

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.2756 OF 2021

Deepak Kedu Parkhe
Age: Major, Occu: Nil,
R/o: C/o Aurangabad Central Prison,
Aurangabad

... Applicant

Versus

1. State of Maharashtra
Through Secretary,
Home Department,
Mantralaya, Mumbai
2. Police Station Officer,
Basamba Police Station, Taluka Vasmat,
District Hingoli
3. Police Station Officer,
Saily Police Station, Taluka Sailu
District Parbhani
4. Police Station Officer,
Nanalpeth Police Station, Taluka &
District Parbhani
5. Police Station Officer,
Jawaharnagar Police Station,
Taluka & District Aurangabad

... Respondents

...
Mr. S. S. Bora, Advocate for Applicant (Appointed)
Mr. V. S. Badakh, APP for Respondents – State
...

CORAM : NITIN B. SURYAWANSHI, J.

**RESERVED ON : 04th JANUARY, 2023
PRONOUNCED ON : 15th FEBRUARY, 2023**

ORDER :

1. Applicant has forwarded application from jail seeking clubbing of the four criminal cases pending against him. This Court

appointed learned advocate Mr. S. S. Bora as amicus curiae to assist the Court, who has filed the present application under Sections 184, 223, 407 read with 482 of Cr.P.C., with following prayer :-

"b. That by passing appropriate order U/sec.407 of the Code of Criminal Procedure, the trials pending pursuant to C.R. No.45/2014, registered with Basamba Police Station Hingoli, C.R. No.147/2014, registered with Selu Police Station, District Parbhani and C.R. No.219/2014 registered with Nanalpeth Police Station, Parbhani may be ordered to be transferred and tried together with Special Case (MPID) No.1/2014 pending with the Special Court at Aurangabad."

2. Heard learned amicus curiae for applicant and learned Additional Public Prosecutor for respondents – State. Perused the grounds raised in the application and citations relied upon by learned amicus curiae and affidavit-in-reply filed by learned Additional Public Prosecutor.

3. During the course of arguments, it is revealed that following criminal trials are pending against applicant :-

Sr. No.	Police Station & District	C.R. No. & U/s.	Status
1.	Police Station, Vajirabad, Nanded	C.R. No.111/2014, U/s. 420, 406, 34 of IPC	Trial not commenced
2.	Police Station, Ramdaspath, Akola	C.R. No.175/2014, U/s. 420, 120-B, 34 of IPC	Trial not commenced
3.	Police Station, Lonar, Dist. Buldhana	C.R. No.36/2016, U/s. 420, 406, 504, 506, 34 of IPC	Trial not commenced

4.	Police Station, Partur, Dist. Jalna	C.R. No.89/2015, U/s. 420, 406, 120-B of IPC r/w 3 & 4 of MPID	Trial not commenced
5.	Police Station, Partur, Dist. Jalna	C.R. No.90/2015, U/s. 420, 406, 120-B of IPC r/w 3 & 4 of MPID	Trial not commenced
6.	Police Station, Nanalpeth, Dist. Parbhani	C.R. No.219/2014, U/s. 420, 406, 465, 467, 471, 474, 107, 109, 114, 120-B of IPC & U/s. 4, 5, 6	Trial not commenced
7.	Police Station, Selu, Dist. Parbhani	C.R. No.147/2014, U/s. 420, 465, 467, 468 of IPC	Trial not commenced
8.	Police Station, Basamba, Dist. Hingoli	C.R. No.45/2014, U/s. 420, 120-B, 406, 407, 405, 471 of IPC r/w 34 MPID	RCC No.69/14 Exhibit not started
9.	Jawahar Nagar Police Station, Aurangabad	C.R. No.187/2014, U/s. 420, 406, 465, 468, 471, 109, 114, 120-B r/w 34 IPC, Sec. 3 & 4 of MPID	44 witnesses examined

4. Present application, in substance, is filed for clubbing of the criminal trials together by transferring them at Aurangabad, as the trial at Aurangabad has progressed, in which so far 44 witnesses have been examined by the prosecution.

