatinderveer Arora on the first occasion, backed off from recording his Section 164 CrPC statement on 22.11.2018, but the same person voluntarily recorded his statement on 01.12.2018 and this is now part of the trial Court records. This solitary instance pertaining to the CHI No.3/ 2019 (relating to one of the petitioners of the TP(Crl.) No.452/2019), is however banked upon by all the other petitioners without any basis. The order sheet of the proceedings reflects clearly that the Magistrate administered caution and duly satisfied himself on both occasions to ensure that legal procedures were followed and statement was free and not under pressure. The recording of the statement on 01.12.2018 in the CHI No.3/2019 is found mentioned in the additional affidavit filed by the petitioner.
- D F 7. It would be appropriate at this stage to note the cases for which these transfer petitions are filed and the involvement of the petitioners in which of those. The following chart will reflect this and the earlier stage of those cases:

	<b>Sl. No.</b>	<b>Details of TP (Crl.)</b>	<b>Case No.</b>	<b>FIR Details</b>	<b>Stage</b>
<b>G</b>	1.	<b>TP(Crl.) No. 452/2019</b> Jatinderveer Arora & Ors. Vs. State of Punjab	CHI No.3/2019	FIR No.161/2015 dt. 20.10.2015 PS Dayalpura, Dist.- Bathinda	Charge NDOH: 21.09.2019
	2.	<b>TP(Crl.) No. 458/2019</b> Baljit Singh & Ors. Vs. State of Punjab	CHI No.4/2019	FIR No.86/2016 dt. 21.06.2016 PS Dayalpura, Dist.- Bathinda	Charge NDOH: 21.09.2019
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A	3.	<b>TP(Crl.) No. 459/2019</b> Prithvi Singh &Ors. Vs. State of Punjab	CHI No.84/2019	FIR No.79/2015 dt. 04.11.2015 PS Samalsar, Dist.- Moga	Prosecution evidence NDOH: 23.09.2019
B	4.	<b>TP(Crl.) No. 460/2019</b> Baljit Singh &Ors. Vs. State of Punjab	CHI No.6/2019	FIR No.98/2016 dt. 03.07.2016 PS Dayalpura, Dist.- Bathinda	Charge NDOH: 21.09.2019
C	5.	<b>TP(Crl.) No. 461/2019</b> Bajit Singh &Ors. Vs. State of Punjab	CHI No.5/2019	FIR No.89/2016 dt. 29.06.2016 PS Dayalpura, Dist.- Bathinda	Charge NDOH: 21.09.2019
D	6.	<b>TP(Crl.) No. 462/2019</b> Sukhwinder Singh @ Sunny &Ors. Vs. State of Punjab	SC No.67/2019	FIR No.89/2018 dt. 13.06.2018 PS City Kotkapura, Dist.-Faridkot	Evidence NDOH: 09.10.2019

8. This Court is conscious that the matter emanates from the State of Punjab and the accused, the witnesses and the prosecutors are all from the State. If the trial is shifted out, all of them will face difficulties. The State's pleading shows that those accused who have a threat implication have been provided personal security by the district police. The learned Senior Counsel for the State in the context submits that elaborate arrangements have been made on orders of the State's DGP and on the trial date, additional force are deployed in the concerned Courts, to ensure safety of the petitioners and all other stakeholders. Moreover, as the sacrilege incidents occurred in 2015, with passage of time, the atmosphere is expected to have mellowed down considerably. This can also be gathered from the fact that the petitioners who reside in different districts in Punjab are doing their work or business in a routine manner, without any inhibition.

9. In such a scenario, it has to be evaluated whether fair trial is an impossibility, before the Courts in Punjab or is it a case of mere apprehension by the accused.

