

D/O

HIGH COURT OF DELHI AT NEW DELHI

Dated 5/6/24

40407 /Crl.

Office of District & Sessions Judge
 Patiala House Court, New Delhi
 Diary No. 2728
 Dated 05/6/24
 New Delhi District

The Registrar General,
Delhi High Court,
New Delhi.

1. The Ld. Principal District & Session Judge, Headquarter, Delhi.
2. The Ld. Principal District & Session Judge, Central Distt., Tis Hazari Courts, Delhi.
3. The Ld. Principal District & Session Judge, North Distt., Tis Hazari Courts, Delhi.
4. The Ld. Principal District & Session Judge, West Distt., Tis Hazari Courts, Delhi.
5. The Ld. Principal District & Session Judge, New Delhi., Patiala House Courts, Delhi.
6. The Ld. Principal District & Session Judge, East Distt., KKD Courts, Delhi.
7. The Ld. Principal District & Session Judge, North- East Distt., KKD Courts, Delhi.
8. The Ld. Principal District & Session Judge, Shahdara Distt., KKD Courts, Delhi.
9. The Ld. Principal District & Session Judge, North-West Distt., Rohini Courts, Delhi.
10. The Ld. Principal District & Session Judge, Outer Distt. Rohini Courts, Delhi.
11. The Ld. Principal District & Session Judge, South-West Distt., Dwarka Courts, Delhi.
12. The Ld. Principal District & Session Judge, South-Distt., Saket Courts, Delhi.
13. The Ld. Principal District & Session Judge, South- East Distt., Saket Courts, Delhi.
14. The Ld. Principal District & Sessions, RADC, New Delhi.
15. The Ld. Principal District & Sessions Judge-cum-Special Judge (PC Act), (CBI), Rouse Avenue District Court (RADC), New Delhi/ Or Successors Courts.
16. The Ld. Special Judge, (PC Act), CBI-16, RADC, New Delhi/ Or Successors Courts.
17. The Ld. Special Judge, (PC Act), CBI-05, RADC, New Delhi/ Or Successors Courts.
18. The Director (Academics), Judicial Academy, Sector 14, Dwarka, New Delhi-110078.

Sl. No. C. 4014/2024 & CRL.M.A. 15285/2024

DIRECTORATE OF ENFORCEMENT

.....Petitioner/s

V/s

AJAY S. MITTAL

.....Respondent/s

Petition U/s. 482 of the Code of Cr.P.C, 1973 filed by the directorate of enforcement seeking quashing of order dated 01.05.2024 in the Misc. DJ ASJ/150/2024 titled as ' Ajay S. Mittal - Directorate of Enforcement' passed by the Court of Ld. Principal District & Sessions Judge-cum-Sessions Judge (PC Act), (CBI), Rouse Avenue District Court (RADC), New Delhi whereby ECIR No. 18120-II/2019 (including bail application of the respondent), has been withdrawn from the Court of Ld. Special Judge, (PC Act), CBI-16, RADC, New Delhi and is assigned to the Court of Ld. Special Judge, (PC Act), CBI-05, RADC, New Delhi.

Sir/Madam

I am directed to forward herewith for immediate compliance/necessary action a copy of judgment/order dated 28.05.2024 passed in the above case by Hon'ble Ms. Justice Swarana Kanta Sharma, of this Court.

Other necessary directions are contained in the enclosed copy of order.

Yours faithfully,

Asstt Registrar (CrI)
For Registrar General

Encl : Copy of order dated : 28.05.2024
and Memo Parties.

Mumbai (MH)-400026
Through his brother and Pairokar
Mr. Anil Mittal
E: ajay.mittal@arshiyalimited.com

...RESPONDENT

TO 184
DATE
2024
Zoheb Hossain

Through:

Place: New Delhi
Dated: 04.05.2024

Zoheb Hossain
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 22.05.2024
Pronounced on: 28.05.2024

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CRL.M.C. 4014/2024 & CRL.M.A. 15285/2024

DIRECTORATE OF ENFORCEMENT Petitioner

Through: Mr. Zoheb Hossain, Special
Counsel for ED with Mr. Kartik
Sabharwal, Advocate.

versus

AJAY S. MITTAL Respondent

Through: Mr. Sandeep Sethi & Mr. Mohit
Mathur, Senior Advocates with
Mr. Sanyam Khetarpal, Mr.
Deepak Goel & Ms. Shreya,
Advocates.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

J U D G M E N T

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SWARANA KANTA SHARMA, J.

INTRODUCTION

1. While this Court decides this case, it bears in mind that a crucial issue of the confidence and trust of the community in the fair administration of justice is involved, since it is of fundamental importance for the delivery of justice system that justice should not only be done but should be seen to be done.

2. This Court has embarked on the journey of determining how a higher Court would answer a question as to whether a judge, from whose Court a case is sought to be transferred, was in fact biased.

3. In this Court's opinion, it is a complicated task as one cannot explore or reach a conclusion regarding the actual state of mind of a judge while he allegedly made a stray comment which was not put in context but was allegedly heard, as in the present case. While in some cases, the alleged bias may be apparent or may be ascertained from the attending circumstances, however, in cases as the present one, where a alleged comment was allegedly heard while the Court proceedings were over and the wife of the respondent, who is co-accused in the case, was still allegedly logged in through video conferencing, and had filed the transfer petition alleging bias after seven days of alleged hearing, it is a difficult task indeed.

4. At the heart of the present case and the issue in question lies the urgency to identify and adjudicate as to whether there was actual apprehension of bias and as to whether real danger of such bias affecting and prejudicing the petitioner herein existed.



5. The case also involves an issue, the outcome of which will have bearing on the public confidence in integrity and purity of administration of the criminal justice system being not shaken.
6. The Directorate of Enforcement is aggrieved by the order dated 01.05.2024 [*Impugned Order*] passed by the learned Principal District & Sessions Judge-cum-Special Judge (PC Act) (CBI), Rouse Avenue District Court, New Delhi [*learned District & Sessions Judge*] by way of which the ECIR No. 06/DLZO-II/2019, including the pending bail application instituted by the respondent Sh. Ajay S. Mittal was withdrawn from the Court of learned Special Judge (PC Act), CBI-16, Rouse Avenue District Court, New Delhi [*learned Special Judge*] and transferred/assigned to the Court of learned Special Judge (PC Act), CBI-05, Rouse Avenue District Court, New Delhi.
7. By way of present petition filed under Section 482 of the Code of Criminal Procedure, 1973 [*Cr.P.C.*], quashing of impugned order dated 01.05.2024 has been sought by the Directorate of Enforcement.

