

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Criminal Transfer Application No.S-89 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of main case.

11.01.2019.

M/s Nadir Khan Burdi and Mir Buriro, advocate for applicant.

Mr. Naeem Ahmed Mangi, Advocate for respondent No.1.

Syed Meeral Shah A.P.G. for the State.

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By means of this application, applicant, who is complainant of F.I.R. bearing Crime No.119/2018 u/s 324, 337, 504 PPC registered at P.S B-Section, Nawabshah, bearing Sessions Case No.292/2018, is seeking transfer of said case pending before the Court of 2nd Additional Sessions Judge, Shaheed Benazirabad, to any other court at Karachi on the ground that the complainant including the witnesses are permanent residents of Karachi and more so the victim namely Khan Wazir, who was injured in the instant incident, is still in a critical condition and is being treated at Karachi, which situation does not allow him to travel from Karachi to Nawabshah for his evidence.

Learned Counsel for the applicant in support of his case has referred to the photocopies of CNICs of the complainant and witnesses available at Page-9 of the file and has further submitted that accused party is influential and prior to the present case lodged by the applicant against them, they were able to get two FIRs registered against the complainant party particularly against injured victim Khan Wazir on the basis of false stories, as such, the applicant and the witnesses are apprehensive of the prospect that in case they

go to Nawabshah to give evidence in the present case, they might be again falsely involved in other cases.

Learned Counsel for accused has however opposed this application on the ground that applicant and his witnesses are resident of Nawabshah, which is evident from the fact that during investigation of the present case he had filed an application u/s 22 Cr.P.C for transfer of the investigation wherein he has filed an affidavit affirming his address at Nawabshah, which is sufficient to show that the grounds taken by him in the present case are not sustainable. Learned Counsel has relied upon the case law reported in 2017 YLR Note 438 and 2016 YLR 1139.

Learned Additional Prosecutor General Sindh while arguing the case has suggested that since both the parties, who are otherwise related to each other, are at odds with each other and since the accused has vehemently opposed transfer of the case from Nawabshah to Karachi, the case may be transferred to Hyderabad instead in the interest of justice. This suggestion has been accepted by the learned Counsel for the applicant however opposed by learned Counsel for the accused.

I have considered submissions of the parties and perused the material available on record including the case law relied at the bar. From the arguments of learned defense Counsel, it has become obvious that applicant and the victim injured witnesses are not willing to appear in the case at Nawabshah for evidence on the ground of their false implication in some other cases at the hands of accused party , who according to them, are influential persons of the said area. In such event, the prosecution case is likely to be rendered meaningless with no option to the trial court to decide the same on merits, which would be against the scheme of law. However, at the same time it may be stated that although learned counsel for the applicant has tried to base his case on the ground that the applicant and the other witnesses are

permanent residents of Karachi but a look at the material available on record does not conclusively lead to any such fact. In the given circumstances, without prejudice to case of either party, the suggestion of learned Additional Prosecutor General Sindh appears to be reasonable as transfer of the case from Nawabshah to Hyderabad would not only be convenient to both the parties but would be in the interest of justice because it being a neutral place would be away from the alleged radar of influence of either party.

Accordingly, this application is allowed, however, in the terms whereby the Sessions case bearing No.292/2018, pending before the Court of 2nd Additional Sessions Judge, Shaheed Benazirabad, is hereby withdrawn from his file and transferred to the learned Sessions Court at Hyderabad with the direction to the learned Sessions Judge to either proceed with the case himself or assign it to any other court of competent jurisdiction for disposal in accordance with law. After the case is so transferred, the transferee court shall expedite the trial and conclude the same preferably within three months and submit such compliance report through Additional Registrar of this Court.

JUDGE