
(2008) 09 CAL CK 0010
In the Calcutta High Court
Case No : C.R.R. No. 2995 of 2007

Ratan Das

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 407
Penal Code, 1860 (IPC) — Section 376

Citation : (2009) 1 CALLT 272

Hon'ble Judges : Tapan Mukherjee, J

Bench : Single Bench

Advocate : Bijoy Adhikary and Mr. Biswaroop Chowdhury, for the Appellant; M.A. Rahaman, H. Rahaman for the O.P. No. 2, Mr. Chittaranjan Ghosh and Mr. Kedar Nath Yadav for the O.P. No. 7, for the Respondent

Final Decision : Allowed

Judgement

Tapan Mukherjee, J.—The hearing arises out of an application filed by the accused Ratan Das u/s 407 Code of Criminal Procedure for transfer of Sessions Case being S.T. No. 4(3) 07 under Sections 376, 387, 507, 511, 120B IPC. from the Court of learned Additional Sessions Judge, 1st Fast Track Court, Baruipur, 24 Parganas (South) to the Court of learned City Sessions Judge, Kolkata for trial.

2. The grounds taken in the initial petition are that on the transfer of earlier P.O. Rabindranath Samanta the Court is lying vacant and Judge-in-Charge is taking up the matter reluctantly. The Petitioner was resisted in attending the learned Court on several occasions at the instance of the associates and agents of the complainant and the police authorities did not take any step to protect the Petitioner. The witnesses and the I.O. and other accused persons will face no trouble to attend the City Sessions Court, Calcutta if the case is transferred there. The Petitioner and other accused persons are not getting any lawyer to represent them at Baruipur after Mr. Bijoy Adhikari retired from brief at Baruipur.

3. Subsequently, on 2.4.2008 a supplementary affidavit was filed on behalf of the

Petitioner which practically forms the main pillars of the edifice of petition of transfer. In the supplementary affidavit it has been stated that the earlier P.O. Mr. Rabindranath Samanta cancelled bail of the Petitioner and issued warrant of arrest. The present P.O. has also not granted his prayer for bail after surrender and on 10.3.2008 on the date of production of the Petitioner before learned trial Judge Sri Dutta, Sri Dutta announced in the open Court showing his red eyes at the Petitioner within the hearing of all present inside the Court room that he would never tolerate accused Advocate Ratan Das (the Petitioner) as he is responsible for transferring Mr. Samanta his predecessor-in-office at the remote place at Jhargram under administrative order of High Court. He further announced that whatever submission is made before him the result is Big zero and thereafter rejected the bail petition of the Petitioner even without giving him patient hearing and directed the Court Police to send the Petitioner to jail when the Petitioner was trying to submit in person as no advocate of Baruiipur Court dared to file Vakalatnama on his behalf. These happenings sufficiently indicate how Mr. Rabindranath Samanta the then Additional Sessions Judge, 1st Fast Track Court had created his influence upon his colleague and Petitioner reasonably apprehends that if the case is transferred to any other Court other than the Hon''ble Court fair trial may be jeopardised under influence of Rabindranath Samanta.

4. On 11.3.2008 the High Court has been pleaded to grant bail to other family members of the Petitioners and after bail was granted the bail bonds were furnished before Sri Dutta but Sri Dutta very surprisingly opined that as a Senior Judge in the subordinate judiciary he is also a fault finding authority. He knows very well how to cause delay in releasing the accused persons i.e. the brothers and brother''s wife of principal accused Ratan Das (Petitioner) whose bail petitions were rejected by him but afterwards allowed by the High Court.

5. Sri Dutta took advantage of the order of the Hon''ble Court to the effect that the accused will be released on bail to the satisfaction of the learned trial Judge. He clarified that it was within his judicial discretion to use the words "to the satisfaction of the learned trial Judge" to the peril of the accused Petitioners which he uses sparingly in the rarest of rare cases as per his choice and this case according to him is such a rarest of rare cases where he would exercise his that power to cause delay in the matter of release of the accused Petitioners although their bail petitions were allowed by the High Court. He expressed that he would demand local sureties according to his own liking and choice and made clear to the learned advocate of the accused that he should submit the original deed of conveyance of at least two land owners within the local limits of Kakdwip P.S. who want to stand as local sureties, record of rights and current rent receipt coupled with voter identity cards, passport size photographs and affidavits and Sri Dutta expressed that he could not be satisfied with the sureties of the Court who had submitted before him the bail bonds on behalf of the accused persons although there is no doubt that they are competent sureties of his Court and fit to furnish the bail bonds and he should not exercise the satisfaction in the liberal