FACTUAL BACKGROUND

8. Background facts of the case are that pursuant to the completion of investigation in the present ECIR, the Directorate of Enforcement had filed a prosecution complaint against 76 accused persons, out of which 72 accused persons were summoned. On 11.01.2024, the respondent and his wife Smt. Archana S. Mittal had been arrested in relation to the present ECIR.
9. Thereafter, on 14.02.2024, Smt. Archana S. Mittal was granted



bail by the Court of learned Special Judge (PC Act), CBI-16. As disclosed in the petition, the said bail order of Smt. Archana S. Mittal has been challenged *vide* CRL.M.C. 2502/2024 before this Court. It is also submitted that after completion of further investigation, a supplementary prosecution complaint was filed against 84 accused persons including the respondent herein, who are yet to be summoned.

10. The respondent Sh. Ajay S. Mittal had preferred an application seeking regular bail on 23.02.2024 before the learned Special Judge (PC Act) CBI-16, reply to which was filed by the prosecution on 13.03.2024. Thereafter, the hearing on bail application was adjourned on several occasions, mainly due to adjournments sought on behalf of the respondent/accused.

11. On 18.04.2024, a transfer petition was filed on behalf of respondent seeking transfer of the proceedings from learned Special Judge (PC Act) CBI-16 to some other Court. The same was allowed by the learned District & Sessions Judge *vide* impugned order dated 01.05.2024.

SUBMISSIONS ON BEHALF OF THE DIRECTORATE OF ENFORCEMENT

12. Learned Special Counsel for the Directorate of Enforcement, while assailing the impugned order, argues that pursuant to filing of bail application by the respondent and the subsequent reply by the prosecution, the learned counsels for the respondent had taken multiple adjournments from the learned Special Judge without being concerned about the delay in adjudication of the respondent's bail



application. It is pointed out that the adjournments were sought on the following grounds:

- (i) 23.03.2024 – Learned counsels for the respondent sought an adjournment on the ground that the main counsel was unable to attend court due to some personal difficulty.
- (ii) 30.03.2024 – Fresh memo of appearance filed by a new counsel for the respondent on instructions of the Applicant's brother Sh. Anil Mittal, and time was sought to file a *vakalatnama*.
- (iii) 10.04.2024 – Time sought by the new counsel for the respondent to go through the case file and the new counsel sought a date post 24.04.2024, stating that he was not available before that date.
- (iv) 25.04.2024 – Long date was being sought by the new counsel for the respondent on account of pendency of the Transfer Petition filed by the respondent, and only upon the objections raised to the same by the petitioner, the next date of hearing was given as 01.05.2024.
- (v) 01.05.2024 – The bail application was adjourned to 04.05.2024 on account of the pronouncement of the orders in the Transfer Petition filed by the respondent.

13. Learned Special Counsel for the Directorate of Enforcement submits that the reason cited in the petition seeking transfer of bail application of the respondent was that post the hearing of the bail application on 10.04.2024 when all the counsels had left the



Courtroom, the respondent's wife Smt. Archana S. Mittal, who is also a co-accused, who was watching the hearing online had heard that the court staff had been enquiring something and the concerned learned Judge had allegedly passed the following comment: "*lene do datein, ED matters me kaunsi bail hoti hai*"

14. It is alleged that the order dated 10.04.2024 passed by learned Special Judge discloses the name of all attending parties including the new counsel for respondent, but the presence of respondent's wife Smt. Archana S. Mittal is not reflected and hence, there is no substantial material available on record to even show that respondent's wife was attending the court proceedings through video-conferencing, as claimed by her.

15. It is further argued that such transfer of cases, on mere asking of any applicant, would seriously undermine the confidence and credibility of the judicial system and the impugned order being passed would go on to show that concerned learned Special Judge is not in a position to preside over any cases filed by the petitioner i.e. Directorate of Enforcement since the comment being attributed to the learned Judge is generic in nature and not specific to the respondent herein. It is also submitted that the judicial orders are open to scrutiny by higher courts and even when one alleges that some orders are against a particular side, it cannot be a ground to transfer the case; moreso since such allegations are always easy to plead but ought not to be accepted by any court without material proof.

16. Learned Special Counsel contends that the power to transfer, withdraw or assign the cases is discretionary but such discretion must



be exercised judiciously and on well founded reasons. When a case is transferred on the basis of a contention/allegation of bias, it has larger repercussions i.e. it not only derails the trial, but also demoralises and demotivates the concerned judge. It is also argued that the learned District & Sessions Judge had previously rejected similar Transfer Petitions filed by the accused person in case No. Misc/DJ-ASJ/99/2023 titled '*Satyender Jain v. Directorate of Enforcement & Ors.*' and case No. Misc/DJ-ASJ/154/2023 titled '*Anubrata Mandal v. Directorate of Enforcement & Ors.*', wherein similar reliefs were being sought on account of alleged prejudice against the accused by the learned Presiding Officer in the respective trials. It is also submitted that the respondent had failed to disclose any real reason or actual 'bias' and his request was based on conjectures, arising out of an apprehension which is without any substantial proof.

17. On the above grounds, it is prayed that the present petition be allowed and impugned order be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

18. Learned Senior Counsels for the respondent, who seek to sustain the impugned order, argue that the impugned order is a well-reasoned order and does not suffer from any infirmity. It is submitted that the wife of the petitioner herein was logged through video-conferencing on 10.04.2024 and was hearing the proceedings in the bail application filed by the respondent, when she had heard the learned Special Judge making the comment: "*lene do datein, ED matters me kaunsi bail hoti hai*". It is argued that the respondent was



shocked due to the above comment passed by the learned Special Judge and in apprehension that the concerned learned Judge was sitting with pre-determined and pre-judicial mind to dismiss his bail application, the respondent could not expect fair and proper opportunity to represent his case and therefore, he had preferred the transfer petition.

19. It is argued that these facts and issues have been taken into consideration by the learned District & Sessions Judge while passing the impugned order, more particularly because justice should not only be done but seem to be done.

20. It is further argued on behalf of respondent that there was a serious and reasonable apprehension of 'bias' on part of the respondent/accused, and Section 408 of Cr.P.C. provides that a particular case can be transferred from one Criminal Court to another Criminal Court, if it is expedient for the ends of justice. It is also submitted that no purpose would be served by sending back the case of the previous learned Judge, when the respondent has an apprehension of bias with regard to adjudication of his bail application before that Court.