5. Learned amicus curiae urged that in the trial at Aurangabad 26 depositors from Akola, Jalna, Parbhani and Buldhana are examined. He further submits that, since applicant had main office at Aurangabad, all the panchanamas are prepared

at Aurangabad. Therefore, Panch witnesses are from Aurangabad. He further submits that in all the criminal trials applicant is the main accused who has allegedly hatched conspiracy along with other accused persons and the applicant has cheated and defrauded depositors. He prays that all the criminal trials pending against applicant be transferred to Aurangabad and be clubbed with Special Case (MPID) No.1/2014, pending with Special Court at Aurangabad. In support of his submissions, he relied on following citations :-

- (1) *Pramod Bhaichand Raisonni and Ors. Vs. The State of Maharashtra and Ors. [2019 (2) BomCR(Cri) 899];*
- (2) *Bhagwan Das Jagdish Chander Vs. Delhi Administration [(1975) 1 SCC 866];*
- (3) *Purushottamdas Dalmia Vs. The State of West Bengal [AIR 1961 SC 1589];*
- (4) *State of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao and Ors. [AIR 1963 SC 1850];*
- (5) *Adnan Bilal Mulla Vs. The State of Maharashtra [2006 (1) MhLj 572];*

6. Learned Additional Public Prosecutor, on the other hand, by relying on affidavit-in-reply filed by Assistant Police Inspector, Economic Offence Wing, Police Commissioner Office, Aurangabad, strenuously opposed prayer of the applicant. He submits that trial at Aurangabad has already commenced and 44 witnesses are examined so far. Trials pending in different districts are yet to commence. Total number of witnesses in the pending trials is more

than 100. Therefore, it would be inconvenient to the prosecution, more particularly to the complainants and witnesses of the trials pending in other districts, to attend trial at Aurangabad. Further submission is that applicant is now released on bail and therefore, he can attend trials in different districts. He submits that in ***Pramod Bhaichand Raisonni and Ors.*** (supra) all the accused persons were in jail and there were 77 trials pending in different districts in Maharashtra and therefore, Division Bench of this Court has directed to transfer all the 77 trials to Special MPID Court at Jalgaon. Hence, the said ruling is not helpful to the applicant. He, therefore, submits that application deserves to be dismissed.

7. On going through the charge-sheets filed in these 09 cases, it is clear that the applicant, his wife and other family members floated Super Investment Services Indian Ltd. and the applicant was President of the Managing Committee of the said company. Applicant and other accused persons lured the investors to invest in their company by giving assurance of hefty returns on the invested amount, but accused persons have not returned the amount and have misappropriate the same. In all the 09 cases similar allegations are levelled and same sections are applied.

8. It would be in the interest of prosecution if the trials pending against applicant are clubbed together and transferred to

the Special MPID Court, Aurangabad, where Special Case (MPID) No.1/2014 is pending.

9. The Division Bench of this Court in ***Pramod Bhaichand Raisoní and Ors.*** (supra) has observed thus:-

"9. The term "in the course of same transaction" is not defined in the Code. However, once again, it came to be interpreted by the Hon'ble Apex Court in case of *Mohan Baitha & Ors Vs. State of Bihar and Ors*, MANU/SC/0217/2001: AIR 2001 SC 149, where the Hon'ble Apex Court observed thus:-

"It may be noticed that under Section 220 of the Code of Criminal Procedure, offences more than one committed by the same persons could be tried at one trial, if they can be held to be in one series of acts, so as to form the same transaction. The expression "same transaction" from its very nature is incapable of an exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense and the ordinary use of language must decide whether on the facts of a particular case, it can be held to be in one transaction. It is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. But the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form parts of the same transaction or not. Therefore a series of acts whether are so connected together as to form the same transaction is purely a question of fact to be decided on the aforesaid criteria.

Thus, in the light of the said observation by Their Lordships, it may be gainfully concluded that if there is any proximity of time or place or unity or purpose and design or continuity of action in respect of series of acts, it can be said that the acts form part parts of the same transaction. Thus, the connection between series of acts is an essential ingredient for those acts

to constitute the same transaction.

