

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-2770-2024 (O&M)

Reserved on 22.01.2025

Pronounced on 17.03.2025

Baljit Singh & Ors.

... Petitioners

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Chetan Mittal, Sr. Advocate with
Mr. Mayank Mittal, Advocate,
Mr. Harish Chhabra, Advocate and
Mr. Abhishek Sanghi, Advocate
for the petitioner (s).

Mr. Baltej Singh Sidhu, Sr. Advocate with
Mr. Divij Datt, Advocate and
Mr. Jashandeep Sidhu, Advocate
for the petitioner (s) in
CRM-M Nos.5611, 5014, 5005, 4757 of 2024.

Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Pratham Sethi, Advocate and
Mr. Kanishk Swaroop, Advocate
for the petitioner(s) in CRM-M Nos. 24794, 24813 of 2024.
Mr. Rajesh Sehgal, Addl. AG Punjab with
Mr. Jaspal Singh Guru, AAG Punjab

Mr. Imran Singh Khara, Advocate for the complainant

Sandeep Moudgil, J. (Oral)

1. This order of mine shall dispose of together the bunch of petitions bearing Nos. CRM-M-2770, 4757, 5005, 5611, 5014, 24794, 24813-2024 involving similar set of facts and identical question and as such CRM-M-2770-2024 titled as ***Baljeet Singh and ors. vs. State of Punjab*** is taken up as the lead case.

2. In the instant petition invoking the jurisdiction of this court under section 407 read with Section 482 CrPC, the trial proceedings are sought to be transferred in the above-said petitions, wherein FIR No.98 dated 03.07.2016 was registered at P.S. Dayalpura, Bathinda under Sections 295-A, 120-B of IPC with the trial pending in the Court of learned Judicial Magistrate First Class, Phul, District Bathinda to the Court of learned Judicial Magistrate First Class, Chandigarh.

Question to be answered

3. Whether the facts and circumstances involved herein warrant for this Court to exercise its jurisdiction under Section 407 Cr.P.C., to transfer the trial from the Court of learned Judicial Magistrate First Class, Phul, District Bathinda to the Court of Judicial Magistrate First Class, Chandigarh.

Factual Matrix

4. Brief facts as put forth by the prosecution in the petitions in hand could be gathered from the version narrated in FIR No.98 dated 03.07.2016 was registered at Police Station Dayalpura, Bathinda under Sections 295-A/120-B IPC, which reads under:-

“Sir, brief facts of the case are that on 03.07.2017, ASI Inderjit Singh along with HC Jaswinder Singh 1543, HC Paramjit Singh No. 1362, Ct. Labh No. 2074 were present at village Bhagta Bhaika in connection with patrol duty, where Gurucharan Singh vice President Gurudwara Mahil Sahib came present and got recorded his following statement:

.Statement of Gurucharan Singh, Vice President, Gurudwara Mahil Sar Sahib, son of Shri Nihal Singh, Jatt resident of Fafra Patti, Bhagta Bahika, Mobile No. 94177- 55408. Stated that I am vice President in Gurudwara Mahil Sahib, Bhagta Bhaika. On

18.06.2016, at about 08:30 o'clock, Rajinder Singh son of Hardayal Singh Mistri, resident of *Bhagta Bhaika came present and informed me that parts of 5th Granthi are lying spread over towards the back gate (short gate) of Gurudwara i.e. in front of house of Rachlipal Singh Fauji as also in the narrow street. Thereafter, I along with him went to the spot and collected the desecrated parts of Gurbani and then put the same in the heaven (Sachkhand) with due humanity. Since, the president of Gurudwara was out of station, that being so, we did not give any intimation of this incident to anyone. The unknown person while religious sentiments. Strict legal action be taken against the said miscreants. The statement has been got recorded read over to me and after admitting the same to be correct, appentled his signature on the same in Punjabi. The same was attested by Inspector Indrjit Singh. From the aforesaid statement, offence U/s 295-A and 120-B of Indian Penal Code is found to have been committed. Accordingly, for registration of an FIR in the matter against unknown persons, a tehrir was sent to the police station through Ct. Labh Singh and the investigation was carried out on the spot by me. After visiting the place of occurrence, site plan was prepared. Statements of witnesses were recorded. Thereafter, ASI Inderjit Singh carried out the investigation in the case. On 13.11.2018, complainant- Gurucharan Singh, Vice President, Gurudwara Mahil Sar Sahib son of Shri Nihal Singh, Jatt, resident of Fafra Patti, Bhagta Bhaika, Mobile No. 9417755048 got recorded his supplementary statement to the effect that he is resident of aforesaid address and agriculturist by profession besides serving as Vice-President at Gurudwara Mahil Sahib Bhagta : Bhaika. On 18.06.2016 at about 08:30. o'clock in the night, Rajinder Singh, son of Hardayal Singh Mistri, resident of Bhagta Bhaika came present and informed him that parts of 5th Granthi are lying spread over towards the back gate (short gate) of Gurudwara i.e. in front of house of

Rachhpal Singh Fauji as also in the narrow street. Thereafter, he along with him went to the spot and collected the desecrated part of Gurbani and then put the same in the heaven (Sachkhand) with due humanity and that on his statement, the FIR was registered against unknown persons. He further stated that the said act Manohar Lal Arora, Gurbaviter Singh, son of Gurbachan Singh Mistri near Bus Stand, Manjit Singh son of Raghvir Singh, Maur Road, Kesar Singh Wala, Amarjit Singh Baildar SC resident of Bhagta Bhaika, Sadhu Singh son of Gurbachan Singh Naai Sikh, Patti Melbra, Sukhmander Singh son of Gurbachan Singh Vahi Sikh, resident of Patti Melbra, Baljit Singh son of Mohinder Singh Mistri Bank side Power Grid, Rajinder Babbu son of Phool Chand Arora, Rajvir Singh son of Thana Singh residents of Bhagta Bhaika, with a view to harm the religious sentiments of sikh communism. Therefore, strict legal action be taken against them. The statement has been recorded to you, listen and same is correct one. Legal action be taken against them.”