21. Therefore, it is submitted that since the impugned order does not suffer from any infirmity, the present petition ought to be dismissed.

22. This Court has heard arguments addressed by learned Special Counsel for the petitioner and learned Senior Counsels for the respondent, and has perused the material placed on record.



THE IMPUGNED ORDER

23. For the purpose of reference, the relevant portion of impugned order dated 01.05.2024 passed by learned District & Sessions Judge is extracted hereunder:

“9. I have given thoughtful consideration to the rival submissions.

10. The fairness and equality are hallmark of criminal justice system. The judges are obliged to decide the cases before them with impartiality, integrity and by ensuring the equality of treatment and in doing so judges are upholding the rule of law. It is also one of the basic principle of administration of justice that justice should not only be done but it should also seen to be done.

11. The applicant has pleaded apprehension on the ground of comment allegedly made by Ld. Judge by which he expressed that no one is getting bail in ED matters. According to the wife of the applicant (who is also co-accused), after the hearing was over on 10.04.2024, Ld. Judge passed the comment while having conversation with the staff. On 17.04.2024, wife of the applicant sent an email to this court making similar allegations and seeking transfer of the matter to some other court. The email was followed by present petition filed under Section 408 Cr.P.C. The wife of the applicant has also filed her affidavit on record in support of her request to transfer.

12. The power under Section 408 Cr.P.C can be exercised to meet the ends of justice. In the present proceedings, this court cannot go into the merits of the allegations by holding any inquiry. There is no complaint as to the conduct of Ld. Presiding Officer Sh.Jagdish Kumar and the only issue raised by the applicant is the apprehension that Ld. Judge has already made up his mind to the effect that bail is not available in ED matters. The perception and view point of petitioner / applicant whereby he does not expect impartial hearing from the court, has to be given due regard in the facts and circumstances of the case. The pleas duly



supported by affidavit cannot be outrightly discarded. Relegating the applicant to the court upon which specific allegations of bias are made, would possibly have adverse bearing on his case.

13. In *Ranjit Thakur vs Union of India*, (1987) 4 SCC 611, it was held that,

“7...As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the judge is not to look at his own mind and ask himself, however, honestly, "Am I biased?" but to look at the mind of the party before him.”

14. Not two cases are similar, however, principles of administration of justice are applicable to all the matters at par. Considering the principle that justice should not only be done but it should seem to be done and that applicant has expressed the apprehension duly supported by the affidavit of his wife, cannot be said to be misconceived or misplaced. The matter is at its initial stage and no prejudice would be caused to the answering respondent, if case is heard by any other court of competent jurisdiction. Accordingly, it is felt appropriate to transfer the proceedings to some other court. The application of applicant is allowed.

15. The ECIR No.06/DLZO-II/2019 (including bail application of the applicant) is withdrawn from the court of Sh.Jagdish Kumar, Ld. Special Judge, (PC Act), CBI-16 and is assigned to the court of Sh.Mukesh Kumar, Ld. Special Judge, (PC Act) CBI-05, RADC, New Delhi for adjudication and disposal as per law.

16. Copy of this order be sent to both the courts for compliance.

17. Parties / counsels to appear before transferee court on 04.05.2024. Ahlmad is directed to send the complete record to the court of Sh.Mukesh Kumar, Ld. Special Judge, (PC Act) CBI- 05, RADC, New Delhi immediately.

18. Present transfer petition file be consigned to the record room.”



ANALYSIS & FINDINGS

I. DEALING WITH ALLEGATION OF BIAS

Section 408 of Cr.P.C.

24. The transfer petition in this case was filed under Section 408 of Cr.P.C. by the accused/respondent. Thus, to adjudicate the present case, this Court deems it necessary to reproduce Section 408 of Cr.P.C., and the same reads as under:

“408. Power of Sessions Judge to transfer cases and appeals

1. Whenever it is made to appear to a Sessions Judge that an order under this Sub-Section is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division.

2. The Sessions Judge may act either on the report of the lower Court, or on the application of a party interested or on his own initiative.

3. The provisions of Sub-Sections (3), (4), (5), (6), (7), and (9) of section 407 shall apply in relation to an application to the Sessions Judge for an order under Sub-Section (1) as they apply in relation to an application to the High Court for an order under Sub-Section (1) of section 407, except that Sub-Section (7) of that section shall so apply as if for the words “one thousand” rupees occurring therein, the words “two hundred and fifty rupees” were substituted.”

25. Therefore, Section 408 of Cr.P.C. provides that the Sessions Judge has the power to transfer a case from one criminal court to another, if it is expedient for the ends of justice.

26. In the present case, the transfer of case was sought on the ground of apprehension of bias.



Decoding Bias

27. Meaning of 'biased', as per the Cambridge Dictionary is "showing an unreasonable like or dislike for someone or something based on personal opinions".

28. 6th Edition of Black Law's Dictionary defines 'bias' as "a particular influential power, which sways the judgment; the inclination of the mind towards a particular object".

29. As per Oxford's Dictionary, 'bias' means "tending to show favour towards or against one group of people or one opinion for personal reasons; making unfair judgements".

30. Bias necessarily means a conduct which shows that a judge was motivated to unfairly favour one party and disfavour another.

Judicial Precedents Defining Bias

31. In the decision reported as *State of W.B. v. Shivananda Pathak (1998) 5 SCC 513*, the Hon'ble Apex Court has made some important observations on the concept of bias and its forms. These observations read as under:

“25. Bias may be defined as a preconceived opinion or a predisposition or predetermination to decide a case or an issue in a particular manner, so much so that such predisposition does not leave the mind open to conviction. It is, in fact, a condition of mind, which sways judgments and renders the judge unable to exercise impartiality in a particular case.

26. Bias has many forms. It may be pecuniary bias, personal bias, bias as to subject matter in dispute, or policy bias etc. In the instant case, we are not concerned with any of these forms of bias. We have to deal, as we shall presently see, a new form of bias, namely, bias on account of judicial obstinacy.

27. Judges, unfortunately, are not infallible. As human beings,



they can commit mistakes even in the best of their judgments reflective of their hard labour, impartial things and objective assessment of the problem put before them. In the matter of interpretation of statutory provisions or while assessing the evidence in a particular case or deciding questions of law or facts, mistakes may be committed bona fide which are corrected at the appellate stage. This explains the philosophy behind the hierarchy of courts. Such a mistake can be committed even by a judge of the High Court which are corrected in the letters patent appeal, if available.