way and manner in the case in hand like other cases as serious allegations have been brought against his predecessor in office by the principal accused (Petitioner) which should not be tolerated by any member of the subordinate judiciary. Accordingly Sri Dutta despite the order of the Hon"ble Court granting bail to other accused Petitioners Jatan Das, Smt. Sibu Das, Lal Mohan Das and Narayan Das, the relations of the Petitioner of Rs. 5000/- each with two sureties of Rs. 2500/- each to the satisfaction of the Court passed the order for granting bail of Rs. 2500/- with one surety and local surety of Rs. 2500/- having the property within the area of the accused persons where they reside and thus intentionally delayed the release of the other accused persons. They tried to impress upon the learned Court that the learned Judge should consider the extreme urgency in the matter and the matter of release as on of the accused who was granted bail by the Hon"ble Court is house wife and pardanasin lady with two children of 5 years and 3 years of age respectively and has been languishing in Jail with her husband for about a year as a consequence of which her said two children all of a sudden became guardian less and her those two children are passing their days in most careless state experiencing all hazards and facing series of deadly accidents almost everyday and all the members of her family her parents-in-law, husband and brothers in-law for no fault of their own have been kept behind the prison-bar for such a long period of about a year and bringing all these facts to the notice of the learned trial Judge that it was extremely necessary in view of the above facts that at least she should be released immediately being satisfied with the bail bond already filed on her behalf by the two sureties of Rs. 2500/- each as ordered by the Hon"ble High Court for her remaining in the same footing like her parents-in-law who were released two months back on similar bail-bonds on the basis of the similar orders passed by the same Division Bench of the High Court in the same matter. But unfortunately, such submission of learned advocate had least impact upon the learned trial Judge who stood strictly to his order and repeated that he has least feeling and consideration for any one of the accused persons. They must have to suffer the consequences for putting allegations against his predecessor-in-office by the principal accused Ratan Das. He further stated that he would not deflect from his original stand under any circumstances and he is as strict as his predecessor-in-office with relation to the accused persons.

6. There was serious attempt to procure local sureties and at least the sureties were procured and produced on 27.3.2008 before learned Judge Sri Dutta. But unfortunately, despite the fact that those sureties were financially sound and they complied with all the requirements for the reasons best known to learned Judge learned Judge passed the order that the purchased deed, rent receipts of the sureties would be sent to Sub-Divisional Registrar, Kakdwip and B.L.L.R.O. of the said area for verification and only after getting positive report from their ends he would adopt the next course for the release of the accused. The said order was communicated at 5:30 p.m. through the Peshkar. Neither local sureties nor learned Counsel of the accused persons were allowed to go through the said

order. On the next date the application for certified copy was prayed for by the accused but they did not get the copy and it is clear that learned trial Judges have been misusing their power and position in delaying with the Petitioner and his other family members first of all by issuing warrant of arrest against the innocent family members and the Petitioners were recustody.

7. The Petitioner will be able to prove his innocence if he gets reasonable opportunity to defend his case properly which is not possible in adverse atmosphere prevailing at Baruipur Court under the influence of the mighty father of the defacto-complainant.

8. In the Baruipur Court there was misunderstanding between the Petitioner with the learned Counsel members of Bar Association in Baruipur as a result of which none of the learned lawyers of the said Court is appearing or on behalf of the Petitioner. That the Petitioner being unable to engage advocate from Baruipur Court had to engage lawyer from Hon"ble Court who is facing difficulty to attend Baruipur Court because of long distance and the Petitioner is suffering to a great extent in conducting the case. If the learned Counsel pf the High Court fails to attend Baruipur Court in time the Petitioner will suffer irreparable loss and injury. On 17.3.2007 during trial of the case at the time of the then learned trial Judge Mr. Rabindranath Samanta the Petitioner and his counsel were assaulted and humiliated during trial in the court room by the said Judge and also by the defacto-complainant's advocates and men and agents of the Baruipur Court with some members of the Baruipur Bar Association after which the Petitioner was immediately sent to police Lock-up without any medical aid after canceling his bail-bond and justice became the victim for which necessary legal measures have already been taken against the said Presiding Officer reporting of the said incident was widely circulated in T.V. media immediately thereafter creating the said issue a most sensational one in the precinct of the Baruipur Court causing sufficient embarrassment for the Bench and the Bar. The Petitioner apprehends that being the Judge of the rank of Additional District Judge Sri Samanta would continue his consistent efforts to create influence upon all the judges of his rank wherever said case would be transferred for trial and the Petitioner will never get the chance of fair trial and his fundamental right is definitely infringed. The justice would be done if the case is transferred to the Hon"ble Court under its extraordinary jurisdiction for the ends of justice.

9. Considering that there were allegations against the learned present presiding Judge, Swapan Kumar Dutta in the supplementary affidavit sworn on 1.4.08 and filed on 2.4.08 learned Presiding Judge was given opportunity to submit his report as regards the allegations made against him and the report of learned Judge Sri Dutta was received. Learned Presiding Judge has categorically stated the allegations made in the para 5 of the supplementary affidavit are completely false. He never showed his red eyes to the Petitioner at the time of hearing of the accused-advocate Ratan Das and he never uttered that accused was responsible for transfer of Mr. Rabindranath Samanta, his predecessor-in-office at

a remote place at Jhargram. He never uttered in open Court that the result will be "Big zero". Sri Rabindranath Samanta never created any influence upon him as to the case. The allegations against this Court the effect that present P.O is causing unnecessary harassment is false as because the Hon''ble Division Bench of Calcutta High Court in connection with C.R.A.N. No. 154 of 2008 granted Bail of Jatan and othes of Rs. 5000/- each subject to the satisfiaction of this Court.