10. In support of their rival contentions, learned Senior Counsel Mr. Ranjit Kumar for the petitioners and Mr. Harin P Rawal, the learned Senior Advocate for the State of Punjab, have relied on *Maneka Sanjay Gandhi Vs. Rani Jethmalani*<sup>1</sup>, *Abdul Nazar Madan Vs. State of T.N. & Anr.*<sup>2</sup>, *R. Balakrishna Pillai Vs. State of Kerala*<sup>3</sup>, Zahira

<sup>1</sup> (1979) 4 SCC 167

<sup>2</sup> (2000) 6 SCC 204

<sup>3</sup> (2000) 7 SCC 129

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- A *Habibullah H. Sheikh Vs. State of Gujarat<sup>4</sup>, Sri Jayendra Saraswathy Swamigal (II), T.N. Vs. State of T.N.<sup>5</sup>, Captain Amrinder Singh Vs. Prakash Singh Badal & Ors.<sup>6</sup> and Nahar Singh Yadav & Others Vs. Union of India & Ors<sup>7</sup>.*

- B 11. The proposition of law that emanates from the above judgments is that for transfer of trial from one Court to another, the Court must be fully satisfied about existence of such factors which would make it impossible to conduct a fair trial. General allegation of surcharged atmosphere is not however sufficient. The apprehension of not getting a fair and impartial trial cannot be founded on certain grievances or convenience of the accused but the reasons have to be more compelling than that. No universal Rules can however be laid down for deciding transfer petitions and each one has to be decided in the backdrop of that case alone. One must also be mindful of the fact that when trial is shifted out from one State to another, it would tantamount to casting aspersions on the Court, having lawful jurisdiction to try the case. Hence powers under Section 406 CrPC must be exercised sparingly and only in deserving cases when fair and impartial trial uninfluenced by external factors, is not at all possible. If the Courts are able to function uninfluenced by public sentiment, shifting of trial would not be warranted.

- E 12. Analyzing the earlier precedents on the issue, this Court in *Umesh Kumar Sharma Vs. State of Uttarakhand<sup>8</sup>*, stated the legal position as under:-

- F “20. The above legal enunciations make it amply clear that transfer power under section 406 of the Code is to be invoked sparingly. Only when fair justice is in peril, a plea for transfer might be considered. The court however will have to be fully satisfied that impartial trial is not possible. Equally important is to verify that the apprehension of not getting a level playing field, is based on some credible material and not just conjectures and surmises.”

- G 13. Here the projection of surcharged atmosphere is not borne out by the corresponding reaction of the petitioners, who are out on bail. Being residents of Punjab, they continue to reside at their usual place

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<sup>4</sup> (2004) 4 SCC 158

<sup>5</sup> (2005) 8 SCC 771

<sup>6</sup> (2009) 6 SCC 260

<sup>7</sup> (2011) 1 SCC 307

H <sup>8</sup> 2020 SCC OnLine SC 845

and are going about their routine affairs. If their threat perceptions were genuine, they could not have gone about their normal ways. For this reason, the Court is inclined to believe that the atmosphere in the State does not justify shifting of the trial venue to another State.

14. We must also be mindful of the fact that the sacrilege incidents occurred in 2015 and it has been more than 2 years since the petitioners were arrayed as accused in the cases. During this long period, no complaint has been made by the petitioners of any threat to their security or to their associates. The zimni orders of the Trial Court does not reflect any bias faced, either by the accused or their family. Insofar as the death of the accused Bittoo in Nabha jail, the projection of the State is that he was murdered by jail inmates undergoing life imprisonment in some other cases and for this incident FIR under Section 302, 34, 120B IPC is registered in PS Sadar, Nabha, chargesheet has been filed and trial has commenced. It is not possible at this stage to say if this incident has any link with the other cases or it is a standalone event. Barring this issue, none of the petitioners have raised any grievances before the court or before the police and inference must accordingly will have to be drawn against their transfer plea.