28. If a judgment is overruled by the higher court, the judicial discipline requires that the judge whose judgment is overruled must submit to that judgment. He cannot, in the same proceedings or in collateral proceedings between the same parties, rewrite the overruled judgment. Even if it was a decision on a pure question of law which came to be overruled, it cannot be reiterated in the same proceedings at the subsequent stage by reason of the fact that the judgment of the higher court which has overruled that judgment, not only binds the parties to the proceedings but also the judge who had earlier rendered that decision. That judge may have his occasion to reiterate his dogmatic views on a particular question of common law or constitutional law in some other case but not in the same case. If it is done, it would be exhibitivive of his bias in his own favour to satisfy his egoistic judicial obstinacy.

29. As pointed out earlier, an essential requirement of judicial adjudication is that the judge is impartial and neutral and is in a position to apply his mind objectively to the facts of the case put up before him. If he is predisposed or suffers from prejudices or has a biased mind, he disqualifies himself from acting as a judge. But Frank, J. of the United States in *Linahan*, In re, 138 F 2d 650 says:

“If, however, ‘bias’ and ‘partiality’ be defined to mean the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial and no one will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions.... Much harm is done by the myth that, merely by ... taking the oath of office as a judge, a man ceases to be human and strips himself of all predilections, becomes a passionless thinking machine.” [See also Griffith and Street, *Principles of Administrative Law* (1973 Edn.), p.



155; Judicial Review of Administrative Action by de Smith (1980 Edn.), p. 272; II Administrative Law Treatise by Davis (1958 Edn.), p. 130.]

30. These remarks imply a distinction between prejudging of facts specifically relating to a party, as against preconceptions or predispositions about general questions of law, policy or discretion. The implication is that though in the former case, a judge would disqualify himself, in the latter case, he may not. But this question does not arise here and is left as it is.”

(Emphasis Supplied)

32. In the case of *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant* (2001) 1 SCC 182, the Hon’ble Supreme Court has defined and explained the idea of ‘Bias’ in the following words:

“10. The word “bias” in popular English parlance stands included within the attributes and broader purview of the word “malice”, which in common acceptation means and implies “spite” or “ill-will” (*Stroud’s Judicial Dictionary*, 5th Edn., Vol. 3) and it is now well settled that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record to come to the conclusion as to whether in fact there was existing a bias which resulted in the miscarriage of justice.

27. The concept of “bias” however has had a steady refinement with the changing structure of the society: modernisation of the society, with the passage of time, has its due impact on the concept of bias as well. Three decades ago this Court in *S. Parthasarathi v. State of A.P.* [(1974) 3 SCC 459 : 1973 SCC (L&S) 580] proceeded on the footing of real likelihood of “bias” and there was in fact a total unanimity on this score between the English and the Indian Courts.

29. Lord Thankerton however in *Franklin v. Minister of Town and Country Planning* [1948 AC 87 : (1947) 2 All ER 289 (HL)] had this to state:

“... I could wish that the use of the word ‘bias’ should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-handed justice which the law requires



for those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute.”

The Test of Real Apprehension and Likelihood of Bias: Judicial Precedents

33. Before adverting to the merits of the case, this Court must consider what constitutes a real apprehension of bias, which is sufficient to transfer a case from one court to another.

34. A Three-Judge Bench of the Hon'ble Apex Court in case of *Gurcharan Dass Chadha v. State of Rajasthan* 1965 SCC OnLine SC 341, had held that mere allegations of apprehension are insufficient and the Court must determine if the apprehension is objectively reasonable. The relevant observations are as under:

“... The law with regard to transfer of cases is well-settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a



reasonable apprehension.”

(Emphasis Supplied)

35. Further, the Hon’ble Apex Court in case of *S. Parthasarathi v. State of A.P. (1974) 3 SCC 459* has held as under on the real likelihood of bias:

“16. ...If right-minded persons would think that there is **real likelihood of bias** on the part of an inquiring officer, he must not conduct the inquiry; **nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent...**”

(Emphasis supplied)

36. The Hon’ble Apex Court in *Kumaon Mandal Vikas Nigam Ltd. (supra)* has laid down the test for determining apprehension or real danger of bias. These observations are reproduced as under:

“35. The test, therefore, is as to whether a mere **apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom** — in the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained: If on the other hand, the allegations pertaining to bias is rather fanciful and otherwise to avoid a particular court, Tribunal or authority, question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent evidence and it is in this context that we do record our concurrence with the view expressed by the Court of Appeal in *Locabail case* [2000 QB 451].”

(Emphasis supplied)

37. The Hon’ble Apex Court *State of Punjab v. Davinder Singh Bhullar (2011) 14 SCC 770* had discussed the concept of bias, and the



test of real likelihood of bias. The relevant portion of the judgment is as under:

“27. In *Bhajan Lal v. Jindal Strips Ltd.* [(1994) 6 SCC 19], this Court observed that there may be some consternation and apprehension in the mind of a party and undoubtedly, he has a right to have fair trial, as guaranteed by the Constitution. **The apprehension of bias must be reasonable i.e. which a reasonable person can entertain. Even in that case, he has no right to ask for a change of Bench, for the reason that such an apprehension may be inadequate and he cannot be permitted to have the Bench of his choice.** The Court held as under : (SCC pp. 26-27, para 23) —

“23. Bias is the second limb of natural justice. Prima facie no one should be a judge in what is to be regarded as ‘sua causa’, whether or not he is named as a party. The decision-maker should have no interest by way of gain or detriment in the outcome of a proceeding. Interest may take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with the subject-matter, from a close relationship or from a tenuous one.”

31. **The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and whether the adjudicator was likely to be disposed to decide the matter only in a particular way.** Public policy requires that there should be no doubt about the purity of the adjudication process/administration of justice. The Court has to proceed observing the minimal requirements of natural justice i.e. the Judge has to act fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality, is a nullity and the trial coram non iudice. Therefore, the consequential order, if any, is liable to be quashed.”

(Emphasis Supplied)

38. In *Chandra Kumar Chopra v. Union of India* (2012) 6 SCC 369, it was held that plea of bias cannot be a facet of one’s imagination. The noteworthy observations are as under:



“ 25... mere suspicion or apprehension is not good enough to entertain a plea of bias. It cannot be a facet of one's imagination. It must be in accord with the prudence of a reasonable man. The circumstances brought on record would show that it can create an impression in the mind of a reasonable man that there is real likelihood of bias. It is not to be forgotten that in a democratic polity, justice in its conceptual eventuality and inherent quintessentiality forms the bedrock of good governance. In a democratic system that is governed by the rule of law, fairness of action, propriety, reasonability, institutional impeccability and non-biased justice delivery system constitute the pillars on which its survival remains in continuum.”

