

IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI

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Criminal Transfer Application No. 01 of 2015

Benazir Jhatyal,
D/o Muhammad Ali,
Currently residing in
Panah Shelter Home,
Darul Aman Premises,
Plot No. ST-6, Block 10, Federal B Area,
Karachi.....Applicant

PRESENTED
06-01-2015
6/1/15
Or. Registrar (Juel.)

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Versus

1. The State
Through Prosecutor General, Sindh,
New Sindh Secretariat,
Shahrah- e – Kamal Ata Turk Road,
Karachi
2. Fayyaz Meerani,
S/o Muneer Ahmed Meerani,
Muslim Adult,
Resident of Najam Colony,
District Dadu
3. Iqrar Janwiry,
S/o Manzoor Ali Janwiry,
Muslim, Adult,
Resident of Najam Colony,
District Dadu.....Respondents



F.I.R. No. 323 of 2014,
U/S 365-B, 376 P.P.C.1860,
P.S. A-Section, District Dadu

CRIMINAL TRANSFER APPLICATION UNDER SECTION 526, READ WITH, SECTION 561-A, CR.P.C, 1898

It is most respectfully and most humbly submitted on behalf of the above named Applicant as under:

1. That the Applicant is the Complainant in F.I.R No. 323 of 2014 [herein after referred to as the 'present FIR.'] which was lodged in relation to the abduction, forced confinement and rape of the Applicant by the Respondents No. 2 and No. 3. Through this Criminal Transfer Application, the Applicant seeks the transfer of Session Case No. 984 of 2014 [herein after referred to as the 'present Case'] arising out of the

present FIR from the Learned Court of Sessions Judge, Dadu, to another competent court of law in Karachi.

A copy of the abovementioned FIR No. 323 of 2014 and its English translation are annexed and marked as Annex 'A'.

2. That on 25-10-2014, the Applicant was travelling alone to her college in Dadu when the Respondents No.2 to No. 3 abducted the Applicant on gun-point and forcibly took her to an unknown place where the Respondent No.2 raped the Applicant with the aid and abetment of the Respondent No. 3 who was also complicit in the said crime. It is pertinent to note here that in September, 2014, the Respondent No.2 had also previously raped the Applicant. The Respondent No.2 had also made a video of this incident and therefore, out of fear the Applicant did not report this earlier incident. The Applicant found out about this video when in September, 2014, the Respondent No.2 had asked for the Applicant's hand in marriage. However, upon her refusal, the Respondent No.2 became infuriated and in revenge raped the Applicant again on 25-10-2014 with the Respondent No. 3 aiding and abetting.



3. That the Applicant lodged the present FIR in relation to the incident on 25-10-2014. However, the Police officials in Dadu, who the Applicant later on came to know had cordial relations with the Respondents No.2 and No.3, tampered with the narration of events of the Applicant and have falsely inserted in the Applicant's narration of events in the FIR that she was allegedly accompanied by her father on 25-10-2014 when the Respondents No.2 and No.3 kidnapped her. It is submitted that the Applicant was medically examined by the Women Medical Officer (WMO), Civil Hospital Dadu. In her Report dated: 26-10-2014, the WMO stated that rape allegedly does not seem to have been committed even though the Chemical Examination Report of the Applicant was still awaited. It is important to submit that Respondents No. 2 and No.3 are

influential persons and the Applicant is informed that the WMO was influenced into giving such a report. It is pertinent to note here that the Report dated: 14-11-2014 of the Chemical Examiner corroborates the rape incident.

A copy of the abovementioned Report of the WMO dated: 26-12-2014 and report dated: 14-11-2014 of the Chemical Examiner are annexed and marked as Annex 'B' & 'B-1' respectively.

- 4. That it is submitted that due to immense influence and pressure from the Respondents No.2 and No.3 and their supporters, the Police Officials deliberately and malafidely did not arrest the main accused i.e. the Respondent No.2. The Applicant filed an Application under Section 22-A(6), Cr.P.C., 1898. for directions to the concerned S.H.O to arrest the Respondent No.2. The Applicant came to know that the Police had deliberately and malafidely not arrested the Respondent No.2 as they had been asked to wait by the Respondent No.2. This is because the Respondent No.2 had surreptitiously filed a pre-arrest bail Application and obtained pre-arrest bail from the Learned Court of IIIrd Additional Sessions Judge, Dadu, while the police was delaying his arrest.