15. From perusal of the First Information Report which arraigned the petitioners as accused, we have taken note of the fact that the allegations levelled relate to a similar transaction of the investors depositing their amount in the Multi-State Co-operative Credit Society on a promised return and failure to return the same amounts with the incentives as promised. All the office bearers of the Multi-State Co-operative Credit Society have been arraigned as accused and barring the amount involved in each FIR, the nature of transaction is identical. The provisions of MPID have been invoked against all the accused persons and the charge-sheets are filed in different Courts. Apart from this, the offences under Indian Penal Code have also been invoked and applied. Since there appears to be a commonality of action with which the accused are charged with, it would be in the interest of justice to assign all the matters to one Court of MPID which would also be in the interest of the prosecution, prosecuting agency and would also ensure fair and speedy trial to the present petitioners who are arraigned as accused. Except raising a technical objection based on the territorial jurisdiction of the Court, we do not find that the State is opposed to the clubbing of trials on any other ground. Trial of 77 cases pending before different MPID Courts is a time consuming process and if the trials are clubbed together, the number of witnesses cited can also be reduced to the bare minimum as it is not the volume of the evidence that is brought on record is of relevance but it is the relevant evidence which should form the basis of any trial in determining the guilt of the accused. It is no doubt true that while issuing a direction for clubbing all the offences and the trials, the Court is duty bound to evaluate whether such clubbing would cause prejudice to the accused persons or it would facilitate the trial by taking into consideration the facts involved in the matter. We are of the clear view that trial of 77 CRs by one Court of MPID would rather facilitate the trial and since the interest of several depositors are involved, we are of the clear view that trying all the offences at one place by the same Court would provide a solace to the complainants and speedy disposal of all the offences would assist in achieving the purpose underlying the MPID Act. Further, it would also avert a situation resulting into different final outcomes of distinct trials tried by separate MPID Courts.

16. The Maharashtra Protection of Interest of Depositors Act is a special enactment to ameliorate the interest of the depositors and the said Act is enacted to deal with such financial establishments in the State who are grabbing money received as deposits from public mostly middle class and poor strata of the society, on the promise of unprecedented high attractive interest on maturity and such financial establishments have defaulted and it has cost great public resentment and uproar creating law and order problem in the State. The said legislation intends to cure the malady of thousands and thousands of depositors ramped into a public disorder and the fraudulent default of the accused in such type of offences form a unique class of white collared and organized crime. The transactions of the accused persons who are the petitioners before us have exploited several depositors and the promise on which the deposits were accepted was never fulfilled. The procedure contemplated under the Special enactment intends to prevent and protect the precarious loss of the depositors and enable them to recover the amount as early as possible. No solution is available to the innocent unsecured depositors in absence of the procedure prescribed in the enactment. In our considered opinion, it is also the duty of the State to assist the innocent depositors and to protect their interest and effectively take steps to recover the amount and return the same to the persons who have lost their savings. The State being the custodian of the welfare of the subjects cannot be a silent spectator and once a legislation has been brought in, to deal with this malady and protect the interest of the vulnerable sector, it is the duty of the State to render justice to such depositors and this would be in real sense amounting to securing of socio economic justice to its citizens, which is a solemn duty of every State.

We, therefore, deem it expedient to exercise our powers conferred on us by virtue of Section 407 of the Code of Criminal Procedure to transfer the 77 criminal cases against the Bhaichand Hirachand Raisonni Multi-State Credit Co-operative Society and its office bearers/employees pending in the different Special MPID Courts in the State to be transferred to the Special MPID Court at Jalgaon. On such transfer, the Special Court (MPID Jalgaon District) would preferably conduct the trial on day to day basis."