(Emphasis Supplied)

39. While deciding the present petition, this Court has analysed a series of judgments. This Court takes note of the difficulty the trial courts/sessions courts face in situations as the present one and therefore, a compelling need was felt to examine and analyse the authorities, the law and rule, if any, in the hope of extracting from them readily referable principles to decide such applications.

40. **In light of the aforesaid principles, this Court would now examine the grievance of the petitioner and the rival contentions raised before this Court by either side.**

Context of Conversations in the present case

41. In the present case, the proceedings for the day were over as is apparent from the transfer petition and email written by the accused's wife. Since the hearing of the case was over, the lawyers of the respondent had already left the courtroom. The video conferencing was still on and the conversation between the learned Special Judge and his staff, which was in unknown context, has been made a pretext



of attributing bias to the learned Special Judge of a long unblemished standing.

42. Noteworthy is the fact that the wife of the respondent claims that some inquiry was made by the staff of the learned Judge to which the learned Judge had made the alleged comment. Therefore, it is understood that the inquiry and the reply were made as part of one sentence by the staff and one by the judge. It is however intriguing that the inquiry made by the staff or what was said by the staff was not heard by the wife of the respondent, but what the judge replied was clearly heard.

43. Even if the learned Judge did make the alleged remark, understanding the context in which it would have been made is also crucial. **This Court is of the opinion** that statements can be easily misinterpreted, misheard or partially heard when taken out of context, and without a complete understanding of the surrounding circumstances. Any action taken straightaway on the basis of such statements of one side without hearing the other, in this Court's opinion, would be unjust.

44. At times, during the course of judicial proceedings, a statement that may appear prejudicial in isolation, could be part of a larger discussion where the judge may be addressing various hypothetical scenarios or legal principles. Therefore, without understanding the full context, it is impossible to fairly assess whether the statement indicated any actual bias or was perhaps a misunderstood or misrepresented comment.

45. Without understanding the context or reasons behind these



discussions, such allegations can lead to unwarranted conclusions and disrupt judicial proceedings.

46. While adjudicating the present case, it will be crucial to consider the observations of the Hon'ble Apex Court in the case of *Usmangani Adambhai Vahora v. State of Gujarat & Anr (2016) 3 SCC 370*. In this case, the accused had filed a petition seeking transfer of his case under Section 408 of the Cr.P.C., which was dismissed by the learned Sessions Court. The transfer was sought on the grounds that the accused had overheard a conversation between the informant and his son, during which they allegedly stated that the trial would surely proceed on the next date and that all the accused persons would definitely be convicted. The accused also claimed that the learned Trial Court had made a statement about the trial, which he correlated with the **overheard conversation**, leading him to believe that he would not receive a fair trial in that court. Although the High Court of Gujarat had allowed his petition, the Hon'ble Apex Court set aside the High Court's order and made the following observations:

“9. In *Captain Amarinder Singh v. Parkash Singh Badal and others (2009) 6 SCC 260*, while dealing with an application for transfer petition preferred under Section 406 CrPC, a three-Judge Bench has opined that for transfer of a criminal case, there must be a reasonable apprehension on the part of the party to a case that justice will not be done. It has also been observed therein that mere an allegation that there is an apprehension that justice will not be done in a given case alone does not suffice. It is also required on the part of the Court to see whether the apprehension alleged is reasonable or not, for the apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension. In the said context, the Court has held thus:-

“19. Assurance of a fair trial is the first imperative of



the dispensation of justice. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that the public confidence in the fairness of a trial would be seriously undermined, the aggrieved party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 CrPC.

20. However, the apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary. Free and fair trial is sine qua non of Article 21 of the Constitution. If the criminal trial is not free and fair and if it is biased, judicial fairness and the criminal justice system would be at stake, shaking the confidence of the public in the system. The apprehension must appear to the court to be a reasonable one.

11. The aforesaid passage, as we perceive, clearly lays emphasis on sustenance of majesty of law by all concerned. **Seeking transfer at the drop of a hat is inconceivable. An order of transfer is not to be passed as a matter of routine or merely because an interested party has expressed some apprehension about proper conduct of the trial.** The power has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide credibility to the trial. There has to be a real apprehension that there would be miscarriage of justice. [See: *Nahar Singh Yadav and another v. Union of India and others*].

12.He has to perform his duty and not to succumb to the pressure put by the accused by making callous allegations. **He is not expected to show unnecessary sensitivity to such allegations and recuse himself from the case. If this can be the foundation to transfer a case, it will bring anarchy in the adjudicatory process. The unscrupulous litigants will indulge themselves in court haunting. If they are allowed such room, they do not have to face the trial before a court in which they do not feel comfortable."**

(Emphasis Supplied)

47. It is essential to recognize that not all conversations overheard



during video conferences are relevant to the cases being discussed and should not automatically be considered part of judicial proceedings. The conversation between the judge and their staff could pertain to any case, context, or any matter in general.

Attending Circumstances of the Case

(i) No proof to substantiate allegations of Bias

48. One of the most crucial aspects of this case is the finding of the learned District and Sessions Judge that the allegations made in the transfer petition were supported by an 'affidavit' filed by the wife of the accused, who is also a co-accused in this case. In the impugned order, the learned District and Sessions Judge noted that "pleas duly supported by affidavit cannot be outrightly discarded".

49. However, after perusing the entire records of the case, this Court notes that no 'affidavit' was actually filed by the wife of the accused/respondent alongwith the transfer petition instituted before the learned District and Sessions Judge. The records clearly indicate that the affidavit supporting the transfer petition was filed by the *paikar* of the accused, i.e. his brother. It is important to note that the accused's brother had admittedly not heard the alleged conversation between the learned Special Judge and his court staff, since the alleged conversation was supposedly only heard by the wife of the accused.

50. Furthermore, the only document from the wife of the accused that was annexed to the transfer petition was a notarized copy of an email dated 17.04.2024, that she had sent to the learned District and



Sessions Judge, a day prior to filing of transfer petition. This notarized email, needless to say, cannot be equated with an 'affidavit', which follows a specific legal format, and carries legal weight since it requires the deponent to swear to the truth of the contents mentioned therein.

51. It is, thus, unclear how the learned District and Sessions Judge concluded that an affidavit had been filed by the wife of the accused and, therefore, that her allegations should be given due weight.

