

FAREWELL SPEECH ON THE TRANSFER OF
JUSTICE ASHUTOSH KUMAR
TO THE HIGH COURT OF PATNA - 21.11.2017

*Justice Gita Mittal,
Acting Chief Justice*

Justice Ashutosh Kumar,

My esteemed sister and brother colleagues,

Sh. Sanjay Jain, Additional Solicitor General of India,

Sh. Kirti Uppal, President, Delhi High Court Bar Association,

Sh. J.P. Sengh, Vice- President, Delhi High Court Bar Association,

Sh. Amit Sharma, Secretary, Delhi High Court Bar Association,

Sh. Ramesh Singh, Standing Counsel (Civil), Govt. of NCT Delhi,

Sh. Rahul Mehra, Standing Counsel (Criminal), Govt. of NCT Delhi,

Other Standing Counsels of the Central and State Government,

Executive Members of the Delhi High Court Bar Association,

Presidents, Secretary & Office Bearers of all Bar Associations of Delhi,

Presidents, Secretary & Office Bearers of Bar Council of Delhi,

Senior Advocates,

Learned Members of the Bar,

Family members of Justice Ashutosh Kumar,

And everyone present

1. We have assembled here to bid farewell to Justice Ashutosh Kumar upon his transfer and return to the Patna High Court.

2. Born on 1st October, 1966, Justice Ashutosh Kumar completed his schooling from St. Micheal's High School in Patna. After graduating from the prestigious St. Stephen's College in Delhi, Justice Kumar obtained his LLB Degree from the Campus Law Centre, University of Delhi.

3. On 9th July, 1991, Justice Ashutosh Kumar joined the Bar and commenced, what became an illustrious practice at the Patna High Court. He practiced mainly in important Criminal Matters including matters relating to convicts on Death Row. He had the opportunity to work as Additional Standing Counsel for the Central Government, a post which he held for three years. He also appeared for the Indian Railways, for Coal India Ltd., as well as its subsidiary companies in the Central Administrative Tribunal Bench at Patna as well as the Patna High Court. He was also appointed Government Pleader for the Government of Bihar in 2011.

4. On the 15th of May, 2014, Justice Ashutosh Kumar was elevated to the Bench of the Patna High Court. What was a loss to the Patna High Court, became a gain for us, when on the 7th of January, 2015 Justice

Kumar was transferred to the Delhi High Court.

5. Justice Ashutosh Kumar has always been acknowledged for being a pleasant yet forthright and upfront person. He is also an outstanding and hard working judge known for giving a patient hearing to everyone, which reflects in his landmark judgments. This has also resulted in deep admiration and respect from the members of the Bar.

6. On the administrative side, Justice Ashutosh Kumar served as a Member on the RTI Committee, the Examination-cum-Judicial Education and Training Programme Committee, the Protocol Committee as well as the Committee for Appointments of Special MMs, Oath Commissioners, Law Researchers and Law Interns etc. Justice Ashutosh Kumar has shown his commitment to institutional development as well on the administrative side.

7. On the judicial side, Justice Ashutosh Kumar dealt with several sensitive questions of law, which came to be the subject of well-crafted judgments by him

8. In *Jugal Kishore v. Lt. Governor of Delhi*, Justice Ashutosh Kumar while quashing an externment order against the petitioner, held that *'there can be no dispute that an externment order brings in societal and personal deprivation and is a great blow on the finances of the externee. An order of*

externment makes an inroad into the cherished and valuable right of a person to have his domicile at the place of his choice.'

9. In *Mohd. Raffique v. State*, he held that *'What any court of law has to be careful of, while sentencing a wrongdoer, is that sentence imposed ought not to be the antithesis of the reformative approach of any penal legislation.'*

10. In *Govindraj Amutha v. Customs*, he laid down the exposition of law for exercise of discretion under Section 229 of the Code of Criminal Procedure which provides that if an accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon. He held that *'A plain reading of Section 229 makes it very clear that the Court has a discretion to convict an accused when he/she pleads guilty. The proper exercise of this discretion is of considerable importance especially when the accused is absolutely unaware of the language of the Court or the language in which the Court proceedings are conducted and is illiterate. It is precisely for this reason that the Courts in India do not accept such pleas of guilt and proceed to take evidence in such cases.'*

11. In *Jai Prakash Pandey v. Prabhawati*, Justice Ashutosh Kumar succinctly reiterated the necessary ingredients for applicability of Section 304B of the IPC.

12. In *Sandeep Bhatnagar v. State*, with regard to production of

documents under Section 91 of the CrPC, it was held that *'this section, though arms the court with such powers but those are not unlimited as there are built in limitations. The sine qua non for exercise of such powers is the "satisfaction" of the court regarding the desirability and necessity of summoning such document.'*

13. In *Omesh Chander Kashyap v. Union of India*, on the issue as to what material would constitute evidence before a Magistrate for him to take a decision in an inquiry conducted on the request of the Central Government for Extradition it was held that *'a Magistrate is only required to find out whether a prima facie case is made out for the extradition. The mode and the manner of inquiry as defined in the Act clearly makes out that there is no insistence on any strict standard of proof.'*

14. The duty of the courts is to do justice while exhibiting fairness, respect and dignity to the people who come before it. A judge is the fulcrum, on which our entire justice system balances.

15. Justice Ashutosh Kumar has rendered all possible assistance that the institution expects from a Judge in discharging his constitutional obligations. Justice Ashutosh Kumar shall be remembered for his positive support in all our court related activities as well as the discipline he maintained on and off the Bench.

16. He has demonstrated a paramount standard of ethical conduct that has stood out.

17. Rule of law can only be maintained if there are judges of quality as Justice Ashutosh Kumar, who are true custodians of the Constitution.

18. Justice Kumar readily endeared himself to all his peers & formed lasting friendships with all of us. As he prepares to depart from this court, I have to say that we will miss Justice Ashutosh Kumar deeply.

19. Justice Ashutosh Kumar's path through life would show that his destiny is inextricably linked with Delhi. At the end, therefore, I would only like to quote Paulo Coelho who said *"If you are brave enough to say goodbye, life will reward you with another hello"*

All of us gathered here, Justice Ashutosh Kumar, shall eagerly await the occasion and opportunity to welcome you to Delhi again.

20. On behalf of my colleagues and myself, I convey our best wishes to Justice Kumar as well as our prayers for added strength to his pen at the Patna High Court. We wish him good health and deep contentment with his accomplishments.

Thank you.