10. In *Cheemalapati Ganeswara Rao and Ors.* (supra) the Hon'ble Apex Court has held:-

"25. According to Mr. Chari s. 235(1) cannot be construed as having an overriding effect on s. 239 because whereas it contemplates acts so connected together as to form the same transaction resulting in more offences than one, s. 239(d) contemplates offences committed in the course of the same transaction and nothing more. The question is whether for the purposes of s. 239(d) it is necessary to ascertain anything more than this that the different offences were committed in the course of the same transaction or whether it must further be ascertained whether the acts are intrinsically connected with one another. Under s. 235(1) what has to be ascertained is whether the offences arise out of acts so connected together as to form the same transaction, but the words "so connected together as to form" are not repeated after the words "same transaction" in s. 239. What has to be ascertained then is whether these words are also to be read in all the clauses of s. 239 which refer to the same transaction. Section 235(1), while providing for the joint trial for more than one offence, indicates that there must be connection between the acts and the transaction. According to this provision there must thus be a connection between a series of acts before, they could be regarded as forming the same transaction. What is meant by "same transaction" is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not come across a single decision of any Court which has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction. The

connection between a series of acts seems to us to be an essential ingredient for those acts to constitute the same transaction and, therefore, the mere absence of the words "so connected together as to from" in clause (a), (c) and (d) of s. 239 would make little difference. Now, a transaction may consist of an isolated act or may consist of a series of acts. The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stands out independently, they would not form part of the same transaction but would constitute a different transaction or transactions. Therefore, even if the expression "same transaction" alone had been used in s. 235(1) it would have meant a transaction consisting either of a single act or of a series of connected acts. The expression "same transaction" occurring in cls. (a), (c) and (d) of s. 239 as well as that occurring in s. 235(1) ought to be given the same meaning according to the normal rule of construction of statutes. Looking at the matter in that way, it is pointless to inquire further whether the provisions of s. 239 are subject to those of s. 236(1). The provisions of sub-s. (2) and (3) of s. 235 are enabling provisions and quite plainly can have no overriding effect. But it would be open to the court to resort to those provisions even in the case of a joint trial of several persons permissible under s. 239.

28. No doubt, as has been rightly pointed out in this case, separate trial is the normal rule and joint trial is an exception. But while this principle is easy to appreciate and follow where one person alone is the accused and the interaction or intervention of the acts of more persons than one does not come in, it would, where the same act is committed by several persons, be not only inconvenient but injudicious to try all the several persons separately. This would lead to unnecessary multiplicity of trials involving avoidable inconvenience to the witnesses and avoidable expenditure of public time and money. No corresponding advantage can be gained by the accused persons by following the procedure of separate trials. Where, however, several offences are alleged to have been committed by several accused persons it may be more reasonable to follow the normal rule of separate trials. But here, again, if those offences are alleged not to be wholly unconnected but as forming part of the same transaction the only consideration that will justify separate trials would be the

embarrassment or difficulty caused to the accused persons in defending themselves....”

11. Aforesaid observations are applicable to the facts of the present case as there appears commonality and continuity of action and community of purpose or design, with which applicant along with other accused persons is charged with.

12. There is no merit in the submission of learned Additional Public Prosecutor that in *Pramod Bhaichand Raisonni and Ors.* (supra) accused were in jail and there were 77 trials pending in different districts, whereas applicant in the present case is released on bail and therefore, he is able to attend the trials.

13. Submission of learned Additional Public Prosecutor that clubbing of the trials at Aurangabad would prolong trial of Special Case (MPID) No.1/2014, is also devoid of merits. Merely because other trials are clubbed with special case pending at Aurangabad, that by itself would not delay trial of Special Case (MPID) No.1/2014.

14. Clubbing of the trials together may also cause number of witnesses cited to be reduced to the bare minimum, so as to prove the charge against accused persons. Clubbing of the trials at Aurangabad would ensure fair and speedy trials and would avoid

situation resulting into different final outcomes of distinct trials by the separate Special MPID Courts.

15. In the result, application is allowed in terms of prayer clause 'b'. 08 criminal cases pending against the applicant in Special MPID Courts at Nanded, Akola, Buldhana, Jalna, Parbhani and Hingoli, be transferred to the Special MPID Court, Aurangabad. All the trials shall be conducted separately in accordance with law and decided simultaneously. The Special MPID Court, Aurangabad, shall as expeditiously as possible decide the matters by conducting trials on day to day basis.

16. The efforts taken by the amicus curiae in conducting the matter are noted and appreciated.

(NITIN B. SURYAWANSHI, J.)