



UPLK010068092026

COURT OF SESSIONS JUDGE, LUCKNOW.

(PRESIDING OFFICER : MALKHAN SINGH, H.J.S.)

Crl. Misc. Case No. 783 of 2026

Anshuman Pandey

Vs.

State of U.P. & Anr.

29.06.2026

1. File is put up for hearing. Learned counsel for the applicant and learned ADGC (Crl.) for State are present. An application for impleadment, supported with affidavit, has been moved on behalf of Satyendra Nath Shukla, with the prayer to permit him to be impleaded in the instant transfer application as Opposite Party No. 2 as he is the first informant and necessary party of this case.

Impleadment application is **allowed**. Let Satyendra Nath Shukla be impleaded and read as Opposite Party No. 2 in this transfer application.

2. Instant transfer application under Section 448 of Bhartiya Nagrik Suraksha Sanhita, 2023 has been preferred by the applicant Anshuman Pandey with the prayer to transfer Sessions Trial No. 2707/2024, State Vs. Anshuman Pandey, arising out of FIR No. 416/2013, PS Gomti Nagar, Lucknow from the Court of Additional Sessions/ATS to the Court of Additional Sessions Judge, Court No. 5/Gangster Act presently presided over by Sh. Abhinay Kumar Mishra.
3. Learned counsel for applicant has submitted that while Sh. Abhinay Kumar Mishra presided over the Court of Additional Sessions Judge/ATS, he recorded prosecution evidence of as many as nine prosecution witnesses. As held by Division Bench of Allahabad High Court in case of **Punjab Singh Vs. State of UP**, a sessions trial commenced by an Additional Sessions Judge, who continues to remain an Additional Sessions Judge within the same Sessions Division but whose designation has changed, should be concluded by him or another Additional Sessions Judge who has been conferred the earlier designation. Learned counsel further submitted that Hon'ble High Court held that there is only one Court of Session in every Sessions Division, though it may be manned by the Sessions Judge, Additional Sessions Judges and Assistant Sessions Judges and the appointment of an Additional Sessions Judge does not create

a separate Court of Session, rather the Additional Sessions Judge exercises jurisdiction in the same Court of Session. Section 326 of CrPC is an exception to the normal and cardinal rule that a criminal should ordinarily be decided by the Judge who has heard and recorded the evidence and for the said provision to apply, two conditions must exist, firstly, the earlier Judge must have heard and recorded the whole or any part of the evidence and secondly, such Judge must have ceased to exercise jurisdiction in the inquiry or trial. The aforesaid principle applies with full force to the present case as Sh. Abhinay Kumar Mishra, who had earlier conducted substantial proceedings in the trial, continues to remain in the same Sessions Division and is presently presiding over the Court of Additional Sessions Judge, Court No. 5/Gangster Act. Therefore, mere change of posting/designation ought not to result in the trial being continued before some other Judge when the earlier Judge remains available within the same Sessions Division. Hence, the case in question be transferred to the Court presently being presided over by Sh. Abhinay Kumar Mishra.

4. *Per-contra*, learned counsel for the Opposite Party No. 2, Satyendra Nath Shukla has submitted that the court where the case is presently pending, has already recorded evidence of PW-10 and no useful purpose would be served by sending the case to some other Court. It is not the case of applicant that he has any concern with the Presiding Officer who is presently conducting the trial proceedings and there is no allegation of bias. The prosecution evidence is complete and the court where trial is presently pending, has full jurisdiction to conclude the trial proceedings.
5. I have heard learned counsel for the parties and perused material available on record.
6. It is pertinent to mention here that orders dated 05.05.2025 and 26.02.2026 passed by Hon'ble Supreme Court in Petition (s) for Special Leave to Appeal (Crl.) No(s) 6991/2025, Satyendra Nath Shukla Vs. Anshuman Pandey & Anr. as well as order dated 27.05.2026 passed by Hon'ble High Court in Application U/S 482 No. 2994/2026, Anita Pandey Vs. State of U.P. & Anr. have been brought on record by the parties and all the three order are concerned with the present case.
7. Hon'ble Supreme Court vide aforesaid order dated 05.05.2025 has been pleased to direct the trial court to make an endeavour to conclude the trial within six months. Thereafter, Hon'ble Supreme Court vide order dated 26.02.2026 directed the trial court to make an endeavour to conclude the trial within six months. Hon'ble High Court vide aforesaid order dated 27.05.2026 has observed in paragraph 15 that the trial in the

said case is at the final stage because as many as nine witnesses have been examined and the case is fixed for further evidence and six months timeline stipulated by the Hon'ble Supreme Court is going on to expire on 26.08.2026.