15. The learned State counsel informs the Court that out of the six cases mentioned in the chart (not up-to-date), the trial in one case (FIR 79/2015- State Vs. Prithvi Singh) is at the stage of final arguments. The other five cases are at the stage of evidence or charge stage. It will therefore not be fair to the prosecution, the State and the witnesses who are yet to testify, to shift the proceeding without compelling reasons as it will inevitably delay the trial. One must also remember that convenience of all parties should be looked at and not just the party which is seeking transfer.

16. Another vital aspect, as has been pointed out by the state counsel, will bear consideration. The Complainant Iqbal Singh, in relation to the FIR 161/15(Jatinderveer Arora Vs. State of Punjab) filed application with prayer to shift the case from JMIC, Phul to any other Court in Bhatinda. The said application came to be dismissed by the learned Chief Judicial Magistrate, Bhatinda by an order dated 04.02.2020, wherein it has been recorded that the accused opposed the transfer application. In such circumstances, the contrary plea for shifting of trial venue made before this Court would suggest that the Petitioners have taken conflicting stand on shifting of trial venue before different forums.

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- A        17. Mr. Ranjit Kumar, the learned Senior Counsel has heavily relied upon two judgments of this Court [*Sri Jayendra Saraswathy Swamigal (II)* (supra) and *Zahira Habibullah H. Sheikh* (supra)] where change of trial venue was allowed. In the present matter, although the case could generate strong feelings between the opposing groups, no such overwhelming factors as was visible in *Sri Jayendra Saraswathy Swamigal (II)*(supra) are brought to light by the learned counsel. In the second case i.e. *Zahira Habibullah H. Sheikh* (supra), the Court found that the State was conducting the investigation in a partisan manner and likelihood of miscarriage of justice was visible. The subversion of justice delivery system in the concerned State was seen and congenial atmosphere was found missing. For such compelling factors, the Court directed that re-trial shall be done by a Court under the jurisdiction of the Bombay High Court and public prosecutor be changed. However, the circumstances in the present matters cannot be equated with those noticed in *Zahira Habibullah H. Sheikh* (supra) or in *Sri Jayendra Saraswathy Swamigal (II)* (supra). Therefore, I am of the considered opinion that similar relief cannot be granted in the present proceedings.
- B        18. From the available material, this Court cannot reasonably conclude that the situation in Punjab is not conducive for a fair trial for the petitioners. The few instances mentioned by the petitioners' counsel may suggest heightened feelings amongst different groups but they do not in my estimation, call for transfer of proceedings to another State.
- C        19. Moreover, it cannot just be the convenience of the petitioner but also of the Complainant, the Witnesses, the Prosecution. The larger issue of trial normally being conducted by the jurisdictional Court must also weigh on the issue. When relative convenience and difficulties of all the parties involved in the process are taken into account, the conclusion is inevitable that no credible case for transfer of trial to alternative venues outside the State of Punjab is made out, in the present matters.
- D        20. The final submission of Petitioners' counsel was that, if the Trials cannot be shifted to Delhi, they should be shifted to Chandigarh.
- E        G This was not the pleaded case of the Petitioners. The suggested alternate venue is Punjab's capital and even though Chandigarh is an Union Territory, the population pattern in the city is like the rest of Punjab. Such alternative plea on the grounds pleaded in these matters cannot therefore be countenanced.
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21. The transfer of trial from one state to another would inevitably reflect on the credibility of the State's judiciary. Except for compelling factors and clear situation of deprivation of fair justice, the transfer power should not be invoked. The present bunch of cases are not perceived to be amongst such exceptional categories. A

22. For the above reasons, these cases are found devoid of merit. Nonetheless, the State as assured to this Court, must make all arrangement to ensure safe conduct of proceedings at the trial courts and also provide adequate security to the petitioners and their associates as might be warranted from the security perspective. It is however made clear that the observations in this judgment are only for disposal of these petitions and should have no bearing for any other purpose. B C

23. Subject to the aforesaid cautionary observation, the cases are dismissed.

Kalpana K. Tripathy

Transfer Petitions dismissed.