Submissions

On behalf of the petitioners

5. Mr. Chetan Mittal, learned Senior Advocate has drawn attention of this Court to an order dated 04.01.2024 (Annexure P-7) passed by the Apex Court and submits that the present petition(s) have been preferred in pursuance to the liberty granted therein and points out that there being repeated incidents of threats to the accused involved in the present FIR it is a fit case to direct transfer of the trial proceedings to the competent Court at Chandigarh.

6. He would further urge that though the petitioners had earlier approached the Supreme Court in Transfer Petition No.452, 458-462 of 2019 and the same were dismissed vide order dated 25.11.2020 in view of the undertaking by the State that “foolproof arrangements will be made and security will be provided to the petitioners”, the circumstances further deteriorated thereafter as three murders having taken place in the past three years of the persons related to the similar FIRs, involving alleged sacrilege incidents.

7. Mr. Mittal lays much stress to the fact that the petitioners are also facing constant threat and having strong apprehension at the hands of the complainant and other radicals and thus are not able to defend themselves in a manner to ensure fair and transparent trial.

8. Dr. Anmol Rattan Sidhu, learned Sr. Advocate further adds submissions on behalf of the petitioners referring to an advisory dated 08.11.2022, issued by Law and Order Wing of Government of Punjab (Annexure P-5), wherein it has been acknowledged that there is an attempt to carry out targeted killings of disciples of Dera Premises especially those who have been accused in the sacrilege cases and as such, a direction has been issued to keep strict vigil and make comprehensive police and security arrangements to maintain law and order.

9. It is also contended on behalf of the petitioners that they are at parity with other co-accused persons in alleged sacrilege cases, wherein the the Apex Court, vide order dated 28.02.2023 (Annexure P6) in Transfer Petition (Crl.) No.284 of 2020 “Sukhjinder Singh @ Sunny & Ors. vs. State of Punjab”, had transferred four sacrilege cases from Moga/Faridkot to the

Courts at Union Territory, Chandigarh and the petitioners being similarly situated are seeking the same relief for the reason that the defence witnesses are not coming forward to depose the truth out of fear and apprehension of being killed from Sikh hardliners. Learned counsel cited various instances including the one of Mohinderpal Singh @ Bittu who was brutally attacked and murdered at Nabha Central Jail on 22.06.2019 by two of his fellow inmates which was celebrated by certain radical elements who threaten violence and persecution of the petitioners as initially the FIR was registered against Mohinderpal Singh @ Bittu but subsequently the petitioners were also named as accused.

10. Lastly arguments have been concluded on behalf of the petitioners with the prayer for transfer of trial proceedings from Bathinda to the Court at Chandigarh asserting that no prejudice would be caused to the prosecution/State of Punjab if the petitions are allowed as the investigation in the present FIR stands completed and final report pertaining to offence under Section 295-A read with Section 120-B IPC already had been presented before the Court on 19.12.2018.

On behalf of the State

11. Learned State counsel submits that adequate police security has been provided to the petitioners and no report has been submitted ever by the incharge of the security inferring any threat to the life and liberty of the petitioners. Moreover, the entire prosecution witnesses are hailing in or around Faridkot and it would be difficult to attend the judicial proceedings at Chandigarh or any other place rather than District Faridkot.

12. It is also averred that the petitioners have no *locus standi* to file the present petition(s) as the matter before the trial court is at conclusion stage and the same has been filed just to delay the proceedings.

13. Heard, learned counsel for the respective parties.

Discussion:-

14. As far as the contention of State is concerned to the effect that trial is at concluding stage, the proceedings at present pending before the trial Court at Bathinda, petition wise are noticed as under:-

CRM-M 2770/2024-Baljeet Singh & Ors. Vs. State of Punjab

FIR No.98 of 2016 has been registered at P.S. Dayalpura, District Bathinda and trial in CHI/6/2019 is still pending in the Court of JMIC, Phul, District Bathinda, Punjab.

CRM-M 5611/2024-Jatindervir Arora & Ors. Vs. State of Punjab

FIR No.161 of 2015 registered at P.S. Dayalpura, District Bathinda. And trial in CHI/3/2019 is still pending in the Court of JMIC, Phul, District Bathinda, Punjab.

CRM-M 5014/2024-Baljeet Singy & Ors. Vs. State of Punjab

FIR No.89 of 2016 registered at P.S. Dayalpura, Bathinda and trial in CHI/5/2019 is still pending in the Court of JMIC, Phul, District Bathinda, Punjab.

CRM-M-5005-2024 Sukhjinder Singh & Sunny & Anr. Vs. State of Punjab

FIR No.89 OF 2018 registered at P.S. Kotkapura, District Faridkot and the trial in SC/67/2019 titled as State Vs. Mohinder Pal Singh @ Bittu arising out

of FIR No.89 of 2018, P.S. Kotkapura, District Faridkot is still pending before Addl. District & Sessions Judge, Faridkot, Punjab.

