

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO.3592 OF 2022
WITH
WRIT PETITION NO.3593 OF 2022**

Sushil Gorakh Gaikwad

... Petitioner

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Shriram S. Chaudhari for the petitioner in both the WPs.

Ms. G.P. Mulekar, APP for the State in WP/3592/2022.

Mr. S.S. Pednekar, APP for the State in WP/3593/2022.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 11, 2022

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P.C.:

- 1. Rule.** Rule made returnable forthwith by consent of the parties.
- 2.** Both the petitions challenge similar order passed by the Sessions Court rejecting application for clubbing Sessions Case No.10 of 2021 with Sessions case No.286 of 2013.
- 3.** The application was filed under section 223(d) of the Criminal Procedure Code. According to the petitioner, both the sessions cases arise out of same transaction. He submitted that

according to the prosecution case, both incidents took place one after another and the witnesses in both criminal cases are same, except the complainant.

4. He invited my attention to the order passed by the Division Bench of this Court in **Sushil Gorakhnath Gaikwad & Ors. v. The State of Maharashtra** (Criminal Writ Petition No. 4395 of 2014 decided on 24th January 2020) wherein the Division Bench of this Court in paragraph 7 held as under:

“7. As the incident is the same, the petitioner can request the trial Court to hold trial jointly. The question of prejudice, if any can be raised by them while arguing the matter before trial Court. Hence, with this liberty we dispose of the petition.”

5. In view of the observations made by the Division Bench of this Court, the petitioner filed an application before the learned Sessions Judge holding that the offence alleged in both sessions case are different.

6. On perusal of section 223(d), it appears that the mandate of section 223 is that the persons accused of different offences committed in course of same transaction need to be tried together. After having considered the prosecution case in both the matter, I am satisfied that the offence alleged against the petitioner have allegedly been committed in course of same transaction. Therefore, in my opinion, the learned Sessions Judge ought to have allowed the application of the petitioner and ought to have clubbed both the sessions cases.

7. In that view of the matter, I pass the following order:
 - a) The application below Exhibit 15 in Sessions Case No.10 of 2021 is allowed;
 - b) The impugned order dated 6th September 2022 passed by the learned Additional Sessions Judge, Solapur is quashed and set aside.
8. Rule is made absolute in above terms. No costs.

(AMIT BORKAR, J.)