A copy of the abovementioned Application under Section 22-A(6), Cr.P.C., 1898, and Application of Respondent No. 2 for pre-arrest bail are annexed and marked as Annex 'C' & 'C-1' respectively.



- 5. That upon the grant of his pre-arrest bail, the Respondent No.2 embarked upon a harassment campaign and has been constantly threatening the Applicant with dire consequences, including threats to the life of the Applicant and her family, unless the FIR is withdrawn by her. The Respondent No.2 had even attacked the Applicant's house in Dadu on 29-10-2014, with the assistance of a number of duly armed supporters of the Respondent No.2. Accordingly, the Applicant filed an Application under

Section 22-B(c)(ii), Cr.P.C., 1898, before the Learned Justice of Peace, Dadu, seeking directions to the local Police Officials to provide protection to her against the Respondent No.2 and his supporters.

A copy of the Application under Section 22-B(c)(ii), Cr.P.C., 1898 is attached and marked as Annex 'D'.

6. That the Respondents No. 2 and No.3 are powerful and influential persons and the Applicant is informed that the Police officials in Dadu are acting at the behest of the Respondent No.2 and the Respondent No.3. This is further corroborated by the fact that the Investigation Officer has manipulated and distorted the facts specified in the present FIR due to the strong involvement and backing of the Respondents No. 2 and No.3. It is further submitted that due to the strong involvement and in collusion with the Respondents No.2 and No.3, the Investigation Officer had also drafted the alleged statement of the father of the Applicant and forced him to sign it under duress. In this false statement, the Applicant's father has allegedly stated that the Respondent No.3 did not kidnap the Applicant. It is further submitted that the statements of the other witnesses are also false and fake and the Applicant is informed that they have been created by the Investigation Officer. Accordingly, the Challan submitted by the Investigation Officer is also manipulated as the Investigation Officer malafidely came to the conclusion that no evidence is available against the Respondent No.3. Without prejudice to the present Transfer Application, the Applicant reserves the right to institute appropriate legal proceedings before this Honourable Court for reinvestigation on the present FIR.

A copy of the abovementioned Interim Challan and Witness Statements is attached and marked as Annex 'E' to 'E-3'.

7. That in view of the above, the Applicant filed an Application under Section 190(3), Cr.P.C., 1898, before the Learned Magistrate for directions that the opinion of the Investigation Officer in respect of

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releasing Respondent No. 3 from the offences specified in the present FIR may be declined. It is submitted that the Learned Magistrate, through Order dated: 02-12-2014 disposed of the Application under Section 190(3), Cr.P.C., 1898 on the basis that there is no sufficient material available for sending the Respondent No. 3 for trial in the case. It is further submitted that through the abovementioned Order, the Learned Magistrate also concluded that there is sufficient evidence against the Respondent No.2, therefore, whilst treating the Interim Challan as Final, and admitting the Challan, the Learned Magistrate has registered the case and sent it to the Learned Court of Sessions Judge, Dadu for trial.

A copy of the abovementioned Application under Section 190(3), Cr.P.C., 1898 and Order dated: 02-12-2014 is attached and marked as Annex 'F' & 'F-1'.

8. That it is submitted that the illegal and malafide conduct of the Police officials in Dadu, the illegal and malafide conduct of the Investigation Officer in releasing the Respondent No.3 as well as constant threats and pressure from Respondent No.2 and Respondent No.3 have compelled the Applicant to leave her place of residence in Dadu and move to Karachi where she is currently seeking shelter in the 'Panah Shelter Home.' It is also pertinent to note here that the Applicant intends to institute appropriate proceedings for re-investigation.


