

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr. Transfer Application No.75 of 2023

Date

Order with signature of Judge

1. For hearing of main case.
2. For hearing of MA No.11932/2023.

27.11.2023

Mr. Sami Ahsan, advocate for the applicants.

Mr. Talib Memon, APG.

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The applicants are seeking transfer of Criminal Appeal No. 34 of 2022 (*Azizullah & others v The State*) pending adjudication before the learned IVth Additional & District & Sessions Judge Karachi East to any other sessions Court for decision on merits, inter alia on the ground that the learned trial Court is not providing a fair trial to the applicants as embodied in Article 10-A of the Constitution. Learned counsel for the applicant has referred to the statement in support of the application for transfer of the case and argued that when the trial Court has no intention to proceed with the matter in that Court in such circumstances judicial propriety demands that the aforesaid case may be transferred to another Court having jurisdiction for smooth trial of the applicants/accused. He prayed for allowing the transfer application.

2. I have heard the learned counsel for the applicants on the issue of maintainability of the instant transfer application and have perused the material available on record.

3. 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.

4. 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.

5. 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 applicants is not tenable based on mere presumption; in such circumstances, they intend to seek a fair trial in the criminal case pending adjudication, which is only possible if they repose confidence in the trial court. However, it would be appropriate for the trial Court not to express its view so that the parties may have confidence.

7. In view of the above facts and circumstances of the case, without prejudice to the rights of the parties and stance of the learned Presiding Officer I feel it appropriate to direct the learned sessions judge to transfer the subject appeal from the Court of learned IVth Additional District & Sessions Judge Karachi East and after hearing both the parties besides the fate of the appeal within two weeks positively and no adjournment shall be granted to either party.

8. In view of the above Criminal Transfer Application is disposed of in the above terms cation(s).

JUDGE