10. After receiving the certified copy of the order this Court directed the accused persons bail bond of Rs. 2500/- by a registered surety and of Rs. 2500/- by a local surety by each of the accused persons who have been granted bail. The intending local sureties filed the deeds and other documents. As the accused persons jumped the bail and remained absconded previously so the order of local surety was imposed upon them.

11. In order to ascertain the fact that whether the intending sureties arg in possession of the property or not, whether the property in question is hypothecated to any Bank or any Financial institutions or not, whether the property is subject matter of any suit or not, a report was called for from the B.L.L.R.O, Namkhana and valuation report was called for from the Sub- Registrar, Kakdwip. They were directed to submit the report within 5 (fivej days from the date of receipt of the copy of order. On 16.4.08, both the reports from B.L.L. R.O. Namkhana and the Additional Registrar, Kakdwip have been received and on the basis of the reports the bonds furnished by the local sureties have been accepted. Learned Judge further stated in his report that the allegations as made that the order was passed at about 5:30 p.m. is false. The order was passed in open Court in presence of the both-sides. It is to be mentioned that the learned lawyer of the accused persons Mr. Bijay Adhikari made some disparaging remarks against the P.O. in open Court in presence of the learned lawyers and litigants public showing a dog called in by him from down-stairs that "this dog be sitted in the Chair of this Judge and he will pass better order than that of the Judge".

12. During continuance of the hearing of the present petition the Respondent No. 7, co-accused also filed a petition in the matter of transfer of the case to the High Court. In the said application she also supported the allegations made by the Petitioner against the present learned Presiding Judge. It has been stated that she and others were on bail. Her father-in-law died and during mourning period they could not attend Court and despite the prayer u/s 317 Code of Criminal Procedure on their behalf was made the bail of the applicant and other co-accused was cancelled. Hon''ble Court was moved by the applicant Sibud Das and other three co-accused. High Court passed the order of bail of Rs. 5000/- each with two sureties of Rs. 2500/- each to the satisfaction of the trial Court. Trial Court certified that the same must be local surety. Compliance was made. Bail Bonds were not accepted. Trial Court send copies of those documents filed by local sureties to the B.L.R.O. and Sub-Registrar for verification quite illegally. The personal bias has cast shadow over fair trial and bias is coming from colleague feelings. The applicant and three others were illegally detained in

custody for more than three weeks unlawfully by the Presiding Officer, Baruipur Court since the bias is coming from collective interest or colleague feelings. The applicant will not get reasonable opportunity to defend his case properly in adverse atmosphere prevailing still at Baruipur Court under influence of the mighty father of the de-facto complainant and there is no possibility of change of the said atmosphere in the precinct of Baruipur Court adverse to the applicant and other co-accused created by a group of Public Prosecutors of said Court and Alipur District Judges' Court headed by one Pankaj Mondal, the Special Public Prosecutor of the Sessions Trial Case and the unholy alliance of Rabindranath Samanta and his other colleagues with some members and port folio holders of Baruipur Bar Association. If the case is transferred to any other Criminal Court of the same Session's Division the applicant is sure that there will not be trial under any circumstances because of their far reaching and overwhelming influence with strength of power and money. In the Baruipur Court misunderstanding took place -between the applicant with other co-accused in one side and the members of Bar Association at Baruipur for which the applicant other co-accused are not responsible. Mighty hand of Rabindranath Samanta is the root cause as a result of which none of the lawyers of the said Court is at all desirous to conduct the case for and on behalf of the applicant. She has prayed for transfer of this case to this Court.

13. It has been contended by learned lawyer for the Petitioner that learned Judge Sri Rabindranath Samanta on the very first day of the trial of S.T. Case. 4(3)07 asked the Petitioner to compromise with the defacto-complainant but the Petitioner refused and wanted to proceed with the trial. The Presiding Judge was infuriated at the reply. Petitioner moved an application u/s 407 Code of Criminal Procedure which was however rejected. But there was an administrative transfer of Rabindranath Samanta from Baruipur Court to Jhargram. Warrant of arrest was issued against the Petitioner and other co-accused persons on 21.4.2007. Petitioner challenged that order and obtained stay of the warrant and surrendered before the trial Court. The Petitioner approached before the Hon''ble Court at least four times earlier but very surprisingly all the said transfer petitions were dismissed. The mandate of the Supreme Court in Sarbananda Sonowal Vs. Union of India (UOI), was not considered.

14. The present learned Presiding Officer Sri Dutta threatened that all the arguments of the Petitioner would be futile and he would be sentenced to imprisonment. He refused to release the members of the family without local surety although they obtained bail from the Hon''ble Court and Hon''ble Court observed in clear terms that the learned trial Court should accept two registered sureties. Contempt application of Sri Dutta was moved. Of course the said application was not successful.

15. Hon''ble Delhi High Court in 1969 Cr LJ at page 554 has observed that contempt application if dismissed is sufficient ground for transfer.