CRM-M 4757/2024-Pritvi Singh @ Pirthi & Ors. Vs. State of Punjab

FIR No.79 OF 2015 registered at P.S. Samalsar, District Moga and in this case, after the conclusion of trial, criminal appeals i.e. (i) CRA/114/2022 titled as Amardeep @ Deepa & Ors. Vs. State of Punjab; (ii) CRA/120/2022 titled as Sewak Singh Vs. Davinder Singh & Ors.; (iii) CRA/124/2022 titled as State of Punjab Vs. Prithvi Singh @ Prithi & Ors. are pending before Sessions Judge, Moga, Punjab.

CRM-M-24813 & 24794-2024 (Pardeep Kumar @ Pardeep Kaler vs. State of Punjab)

FIR No.79 dated 04.11.2015 registered at PS Smalsar, District Moga and FIR No.161 dated 20.10.2015 registered at P.S. Dayalpura, Bathinda and trial in both the cases are still pending.

15. Before proceedings further, it would be appetite to note here that status report dated 05.03.2024, has been filed by Pritpal Singh, DSP, S/D Phul, District Bathinda, followed by two other status reports dated 19.01.2025 has been filed (in CRM-M-24794-2024 and CRM-M-5611-2024) by Pardeep Singh, PPS, DSP, S/D Phul, wherein it is averred that the petitioners have no locus standi to file the present petition(s) as the matter before the trial court is at conclusion stage and the same has been filed just to delay the proceedings.

16. Subsequently, reply dated 21.01.2025 has been filed by Jatinder Singh, DSP S/D Kotkapura, District Faridkot wherein the fact of murder of Mohinder Pal in jail has been acknowledged. Though, it is urged that none of the petitioners had ever expressed any threat or made any representation or

complaint raising apprehension of threat to their life which shows that it is nothing but their manifestation.

17. It is evident that initially the case were registered against unknown persons alleging that on 18.06.2016 several pages of Sri Guru Granth Sahib were lying on the street near Gurudwara in Bhagta Bhaika. In a supplementary statement recorded on 13.11.2018 of informant Gurcharan Singh, who was serving as Vice President at Gurudwara Mahil Sahib Bhagta Bhaika, it was alleged that the said act of desecration of the holy Granth was committed by the petitioners in order to harm the religious sentiments of Sikh community and thereafter, the petitioners were arrayed as accused in the above stated FIR vide report dated 13.11.2018.

18. Subsequently the Investigating Agency arrested Sadhu Singh, Amarjit Singh, Rajinder Kumar and Gulpaviter, who were lodged in Central Jail, Nabha, along with the accused persons in another FIR No.161/2015. It is during this detention one of the accused, namely, Mohinderpal Singh Bittu was allegedly murdered by two inmates in the Nabha Jail.

19. Even, the media reports poured in on the said incident with the reporting that his alleged murder was celebrated by various radicals and murderers, who were inmates at the Nabha Jail.

20. In the wake of such threats faced by the persons accused in alleged sacrilege cases and the possibility of retaliation, the Director General of Police, Punjab, has to even issue advisory dated 20.7.2019 (Annexure P3) to take preventive measures for protection of Dera Sacha Sauda followers.

21. With such prevailing circumstance, the petitioners and other such accused persons approached the Hon'ble Apex Court seeking transfer of

investigation/trial of the FIRs to any other court outside Punjab in the light of communally surcharged atmosphere and persecution faced by them in the State of Punjab as the defence witnesses were not coming forward to depose in favour of the petitioners due to apparent apprehension of their safety and security from the radicals.

22. The said Transfer Petition (Crl.) No.452 of 2019 and other connected petitions reported as “**Jatinderveer Arora & Ors. vs. State of Punjab, AIR 2021 SC 760**” were dismissed by the Supreme Court vide judgment dated 25.11.2020 with the following observations:-

“18. From the available material, this Court cannot reasonably conclude that the situation in Punjab is not conducive for a fair trial for the petitioners. The few instances mentioned by the petitioners’ counsel may suggest heightened feelings amongst different groups but they do not in my estimation, call for transfer of proceedings to another State.

19. Moreover, it cannot just be the convenience of the petitioner but also of the Complainant, the Witnesses, the Prosecution. The larger issue of trial normally being conducted by the jurisdictional Court must also weigh on the issue. When relative convenience and difficulties of all the parties involved in the process are taken into account, the conclusion is inevitable that no credible case for transfer of trial to alternative venues outside the State of Punjab is made out, in the present matters.

20. The final submission of Petitioners’ counsel was that, if the Trials cannot be shifted to Delhi, they should be shifted to Chandigarh. This was not the pleaded case of the Petitioners. The suggested alternate venue is Punjab’s capital and even though Chandigarh is an Union Territory, the population pattern in the city is like the rest of Punjab. Such alternative plea on the

grounds pleaded in these matters cannot therefore be countenanced.

21. The transfer of trial from one state to another would inevitably reflect on the credibility of the State's judiciary. Except for compelling factors and clear situation of deprivation of fair justice, the transfer power should not be invoked. The present bunch of cases are not perceived to be amongst such exceptional categories.

22. For the above reasons, these cases are found devoid of merit. Nonetheless, the State as assured to this Court, must make all arrangement to ensure safe conduct of proceedings at the trial courts and also provide adequate security to the petitioners and their associates as might be warranted from the security perspective. It is however made clear that the observations in this judgment are only for disposal of these petitions and should have no bearing for any other purpose.

