

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Transfer Application No. 55 of 2024

Date	Order with signature of Judge
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For hearing of main case

01.07.2024

Mr. Kashif Khan Tanoli advocate for the applicants.
Mr. Abida Parveen Channar, Special Prosecutor ANF

ORDER

Adnan-ul-Karim Memon J Through this Criminal Transfer Application under Section 49 CNSA. 1997 r/w Section 526 Cr. P.C., the applicants Shakeel Ahmed and Attaullah seeking transfer of Special case No. 14 of 2024 pending before Special Court No. II (CNS) Karachi to any other Court having jurisdiction, inter-alia on the ground that the tenure of the Presiding Officer is over and the Special Court No. II (CNS) is lying vacant; that speedy trial is a fundamental right of the applicants in Special Case No. 14 of 2024 arising out of FIR No. 07/2024 registered for an offence under Section 9 (2),9-15 of CNS Act as amended Act 2022 of PS ANF Clifton Karachi.

2. At the outset learned Special Prosecutor ANF submitted that Special Court No. II (CNS) Karachi is vacant and the applicants have filed this Transfer Application for withdrawal of Special Case No. 14 of 2024 from the Special Court No. II (CNS) Karachi to Special Court No. III (CNS) Karachi and she has no objection to this effect.

3. Learned counsel states at the bar that the tenure of the learned Presiding Officer is over and the trial Court is lying vacant as such a fair Trial to the applicants as embodied in Article 10-A of the Constitution shall be compromised if the applicants are not provided the speedy trial. He referred to the Notification dated 24.04.2024, issued by this Court whereby certain transfer and posting of the District & “Sessions Judges have been made.

4. 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.

5. To the proposition so put forward by the learned counsel for the complainant, suffice it to say that it is a general and indisputable rule that where there is a legal right, there is also a legal remedy whenever that

right is invaded. It is a settled and invariable principle in the laws that every right, when withheld must have a remedy and every injury its proper redress. Under Articles 4 & 10-A of the Constitution, every person has a right to be dealt with under the law and have a fair trial. This principle has always been considered one of the fundamental principles of law and natural justice. On the aforesaid proposition, I am guided by the decisions of the Supreme Court in the cases of Sarafraz Saleem's Case – **PLD 2012 SC 232**, Mian Muhammad Nawaz Sharif's Case – **PLD 2009 SC 644**, Imtiaz Ahmed Mahmood's Case – **PLD 2003 SC 40**, and Mst. Zahida Sattar's Case – **PLD 2002 SC 408**

6. In the present matter, the question arises whether this Court can order for transfer of a Special Case from one Special Court to another court under Section 526 Cr.P.C.

7. To answer the aforesaid proposition, it is well-settled law that any aggrieved person can file a Transfer Application before this Court under Section 526, Cr.P.C. if there appears reasonable apprehension of injustice being done due to the conduct of the court subordinate to the High Court. The said grievances must be agitated before this Court but should be supported by legal requirements of law. It would be advantageous to go through provisions of Section 526, Cr.P.C. which read as follows:-

“Section 526. High Court may transfer case or itself try it.

(1) Whenever it is made to appear to the High Court:-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or (b) that some question of law of unusual difficulty is likely to arise, or (c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or (d) that an order under this section will tend to the general convenience of the parties or witnesses, or (e) that such an order is expedient for the ends of justice, or is required by any provision of this Code; it may order: (i) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence.

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case or appeal be transferred to and tried before itself; or (iv) that an accused person be sent for trial to itself or to a Court of Session. (2) When the High Court withdraws for trial before itself any case from any Court [...] it shall observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

(3) The High Court may act either on the report of the lower Court, or the application of a party interested, or on its own initiative.

(4) Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Advocate-General, be supported by affidavit or affirmation.

(5) When an accused person makes an application under this section the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if so ordered, pay any amount which the High Court may under this section award by way of compensation to the person opposing the application.

(6) Notice to Public Prosecutor of application under this section. Every accused person making any such application shall give to the Public Prosecutor notice in writing of application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty four hours have elapsed between the giving of such notice and the hearing of the application.

(6A) When any application for the exercise of the power conferred by this section is dismissed, the High Court may if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding [five hundred rupees] as it may consider proper in the circumstances of the case.”

8. 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. However in the present case the applicants approached the Hon’ble Supreme Court in Criminal Petition No. 64-K of 2024 whereby the applicants after arguing the case at some length did not press the petition however submitted that the charge sheet had been submitted before the Special Court –II, Karachi but the said Court was/is vacant, therefore he sought permission to file transfer application before this Court for transfer of the case to some other Court for expeditious disposal of the case. Learned Special Prosecutor ANF put his appearance in the aforesaid case and waived notice on behalf of the State and had no objection to the proposition so put forward by the defense side and the Hon’ble Supreme Court accorded permission if the applicants so desired. If this is the position of the case, this Court is left with no option as the Judicial propriety demands that Special Case No. 14 of 2024 arise out of FIR No. 07 of 2024 pending in Special Court No. II CNS Karachi needs to be transferred to the Court of Learned Special Judge III CNS Karachi for the smooth trial of the applicants.

9. Before parting with this order I expect from the learned Special Court III CNS Karachi for swift disposal of the aforesaid Special Case within contemplation of the order dated 10.06.2024 passed by the Supreme Court in Criminal Petition NO. 64-K of 2024 and in the meanwhile ensure that the trial is fair in all respects.

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

JUDGE