

HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Crl. Transfer Application No.S-07 of 2026

[Qurban Ali Laghari v. The State and another]

Applicant by : Mr.Tehseen Ahmed Qureshi, Advocate

Respondent No.1 by : Mr.Neel Parkash, D.P.G

Respondent No.2 by : Mr.Aziz Ahmed Laghari, Advocate

Date of hearing : **04.05.2026**

Date of decision : **04.05.2026**

ORDER

ARBAB ALI HAKRO, J.- The applicant, an accused in Sessions Case No.53 of 2023 pending before the Court of learned Additional District & Sessions Judge-I/MCTC, Mirpurkhas, seeks transfer of the said case from the file of the learned Presiding Officer in exercise of powers under section 526, Cr.P.C., on the plea that he has lost faith in the Court and entertains apprehension that he will not receive a fair and impartial trial.

2. The factual matrix, in its narrow compass, is that the applicant and co-accused were earlier convicted by the trial Court. In Criminal Appeal No.D-05 of 2024, this Court, by consent of the parties, set aside the judgment dated 09.06.2023 and remanded the matter to the trial Court with specific directions to re-frame proper and simple questions under section 342, Cr.P.C., record replies of the accused and decide the case within sixty days. The record shows that after remand, the custody of the two accused remained in Central Prison, Karachi; to comply with the remand directions within the stipulated period, the trial Court ordered recording of statements under section 342, Cr.P.C, through video-link, which was strongly opposed by the defence, who instead moved a bail application that came to be dismissed by a detailed order. Immediately thereafter, the present transfer application has been filed.

3. Pursuant to directions of this Court, the learned Additional District & Sessions Judge-I/MCTC, Mirpurkhas, submitted comments, wherein it is submitted that the remand order required disposal within sixty days with directions “for reframing proper and simple questions in statement(s) under section 342 Cr.P.C and after recording the replies thereto pass the Judgment and that the accused side, after having consented to remand, misusing such directions by deliberately avoiding proceedings on one pretext or the other want to get bail from the court due to non-disposal of case within specified directions. He has further observed that fallacious grounds would give rise to a sense of insecurity amongst the Judicial Officers of District Judiciary and that vague and general allegations cannot be made a ground of transfer. He has denied any allegation of bias, yet stated that he has no objection to the transfer, provided any false allegations are withdrawn; otherwise, he has prayed for dismissal of the transfer application.

4. Learned counsel for the applicant has argued that the applicant has a reasonable apprehension that he will not receive justice from the present Presiding Officer; that the insistence of the trial Court on recording statements under section 342, Cr.P.C, through video-link and the refusal to grant bail, demonstrate bias; that justice must not only be done but must also be seen to be done and that once an accused has lost confidence in the Court, the safer course, in the interest of the administration of justice, is to transfer the case. In support, he has relied upon PLD 1973 SC 327, 1999 P.Cr.L.J 227, 2005 YLR 1848 and 2016 YLR 1139.

5. Learned counsel for respondent No.2 has opposed the application and submitted that mere mistrust or dissatisfaction with judicial orders is not a ground for transfer; that the applicant is attempting to overawe the trial Court and to delay the conclusion of the remanded trial and that the conduct of the applicant, in first consenting to remand with a sixty-day mandate and then obstructing the recording of statements under section 342, Cr.P.C, shows that the transfer plea is a device to frustrate the remand directions.

6. Learned Deputy Prosecutor General has adopted the arguments of learned counsel for respondent No.2 and has further submitted that the State has a vital interest in ensuring that remand directions of this Court are honoured; that section 526, Cr.P.C. is a protective, not a punitive, provision and cannot be invoked to browbeat the trial Court; that the applicant has not pointed to any concrete material indicating bias, malice or lack of impartiality and that the application is frivolous and vexatious

7. Heard and perused the record.

8. Section 526(1), Cr.P.C. empowers the High Court to transfer a criminal case, inter alia, where "a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto", or where such an order "is expedient for the ends of justice". The jurisdiction is extraordinary and discretionary; it is not to be exercised on the mere ipse dixit of a party, but only where the apprehension of bias or denial of fair trial is reasonable, genuine and supported by some tangible material. The superior Courts have consistently held that Judges are presumed to act honestly, impartially, and in accordance with law, and that this presumption is not displaced by adverse judicial orders or by subjective dissatisfaction of a litigant.

9. The Supreme Court, in the case of Akhtar Ali¹, while dealing with a transfer application containing scandalous allegations against the Presiding Officer, reiterated that accusations directed against Judges which are "outrageous as well as scandalous" cannot be countenanced and that it is fundamentally important for the preservation of society that Judges attend the call of their office fearlessly, with dignity, respect and independence, without obstruction or interference with the administration of justice.

10. It is equally settled that, while justice must not only be done but must also be seen to be done, the test is not the subjective perception of a disgruntled litigant but that of a reasonable, informed person, viewing the matter realistically and practically. A "reasonable apprehension" must be based on sound judgment and objective circumstances, not on conjecture,

¹ Akhtar Ali v. The State (2020 SCMR 1243)

dissatisfaction with interlocutory orders, or a desire to choose a forum of one's liking.

11. When the present case is examined against this legal backdrop, the following features emerge. First, the conviction judgment was set aside by this Court by consent of the parties, and the matter was remanded with a peremptory direction to re-frame questions under section 342, Cr.P.C and decide the case within sixty days. Second, the learned trial Court, faced with the logistical difficulty of custody at Central Prison, Karachi, resorted to recording statements through video link, a course neither unknown to law nor inherently unfair, Third, the defence, instead of cooperating in the expeditious conclusion of the remanded trial, repeatedly resisted the recording of statements under section 342, Cr.P.C., first on the ground of video-link and then on the ground of having moved a transfer application, and simultaneously sought bail, which was declined by a reasoned order. Fourth, there is nothing on record to suggest any extraneous conduct, remark or act on the part of the learned Presiding Officer that could objectively give rise to a reasonable apprehension of bias or lack of impartiality.

12. The applicant has not placed before this Court any specific instance of hostile conduct, prejudicial remark or extraneous interest on the part of the learned Presiding Officer. The gravamen of his grievance is that his bail application was dismissed and that the Court insisted on proceeding with the trial, including the recording of statements under section 342, Cr.P.C, within the time fixed by this Court. Adverse judicial orders, however, are amenable to challenge in appeal or revision; they do not, without more, establish bias or justify transfer. To accept such a proposition would be to permit every unsuccessful litigant to seek a change of forum on the strength of his own dissatisfaction, thereby undermining the independence of the trial Courts and eroding public confidence in the administration of justice.

13. In these circumstances, I am not persuaded that the applicant has established that a fair and impartial trial cannot be had before the present

Presiding Officer or that any of the other statutory grounds under section 526(1), Cr.P.C. are attracted.

14. Consequently, the Criminal Transfer Application is **dismissed**. The learned Additional District & Sessions Judge-I/MCTC, Mirpurkhas, is directed to proceed with the case with full confidence and independence, strictly in accordance with law and uninfluenced by the present transfer application. Office to transmit copy of this order to the learned Additional Sessions Judge-I/M.C.T.C, Mirpurkhas, for information.

JUDGE

“Saleem”