

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Crl. Transfer Application No.S-35 of 2022

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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09.09.2022.

1. For orders on office objections.
2. For hearing of main case

Ms. Aisha Saeed, advocate for applicant.

Mr. Badaruddin Memon, Advocate for respondent No.1.

Mr. Imran Mubeen Khan, A.P.G.

ORDER

ZAFAR AHMED RAJPUT, J.- By means of this criminal transfer application under section 526, Cr.P.C, applicants Ghulam Muhammad @ Gulab & others seek transfer of Sessions Case No.237/2020 (*Re-State vs. Jahangir and others*) arisen out of Crime/F.I.R No.107/2020 lodged by the respondent No.1 at Police Station Daharki, District Ghotki, under sections 324, 337-F(vi), 337-F (ii), 337-L (ii), 147,148,149,114,337-H(ii), P.P.C., from the Court of learned Addl. Sessions Judge, Daharki to any other Court.

2. The learned counsel for the applicants contents that the trial Court declined bail application of the applicants despite the injuries allegedly caused to complainant party were minor in nature, while in counter case bearing Crime No. 131/2020, the trial Court confirmed pre-arrest bail of the complainant and ten co-accused, who caused injuries to applicant party on vital parts of their bodies. She further contends that the presiding officer of the said trial Court issued threats to applicants; hence, they have lost their faith in the trial Court.

3. On the other hand, learned counsel for respondent No.1 and A.P.G. maintain that passing of an order against the accused and/or in

favor of the complainant is no good ground for the transfer of the case from the Court. They further maintain that it does not appeal to a prudent mind that the presiding officer of the trial Court against whom no enmity has been claimed by the applicants, shall issue threats to them; therefore, the prayer for the transfer of aforesaid case appears to be unjustified. In support of their contentions, they have relied upon the case of Altaf Hussain vs. The State and other (PLD 2014 Sindh 287) and Muhammad Moosa vs. Ghulam Qadir and 4 others (2009 MLD 16).

4. Heard learned counsel for the parties as well as A.P.G. and perused the material available on record.

5. It may be observed here that transfer of case from one to another Court cannot be claimed by the applicant(s) as a matter of right or cannot be granted as a matter of routine and the Court before whom the application for transfer is moved has to see whether mistrust shown by the applicant is genuine or otherwise. Besides, while exercising jurisdiction to transfer cases from Courts, balance has to be struck in order to ensure that the cases are not transferred mainly on the basis of unfounded and conjectural apprehensions. It may also be observed here that the Presiding Officers of the Courts have to be given full protection against frivolous allegations in view of the honourous, noble and dignified duty they are performing and while deciding the cases they should not be allowed to be harassed unnecessarily by the litigants to mainly entertain groundless and baseless apprehensions.

6. As regard rejection of applicants' bail application, suffice it to say that orders wrong in law or improper orders passed on disobedience of statutory provision of law or in violation of rules or procedure have never been accepted as valid basis for transfer of cases, unless circumstances attending passing of such orders are capable of raising a

reasonable apprehension in the mind of a party that justice would not be done to him. Something more than a mere wrong order is required to justify such transfer so as to create a reasonable apprehension in the mind of the party concerned of not getting fair and impartial trial.

7. So far issuance of threats by the presiding officer of the Court is concerned, nothing has been brought on record in support thereof. Even no exact words and date of issuance of threats have been given. A case cannot be transferred on the vague and absurd allegations and at the whim of a party who moves application expressing no confidence in the trial Judge and desiring transfer of case. This would set up an unhealthy precedent and would be tantamount to conferring powers of transfer upon parties defeating the purpose of Section 526, Cr.P.C.

8. For the foregoing facts and reasons, no reasonable apprehension exists in the instant case that the trial Court would not act fairly and impartially, therefore, this transfer application being devoid of merit is dismissed accordingly, with no order as to costs.

JUDGE

ARBrohi