16. The situation at Baruipur is such that no lawyer is willing to appear for the

Petitioner because they have the impression that if they appear for the Petitioner the presiding officer will ruin their professional career. It is inconvenient for the learned advocate for the Petitioner to go from High Court to Baruipur Court. Therefore it is necessary for the ends of justice the case may be transferred either to the High Court or City Sessions Court. Baruipur Bar Association called a cease work for 4 days when the learned advocate for the Petitioner was assaulted by peshkar.

17. Learned lawyer has further contended that Hon''ble Supreme Court observed that in considering whether there is real likelihood of bias Court does not look at the mind of the justice himself or it does not look to see if there was likelihood that he would. The Court looks at the impression given to other people.

18. Hon''ble Supreme Court further held continuance of inquiry conducted as biased officer vitiates the order passed and order passed and safe course for fair trial fs to transfer the case.

19. It has further been contended by the learned lawyer for the Petitioner that relations of Petitioners prayed for bail before learned trial Judge Sri Dutta and the same was rejected and against that order they moved the Hon''ble Court and a Hon''ble Court passed order of release of the accused with two sureties of Rs. 5000/- each with two sureties of Rs. 2500/- each to the satisfaction of learned Additional Sessions Judge, 1st Fast Track Court Baruipur. Hon''ble Court did not order that local sureties would be required and bonds filed by the registered sureties would not be accepted. However learned Judge with an ulterior motive of delaying the release of the said accused persons refused to release them on furnishing bonds by registered sureties and imposed condition on furnishing bonds with local sureties and asked sureties to produce documents etc and when documents etc. in support of bail bonds were filed in terms of the order of the learned Judge, learned Judge was not satisfied and in order to make further delay in the matter of the release of the accused referred the matter to B.L.L.R.O. and Sub-Registrar and those accused were not released. Hon''ble Court was moved against learned Presiding Judge, Sri Dutta in contempt and Court passed order of release of accused on furnishing bail bonds by registered sureties and rejected the contempt petition. The manner in which learned Judge passed order and dealt with the bail-bonds amply prove that he was biased and he was bent upon detaining the accused and resorted to different means so that release order be not passed and they may be detained. Petitioner believes that as other accused are related to Petitioner so they were harassed and this will show that the attitude of learned Judge was tainted with bias and the Petitioner can not expect justice from such Judge and reasonably apprehends that he will not get justice.

20. Learned lawyer further contends that one of the accused, relation of Petitioner Respondent No. 7 whose bail-bond was not accepted by learned trial Judge, Sri Dutta has also filed an appropriate application for transfer of the case alleging that he will not get justice.

21. Learned Counsel has placed his reliance on the ruling reported in AIR 1973 SC at page 2701, 1987(4) SCC 618, AIR 1958 SC at page 309, AIR 1965 SC at page 1303, 2006 KARLJ - 1 -211, 1969 CRI LJ at page 554 and AIR 1951 Hyderabad page 50.

22. Learned Counsel for the State has opposed the prayer for transfer and contended that successive applications for transfer of the case filed before the Hon"ble Court have been rejected and the present application is also devoid of any merit and in order to delay the disposal of the Sessions Case this frivolous application has been filed.

23. Learned Counsel for the O.P. No. 2 has contended that the present petition is frivolous and a number of applications for transfer have been rejected by Hon"ble Court. The allegations against earlier learned trial Judge, Sri Rabindranath Samanta have not been substantiated. It is impossible to attend Kolkata from Kakdwip.

24. Learned Counsel for the O.P. No. 2 has placed his reliance upon the ruling reported in 1985 CRI LJ at page 633, 1979 CRI LJ at page 458 and 2002 CRI LJ at page 90.

25. It is undisputed that the present trial Judge of the Sessions Case No. S.T. 4(3)07 for transfer of which the instant application has been made is Sri Swapan Kumar Dutta, learned Additional Sessions Judge, 1st Fast Track Court, Baruipur.

26. In para 5 of the supplementary affidavit filed on 2.4.2003 the clear allegations against him are that on 10.3.2008 on the date of usual production of the Petitioner from Jail, learned trial Judge Sri Dutta announced in open Court showing his red eyes at the Petitioner within the hearing of all present inside the Court room that he would never tolerate accused advocate (the Petitioner) as he is responsible for transferring Mr. Samanta at the remote Mace at Jhargram under administrative order of the High Court. He further announced in open Court that whatever submission would be made before Him the result is Big zero and thereafter rejected the bail petition of the Petitioner even without giving him patient hearing and directed Court Police to send the Petitioner in jail when the Petitioner was trying to submit in person as no advocate of Baruipur Court dare to file Vakalatnama on his behalf. These happenings sufficiently indicate how Mr. Rabindranath Samanta the then Additional Sessions Judge, 1st Fast Track Court had created his influence upon his colleague and the Petitioner reasonably apprehends that if the case is transferred to any other Court other than the Hon"ble Court fair trial may be jeopardised under the influence Sri Rabindranath Samanta, the then Additional District and Sessions Judge, 1st Fast Track Court, Baruipur.

