

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Transfer Application No. 54 of 2023

Date	Order with signature of Judge
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For hearing of main case

21.11.2023

Mr. Mallang Essa Dshti advocate for the applicant
Ms. Abida Parveen Channar Special Prosecutor ANF

Through this Criminal Transfer Application under Section 526 Cr. P.C., the applicant Muhammad Ismail seeks transfer of Special Case No. 103 of 2022 (re-The State v Baloch Khan & others) pending before CNS Court-II to any other Court having jurisdiction, inter-alia on the ground that in another case of a similar nature, the applicant has been convicted by the same Court; and, there is strong likelihood that the learned Presiding Officer will convict the applicant in the present case as he has already formed opinion in such a situation judicial propriety demands that the subject special case needs to be transferred to another Court for fair trial of the accused. Learned counsel further submitted that there are various instances wherein if the trial Court has formed an opinion the case is required to be transferred.

2. Ms. Abida Parveen Channar Special Prosecutor ANF has expressed her reluctance to accept the plea of the applicant on the premise that the applicant's mere apprehension which cannot form the basis as such the Transfer Application is liable to be dismissed.

3. I have heard the learned counsel for the parties on the issue of the instant transfer application and have perused the material available on record including the comments filed by the learned trial Court vide letter dated 26.08.2023, wherein it is stated that the applicant Muhammad Ismail was convicted on his pleading guilty vide judgment dated 31.07.2023 in FIR No. 02/2022 of P.S ANF-I Karachi. It is further disclosed that the applicant had shown his trust in the learned trial Court however he sought a transfer of his case upon some technical grounds.

4. 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.

5. To have good faith in the court, the court should maintain high moral standards among the members of the judiciary under the Code of Criminal Procedure. Justice can be achieved only when the court deals in the presence of both parties and the court has the power to move cases from one court to another. But the rights of the parties cannot be curtailed, controlled, or interfered with subject to exceptions provided under the law. The concept of impartiality or bias of a judge has been discussed exhaustively by the Supreme Court in its judgment in the case of the Government of NWFP & Another vs. Dr. Hussain Ahmed Haroon & Others, **2003 SCMR 104**. It is well-settled law that the 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**.

6. Prima facie the ground raised by the learned counsel for the applicant is tenable based on certain reservations as he has already been convicted by the same Court on his pleading guilty; in such circumstances, he intends to seek a fair trial in the criminal case pending adjudication, which is only possible, if he reposes confidence in the trial court. However, in the best interest of justice, coupled with the instance taken by the learned trial Court through the comments, it would be appropriate for the trial Court not to express its view so that the parties may have confidence. In such circumstances, judicial propriety demand that Special Case No. 103 of 2022 pending before the learned Special Court CNS-II, Karachi needs to be transferred to the learned Special Court CNS-I, Karachi.

7. Before parting with this order I expect from the learned CNS Court-I for swift disposal of the aforesaid special case within a reasonable time and in the meanwhile ensure that the trial is fair in all respects.

8. In view of the above Criminal Transfer Application is disposed of along with pending application(s).

JUDGE