(ii) Delay in sending email to the learned District & Sessions Judge

52. This Court further takes note of the fact that though the alleged comment was passed by the learned Special Judge and heard by the wife of respondent on 10.04.2024 after the court proceedings were over for the day, the email raising such grievance was sent to the learned Principal District and Sessions Judge after a delay of about seven days i.e. on 17.04.2024.

53. Strange is also the fact that the alleged proceedings were seen by the wife of the respondent on 10.04.2024 of which, *firstly*, there is no record of her logging in. *Secondly*, she also waited till 17.04.2024 to send an email to the learned District & Sessions Judge raising her grievance and thereafter on 18.04.2024 itself, a notarized copy of the email was filed alongwith the transfer petition. The notarization had taken place in Mumbai. *Thirdly*, as noted above, there is no affidavit on record filed by the wife of accused who had allegedly overheard the conversation in question. *Fourthly*, though it is alleged that some court staff had enquired something from the learned Special Judge, the



identity of the staff being present to whom the learned Judge was speaking to or any other detail has not been disclosed in the application seeking transfer.

54. Therefore, in this Court's opinion, there was no evidence at all to even reasonably substantiate the allegations of bias against the learned Special Judge. The absence of an affidavit from the wife of the accused who had actually heard the alleged conversation, coupled with the delay in sending the email, raises questions and doubts about the allegations levelled against the learned Special Judge.

(iii) Repeated Adjournments sought by the accused and granted by the learned Special Judge

55. One of the arguments raised on behalf of the accused before the learned District & Sessions Judge as well as this Court was that every day in prison counts and the matter requires urgent transfer, since the learned Judge due to the alleged comment made by him had already predetermined non-grant of bail is contradicted by the accused's own conduct. Despite the learned Special Judge's readiness to hear the arguments on bail application, the accused himself had sought adjournments on multiple dates including 23.03.2024, 30.03.2024 and 10.04.2024. The order dated 10.04.2024 itself records that it was the counsel for the accused who had sought a longer date of hearing as he was not available before 25.04.2024 and this adjournment was also granted.

56. It was the respondent's counsel who was not arguing the bail application, and not that the learned Judge was not hearing them. The



learned Special Judge was accommodating them on every date of hearing at their asking.

57. In the present case, not a single adjudicatory order has been passed by the learned Special Judge *qua* the respondent especially on his bail application since it was not argued by the respondent himself. It is very difficult to accept that there was any apprehension in the mind of the accused/respondent to attribute bias to the learned Special Judge as the matter was never effectively heard.

58. Thus, this Court is posed with the following question: Was there any reason for bias on part of the learned Judge when adjournment after adjournments were being sought by the defence counsels themselves? On one hand, they were seeking adjournments before the learned concerned Judge, and on the other, they were arguing that bail was a fundamental right of the accused and that each day spent in custody was a day too long, before the learned Principal District & Sessions Judge seeking transfer on the basis of alleged bias of not granting bail in the matters of Directorate of Enforcement. It is noteworthy that it was not the learned Judge who had granted adjournments on any date of the hearing but the accused himself who, despite being in judicial custody, was seeking adjournment after adjournment.

59. **It is thus not clear** whether it was the alleged apprehension of the accused that the Court was biased against him, or the accused himself had bias against the learned Judge that the Judge may not be inclined to grant him bail in this case, persuading him to file transfer petition.



No reasonable apprehension of bias

60. The wife of the respondent had allegedly overheard the learned Special Judge making a comment during a conversation with his court staff while she was still logged in through video conferencing, even though the court proceedings for their case had concluded. There is no certainty regarding the context in which the comment was made, if it was made at all. Furthermore, since such Courts often preside over numerous cases involving the Directorate of Enforcement, it cannot be definitively asserted that the comment specifically pertained to this particular case or any case at all. Additionally, there is no way to determine whether the learned Judge was expressing his own perception or referring to the perception of the counsels for the accused regarding the difficulty of obtaining bail in cases involving the Directorate of Enforcement. This ambiguity makes it difficult to substantiate any allegations of bias based solely on the basis of the alleged comment in question.

61. Therefore, to hold the learned Special Judge biased towards the respondent will be too far fetched in absence of any other attending circumstances.

62. In the present case, this Court is of the opinion that there is no legitimate foundation or premise on the basis of which the respondent herein could have apprehended bias on part of learned Special Judge, sufficient enough to transfer the case from one criminal court to another.



II. AUDI ALTERAM PARTEM

63. The principle of '*audi alteram partem*' i.e. hear the other side, is a foundational aspect of natural justice, mandating that all parties involved in a dispute must be given a fair opportunity to present their case. It is a fundamental tenet of any administrative or judicial proceeding. This principle ensures that the decisions which are made by a Court of law are based on a comprehensive understanding of the facts as well as contentions of both the sides.

Judges too, have right to be heard

64. Judges, by virtue of their duties, are tasked with upholding the principles of fairness and impartiality while adjudicating cases before them and authoring judgments. However, when the conduct of a judge himself comes into question, the principle of *audi alteram partem* must be equally applied in such cases to the judges. In other words, judges are also entitled to the benefit of the same principles of natural justice that they apply in their judgments to the community in general.

65. The application of *audi alteram partem* in cases involving judges would ensure that the judiciary remains accountable, while also protecting the rights of judges to defend their conduct and decisions. If a judge is denied the opportunity to respond to allegations levelled against him, it would lead to a culture of levelling unchecked and unverified accusations against any judge.

66. Thus, it has to be ensured that judges are treated with the same fairness and impartiality with which they are expected to treat others in their conduct and through their judgments. When the utterance or



action of a judge is brought in question and given colour of bias which has the tendency of questioning the pre-determined perception of the judge about granting relief in the particular roster he is holding, it is imperative that their part of story be also heard before passing any order against them.

67. In the present case, there are two parties involved: one against whom bias has been alleged, and the other alleging the bias i.e. the judge against whom bias is alleged and the accused who is alleging bias. The learned Special Judge was accused of making a statement after adjourning the bail application of the respondent at request of respondent himself, granting him the date of hearing of his choice only. On the basis of such accusation, the respondent had sought transfer of his bail application to some other court, since he apprehended that justice would be denied to him in the said Court since the learned Judge was, allegedly, hearing the bail application with a pre-determined mindset. It was thus essential for the learned District and Sessions Judge to hear the perspectives of both parties before passing an order of transfer of the case.

No comments called from the learned Special Judge

68. In the present case, no opportunity was granted to the learned Special Judge to respond to these allegations, before the case was transferred to another Judge. In this Court's opinion, this oversight of not providing an opportunity to present his side of story has undermined the basic tenets of fairness and natural justice. In other words, the very basic principle of natural justice i.e. *audi alteram*



partem was not followed in this case *qua* the judge against whom bias was alleged.

