

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION [APPLN] NO.16 OF 2023

- 1] Mr. Ikramali s/o Abdulla Sheikh,
Aged 48 years, Occupation-Service,
R/o. Sironcha.
- 2] Aazambi Mira Hussain Sheikh
(wrongly mentioned in charge sheet
as Aazambi @ Amen Hussain Mira Hussain)
Age 55 years, Occupation-Household,
R/o. Kuttagudam, Sironcha.
- 3] Sabeer Hussain Mira Hussain Sheikh,
Age 32 years, Occupation-Business,
R/o. Kuttagudam, Sironcha.
- 4] Rasulbi Karim Sheikh,
Age 52 years, Occupation-Household,
R/o. Near old Bus Stop, Near Bhende's
House, Ballarsha. .. Applicants

.. Versus ..

- 1] Mrs. Shahin w/o Ekramali Sheikh,
Age 31 years, Occupation-Household,
R/o. c/o. Aslam Khan, Sajid Hussain's
house, Ambadara Ward, Rajura,
District-Chandurpur.
- 2] State of Maharashtra, through Police
Station Officer, Police Station Wani,
Yavatmal. .. Non-Applicants

Mr. V.M. Vishwarupe, Advocate h/f Mr. Rajnish Vyas, Advocate for Applicants,

Mr. Amin Dupare, Advocate h/f Mr. Sk. Sabahat Ullah, Advocate and Mrs. Poonam Moon, Advocate for Non-Applicant No.1,

Mr. Amit Chutke, A.P.P. for Non-Applicant No.2-State.

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CORAM : G.A. SANAP, J.

DATED : 03.07.2023.

ORAL JUDGMENT

ADMIT. Taken up for final hearing forthwith by the consent of the learned advocates for the parties.

2. The applicants have made this application under Section 407 of the Code of Criminal Procedure for transfer of Regular Criminal Case No.135/2021, pending on the file of the Judicial Magistrate, First Class, Wani, District-Yavatmal, to the Court of the Judicial Magistrate, First Class, Rajura, District-Chandrapur.

3. It is stated that on the report of non-applicant no.1, the applicants have been prosecuted for the offences punishable under Sections 498-A, 504, 506 r/w 34 of the Indian Penal Code. It is stated that non-applicant no.1 has shifted to Rajura, District-Chandrapur. She has been residing with her brother. She has filed

domestic violence proceeding bearing no. P.W.D.V.A. No.9/2021 in the Court of the Judicial Magistrate, First Class, Rajura, District-Chandrapur. It is submitted that the applicants are resident of Sironcha, District-Gadchiroli. The non-applicant no.1 has shifted to Rajura, District-Chandrapur and therefore, for the purpose of convenience of the applicants and non-applicant no.1, transfer of Regular Criminal Case No.135/2021 pending on the file of the learned Judicial Magistrate, First Class, Wani District-Yavatmal to the learned Judicial Magistrate, First Class, Rajura, District-Chandrapur is necessary.

4. The non-applicant no.1 has filed the reply and opposed the application. It is contended that she has been temporarily residing with her brother at Rajura. It is further stated that the possibility of tampering with the prosecution witnesses cannot be ruled out, if the matter is transferred to Rajura.

5. Heard the learned advocate for the applicants, learned advocate for non-applicant no.1 and learned Additional Public Prosecutor for non-applicant no.2-State. Perused the record and proceedings.

6. The non-applicant no.1 has been residing with her brother at Rajura, District-Chandrapur. Initially, she was residing at Wani, District-Yavatmal. The contention of non-applicant no.1 that she has been temporarily residing with her brother at Rajura, cannot be accepted. She has filed domestic violence proceeding against the applicants in the Court of Judicial Magistrate, First Class, Rajura, District-Chandrapur on 17.02.2021. It is, therefore, apparent that since then she has been residing at Rajura. In the facts and circumstances, therefore, the contention of non-applicant no.1 that she has temporarily shifted to Rajura cannot be accepted. The non-applicant no.1 is also required to attend the Court of Judicial Magistrate, First Class, Wani on the date of hearing of the criminal case. The distance between Rajura and Wani is 67 kms. The distance between Sironcha and Wani is 237 kms. The applicants have to attend both the courts. The applicants would be required to attend the criminal proceedings regularly which is pending on the file of learned Judicial Magistrate, First Class, Wani, District-Yavatmal.

7. Considering the facts and circumstances and for the

convenience of both the parties, it would be just and proper to grant this application. Accordingly, the following order is passed :

ORDER

- (i) Criminal Application is allowed.
- (ii) Regular Criminal Case No.135/2021 pending on the file of learned Judicial Magistrate, First Class, Wani, District-Yavatmal be transferred to the Court of learned Judicial Magistrate, First Class, Rajura, District-Chandrapur.
- (iii) The Principal District Judge, Yavatmal shall withdraw the criminal case from the file of learned Judicial Magistrate, First Class, Wani, District-Yavatmal and transfer it to the Principal District Judge, Chandrapur.
- (iv) The Principal District Judge, Chandrapur shall assign the said case to the competent court at Rajura.
- (v) It is made clear that the applicants shall not, in any manner pressurize, contact or threaten the non-applicant no.1.
- (vi) The criminal application stands disposed in the aforesaid terms.

[G. A. SANAP, J.]