23. Subject to the aforesaid cautionary observation, the cases are dismissed.”

23. However, despite police protection given to the persons precepting danger, there was no end to the violence against them which led to filing of petitions bearing Transfer Petitions No.284 & 286 of 2020 and Transfer Petitions No.798 & 801 of 2022, wherein the Hon'ble Supreme Court directed transfer of trial in the sacrilege cases from Courts at Moga and Faridkot to the Competent Courts at Union Territory Chandigarh vide its judgment dated 28.02.2023 (Annexure P6). The relevant part of same reads as under:-

“Under these circumstances, the apprehension of the petitioners cannot be rejected outright as being unfounded and taking an overall view of the petitioners' plea, in our opinion, it would be

expedient for the ends of justice if the cases are transferred to a Court of competent jurisdiction within the Union Territory of Chandigarh. We have taken this view upon considering the judgment of the learned Single Judge delivered on 25th November 2020. But in that judgment, one of the factors which was weighed by the learned Single Judge was that with passage of time, the atmosphere ought to have mellowed down. In the cases before the learned Single Judge, the incidents were of 2015. Same is the year of incident before us as well, but as it has been submitted before us, persons accused in such offences had faced assault after the said judgment was delivered.

We make it clear, however, that the reason for passing this order is solely based on apprehension of safety and security of the petitioners, who are accused persons, as well as the defence witnesses and this order of transfer must not be construed to cast any doubt or aspersion on impartiality of the concerned Court or any lapse or deficiency of the law enforcement agency.

We, accordingly, allow these transfer petitions and request the learned Chief Justice of High Court of Punjab and Haryana to allocate the cases to an appropriate Court within the Union Territory of Chandigarh. As the cases are being transferred from the Courts of the State of Punjab to Courts subordinate to the same High Court, we invoke our jurisdiction under [Article 142](#) of the Constitution of India to effect transfer of these cases.

24. Deriving support from the above directions; a bunch of other petitions were also filed which were decided by the Supreme Court vide order dated 04.01.2024 (Annexure P7) relegating them to approach this Court under Section 407 CrPC for the relief claimed, which would be crystalized by having a glance and as such is noted hereinbelow:-

“The prayer of the petitioners in Transfer Petition(Criminal) No. 377 of 2023 is for transfer of a proceeding registered as CHI No. 5 of 2019, titled as "State of Punjab Vs. Baljeet Singh & Ors."(subject-case), pending in the Court of Judicial Magistrate 1st Class, Phul, District Bathinda, Punjab to the Court of Judicial Magistrate 1st Class, Criminal Courts, Chandigarh. Mr. Basant, learned senior counsel appearing for the petitioners has relied on an earlier judgment of this Court transferring a batch of cases containing allegations similar to the one which forms the basis of the aforesaid case. The said judgment was delivered on 28th February, 2023 in Transfer Petition (criminal) No. 284 of 2020, which was heard along with three other transfer petitions.

But in the set of petitions in which the aforesaid judgment was delivered, the petitioners sought transfer of the respective cases to a Court of Competent Jurisdiction in Delhi, outside the State of Punjab.

In the present petition, transfer of the subject-case is asked for from a Court subordinate to the Punjab and Haryana High Court at Chandigarh to another Court having the same status, i.e. subordinate to the Punjab and Haryana High Court.

In our opinion, the petitioners ought to apply before the jurisdictional High Court I n terms of Section 407 of the Code of Criminal Procedure, 1973 for the reliefs claimed in this petition. The present petition stands disposed of with the aforesaid observation.

We also make it clear that if such an application is made before it, the High Court shall apply its mind independently in such petition for transfer and not be influenced by any earlier order passed, before the aforesaid judgment was delivered by this Court.

Pending application(s), if any shall also stand disposed off.

TRANSFER PETITION (CRIMINAL) NO.380/2023; TRANSFER PETITION (CRIMINAL) NO.378/2023; TRANSFER PETITION TRANSFER and TRANSFER PETITION PETITION (CRIMINAL) NO.381/2023 (CRIMINAL) NO.382/2023; (CRIMINAL) NOS. 384-386/2023

The order passed in transfer petition(criminal) No. 377 of 2023 shall guide the rest of these petitions. The petitioners in these proceedings shall also be at liberty to apply before the Punjab and Haryana High Court Chandigarh transfer for of the at respective cases/appeals, which form subject-matter of this set of petitions.

These transfer petitions also stand disposed of with the same observation(s).

Pending application(s), if any, shall stand disposed off.”

25. The complainant in the instant FIR, filed CRM-M-27562-2023 titled as “**Gurcharan Singh vs. State of Punjab**” seeking a direction to the trial court at Bathinda to expedite and conclude the trial proceedings in CHI No.6 of 2019 and this Court vide order dated 30.05.2023 (Annexure P-8) disposed of the said petition with a direction to the trial court to dispose of the trial expeditiously preferably within a period of 6 months. However, the petitioners herein were not impleaded as party and as such, applications were moved for impleadment therein and for extension of time, which was already granted to the trial Court for conclusion of the trial. The order dated 30.05.2023 read as under:-

“1. By way of present petition filed under Section 482 CrPC, prayer has been made for issuance of directions to the trial Court to expedite the trial arising out of FIR No.98 dated 03.07.2016 under Sections 295-A and 120-B IPC registered at

P.S. Dialpura, District Bathinda titled as “State of Punjab Vs. Baljeet Singh and Ors.”