27. It is also alleged in the para 6 of the said supplementary affidavit that after 10.3.2008 immediately on the next day i.e., 11.3.2008 Hon"ble High Court through the Division Bench comprising of Hon"ble Justice Girish Chandra Gupta and Hon"ble Justice Kishore Kumar Prasad in a review application being CRAN

No. 154 of 2008 arising out of CRM No. 489 of 2008, Jatan Das and Ors. v. State of West Bengal has been pleased to grant bail to all the Petitioners in that review application i.e., the other innocent family members of the present Petitioner in the instant revisional application, who have been put under long detention unnecessarily behind the prison bar since 6.5.2007 and 6.7.2007 because of issuance of warrant of arrest on 21.4.2007 by Sri Samanta learned trial Judge after cancellation of bail-bond by him without any legal basis or foundation, out of grudge and personal vendetta upon the Petitioner; just for their remaining absent on 21.4.2007 for some valid reasons although they were properly represented u/s 317 Code of Criminal Procedure through their learned lawyer which shows how said Rabindranath Samanta, the then Additional District and Sessions Judge, 1st Fast Track Court at Baruipur identified himself with the said case to the detriment of the Petitioner and his other family members.

28. In para 7 of the said affidavit it has been stated that the Petitioner states that keeping with him the certified copy of the said order of granting of bail by Hon"ble High Court as aforesaid dated 11.3.08, the swearer of the affidavit along with the father of the Petitioner attended at Baruipur Court before Mr. Swapan Kumar Dutta, learned Additional District and Sessions Judge, 1st Fast Track Court at Baruipur for release of the brothers and brother's wife of the Petitioner and by submitting the certified copy of the said order of bail granted by Hon"ble High Court as aforesaid along with the petition relating thereto and furnishing filled up bail bonds bearing the signatures/L.T.I.s of the accused persons duly attested by the Jail Authority with signatures of the sureties upon the said bail bonds i.e., maintaining all the formalities as required in law and/or as per the practice prevalent in Baruipur Court like similar other cases of like nature upon their bail bonds i.e., the brothers and brother's wife of the Petitioner as aforesaid when the learned advocate for the said accused persons was moved before the learned trial Court with prayer for passing release order in favour of the accused persons so that the said accused persons could get immediate benefit from the learned trial Judge of the said favourable order of the Hon"ble Court in the interest of justice as the accused persons and their sureties have followed all the formalities required in law regarding bail bonds as per direction of the Hon"ble Court like other cases of similar nature then said Mr. Swapar Kumar Das learned trial Judge very surprisingly, in the way and manner not expected and desirable from such a high chair of high position, high respect and high dignity, opined that as a senior Judge of subordinate Judiciary he is also a fault finding authority. He knows very well how to cause delay in releasing accused persons i.e., the brothers and brother's wife of the principal accused Ratan Das whose bail petitions were rejected by him but afterwards were allowed by the High Court against his expectation in a review application when originally their bail application were rejected by the High Court but taking opportunity of the words through the words written in the said bail order granted by the High Court "...to the satisfaction of the learned trial Judge...". He clarified that it is within his judicial discretion to use the said words "...to the satisfaction of the learned trial

Judge..." to the peril of the accused Petitioners which he uses sparingly in rarest of rare cases as per his choice, satisfaction and discretion and this case, according to him, is such a rarest of rare case where he would exercise his that power to cause delay in the matter of release of the accused Petitioner although their bail petitions have been granted by the High Court. It is further stated by the learned lawyer for the accused persons that it is well within his domain to ask for not only local sureties but also the local sureties according to his own liking and choice i.e., according to his own satisfaction and taking the advantage of that part i.e., "... to the satisfaction of the learned trial Judge " in the granting of bail-order of the High Court dated 11.03.08 in favour of the accused Petitioners he would demand the local sureties having landed properties within the local Police station of the accused person. The learned trial Judge made it clear to the learned advocate of the accused Petitioners that he should submit the original deed of conveyance of at least two land owners within the local limits of Kakdwip P. S. who intend to stand as local sureties for the accused persons, khatian parchas and current receipts of the land revenues coupled with voter identity cards and passport size photos and respective affidavits by them duly affirmed by Notary Public i.e. by those who intend to stand as local sureties for the accused persons as a measure to serve his purpose, may be such measure would cause delay in the process of releasing of the accused persons through his Court and opined that in this case specially he could not be satisfied with sureties of the Court who have submitted before him the bail bonds on behalf of the accused-Petitioner although there is no doubt that they are the competent sureties of his Court and they are fit to furnish bail bonds in his Court for and on behalf of the accused-Petitioners still for some special reason which he does not like to disclose he would not allow them to furnish their bail bonds for the whole amount as was directed by the Hon'ble High Court although their bail bonds were duly filled up and furnished and submitted before him as in the instant case his satisfaction would be something otherwise and he should not exercise his satisfaction in liberal way and manner in the case in hand like other cases as serious allegations have been brought against his predecessor-in-office by the principal accused of the case which should not be tolerated by any member of the subordinate judiciary and after returning back the said bail bonds to the respective sureties of the Court through the learned advocate appearing for the said accused Petitioners on the said date i.e. on 25.03.08, who were released on bail far back on 11.03.08 by the Division Bench of the Hon'ble High Court as aforesaid, said Mr. Dutta- learned trial Judge passed order to the peril the said accused-Petitioners by directing their said learned advocate to furnish local sureties in equal distribution with Court-sureties for and on behalf of the accused Petitioners by passing the order inter alia "perused the certified copy of the order of the Hon'ble High Court in connection with Criminal Misc. Case No. 489/2008. On perusal of the certified copy of the order it is found that the Hon'ble High Court has been pleased to grant bail to "Shri Jatan Das, Smt. Sibhu Das, Lai Mohan Das and Narayan Das of Rs. 5000/- each with two sureties of Rs. 2500/- each to the satisfaction of the Court. Let the accused Shri Jatan