69. The learned District & Sessions Judge did not call for comments of the learned Special Judge against whom allegations of bias were being made, that too without there being specific proof of the wife of the respondent having logged in through video conferencing, no affidavit being filed by her.

70. In the case at hand, on the mere saying of one side that the learned Special Judge had made the alleged comment, without attempting to know the side of story of the learned Judge, the case has been transferred to another judge. Rather in the present case, it was also essential to have called for the comments of the staff to whom the learned Special Judge had allegedly made this comment.

71. Thus, in these circumstances, it was not appropriate to have transferred that matter without calling for comments of the learned Special Judge and without finding out from the complainant herself as to whom the learned Judge was speaking to and what was he replying to.

III. REPUTATION AT RISK: THE DANGERS OF HASTY CASE TRANSFERS

Demoralizing Effect of Such Transfer Orders

72. In the hard realities of the legal profession, it is not uncommon for some judges to be perceived as more lenient or 'relief giving', while others are viewed as stricter or less inclined to grant relief. Such



perceptions, whether accurate or not, can influence how parties approach their cases and the strategies they employ. Nevertheless, it is crucial to remember that every judge is bound by the same principles of law and justice, and strives to apply them impartially and fairly, irrespective of any preconceived notions which the parties or the counsels may hold about them. As long as the legal principles are applied impartially and fairly, irrespective of the outcome of an order, the party not getting relief cannot allege bias against him. The perceptions about a judge without there being any material showing bias has to remain within the realm of perception and cannot take place of evidence of bias.

73. However, when parties perceive that they can manipulate the judicial process by casting doubt on a judge's fairness, it sets a dangerous precedent. It is a general perception that some litigants attempt to manipulate the system by indulging in frivolous claims aimed at Court hunting, where litigants seek to have their cases heard by judges they perceive as more lenient. The justice system relies on the principle that judges are impartial arbiters, and any deviation from this principle must be based on clear, substantiated concerns, not mere suspicion or personal preference. Therefore, the application for transfer of case from one Court to another has to be dealt with circumspection and caution.

74. Withdrawing a case based solely on mere apprehension or unsubstantiated allegations, without first obtaining a report from the presiding judge, can have a deeply demoralizing effect not only on the officer concerned but the entire judiciary as the name of the concerned



judge not only finds mention in the order but is all over the social media. In this Court's view, such actions undermine the confidence and morale of judges, suggesting that their impartiality and integrity can be easily questioned without substantial evidence. This not only affects the individual judge but also threatens the credibility of the entire criminal justice system. Such actions, needless to say, can seriously prejudice the judge and demoralize the entire judiciary. It may also discourage a judge from performing his duties without fear or favor.

75. In case a different view is taken in the facts and circumstances of the present case, it will amount to and lead to incapacitating a judicial officer from adjudicating matters pertaining to the Directorate of Enforcement. In case, the case is transferred from the Court of learned Special Judge on such grounds, it may be used by other parties also seeking transfer on this unsubstantiated ground on flimsiest pretext of bias.

Judges' Reputation

76. The reputation of a judge is an important aspect of the judiciary's credibility and the public's trust in the legal system. **The reputation of a judge is one of his most vital assets, painstakingly built over years of dedicated service. It is of utmost importance for a judge to guard this reputation as judges too, like all other individuals, have a right to protect their reputation.**

77. The learned presiding judge in the present case could not have been condemned without being given a fair opportunity to be heard.



Allegations based on an alleged comment, purportedly made in response to an enquiry by his court staff, when the court was not in session and when the entire context in which the alleged comment may have been made is not known, do not create any premise to affect negatively the hard-earned reputation of a judge.

78. It is also important to not forget that the Court in question had been given the duty to deal with cases pertaining to Directorate of Enforcement and other matters. By casting aspersions or doubt that the learned Judge holds a view as if bail is never granted in cases of Directorate of Enforcement will seriously jeopardize the working assignment and the career of the learned Judge, on a flimsy ground that someone heard him making this comment, especially when the context is not known, and no comments are called from the learned Judge.

79. Furthermore, when orders of transfer of cases, passed on the basis of unverified allegations, are widely publicized in social media, they can cause significant harm to a judge's reputation, and can create a lasting negative perception of the judge.

80. Transfer of cases on the basis of allegations, such as the one levelled in the case at hand, would also raise questions of the fate of other cases pending before the same learned Judge. This can also undermine the judge's authority in future cases, as parties may question the judge's impartiality based on such orders of transfer of cases.



IV. ADDRESSING THE UNFORESEEN CHALLENGES OF VIRTUAL COURT PROCEEDINGS

81. There is no doubt about the fact that video-conferencing has become a common feature nowadays in judicial proceedings in our country. However, there is no gainsaying too that widespread use of this technology opens up possibilities for misunderstandings and misinterpretations as well as leave the judges and staff vulnerable to accusations.

82. When the court proceedings are conducted through video-conferencing in addition to physical hearing, it allows not only the counsels and the parties, but the general public too, to join and witness the proceedings. Thus, there may be numerous participants who may join the video-conferencing. Since the participants may include those persons who may not be connected with the field of law and may lack knowledge of legal procedures and legal terminologies, it is also important to consider that statements made during such court proceedings can be easily misheard or taken out of context.

83. If any allegation made against a judge is to be taken as true on the face of it, without any verification, in such manner, any person can allege that he or she had heard the judge or the staff saying something or the other, on video-conferencing, questioning or commenting on such alleged comments or conversations which may be quoted or used out of context to the prejudice and detriment of the judge or the staff.



*Encountering Hiccups and Challenges of Virtual Hearings:
Finding Solutions*

84. Thus, in today's era, where proceedings are often conducted *via* video-conferencing, one of the **side-effects** of the same is the potential for allegations to be leveled against judges and their staff based on overheard conversations. These conversations, which may be taken out of context, could pertain to general matters and not necessarily to the specific case at hand.

85. The transition to virtual court hearings *via* video conferencing is indeed a recent phenomenon. As we continue to embrace technology, it's natural to encounter hiccups and challenges along the way. However, these issues can only be effectively addressed when petitions concerning them come before the courts and are appropriately considered.

86. It is important to acknowledge that with any new system or technology, there will inevitably be obstacles to overcome. Yet, recognizing these challenges is the first step towards finding solutions. As these challenges are recognized and addressed, we can expect improvements in the virtual court hearing experience. By learning from each hurdle encountered, the process can be refined and it can be ensured that justice is delivered effectively, even through virtual means.