2. Learned counsel for petitioner submits that based on a complaint moved at the instance of petitioner, the aforementioned FIR was registered wherein challan was presented on 03.01.2019 followed by framing of charges on 05.12.2020, however, even after the expiry of more than two years and six months, the prosecution has not been able to conclude the evidence and the trial is thus lingering on.

3. Notice of motion.

4. Mr. Tarun Aggarwal, Sr. D.A.G. Punjab who is present in Court accepts notice on behalf of respondent-State and on instructions from ASI Mander Singh submits that the Investigating Agency shall take every endeavour to conclude the prosecution evidence at the earliest.

5. In view of the above as well as considering the fact that the trial is pending for the last almost 4 years and six months and out of 23 witnesses only 3 have been examined-in-chief and their cross-examination is yet to be conducted, trial Court is requested to dispose of the trial expeditiously preferably within a period of six months.

6. Disposed of in the aforesaid terms.”

26. The petitioners allege grave threat to their life and apprehend that there is bleak chance of fair trial, if, the case is tried in the State of Punjab and therefore, the instant petition has been filed seeking transfer of CHI No. 6/2019 titled "State of Punjab v. Baljeet Singh & Ors." pending before the Court of JMIC, Bathinda, Punjab to any other court outside the State of Punjab, which was heard alongwith other petitions clubbed together having same cause of action and identical relief sought therein.

27. It would be appetite to borne in mind that the Supreme Court in *Nahar Singh Yadav v. Union of India, (2011) 1 SCC 307* laid down broad factors to determine the transfer like,

- (i) the state machinery and prosecution “working hand in glove with the accused”,
- (ii) probability of physical harm to the witness or the complainant,
- (iii) inconvenience burdened by the parties,
- (iv) communally surcharged atmosphere,
- (v) and the involvement of hostile individuals in the case.

28. In a concrete, a graver fact which disturbs this Court in more ways than one is the alleged absence of congenial atmosphere for a fair and impartial trial. It is becoming a frequent phenomenon in our country that court proceedings are being disturbed by rude hoodlums and unruly crowds, jostling, jeering, or cheering and disrupting the judicial hearing with menaces, noises and worse. This tendency of toughs and street roughs to violate the serenity of court is obstructive for the course of justice and must surely be stamped out.

29. Likewise, the safety of the person of an accused or complainant is an essential condition for participation in a trial and where that is put in peril by commotion, tumult, or threat on account of pathological conditions prevalent in a particular venue, the request for a transfer may not be dismissed summarily. It causes disquiet and concern to a court of justice if a person seeking justice is unable to appear, present one's case, bring one's witnesses or adduce evidence.

30. Indeed, it is the duty of the court to assure propitious conditions which conduce to comparative tranquility at the trial.

31. Turbulent conditions putting the accused's life in danger or creating chaos inside the court hall may jettison public justice. If this vice is peculiar to a particular place and is persistent, the transfer of the case from that place may become necessary.

32. Likewise, if there is general consternation or atmosphere of tension or raging masses of people in the entire region taking sides and polluting the climate, vitiating the necessary neutrality to hold a detached judicial trial, the situation may be said to have deteriorated to such an extent as to warrant transfer.

33. Reference can be made to “***G.X. Francis v. Banke Bihari Singh, A.I.R. 1958 S.C. 809***”, wherein the Supreme Court held as under:-

".... But we do feel that good grounds for transfer from Jashpurnagar are made out because of the bitterness of local communal feeling and the tenseness of the atmosphere there. Public confidence in the fairness of a trial held in such an atmosphere would be seriously undermined, particularly among reasonable Christians all over India not because the Judge was unfair or biassed but because the machinery of justice is not geared to work in the midst of such conditions. The calm detached atmosphere of a fair and impartial judicial trial would be wanting, and even if justice were done it would not be "seen to be done".

34. It is no doubt pertinent to mention that the transfer process itself can cause a lot of inconvenience to witnesses, victim, accused and the state.

35. All of them would on transfer have to travel to the place where

transfer is ordered when required, costing time and money for all the interested parties. Since the interest of both the victim and the accused can be at jeopardy in an unfair trial a question arises as to who can claim transfer under this section.

36. A reference to ***Menaka Gandhi vs. Rani Jethmalani, (1979) 4 SCC 167*** needs to be made, wherein the Editor of a monthly journal, Mrs. Menaka Gandhi filed a petition for the transfer of the criminal case of defamation against her from Bombay to Delhi on three grounds; namely,

- (i) that the parties (complainant and petitioners) reside in Delhi and some formal witnesses also belong to Delhi;
- (ii) that the petitioner is not able to procure competent legal service in Bombay; and
- (iii) that the atmosphere in Bombay is not congenial to a fair and impartial trial of the case against her.

Dismissing the petition, the Supreme Court gave certain directions and made strong observations to hold that the assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made, is not the hypersensitivity or relative convenience of the parties or easy availability of legal service or like trivial grievances. Something more substantial, more compelling, more imperiling from the point of view of public justice and its attendant environment is necessitous if the Court is to exercise its powers of transfer. The Court also held that the sophisticated process of criminal trial certainly require competent legal service to present a party's case.