Das, Smt. Sibbu Das, Lai Mohan Das and Narayan Das are granted bail of Rs. 2500/- with one Registered surely and local surety of Rs. 2500/- having the property within the area of the accused persons where they reside".

29. In para 8 of the supplementary affidavit it has been stated that learned advocate for the accused Petitioners further tried to impress upon learned Court by stating that learned trial Judge should consider the extreme urgency in the matter as one of the accused Petitioners is a humble house wife and pardanasin lady with two children of 5 years and 3 years of age respectively against whom there was no allegation of rape but who was the victim of the circumstances and has been languishing in Jail along with her husband for about a year as a consequence of which her said two children all of a sudden became guardian-less and her those two children are passing their days in most careless state experiencing all hazards and facing series of deadly accidents almost everyday like drowning in the nearby ponds etc. as there is none to look after her said two children as all the members of her family i.e. her parents-in-laws, husband and brothers-in-laws, for no fault of their own, have been kept behind the prison bar for such a long period of about a year and bringing all these facts to the notice of the learned trial Judge that it was extremely necessary in view of the above facts that at least she should be released immediately being satisfied with the bails and bonds already filed on her behalf by the two sureties of Rs. 2500/- each as ordered by the Hon'ble High Court for her remaining in the same footing like her parents-in-laws who were released about two months on similar bails and bonds on the basis of the similar orders passed by the same Division Bench of the Hon'ble High Court in the same matter. But it is very unfortunate that the said submission of her learned Advocate had least impact upon the learned trial Judge Mr. Swapan Kumar Dutta and without giving any importance to such touchy submission the learned trial Judge remaining strict in his said order and once again repeated that he has least feeling and consideration for any one of the accused Petitioners. They must have to suffer the consequence for putting allegation against his predecessor-in-office by the principal accused Ratan Das. He further stated that he would not deflect from his original stand under any circumstances and he is as strict as his predecessor-in-office in the matter of accused Petitioners.

30. On receipt of the supplementary affidavit sworn on 1.4.2008 and filed on 2.4.08 learned Presiding Judge Sri Swapan Kumar Dutta was given opportunity to submit his report as regards the allegations made against him but the learned Judge has challenged categorically the allegations made in para "5" of the supplementary affidavit to be false and stated that he did not show red eyes at the Petitioner at the time of hearing of the accused-advocate Ratan Das and he never uttered that accused was responsible for transfer of Mr. Samanta his predecessor-in-office at the remote place at Jhargram. He never uttered in open Court that the result would be Big zero. Sri Rabindranath Samanta never influenced him about the case. He received the order of bail from the Hon'ble Court to the satisfaction of the Court. He stated that he is causing unnecessary

harassment is false as because the Hon"ble Division Calcutta High Court in connection with CRAN No. 154 of 2008 granted Bail of Jatan and others of Rs. 5000/- each subject to the satisfaction of this Court. After receiving the certified copy of the order this Court directed the accused persons bail bond of Rs. 2500/- by a registered surely and of Rs. 2500/- by a local surety by each of the accused persons who have been granted bail. The intending local sureties filed the deeds and other documents. As the accused persons jumped the bail and remained absconded previously so the order of local surety was imposed upon them. In order to ascertain the fact that whether the intending sureties are in possession of the property or not, whether the property in question is hypothecated to any Bank or any Financial institutions or not, whether the property is subject matter of any suit or not, a report was called for from the B.L.L.R.O., Namkhana and valuation report was called for from the Sub-Registrar, Kakdwip. They were directed to submit the report within 5 (five) days from the date of receipt of the copy of order. Today i.e. on 16.4.08, both the reports from B.L.L.R.O, Namkhana and the Additional Registrar, Kakdwip have been received and on the basis of the reports the bonds furnished by the local sureties have been accepted.

31. Learned Judge Sri Dutta did not deny allegation that on receipt of the bail bond as per direction of the Hon"ble Court like other cases of similar nature opined that as a Senior Judge of subordinate judiciary he is also a fault finding authority. He knows very well how to cause delay in releasing the accused persons i.e. the brothers and brother's wife of the principal accused Ratan Das whose bail petitions were rejected by him but afterwards were allowed by the High Court against his expectation in a review application. He further clarified that it is within his judicial discretion to use the said words "...to the satisfaction of the learned trial Judge..." to the peril of the accused Petitioners which he uses sparingly in rarest of rare cases as per his choice, satisfaction and discretion and this case according to him, is such a rarest of rare case where he would exercise his that power to cause delay in the matter of releasing the accused Petitioners although their bail petitions have been granted by the High Court.