87. The growing tendency of writing abusive or inappropriate comments in the chat box at the time of video conferencing, using inappropriate, defamatory, contemptuous and abusive language against judges have also come to the notice of the Courts in the recent



past in addition to now the present case where allegations regarding an overheard conversation between the judge and the staff when the Court was not in session have been made basis of alleging bias against the concerned judge. These developments are a matter of concern. Thus, in future appropriate guidelines may be added to the video conferencing rules to counter these developments.

88. This Court respectfully requests the concerned IT committee to consider these new aspects of the video conferencing facility and the challenges it throws at the judges, the staff attached to the judges and the Registry.

Beautiful Banter Between Bar and Bench who share Bond of Bonhomie

89. This Court is also of the firm opinion that court proceedings of all Courts of law in India which are widely reported these days, including the **Beautiful Banter Between Bar and Bench** who share a **Bond of Bonhomie**, have to be safeguarded from any onslaught.

90. **This Court wonders whether even this could one day be sacrificed**, if every exchange or conversation between the bar and bench will be questioned by a litigant watching proceedings through video-conferencing who takes it otherwise to allege that the Court was communicating something on a lighter note or otherwise with the counsel appearing from the other side.

91. **The judicial process leads to justice delivery through the bonds of partnership between the bar and bench. The judicial process is not solely governed by judges but is also significantly**



partnered by the lawyers who practice before them and those working in their offices. The bar plays a crucial role in the functioning of the judiciary, and without the bar, judges cannot effectively perform their duties. **Good judgments are also the result of the collaborative contributions of both judges and lawyers.** The conversations and debates between judges and lawyers give birth to innovative interpretation of law and interpretations that evolve the legal landscape. In case, transfers of cases are allowed on the basis of alleged comments overheard without a context by a litigant who has joined proceedings through video conferencing, it will affect even the conversations between the judges and the lawyers.

92. This Court is of the opinion that **the justice system thrives on the synergy between judges and lawyers, neither can function without the other.**

CONCLUSION

93. When a person approaches a Court of law, he himself is always confronted with a question as to whether he will get justice i.e. *nyaya* from the Court. The issue of bias raised by a party and imputed to the person who is expected to do justice is a serious issue and is directly connected with the question of getting justice/*nyaya*, the prime object of coming to a Court of law.

94. While this Court returns to the merits of the present case, its task is to place the facts of the case, the attending circumstances and the allegations of the wife of the respondent in its proper context. A perusal of judicial precedents would point out that the approach of the



Courts in India has been to analyse the relevant attending circumstances in its entirety to reach a conclusion whether there has been possibility of bias to the extent that should persuade the concerned Sessions Judge, to transfer the case from one Court to another.

95. A Court of law has to satisfy itself about real likelihood of bias and not some kind of impression that a litigant may have got out of context.

96. While actual bias is not required to be proved, the real likelihood of bias can be gathered from the circumstances of a particular case. In a nutshell, the focus has to be on actual circumstances of the case to decide as to whether those circumstances and facts give rise to likelihood of bias.

97. **Judges and the judicial process possess an inherent dignity that must be preserved.** Allowing allegations to be made on the basis of mere overheard conversations between a judge and his court staff and transferring cases from one criminal court to another on such premise will undermine this dignity and threaten the integrity of the entire judiciary. Such apprehensions cannot be entertained in absence of any *iota* of evidence.

98. Further, **in this Court's opinion, the relationship between the staff and the judge has to be treated as confidential and it should not become a subject of scrutiny by the litigants or the lawyers. It is an area that demands respect and privacy.**

99. In the present case, even if it is taken to be true that the learned Special Judge in question did utter the words as alleged against him, it



does not reflect any real apprehension of bias towards the respondent and any unfair favouring to the prosecuting agency as it is not known as to in what context the alleged comment was passed and in relation to which case.

100. A stray general comment by a judge to one of his staff members who is not a participant in the decision making process, and has no interest in the outcome of any case, cannot become a ground to infer that the learned judge was saying something in context of the similar case so as to invite allegations of bias. There is nothing on record to reveal or suggest any bias due to desire of the learned Special Judge which favoured the prosecution as there are only two parties before the judge, infecting/influencing his views to the extent of adversely denying justice to the applicant.

101. This Court therefore is of the opinion that mere suspicion of bias when there was no foundational context, reason or facts, cannot amount to reasonable apprehension of likelihood of bias on the part of the learned Special Judge.

102. While this Court, in a case of reasonable apprehension and likelihood of bias supported by some basis or facts and circumstances, will recommend and immediately order a transfer of case from one court to another since as rightly pointed out by the learned Senior Counsel for the respondent, justice should not only be done but must also be seen to be done, which is of paramount importance to the administration of criminal justice; however, at the same time, the judges and judicial officers cannot be left feeling unprotected against any and every sort of allegation. It will be grave injustice if a case is



transferred from a criminal court merely at the request of a party without considering the basis for the apprehension of bias.

The Decision

103. This Court is of the opinion that in the facts and circumstances of the present case and for the reasons recorded hereinabove, there were no sufficient reasons to transfer the matter from the concerned learned Special Judge to another learned Judge, without calling for comments from the learned Trial Judge.

104. In view of the foregoing discussion, this Court is inclined to set aside the impugned order dated 01.05.2024. The matter is remanded back and the learned District and Sessions Judge is directed to decide the transfer petition afresh, after calling for comments from the concerned learned Special Judge and taking into consideration the observations made in the preceding discussion.

105. While passing this order, this Court has made an endeavour to ensure that the balance of justice and purity is maintained not only towards the parties but also to the judicial fraternity and the community.

106. This Court also directs that the following guidelines shall be followed by the learned Principal District & Sessions Judges while dealing with transfer applications filed before them:

- (i) The comments of the concerned Judge from whom the case is sought to be transferred on ground of bias will be called mandatorily.
- (ii) The application will be decided after considering the said



comments and in light of principles of real apprehension of bias.

- (iii) The other principles regarding the attending circumstances being considered will also be taken into consideration at the time of deciding such applications.

107. Learned Registrar General of this Court is directed to forward a copy of this judgment to all Principal District and Sessions Judges of Delhi. A copy be also forwarded to Director (Academics), Delhi Judicial Academy for taking note of its contents and inclusion in appropriate programme to be held for Principal District & Sessions Judges, Delhi.

108. Accordingly, the present petition alongwith pending application stands disposed of in above terms.

109. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 28, 2024/ns

