

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

**Cr. Transfer App. No. S – 114 of 2024**

*(Ikhtiar Ali Darwan & others v. The State & another)*

Date of hearing : **18.11.2024**

Date of decision : **18.11.2024**

Ms. Rizwana Jabeen Siddiqui, Advocate for applicants.

## **ORDER**

**Zulfiqar Ahmad Khan, J.** – By filing this transfer application, the applicants (accused) seek transfer of Sessions Case No.18 of 2024, arising out of Crime No.32 of 2014, registered at Police Station Mohabat Dero under Sections 302, 395, 324, 353, 114, 148, and 149, PPC, from the Court of learned Sessions Judge, Naushahro Feroze to the Court of learned Additional Sessions Judge, Kandiaro.

2. Learned Counsel for the applicants has contended that on 06.11.2024, learned Sessions Judge, Naushahro Feroze exhibited undue interest in the matter, which has caused apprehension and a sense of insecurity in the minds of the applicants. Learned Counsel has further argued that, as a result, the applicants have lost confidence in the learned Presiding Officer and fear that they will not receive a fair trial in accordance with the settled principles of law.

3. A perusal of the record reveals that the subject case arises from a crime registered in 2014. The applicants (accused) were previously tried by learned Judge, Anti-Terrorism Court, Naushahro Feroze, in various cases (Special Cases No.21, 22, 23 of 2014, 49 of 2018 and 31 of 2022), where they were convicted and sentenced. Subsequently, the applicants filed a set of appeals before this Court (Special Anti-Terrorism Appeals No. D-273, 274 & 275 of 2019 and Special Anti-Terrorism Jail Appeals No. D-186 of 2019 & 122 of 2022), which were decided by a learned Division Bench through a judgment dated 24.04.2024, with following observations:

*“4. In the case of Irfan and another (supra), the Supreme Court has been pleased to observe that under the*

*provisions of section 367(2) and (3) CrPC, it was mandatory for the trial Court that upon finding the accused guilty of one or more offences, separate sentence must be clearly awarded to the accused so convicted, otherwise it would be illegal being in violation of the mandatory provisions of law. In the case in hand, the trial Court has convicted and sentenced the appellants only under sections 302(b), 324, 392 PPC r/w section 6/7 ATA & 23(i)(a) Sindh Arms Act, but did not record any specific conviction and sentence under remaining penal sections, as reflected in the charge. Further, this is a case of triple murder, but appellants have been convicted under section 302(b) PPC and sentenced on only one count and there is no mention whether appellants have been acquitted in respect of remaining two counts of murder or have also been convicted and sentenced therein. Accordingly in view of such legal flaw and with consent, conviction and sentence awarded to the appellants vide impugned judgment are set aside and their case is remanded to the trial Court with direction to hear both the parties and rewrite the judgment in accordance with law in terms of provisions of section 367 CrPC within a period of three months. However, if application under section 23 of ATA, 1997 or bail application is filed on behalf of the accused, the same shall be decided in accordance with law on its own merits before announcement of the judgment.”*

4. Upon remand of the cases, the applicants moved a transfer application before this Court (Criminal Transfer Application No. S-66 of 2024) on the ground that the Anti-Terrorism Court, Naushahro Feroze was lying vacant. This application was disposed of by an order dated 12.08.2024, transferring the case to the Anti-Terrorism Court, Khairpur. The applicants then filed an application under Section 23 of the Anti-Terrorism Act, 1997, before learned Judge, Anti-Terrorism Court, Khairpur, who, by order dated 16.10.2024, transferred the cases to the Court of learned Sessions Judge, Naushahro Feroze.

5. The case was first fixed for hearing on 23.10.2024 before the learned Sessions Judge, Naushahro Feroze, and according to the applicants, the learned Judge indicated that the case would be transferred to the learned Additional Sessions Judge, Kandiaro on the next date. However, on 06.11.2024, the learned Sessions Judge did not transfer the case as anticipated. The applicants admit that, on 06.11.2024, when the case was taken up before the learned Sessions Judge, Naushahro

Feroze, the complainant appeared and opposed the transfer of the case to the learned Additional Sessions Judge, Kandiaro.

6. This Court finds no fault in the act of the learned Sessions Judge, Naushahro Feroze, as there was no pending transfer application at the time, and the case had only been placed before him on two occasions. If the complainant opposed the transfer, the learned Sessions Judge, being a senior judicial officer, was within his discretion to hear and decide the matter in accordance with law.

7. It is important to note that a transfer of a case from one Court to another cannot be claimed as a matter of right or granted as a routine procedure. When an application for transfer is made, the Court must carefully assess whether the mistrust of applicant(s) is based on genuine concerns or is merely speculative. While exercising the power to transfer cases, the Court must ensure that transfers are not granted solely based on unfounded or conjectural fears. Moreover, it is crucial to protect the integrity of the Presiding Officers of the Courts from frivolous allegations. These officers perform a noble and dignified duty, and they should not be subjected to harassment or have their decisions questioned based on groundless apprehensions.

8. It is also worthwhile to mention here that this matter stems from a crime registered in 2014, and a significant amount of time, almost 10 years, has already passed since the commission of the alleged offence.

9. In light of the above, the transfer application lacks merit and is **dismissed in *limine***. However, the learned trial Court is directed to hear both parties and decide the matter in accordance with the law, preferably within three months, to ensure timely justice in this long-pending case.

J U D G E

Abdul Basit