

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL****Criminal Transfer Application No. 8 of 2023**

Rakesh Banwal

.... Applicant

Versus

State of Uttarakhand and Others Respondents

Presence:-

Ms. Jasmeet Kaur, learned counsel holding brief of Mr. S.S. Yadav,
learned counsel for the applicant.

Mr. Vikas Uniyal, learned Brief Holder for the State.

Mr. Yuvraj Bhatnagar, learned counsel holding brief of Mr.
Abhishek Verma, learned counsel for the respondent no.3.

Hon'ble Siddhartha Sah, J. (Oral)

By means of the present Criminal Transfer Application under Section 407 of the Cr.P.C., the applicant has sought transfer of the Sessions Trial No. 117 of 2022 pertaining to the FIR No.109 of 2022, State of Uttarakhand Vs. Aditya Tomar under Section 302 IPC and Section 25 of the Arms Act pending in the Court of District and Sessions Judge, Dehradun to any other Court of competent jurisdiction of District Haridwar.

2. In the affidavit, in support of the transfer application, it has been stated that the applicant is compelled to file the present criminal transfer application for the reason that the accused and his whole family is a group of criminal background; they have threatened the applicant and his family several occasions for committing their murder in case they do the pairvi in the said



criminal case. They became shocked on 10.02.2023, when the eyewitness was examined in the campus of court, a group of anti-social elements face to face threatened the applicant. The event has been informed by the applicant to Senior Superintendent of Police, Dehradun on 13.02.2023 and also informed to the local police but it was orally told to him that he should also form a group and carry weapon.

3. Vide order dated 08.05.2023, the Registry was directed to collect the report from the District and Sessions Judge, where the trial of Sessions Trial No. 117 of 2022, State Vs. Aditya Tomar is pending consideration.

4. In pursuance to the said order, the Vth Additional District and Sessions Judge, Dehradun has submitted a report dated 25.05.2023, in which, it has been stated that the Sessions Trial No. 117 of 2022, State Vs. Aditya Tomar is pending in which 07.06.2023 is fixed for prosecution evidence. It has also been intimated that in the said Sessions Trial, the evidence of the complainant Shri Rakesh Bansal was recorded on 09.01.2023. It has further been mentioned in the report dated 25.05.2023 that Km. Divya and Sub Inspector Kavita Nath have already been examined as PW2 and PW3 respectively. It has further been mentioned in the report dated 25.05.2023 that the particular Court has not been informed by PW1 Rakesh Bansal or any other witnesses who have been examined about the threat being extended to them.

5. It is also pertinent to mention that the Uttarakhand Witness Protection Act, 2020 (in short, "Act") provides for protection measures, which have been



defined under Section 2(i), which is quoted hereunder :-

“(i) “Protection measures” means the measures taken by Competent Authority/court so that the witnesses may give evidence in suit without fear of their life and reputation or of their family members;”

6. Section 4 of the said Act provides for submission of witness protection application before the competent authority. Section 5 of the Act further provides that when the application is received by the Competent Authority in the prescribed form, it shall forthwith pass an order for calling the threat analysis report from the Senior Superintendent of Police / Superintendent of Police of the concerned district, investigating the case. Sub-section (2) of Section 5 of the Act further provides that depending upon the urgency in the matter owing to imminent threat, the Senior Superintendent of Police / Superintendent of Police of district may pass the interim order for the protection of witness and his family member during the pendency of the application, but the final order shall be passed only by the Competent Authority.

7. Since the provision for granting protection to a witness is already there by virtue of the provisions of Sections 4 and 5 of the Act and also in view of the fact that the evidence of the applicant has already been recorded as PW1 on 09.01.2023, there is no reason to interfere in the matter. Needless to mention that if any other witness, who is to be examined in Sessions Trial 117 of 2022, State Vs. Aditya Tomar, faces any threat, then it will be open to him as well as the applicant to file an appropriate application before the Competent



Authority / Court for appropriate protection measures and the concerned Court / Competent Authority may grant the protection in the manner as provided in the Act.

8. In such view of the matter, the instant Criminal Transfer Application is dismissed.

9. Learned Brief Holder undertakes to communicate the order to the concerned Senior Superintendent of Police.

(Siddhartha Sah, J.)
02.07.2026

Shiv/