

CASE NO.:
Transfer Petition (crl.) 216 of 2007

PETITIONER:
K.C. SURESH KUMAR

RESPONDENT:
UNION TERRITORY OF A & N ISLANDS TH. CBI

DATE OF JUDGMENT: 22/02/2008

BENCH:
A.K.MATHUR & AFTAB ALAM

JUDGMENT:
JUDGMENT

O R D E R

TRANSFER PETITION (CRL) NO.216 OF 2007
WITH
SPECIAL LEAVE PETITION(CRL.) 5094 OF 2007
K.C. SURESH KUMAR

PETITIONER(S)

VERSUS

CENTRAL BUREAU OF INVESTIGATION

RESPONDENT(S)

TRANSFER PETITION (CRL.) NO.216 OF 2007

We have heard learned counsel for the parties.

This Transfer Petition has been filed by the petitioner for transfer of the criminal proceedings/trial which was scheduled to commence from 30.7.2007 before the Sessions Judge, Port Blair, Andaman & Nicobar Islands pursuant to case bearing G.R. Case No.4650 of 2003 titled Union territory of Andaman and Nicobar Islands through CBI versus K.C. Suresh Kumar pending before the Chief Judicial Magistrate, Port Blair to the competent Court of jurisdiction at Madras.

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The grievance of the petitioner is that since the murder of a lawyer, T. Vasantha Secretary of bar has taken place and the accused is facing trial under Section 302 IPC, the atmosphere is charged with emotion and no member of bar is prepared to appear for accused, therefore, the accused will not get proper justice. It is further submitted that it will not be fair to allow this trial to continue at Port Blair. Therefore, it is prayed that the trial may be transferred either to Tamil Nadu or to Calcutta.

Mr. Vikas Singh, learned ASG appearing on behalf of the respondent-CBI seriously oppose the request for transfer of the petition to either of the two places. He has produced before us some of the proceedings to show that the accused was not willing to take any legal assistance provided by the Court. Mr. K.T.S. Tulsi, learned senior counsel appearing on behalf of the petitioner has invited our attention to a decision of this Court in the case of Sri Jayendra Saraswathy Swamigal(II), T.N. versus State of Tamil Nadu & Ors. reported in 2005(8) SCC 711. He submits that apprehension of the accused that he is not likely to get a fair trial, should be a good ground to transfer the trial from one place to another. We fully agree with the contention raised by Mr. K.T.S. Tulsi that the accused should get a fair trial and he should be provided assistance and right to defend himself

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under Article 21 of the Constitution of India. Mr. Vikas Singh, learned ASG submits that there are sixty witnesses to be examined and if the case is transferred, practically it will be difficult to complete the trial.

Be that as it may, we consider it proper that the accused should get a fair trial and

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he should also be represented by a counsel of his choice. Therefore, we direct that the accused may name the counsel of his choice either from Calcutta or from Madras or from any other part of the country. The expenses for legal assistance shall be borne by the respondent-CBI so that the accused should not feel that he did not get a fair trial in the matter.

In this view of the matter, we are not inclined to interfere in this transfer petition.

However, it is directed that the accused shall give the name of a counsel of his choice to the CBI. The CBI shall reimburse the expenses and also the fee which should be reasonable, to the counsel of the accused.

The Transfer Petition is accordingly, disposed of.

We hope and trust that the members of the Bar will keep their cool and will not vitiate the atmosphere of fair trial.

SPECIAL LEAVE PETITION (CRL) NO.5094 OF 2007

Learned counsel for the petitioner prays for leave to withdraw this Special Leave Petition with liberty to move the

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bail application before the Trial Court.

The Special Leave Petition is accordingly, dismissed as withdrawn.