32. Shri Dutta has not also denied the allegations that learned advocate for the accused submitted that it was extremely necessary that in view of the fact that none to look after the two children of the Petitioner Jatan Das and she should be released immediately being satisfaction with the bail bonds already filed on her behalf by the two sureties as such order of the Hon"ble High Court for her remaining the same footing like her parents-in-laws who were released on similar bail bonds on the basis of similar order by the same Division Bench of the Hon"ble High Court in the same matter and that it is unfortunate that the said submission of her learned advocate had least impact upon the learned trial Judge Mr. Swapan Kumar Dutta and without giving any importance to such touchy submission the learned trial Judge remaining strict in his said order and once again repeated that he has least feeling and consideration for any one of the accused Petitioners. They must have to suffer the consequence for putting allegation against his predecessor-in-office by the principal accused Ratan Das

(the Petitioner).

33. He further stated that he would not deflect from his original stand under any circumstances and he is as strict as his predecessor-in-office in the matter of accused Petitioners.

34. So the fact remains that the said allegations made against Sri Dutta stand uncontroverted. It is also undisputed that previously in view of the order of the Hon"ble Court for release of the accused persons with sureties the bonds filed by the registered sureties were accepted and local surety was not insisted but in this cases Sri Dutta insisted on furnishing bond with local surety besides the registered surety and did not accept the bonds filed by the local sureties though the local surety produced all documents and filed affidavit.

35. To the contrary, Sri Dutta took unusual step of sending the purchased deeds along with Khatian to the Sub Divisional Registrar, Kakdwip and the BLRO of the said area for verification.

36. Section 441 Sub-Section 4 Code of Criminal Procedure provides that for the purpose of detercnining whether the sureties are fit or sufficient the Court may accept affidavit in proof of the facts contained therein relating to the sufficiency or fitness of the sureties or if it considers necessary may either hold an enquiry itself or cause an enquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness. The affidavits in support of the fitness of the local surety were filed but Sri Dutta did not accept the same. He did not assign any reason for not accepting affidavits in proof of the fact contained therein relating to the sufficiency or fitness of the sureties. He did not make over the matter for enquiry to the Magistrate subordinate to him as to sufficiency or fitness of the surety. He passed order for sending the documents to the Sub-Divisional Registrar, Kakdwip and B.L.L.R.O. of the said area for his verification and awaited report for the purpose of taking next course for release of the accused person up to his satisfaction. This unusual course resorted to by the Learned Trial Judge Sri Dutta coupled with his failure to challenge categorically the allegations that he said that as a Senior Judge of subordinate judiciary he is also a fault finding authority and that he knows very well how to cause delay in releasing the accused persons i.e. the brothers and brother"s wife of the principal accused Ratan Das that he clarified that it is within his judicial discretion to use the said words"....to the satisfaction of the learned trial Judge...."to the peril of the accused Petitioners which he uses sparingly in rarest of rare case as per his choice, satisfaction and discretion and this case, according to him, is rarest of rare case where he would exercise his that power to cause delay in the matter of releasing the accused Petitioners although their bail petitions have been granted by the High Court and that he had least feeling and consideration for any one of the accused Petitioners and they must have to suffer the consequence for putting allegations against his predecessor-in-office by the principal accused Ratan Das and that he would not deflect from his original stand under any circumstances and he is as strict as his predecessor-in-office in the

matter of accused Petitioners make room for the contention that the learned Judge was displeased with the Petitioner and in order to teach the Petitioner a good lesson resorted to the procedure of not accepting the registered surety and also insisted on the local surety and did not accept affidavit, document of local sureties who were fit as alleged and unusually referred those to the B.L.L.R.O. and Sub-Divisional Registrar, Kakdwip only for causing delay in the matter of release of the accused persons.

37. It further appears that Hon"ble Court did not approve such steps taken by the Sri Dutta and passed order in the contempt application that Learned Additional Sessions Judge, 1st Fast Track Court, Sri Dutta too will accept two registered sureties of Rs. 2500/- each from each of the accused persons namely Jatan Das, Sibu Das, Lal Mohan Das, Narayan Das to his satisfaction. In the teeth of denial of Sri Dutta as regards allegations made against him in para "5" of the supplementary affidavit it will be not proper to accept the allegations made in para "5" and rely on it without elaborate enquiry. But the fact remains that the procedure adopted by Sri Dutta in the matter of acceptance of bail bonds is unusual. Such unusual delay in the matter of acceptance of the bail bonds paved the way for detention of the accused. The probability of Petitioner's contention that learned Judge was bent upon detaining the near relations i.e. family members of the Petitioner in custody as he was displeased with the Petitioner and resorted to such dilatory procedure of acceptance of bail bonds cannot be ruled out. There is certainly scope for reasonable apprehension on the part of the Petitioner and others that they will not get fair trial from the said P.O. Sri Dutta. Accused Sibu Das whose bail bond was not accepted by the learned trial Judge, Sri Dutta has also hurled allegations against Sri Dutta and let loose her reasonable apprehension of not getting fair trial.

