

**IN THE SUPREME COURT OF PAKISTAN**  
(Original Jurisdiction)

**PRESENT:**

Mr. Justice Mushir Alam  
Mr. Justice Sardar Tariq Masood  
Mr. Justice Qazi Muhammad Amin Ahmed

**Constitution Petition No.31 of 2019.**

(Under Article 186-A of the Constitution of the Islamic Republic of Pakistan, 1973 - transfer of case from Islamabad High Court to any other High Court)

***Raja Arshad Mehmood***

*...Petitioner(s)*

**Versus**

***Mst. Maliha Malik & others***

*...Respondent(s)*

For the Petitioner(s):                      Mr. Muhammad Ahsan Bhoon, ASC  
Ch. Akhtar Ali, AOR

For Respondents(1-3)                      Mr. Faisal Siddiqui, ASC with  
respondents No.1 & 3.

Date of hearing:                              08.11.2019

**ORDER**

**Qazi Muhammad Amin Ahmed, J.** The petitioner is amongst the accused, contesting indictment for homicide as well as murderous assault, before the learned Special Judge Court-I Anti-Terrorism, Islamabad, during pendency whereof, he was admitted to bail by the trial Court vide order dated 30-4-2018; an even dated application presented by deceased's mother, Mst. Maliha Malik, respondent herein, was entertained by the office as a Constitutional petition and posted for hearing before a learned Division Bench of Islamabad High Court, same day, whereupon operation of the order passed by the learned trial Judge was suspended; the petition was numbered as W.P. No.1721 of 2019 titled as Mst. Maliha Malik Vs. Raja Arshad Mehmood, etc.; it is now clubbed with CrI. Misc. No.326-BC/2019 titled as Malik Tariq Ayoub and Muhammad Jawad Sohrab Vs. Raja Arshad Mehmood, etc., seeking cancellation of bail, in exercise of

powers under section 497 (5) of the Code of Criminal Procedure, 1898. These petitions are pending adjudication in the Islamabad High Court and the petitioner seeks withdrawal thereof from the said High Court for their transfer to any other High Court in the country on the ground that three out of four Judges including the Hon'ble Chief Justice had earlier recused to hear the allied matters and, thus, according to the learned counsel, the transfer of the cases would be most expedient in the interest of justice, a plea vehemently resisted by the respondent with the plea that the Judges had since recalled their recusals with the consent of both sides and, thus, there was no occasion for transfer of cases to some other High Court.

2. The case has a chequered history; motions by both sides were earlier attended by the different Benches of the Islamabad High Court. In Criminal Original No.281-C of 2015 Barrister Fahad Sohrab Malik Vs. Maliha Sohrab Malik, etc., Athar Minallah, J. as he then was, recused on account of personal acquaintance with both sides. On 9-11-2017, respondent sought recusal of Shoukat Aziz Siddiqui, J. as he then was, from a Division Bench hearing W.P. No.178 of 2017 Malik Tariq Ayoub & another Vs. The State, a request acceded to, though disapprovingly; the same Constitutional petition came up for hearing before a Division Bench comprising Athar Minallah and Miangul Hassan Aurangzeb, JJ. when they declined to hear the case on 19-10-2017 on account of acquaintance with one of the petitioners, namely, Muhammad Jawad Sohrab whose counsel also prayed for transfer of the case to some other Bench. In yet another contest in W.P. No.1721/2019 titled as Mst. Maliha Malik Vs. Raja Arshad Mehmood, etc., on 19.8.2019, both members of the Division Bench comprising Athar Minallah, CJ. and Mohsin Akhtar Kayani, J. recused themselves in the face of objections raised by both the sides. In supra criminal miscellaneous, the petitioner sought recusal of Mohsin Akhtar Kayani, J. from a Division Bench headed by Aamer Farooq, J., a request once

again granted, with intense disapproval. In this uncanny state of affairs, three out of four available Judges in the Islamabad High Court had recused to hear the case, either on their own or on the request of the parties, on more than one occasion.

3. Ordinarily a High Court does not have to be precluded to exercise authority conferred upon it by the Constitution and the Law, in cases/matters falling within its jurisdiction, therefore, this Court would exercise powers of transfer under Article 186-A of the Constitution, most sparingly as well as cautiously in extraordinary situations, to secure the ends of justice, certainly not in the run of the mill cases for the satisfaction of disgruntled parties, however, in the present case, we have noticed that three Judges of the Islamabad High Court had earlier recused to hear the case that requires hearing by a Division Bench and, thus, in the presence of available Judges, there was no option for them to once again attend the plea without leaving the parties remediless, therefore, we find it expedient as well as in the interest of justice to withdraw W.P. No.1721 of 2019 titled as Mst. Maliha Malik Vs. Raja Arshad Mehmood, etc. as well as Crl. Misc. No.326-BC/2019 titled as Malik Tariq Ayoub and Muhammad Jawad Sohrab Vs. Raja Arshad Mehmood, etc. from Islamabad High Court and transfer the same to Peshawar High Court for disposal in accordance with law. Constitutional Petition No.31 of 2019 is accordingly allowed.

**Judge**

**Judge**

**Judge**

Islamabad  
8<sup>th</sup> November, 2019  
*Not approved for reporting*  
Azmat/-