9. That it is most respectfully and most humbly submitted that the Applicant seeks the transfer of the present Case from the Learned Court of Sessions Judge, Dadu, to another competent court of law in Karachi on, inter alia, the following grounds:



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GROUNDS

A. That it is most respectfully and most humbly submitted that due to serious threat to the life and liberty of the Applicant, as evident from the fact that the Applicant was attacked at her home by the Respondent No.2 and his supporters, the Applicant was compelled to find shelter in Panah Shelter Home in Karachi. It is submitted that the Applicant belongs to a poor family and has no means of sustenance. It is further submitted that the Applicant will not be able to travel to Dadu to attend the hearing in the present Case on each date of hearing for two reasons i.e. due to serious threat to her life and liberty in Dadu and due to expenses involved in travelling to Dadu. Therefore, unless this Criminal Transfer Application is allowed, the Case will be decided in violation of the principles of natural justice, in violation of the Applicant's right to impartial trial, in the absence of the Applicant's right of hearing and in violation of the Applicant's rights as guaranteed under, inter-alia, Articles 4, 9 and 10-A of the Constitution 1973.



B. That the Police officials in Dadu are acting at the behest of the Respondents No.2 and 3. This is evident by, inter-alia, the fact that the Police officials have manipulated the contents of the FIR and the witness statements. It is submitted that the Respondents No.2 and No.3 have also been able to influence the Investigation Officer as well the Women Medical Officer (WMO) who provided a false report. It is submitted that the Respondents No.2 and No.3 are influencing the trial in the Case and the Applicant reasonably apprehends that there can be no fair trial in Dadu. Therefore, unless this Criminal Transfer Application is allowed, the Case will be decided in violation of the principles of natural justice, in violation of the Applicant's right to impartial trial, in the absence of the Applicant's right of hearing and in violation of the Applicant's rights as guaranteed under, inter-alia, Articles 4, 9 and 10-A of the Constitution 1973.

C. That it is most respectfully and most humbly submitted that the fact that the Respondent No.3 was released on the basis that the Investigation Officer falsely and malafidely stated in the Interim Challan that no evidence is available to implicate Respondent No.3 in the offences specified in the present FIR shows the extent of influence that the Respondent No.2 and Respondent No.3 have on the proceedings in the present Case in Dadu. Therefore, unless this Criminal Transfer Application is allowed, the present Case will be decided in violation of the principles of natural justice, in violation of the Applicant's right to impartial trial, in the absence of the Applicant's right of hearing and in violation of the Applicant's rights as guaranteed under, inter-alia, Articles 4, 9 and 10-A of the Constitution 1973.

D. That it is most respectfully and most humbly submitted that the fact that the Respondent No.2 has been granted pre-arrest bail without taking into account that the Respondent No.2 had been accused of a non-bailable offence under Section 376, PPC, 1860, and despite the availability of the sufficient evidence against Respondent No.2, the Respondent No.2 is roaming freely are sufficient facts to show the influence of the Respondent No.2 in Dadu. Therefore, unless this Criminal Transfer Application is allowed, the present Case will be decided in violation of the principles of natural justice, in violation of the Applicant's right to impartial trial, in the absence of the Applicant's right of hearing and in violation of the Applicant's rights as guaranteed under, inter-alia, Articles 4, 9 and 10-A of the Constitution 1973.

E. That it is most respectfully and most humbly submitted that the Learned Magistrate had failed to record the evidence of the Applicant under Section 164, Cr.P.C., 1898, under the pressure of Respondents No. 2 and No.3 which shows that the Respondent No.2 and No.3 may influence the



trial of the present Case in Dadu. Therefore, unless this Criminal Transfer Application is allowed, the present Case will be decided in violation of the principles of natural justice, in violation of the Applicant's right to impartial trial, in the absence of the Applicant's right of hearing and in violation of the Applicant's rights as guaranteed under, inter-alia, Articles 4, 9 and 10-A of the Constitution 1973.

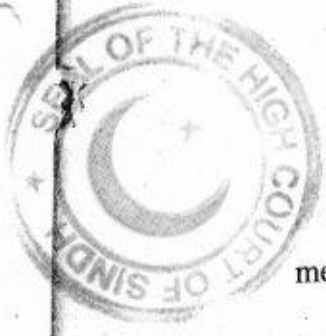
F. That it is most respectfully and most humbly submitted that without prejudice to the aforementioned, the Applicant reserves the right to file appropriate proceedings before this Honourable Court for reinvestigation in relation to the present FIR in view of the manipulation of the current investigation by the officials in Dadu who are acting at the behest of the Respondents No.2 and No.3. It is submitted that it is therefore, necessary that the present Case is also transferred to Karachi for the convenience of the Applicant.