8. Hon'ble Allahabad High Court in case of **Punjab Singh Vs. State of UP**, as reported in **1983CRILJ205**, has been pleased to hold that:-

"17. Section 326 thus deals with part-heard cases and provides for the powers of the Judge and the procedure to be followed by him in respect thereof with reference to the situations arising therein. The part-heard case in an inquiry or trial, has to reach a stage where the Judge has heard and recorded the whole or any part of the evidence therein, and thereafter if the Judge ceases to exercise jurisdiction therein and is succeeded by another Judge who has or would exercise such jurisdiction, namely, the Jurisdiction to continue the trial, he may act on the evidence recorded by his predecessor or may record the evidence himself, and then conclude the trial. In this regard, if the succeeding Judge finds it necessary that he should re-summon the witnesses or any of them, he may do so, and after such further examination, cross-examination or re-examination as he may permit, the witness or witnesses may be discharged.

18.

It is the right of an accused that his case should be decided by Judge who has heard and recorded the evidence. Thus, unless the jurisdiction of the first Judge to continue the trial is taken away expressly or by necessary implication either under a statutory provision or an order passed to that effect by a competent authority, the Judge shall continue to exercise the jurisdiction to continue a part-heard trial, and he would not be deemed to have been divested of it merely because a change has taken place in his designation. If this be not the true rule, successive changes in the designation of Additional Sessions Judges would result in successive change of hands in the trial of part-heard cases, which does not seem to be the intention of the legislature behind the provisions of Section 326.

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21. Two kinds of cases may be part- heard with a Judge : (i), where the Judge had framed only the charges but had not recorded evidence, and (ii) where the Judge had heard and recorded evidence either wholly or in part, and his jurisdiction has not ceased in the trial in the manner referred to above. To the first category of cases. Section 326 in terms may not apply, and the successor-in-office of that Judge would not be entitled to continue the hearing of the case from the stage left over by his predecessor. But, at the same time, the Judge who had commenced the proceedings and framed the charges, being seized of the matter, would be entitled to continue the proceedings since his jurisdiction to deal with it had not been terminated. In the aforesaid second category, the Judge would continue to exercise jurisdiction and will dispose it of according to law, in the light of the discussion above."

[emphasis supplied]

9. It is not disputed between the parties that when the direction of expeditious disposal to the trial court was given by Hon'ble Supreme Court, at that time, the trial proceedings were being conducted by Sh. Abhinay Kumar Mishra, learned Additional Sessions Judge/ATS and presently, the said Presiding Officer is posted in this Judgeship as Additional Sessions Judge, Court No. 4, Lucknow. In his report dated 10.06.2026, Sh. Abhinay Kumar Mishra has stated that he recorded evidence of prosecution witnesses and prior to his transfer, the file was at the stage of prosecution evidence and examination of all the prosecution witnesses was not complete. He has not heard the arguments of the parties.
10. As argued before this Court, Sh. Abhinay Kumar Mishra recorded evidence of as many as nine prosecution witnesses. The prosecution evidence is stated to be completed. Hence, in the light of directions of expeditious disposal given by Hon'ble Supreme Court, keeping in mind the law laid down by Hon'ble High Court in case of **Punjab Singh** (*supra*) and the provision envisaged in Section 326 CrPC, in the considered opinion of this Court, grounds for transfer are found sufficient.

ORDER

Accordingly, transfer application is **allowed**.

Sessions Trial No. 2707/2024, State Vs. Anshuman Pandey, arising out of FIR No. 416/2013, PS Gomti Nagar, Lucknow, is recalled from the Court of Additional Sessions

Judge/Spl. Judge ATS, Lucknow and the same be transferred to the Court of Additional Sessions Judge, Court No. 4 which is presently being presided over by Sh. Abhinay Kumar Mishra, H.J.S. for hearing and disposal in accordance with law and in the light of directions already issued by Hon'ble Supreme Court for the present case.

Date: 29.06.2026

(Malkhan Singh)
Sessions Judge,
Lucknow.