If an accused person, for any particular reason, is virtually deprived of this facility, an essential aid to fair trial fails. If in a certain court the whole Bar, for reasons of hostility or otherwise, refuses to defend an accused person, an extraordinary situation difficult to imagine, having regard to the ethics of the profession- it may well be put forward as a ground which merits the Court's attention. The Court held that in case of many controversial figures in public life, their presence in a public place gathers partisans for and against, leading to cries and catcalls or 'jais' or 'zindabads'. Nor is it unnatural that some persons may have acquired, for a time a certain quality of reputation, sometimes notoriety, sometimes glory, which may make them the cynosure of popular attention when they appear in cities or even in a court. And when unkempt crowds press into a court hall, it is possible that some pushing, some nudging, some brash ogling or angry staring may occur in the rough and tumble resulting in ruffled feelings for the victim. This is a far cry from saying that the peace inside the court has broken down, that calm inside the court is beyond restoration, that a tranquil atmosphere for holding the trial is beyond accomplishment or that operational freedom for judge, parties, advocates and witnesses has ceased to exist.

37. At the same time the Apex Court also observed that it cannot view with unconcern the potentiality of a flare up and the challenge to a fair trial, in the sense of a satisfactory participation by the accused in the proceedings against her. Engineered fury may paralyse a party's ability to present his case or participate in the trial. If the justice system grinds to a halt through physical manoeuvres or sound and fury of the senseless populace,

casualty is of the rule of law. It emphasized that even the most hated human anathema has a right to be heard without the rage of ruffians or huff of toughs being turned against him to unnerve him as party or witness or advocate.

38. At this stage I deem necessary to look at the power of this Court to transfer the case in appeals deserve consideration for which this Court turn to Section 407 Cr.P.C.:-

407. Power of High Court to transfer cases and appeals.

(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 an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order –

(i) that any offence be inquired into or tried by any Court not qualified under Sections 177 to 185 (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 be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative : Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the 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.

(6) Where the application is for the transfer of a case or appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose :Provided that such stay shall not affect the subordinate Court's power of remand under Section 309.

(7) Where an application for an order under sub-section (1) 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 one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under Section 197.

39. It thus emerges out from plain examination of above mandate that whenever it is made to appear to the High Court that:

- (i) a fair and impartial inquiry or trial cannot be held in any criminal court subordinate thereto, or
- (ii) that some question of law of unusual difficulty is likely to arise;

- (iii) that an order under this section is required by any provision of Cr.PC, or
- (iv) will tend to the general convenience of the parties or witnesses, or
- (v) is expedient for the ends of justice.

40. It may order 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. The High Court may act either on the report of the lower Court or on an application of the party interested or on its own initiative.

41. The scope of jurisdiction under Section 406 of the Code of Criminal Procedure was discussed in **Surendra Pratap Singh v. State of Uttar Pradesh, (2010) 9 SCC 475**, wherein the Supreme Court held as under:-

“14. Mr Gupta submitted that except for wild allegations made against the investigating authorities and the officials of the State Government, nothing substantial has been disclosed from the submissions made on behalf of the petitioner which would indicate that either the investigating agencies or the prosecuting agency was in any way biased in favour of Respondent 2. On the other hand, upon a fair investigation undertaken by two separate agencies, which included CB CID, it had been found that Respondent 2 was not in any way connected with the alleged incident of 24-6-2005. In fact, at the relevant time, the party to which he belonged was not in power which would enable him to influence the course of investigation. Mr. Gupta submitted that no interference was called for with the investigation reports submitted both by the local police as also by CB CID, and the transfer petition was, therefore, liable to be dismissed.

15. *We have carefully considered the submissions made on behalf of the respective parties. While the arrest of Respondent 2 may have been stayed by the High Court, the circumstances in which the incident had occurred on 24-6-2005 coupled with the fact that Respondent 2 was returned as an MLA in the same elections, does to some extent justify the apprehension of the petitioner that the perspective of the prosecution may become polluted. There is no getting away from the fact that Respondent 2 is an MLA and that too belonging to the present dispensation. Since justice must not only be done but must also seem to be done, this case, in our view, is an example where the said idiomatic expression is relevant.*

16. *It would not be proper on our part to dilate on this question further during the pendency of the trial. We are, however, of the view that in order to do fair justice to all the parties, the trial should be held outside the State of Uttar Pradesh and, accordingly, we allow the transfer petition and direct that the matter be transferred to the High Court of Madhya Pradesh which shall decide the place and the court before which the trial may be conducted."*

42. The identical issue as in hand, was also tested in “**Nahar Singh Yadav v. Union of India, (2011) 1 SCC 307**” wherein the Supreme Court delineated the parameters which ought to be kept in mind while considering an application for transfer, the same reads as under:-

“...This power has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide credibility to the trial. Some of the broad factors which could be

kept in mind while considering an application for transfer of the trial are:-

(i) when it appears that the State machinery or prosecution is acting hand in glove with the accused, and there is likelihood of miscarriage of justice due to the lackadaisical attitude of the prosecution;

(ii) when there is material to show that the accused may influence the prosecution witnesses or cause physical harm to the complainant;

(iii) comparative inconvenience and hardships likely to be caused to the accused, the complainant/the prosecution and the witnesses, besides the burden to be borne by the State Exchequer in making payment of travelling and other expenses of the official and non-official witnesses;

(iv) a communally surcharged atmosphere, indicating some proof of inability of holding fair and impartial trial because of the accusations made and the nature of the crime committed by the accused; and

(v) existence of some material from which it can be inferred that the some persons are so hostile that they are interfering or are likely to interfere either directly or indirectly with the course of justice.”