G. That it is most respectfully and most humbly submitted that the Applicant seeks the permission of this Honourable Court to raise further facts and grounds at the time of the hearing of this Criminal Transfer Application.

PRAYER

It is most respectfully and most humbly prayed that in view of the above-mentioned, inter-alia, facts and grounds, this Honourable Court may be pleased to graciously pass orders in the following terms:

- (i) Allow this Criminal Transfer Application and withdraw the present Case i.e. Sessions Case No. 984 of 2014 from the Learned Court of Sessions Judge, Dadu, and transfer the same to any other competent Court of law in Karachi;



- (ii) Pass any other Order, or further Order, as may be just and proper in the facts of this Criminal Transfer Application and case.
- (iii) Graciously grant the costs of this Criminal Transfer Application.

Bemazir
 APPLICANT

Mohammad Usada
 ADVOCATE FOR THE APPLICANT

Karachi:

Dated: ___-01-2015

DOCUMENTS FILED:	As shown in the Application
DOCUMENTS RELIED UPON:	The abovementioned documents
ADDRESS OF APPLICANT:	As per in title of the Application
ADDRESS OF APPLICANT'S COUNSEL:	Faisal Siddiqi Advocate HC-8504/HC/KHI F-66/3, Park Lane, Block-5, Clifton, Karachi.

DRAWN BY ME

Faisal Siddiqi
 ADVOCATE



IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI

Criminal Transfer Application No. 01 of 2015

Benazir JhatyalApplicant

Versus

The State & Others.....Respondents

AFFIDAVIT

I, Benazir Jhatyal Daughter of, Muhammad Ali, Muslim, Adult, currently residing in Panah Shelter Home, Darul Aman Premises, Plot No. ST-6, Block 10, Federal B Area, Karachi, holding CNIC No. 43201-1846766, do hereby state on oath as under:

1. That I am the Applicant in this present Transfer Application and I am well conversant with the facts in this case.
2. That the accompanying Transfer Application has been drafted, instituted and filed under the instructions of the Applicant, and for the sake of brevity, the entire contents of the accompanying Transfer Application, may be read as a part of this Affidavit.
3. That unless the accompanying Transfer Application is granted, the Applicant will be gravely prejudiced.
4. That whatever is stated above is true and correct to my knowledge and belief, and the law as stated in the accompanying Transfer Application is believed to be correct in view of the advice received from my counsel.

Benazir
DEPONENT

CNIC No. 43201-1846766-2
ASSISTANT REGISTRAR-IV
AFFIDAVIT & IDENTITY BRANCH
HIGH COURT OF SINDH
21-36360025-28



To be attached with Affidavit as last Page

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Tran No: ⁰¹ - of 2015

Benazir Jhatyal ----- APPLICANT

VERSUS

The State and Others ----- RESPONDENT

AFFIDAVIT IN SUPPORT OF MEMO OF CR. TRANSFER APPLICATION

Ms. Benazir Daughter of Muhammad Ali Jhatyal, resident of Village Kaji Jhatiyal Tatri Taluka Dokri District Larkana. Presently residing at Panah Shelter Home Darul Aman Premises Plot No. ST-6 Block 10 F.B Area Karachi., affirmed on oath before me at Karachi on this 06-JAN-2015 in the 'Identity' Section of this court.

Photograph of Deponent



Signature of Deponent

Benazir

CNIC: 43201-1846766-2

Cell No. 021-36360025-

Original CNIC verified by Bar Code Reader

Photo taken at I.S.

Biometric Attendance done at I.S.

Video recording done at I.S.

CNIC verified through NADRA

Finger Prints verified through NADRA



Electronic Finger Print taken at I.S.



[Signature]
ASSISTANT REGISTRAR-IV
AFFIDAVIT & IDENTITY BRANCH
HIGH COURT OF SINDH

COMMISSIONER FOR TAKING AFFIDAVIT

Tag ID: 060115120741

No. of Affidavit : 5/5

Cost received : Rs. 30

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