

# HIGH COURT OF SINDH, CIRCUIT COURT AT HYDERABAD

**Cr. Misc. Application No.74 & 75 of 2022**  
**Cr. Transfer Application No.S-78 & 79 of 2022**

<u>DATE</u>	<u>ORDER WITH SIGNATURE OF JUDGE</u>
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Applicants	:	Through Mr. Ayatullah Khuwaja advocate
Respondents	:	Through Mr. Muhammad Jamil advocate
State	:	Through Mr. Siraj A. Bijarani Assistant P.G Sindh

Date of hearing and order: 16.10.2023

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## ORDER

This single order will decide the fate of captioned matters, as all these matters are interlinked to each other.

2. Through Criminal Miscellaneous Applications the applicant / complainant Bharoo Mal seeks cancellation of bail granted by the trial Court to the respondents / accused in Crime No. 121 of 2021 registered at P.S Umerkot City; Whereas through Criminal Transfer Applications the said applicant/ complainant seeks transfer of Sessions Case No.251 of 2021 [**The State v. Karamchand & Others**] arisen out of above said crime, so also Sessions Case No. 247 of 2021 [**The State v. Bharoo Mal & Others**] outcome of Crime No. 127 of 2021 registered at P.S Umerkot City wherein the said applicant alongwith others is nominated as accused from the Court of 1<sup>st</sup> Additional Sessions Umerkot to any other competent Court.

3. Learned counsel for the applicants, *inter-alia*, contends that earlier the plea for pre-arrest bail of accused/respondents was declined by the trial Court vide Order dated 27.10.2021; however, thereafter the said accused / respondents moved an application for post-arrest bail without having any new ground, but the same was allowed by the trial Court vide Order dated 14.12.2021 and the accused / respondents were admitted to post-arrest bail. He further submits that once the plea of pre-arrest bail of the accused/respondents was declined by the trial Court on merit, the admission and allowing the plea for post-arrest bail of same accused / respondents by the trial Court without any new ground is not permissible under the law, as such post-arrest bail granted to the respondents / accused by the trial Court may be recalled. He further emphasized that as the

trial Court has illegally entertained the bail plea of accused/respondents, as such the applicants / complainant have lost faith over the present Presiding Officer; therefore, both sessions cases may be transferred to any other Court within the said district.

4 Learned counsel for the applicants after arguing the matter at some length, submits that he will be satisfied and will not press the applications for cancellation of bail, provided that sessions cases, mentioned supra, may be transferred to any other competent Court of law, to which counsel for respondents / accused as well as learned A.P.G raised no objection.

5. Primarily, the court should practice without discrimination and bias. Justice should be given in such a manner that a clear image of the judiciary has to be maintained in the minds of litigants. In order to have good faith on the court, the court should maintain high moral standards between the members of judiciary under the Code of Criminal Procedure. Justice can be achieved only when the court deals in presence of both the parties and the court has the power to move cases from one court to another. But the right of the parties cannot be curtailed, controlled or interfered subject to exceptions provided under the law. The concept impartiality or bias of a judge has been discussed exhaustively by the Supreme Court in its judgment in the case of Government of NWFP & Another vs. Dr. Hussain Ahmed Haroon & Others, **2003 SCMR 104**. It is well settled law that transfer of a matter from one court to another could only be granted in exceptional circumstances, where it was shown that the same would be in the interest of justice. Reliance is placed upon the judgment in the case of All Pakistan Newspapers Society & Others vs. Federation of Pakistan & Others **PLD 2012 Supreme Court 1**. Prima facie in the present matters both the parties have certain reservations against each other and one of the party has strong reservation so far as the partiality of the presiding officer of the concerned Court; in such circumstances they intend to seek fair trial in both the criminal cases pending adjudication.

6. Before parting with this order I expect from the learned Sessions Judge for swift disposal of the aforesaid Sessions Cases within a reasonable time i.e. within one month and in the meanwhile ensure safety of the Complainant and his witnesses in both the cases at the time of hearing of the case through all modes of security as provided under the law so that the remaining witnesses depose their testimony with ease, and that too, in a stress free environment.

7. In view of the above, both Criminal Miscellaneous Applications are dismissed as not pressed. However, without prejudice the stance of learned Presiding Officer, and keeping in view the consent of the parties, both Transfer Applications are allowed with directions to learned Sessions Judge Umerkot to withdraw Sessions Case No.251 of 2021 [**The State versus Karamchand & Others**] as well as Sessions Case No.247 of 2021 [**The State versus Bharoo Mal & Others**] from the Court of 1<sup>st</sup> Additional Sessions Umerkot and record further evidence of the parties of the parties and decide the matters on merits within one month positively.

Captioned matters stand disposed of accordingly.

JUDGE

Sajjad Ali Jessar