43. This Bench In **Charanjit Singh Sharma vs. State of Punjab (CRM-M-51561-2019)** decided on 31.05.2024, similar circumstance involving identical issue of transfer of cases on account of threat by Sikh hardliners, recapitulated the power of this Court in matters of transfer of trial, as enshrined under Section 407 Cr.PC and held as under:-

“25. It thus emerges out that whenever it is made to appear to the High Court that a fair and impartial inquiry or trial cannot be held in any criminal court subordinate thereto, or that some question of law of unusual difficulty is likely to arise; or that an order under this section is required by any provision of CrPC, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order 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. The High Court may act either on the report of the lower Court or on an application of the party interested or on its own initiative.

26. Unless an application for such transfer has been made to the Sessions Judge and rejected by him, no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division. Every application for an order under sub-section(1) of section 407 of the Code of Criminal Procedure shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation. When an application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7) CrPC. Where the application is for the transfer of a case of appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, in such terms as the High Court may think fit to impose.”

44. Considering the above-said principles alongwith the power vested with it to transfer a trial under certain circumstances, those petitions were allowed and the judgement rendered in CRM-M-51561-2019 dated 31.05.2025 has also been upheld by the Hon'ble Supreme Court in Special Leave Petition (Crl.) No.5430 of 2025 vide order dated 09.04.2025.

45. Applying the above parameters in the facts and circumstances of the cases and also taking into account the fact that the Supreme Court vide order dated 28.02.2023 in **Transfer Petition (Crl.) No.284 of 2020** (cited supra) ordered transfer of all cases relating to the trial of those persons who were allegedly connected to the incident of sacrilege from Faridkot to the competent Court at UT Chandigarh solely keeping in view the apprehension of safety and security of the accused persons as well as the defence witnesses, this Court held as under:-

*“Undoubtedly, the power under Section 407 CrPC has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide credibility to the trial, however, in keeping in mind the peculiar factual and law and order situation particularly the life and security of the accused and other witnesses in the present case, the broad parameters as laid down in **Nahar Singh's** case (supra) are made out inasmuch as the documents placed on record and the instances quoted by the petitioner are sufficient enough to indicate that if trial is permitted to continue at Faridkot that may create communally surcharged atmosphere for holding fair and impartial trial. Furthermore, since the Apex Court itself has transferred the trial of all the FIRs, referred to above, relating to the said sacrilege incident from Moga and Faridkot to UT*

Chandigarh, this Court sees no reason for it to deviate from the order passed by the Apex Court.”

46. This Court is also sanguine of a judgment dated 28.02.2023 rendered by the Hon'ble Supreme Court in a bunch of four transfer petitions including **Transfer Petition (Criminal) No.284 of 2020 Sukhjinder Singh @ Sunny & Ors. Vs. State of Punjab** wherein the trial of FIRs as mentioned by the petitioner in the writ petitions, have been transferred. The relevant extracts of the said order read as under:-

“Under these circumstances, the apprehension of the petitioners cannot be rejected outright as being unfounded and taking an overall view of the petitioners’ plea, in our opinion, it would be expedient for the ends of justice if the cases are transferred to a Court of competent jurisdiction within the Union Territory of Chandigarh. We have taken this view upon considering the judgment of the learned Single Judge delivered on 25 th November 2020. But in that judgment, one of the factors which was weighed by the learned Single Judge was that with passage of time, the atmosphere ought to have mellowed down. In the cases before the learned Single Judge, the incidents were of 2015. Same is the year of incident before us as well, but as it has been submitted before us, persons accused in such offences had faced assault after the said judgment was delivered.

We make it clear, however, that the reason for passing this order is solely based on apprehension of safety and security of the petitioners, who are accused persons, as well as the defence witnesses and this order of transfer must not be construed to cast any doubt or aspersion on impartiality of the concerned Court or any lapse or deficiency of the law enforcement agency.

We, accordingly, allow these transfer petitions and request the learned Chief Justice of High Court of Punjab and

Haryana to allocate the cases to an appropriate Court within the Union Territory of Chandigarh. As the cases are being transferred from the Courts of the State of Punjab to Courts subordinate to the same High Court, we invoke our jurisdiction under [Article 142](#) of the Constitution of India to effect transfer of these cases. We accordingly direct that cases registered as:-

(a) CHI/178/2020 titled “[State v. Randeep Singh alias Neela & Ors.](#)” arising out of FIR No.63/2015 dt. 02.06.2015 registered at P.S. Bajakhana, district Faridkot pending in the Court of Judicial Magistrate First Class, Faridkot, Punjab.

(b) SC/170/2018 titled “[State v. Mohinderpal @ Bittu & Ors.](#)” arising out of FIR No.33/2011 dt.07.03.2011 registered at P.S. City Moga, district Moga pending in the Additional Sessions Court, Moga, Punjab.

(c) CHI/284/2021 titled “[State v. Sukhjinder Singh & Ors.](#)” arising out of FIR No.117/2015 dt.25.09.2015 registered at P.S. Bajakhana, district Faridkot pending in the Court of Chief Judicial Magistrate, Faridkot, Punjab.

(d) CHI/275/2021 titled “[State v. Sukhjinder Singh & Ors.](#)” arising out of FIR No.128/2015 dt.12.10.2015 registered at P.S. Bajakhana, district Faridkot pending in the Court of Chief Judicial Magistrate, Faridkot, Punjab.

be placed before the learned Chief Justice of the High Court of Punjab and Haryana for being allocated to a Court of competent jurisdiction within the Union Territory of Chandigarh. Pending application(s), if any, shall stand disposed of.

