

IN THE SUPREME COURT OF INDIA  
CRIMINAL ORIGINAL JURISDICTION

**TRANSFER PETITION (CRIMINAL) NO. 355 OF 2020**

WITH

**TRANSFER PETITION (CRIMINAL) NO. 357 OF 2020**

Devendra Kumar Saxena

... Petitioner (s)

Versus

Central Bureau of Investigation (CBI)  
and Others

... Respondent(s)

**ORDER**

1. While Transfer Petition (Criminal) No.355 of 2020 is filed by a retired Chief Engineer of the Central Public Works Department, who is arrayed as Accused No.1 in a criminal case in Special CBI Case No.18 of 2012, for transferring the case from the Court of the Special Judge (CBI), Siliguri, Darjeeling, West Bengal, to any court of competent jurisdiction at New Delhi, the 2<sup>nd</sup> Transfer Petition (Criminal) No.357 of 2020 is filed by the very same

person together with his wife, both of whom are arrayed as the accused in another criminal case in Special (CBI) Case No.41 of 2012, pending on the file of the Special Judge (CBI), Siliguri, Darjeeling, West Bengal, seeking transfer of the same to any court of competent jurisdiction in New Delhi.

2. I have heard Shri Rameshwar Singh Malik, learned senior counsel for the petitioners, Mrs. Madhvi Divan, learned Additional Solicitor General for CBI and Shri Rabin Majumdar, learned counsel for Respondent Nos. 2 and 3 in the 1<sup>st</sup> Transfer Petition.

3. The main ground on which the sole petitioner in the 1<sup>st</sup> Transfer Petition, who is also petitioner no.1 in the 2<sup>nd</sup> Transfer Petition seeks transfer of both the criminal cases from Darjeeling, to New Delhi, is that he is now aged about 70 years and that he had already suffered a severe paralytic attack and brain stroke. He claims that he is not in a position to move, walk, speak and perform his routine activities, without the help of an attendant.

4. Due to the medical condition of the petitioner, I entertained the Transfer Petitions and ordered the issue of notice. After service of notice, the co-accused (who are Respondent Nos. 2 and 3) in the case which is the subject matter of the 1<sup>st</sup> Transfer

Petition, have filed a counter affidavit opposing the request for transfer. According to the learned counsel for the co-accused (Respondent Nos. 2 and 3 in the 1<sup>st</sup> Transfer Petition), they are also aged and that they are also suffering from ill health. Therefore, they contend that a transfer from Darjeeling to New Delhi will make their life miserable.

5. It is contended on behalf of the CBI that the charges framed against the petitioner(s) are under Sections 120B IPC and Sections 7 and 13(2) read with 13(1)(a) and 13(1)(d) of the Prevention of Corruption Act, 1988 in one case and under Sections 109 IPC read with Sections 13(2) and 13(1)(e) of the Prevention of Corruption Act, 1988 in the other case. The petitioner retired from service only on 30.09.2010. The FIR was lodged on 30.09.2010 in the 1<sup>st</sup> case and the final report was filed on 30.06.2011. It appears that there are 21 witnesses in the 1<sup>st</sup> case, and out of them none have been examined so far. In so far as the 2<sup>nd</sup> case is concerned, FIR was lodged on 05.01.2011 and the final report was filed on 31.05.2012. A total of 115 witnesses are to be examined in the 2<sup>nd</sup> case, out of whom 32 have already been examined.

6. If we take the totality of the circumstances into consideration it is clear that however sympathetic one may be to the health condition of the petitioner, transfer cannot be ordered.

7. Though it is contended by the learned senior counsel for the petitioner that in the 2<sup>nd</sup> case, the witnesses remaining to be examined are scattered all over and are not in the locality, I do not think that after the examination of 32 witnesses, it will be in the interest of justice to order the transfer.

8. It is true, as rightly contended by the learned senior counsel for the petitioner that the right of the accused to a fair trial and a fair opportunity to defend himself against the charges will be meaningful only when there is active participation of the accused in the proceedings. Though one may point out the availability of technology for effective communications between the client and the counsel, the same cannot replace the physical assistance that an accused may be able to render to the defence counsel in a criminal proceeding.

9. But the same logic will apply equally to Respondent Nos. 2 and 3 in the 1<sup>st</sup> case. If the petitioner is entitled to a fair trial, the Respondent Nos. 2 and 3 are also equally entitled to a fair trial. I

cannot ask Respondent Nos. 2 and 3 in the 1<sup>st</sup> case to travel to Delhi and expect them to defend the case effectively.

10. It is true that in the 2<sup>nd</sup> case there are no other co-accused except the wife of the petitioner (petitioner no.2 in the 2<sup>nd</sup> case), but there is no point in ordering the transfer of one case and rejecting the prayer for transfer in the other case.

11. Therefore, both the Transfer Petitions are dismissed. However, the Trial Court shall take note of the health condition of the petitioner and dispense with his personal appearance, except when necessary. If online participation is permissible and the facility is also available, it is open to the Special Court to consider whether the petitioner can be allowed to participate virtually, so that he is not completely in the dark about what is happening.

12. Pending application(s) if any, shall also stand dismissed.

.....**J.**  
**(V. Ramasubramanian)**

New Delhi  
April 20, 2021