38. In the case reported in AIR 1937 Calcutta page 64 it has been held that it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. One important object, at all events, is to clear away everything which might engender suspicion and distrust of the tribunal, and so to promote the feeling of confidence in the administration of justice which is so essential to social order and security. What the Court has to consider is not merely the question whether there has been any real bias in the mind of the presiding Judge against the applicant, but also the further question whether incidents may not have happened which though they may be susceptible of explanation and may have happened without there being any real bias in the mind of the Judge, are nevertheless such as are calculated to create in the mind of the applicant a justifiable apprehension that he would not have an impartial trial.

39. In the case reported in AIR 1955 Calcutta at page 600 it has been held that in a transfer case there is no doubt that the learned Magistrate lost his temper at the Petitioner's conduct in taking their seats and he was in consequence unduly harsh towards them. Moreover, the learned Magistrate was entirely wrong in

declining to enlarge the Petitioners on bail. In view of two unpleasant happenings the Petitioner may reasonably apprehend that they will not get a fair or an impartial trial. In a case such as this, the question is not whether the Court is prejudiced against the litigant, but whether the litigant may reasonably apprehend that he will not get a fair or an impartial trial. As has often been said justice must not only be done but must appear to be done.

40. In the case reported in 1992 CRI LJ at page 1392 it has been held that applicant's apprehension might be real or illusory but hearing of the case by some other Judge would defend cause of justice. In that case, High Court had no reason to disbelieve the explanation of Additional Sessions Judge. Learned Judge was not inclined to transfer of the case on the grounds mentioned above but still to secure the ends of justice learned Judge was inclined to pass an order in this case because of the first principle of jurisprudence that justice should not only be done but it should appear to have been done and it is the apprehension of the applicant which is of prime importance.

41. In the case reported in (1983) 2 Supreme Court Cases at page 268 learned Judge had granted huge cost as lawyer's fee in an interlocutory matter and transfer application was made on the ground of apprehension that the Petitioner will not get justice. The Apex Court held that this is a rather very extraordinary course that seems to have adopted by the learned Judge. He may or may not be justified in this but if the Appellant has an apprehension on this score it cannot be said that his apprehension is riot well founded. The case was transferred.

42. In this case, the fact remains that the contempt application was filed by Respondent No. 7 and others against learned trial Judge, Sri Dutta.

43. Under the circumstances, the apprehension of the Petitioner is that he will not get justice from the present. Learned trial Judge is reasonable and well founded and it is his apprehension which is of prime importance. Even if it is assumed that learned Judge, Sri Dutta is not prejudiced about the Petitioner still then apprehension of Petitioner that he will not get fair or impartial trial is very much relevant in deciding the matter of transfer of the case. Even the apprehension of the Respondent No. 7 that she will not get justice from learned Judge Sri Dutta cannot be said to be not well founded. The hearing of the case by some other Judge would defend cause of justice.

44. Before parting of the judgment it must be placed on record that in this case both the Petitioner and Respondent No. 2 to 7 have hurled allegations touching the fairness and impartiality of the learned trial Judge. Learned trial Judge has also hurled allegation against the Petitioner.

45. Needless to say that allegations and counter allegations have vitiated the entire atmosphere in the Court of the learned trial Judge. The atmosphere is pregnant with distrust at least of some of the accused including the Petitioner. Free and peaceful atmosphere is indispensable for dispensation of justice. The Court of learned Judge, Sri Dutta lacks such atmosphere. It is imperative to

transfer the case to any other Court in the interest, of justice. There were allegations against some of the lawyers at Alipur. It will be in the interest of justice to transfer this case to the Court of learned Chief Judge, City Sessions Court, Calcutta for trial.

46. It is true that previous applications including writ application for transfer of the case were rejected by this Court but the said rejection does not stand on the way of allowing the present application for transfer based on the new ground of apprehension of the Petitioner that he will not get justice from the present learned trial Judge, Sri Dutta.

47. In the premises the instant petition for transfer being CR R 2995 of 2007 stands allowed. The case S.T. No. 4(3)07 pending in the 1st Fast Track Court at Baruipur is transferred to the Court of learned Chief Judge, City Sessions Court, Calcutta for trial.

48. Learned Chief Judge, City Sessions Court is directed to proceed with the trial of the case with utmost expedition.

49. CRAN No. 1295 of 2008 filed by Respondent No. 7 stands disposed of accordingly.

50. A copy of this order be sent to the learned Additional Sessions Judge, 1st Fast Track Court, Baruipur, learned Chief Judge, City Sessions Court, Calcutta for information and necessary action.

51. Learned Additional Sessions Judge, 1st Fast Track Court, Baruipur is directed to send the entire records of S.T.4(3)07 to the learned Chief Judge, City Sessions Court, Calcutta immediately.

Urgent xerox certified copy, if applied for, be given to the parties as expeditiously as possible.

Petition allowed