47. A perusal of the above order would show the Apex Court has ordered transfer of FIR No.63/2015 dt. 02.06.2015 registered at P.S. Bajakhana, district Faridkot, FIR No.33/2011 dt.07.03.2011 registered at P.S.

City Moga, district Moga, FIR No.117/2015 dt.25.09.2015 registered at P.S. Bajakhana, district Faridkot and FIR No.128/2015 dt.12.10.2015 registered at P.S. Bajakhana, district Faridkot, all relating to the trial of those persons who were allegedly connected to the incident of sacrilege, from Faridkot to the competent Court at UT Chandigarh solely keeping in view the apprehension of safety and security of the accused persons, as well as the defence witnesses.

48. Coming back to the bunch of cases in hand, the petitioners have highlighted instance like murder of Manohar Lal who was father of one accused Jatinderveer Arora in FIR No.161 of 2015 and FIR No.86 of 2016 followed by murder of Pardeep Kumar accused in FIR No.63 of 2015 and the trial of this case has already been transferred.

49. Another instance of attempt of murder of Shakti Singh accused in FIR No.89 of 2018 has also been highlighted pointing out that the environment in the Punjab is surcharged after the sacrilege case.

50. A free and fair trial is an important facet of Article 21 of the Constitution even as it forms the foundation of criminal jurisprudence. Fairness of a trial can only be ensured if the process from investigation to conviction is not tainted with bias for or against the accused or the victim. The nature of the criminal justice system in Bharat is such that the involvement of executive in the investigation and prosecution process paves the way for bias in the trial proceedings leaving a vacuum for tampering of evidence and witnesses being intimidated and put in danger are extremely high. This demands for a fair adjudication and independent trial to be conducted in an environment which is free from such abuses and excesses.

51. Taking into account the above-discussion based on submissions of respective all stake-holders, the material before this Court, the circumstances prevailing and also considering the fact that the identical petitions involving sacrilege has been ordered to be transferred to UT Chandigarh, there is no reason for this Court to reject the petitions.

52. The trial of the present cases is ordered to be transferred to the competent Court at UT Chandigarh moreso when the FIRs are interconnected and that being so, moving of the trial to a particular place would only facilitate the fair, transparent and free from fear trial proceedings.

53. Accordingly, these petitions are allowed and the trial in the following cases:-

a. **CRM-M 2770/2024-Baljeet Singh & Ors. Vs. State of Punjab**

FIR No.98 of 2016 has been registered at P.S. Dayalpura, District Bathinda and trial in CHI/6/2019 is still pending in the Court of JMIC, Phul, District Bathinda, Punjab is transferred to the Competent Court of jurisdiction to try the said offences at Union Territory Chandigarh.

b. **CRM-M 5611/2024-Jatindervir Arora & Ors. Vs. State of Punjab**

FIR No.161 of 2015 registered at P.S. Dayalpura, District Bathinda and trial in CHI/3/2019 is still pending in the Court of JMIC, Phul, District Bathinda, Punjab is transferred to the Competent Court of jurisdiction to try the said offences at Union Territory Chandigarh.

c. **CRM-M 5014/2024-Baljeet Singy & Ors. Vs. State of Punjab** FIR

No.89 of 2016 registered at P.S. Dayalpura, Bathinda and trial in CHI/5/2019 is still pending in the Court of JMIC, Phul, District Bathinda, Punjab, is

transferred to the Competent Court of jurisdiction to try the said offences at Union Territory Chandigarh.

d. **CRM-M-5005-2024 Sukhjinder Singh & Sunny & Anr. Vs. State of Punjab**

FIR No.89 OF 2018 registered at P.S. Kotkapura, District Faridkot and the trial in SC/67/2019 titled as State Vs. Mohinder Pal Singh @ Bittu arising out of FIR No.89 of 2018, P.S. Kotkapura, District Faridkot is still pending before Addl. District & Sessions Judge, Faridkot, Punjab, is transferred to the Competent Court of jurisdiction to try the said offences at Union Territory Chandigarh.

e. **CRM-M 4757/2024-Pritvi Singh @ Pirthi & Ors. Vs. State of Punjab**

FIR No.79 OF 2015 registered at P.S. Samalsar, District Moga and in this case, after the conclusion of trial, criminal appeals i.e. (i) CRA/114/2022 titled as Amardeep @ Deepa & Ors. Vs. State of Punjab; (ii) CRA/120/2022 titled as Sewak Singh Vs. Davinder Singh & Ors.; (iii) CRA/124/2022 titled as State of Punjab Vs. Prithvi Singh @ Prithi & Ors. are pending before Sessions Judge, Moga, Punjab, is transferred to the Competent Court of jurisdiction to try the said offences at Union Territory Chandigarh.

f. **CRM-M-24813 & 24794-2024 (Pardeep Kumar @ Pardeep Kaler vs. State of Punjab)**

FIR No.79 dated 04.11.2015 registered at PS Smalsar, District Moga and FIR No.161 dated 20.10.2015 registered at P.S. Dayalpura, Bathinda and trial in both the cases are still pending, is transferred to the Competent Court of jurisdiction to try the said offences at Union Territory Chandigarh.

54. The petition in the aforesaid terms stand allowed with no order as to costs.
55. Pending application(s), if any shall disposed off, accordingly.

17.03.2025
V.Vishal/Meenu

(SANDEEP MOUDGIL)
JUDGE

- | | |
|--------------------------------------|---------------|
| <i>1. Whether speaking/reasoned?</i> | <i>Yes/No</i> |
| <i>2. Whether reportable?</i> | <i>Yes/No</i> |