

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.
CRIMINAL APPLICATION (APPLN) NO. 46 OF 2022

APPLICANTS

- : 1. Prashant s/o Jaidev Wasankar, Aged about 50 years, Occ.: Nil, R/o. Plot No.42, Shrinatharpan, Cosmos Town, Trimurti Nagar, Nagpur. (In Jail).
2. Vinay s/o Jaidev Wasankar, Aged about 47 years, Occ: Nil, R/o. Plot No.42, Shrinatharpan, Cosmos town, Trimurti Nagar, Nagpur.
3. Abhijit s/o Jayant Chaudhari, Aged about 37 years, Occ: Service, R/o. Plot No.42, Shrinatharpan, Cosmos Town, Trimurti Nagar, Nagpur.
4. Mithila w/o Vinay Wasankar, Aged about 39 years, Occ: Nil, R/o. Plot No.42, Shrinatharpan, Cosmos Town, Trimurti Nagar, Nagpur.

//VERSUS//

NON-APPLICANTS

- : 1. State of Maharashtra, through Economic Offence Wing (EOW), Civil Lines, Nagpur.
2. State of Maharashtra, through Secretary Home Department, Mantralaya, Mumbai-400 032.

Mr. G.S. Gour, Advocate for the Applicants.

Ms. Mayuri Deshmukh, APP for the Non-applicants/State.

CORAM : G. A. SANAP, J.

DATED : 16th MARCH, 2023.

ORAL JUDGMENT

Heard.

02] **Admit.** The application is heard finally by consent of the learned advocates for the parties. Perused the record and proceedings.

03] The applicants, who have been arrayed as accused in MPID Case Nos.4/2014, 4/2017 and 7/2017 pending on the file of learned District Judge-12 and Additional Sessions Judge, Nagpur, have made this application for transfer of the similar cases pending against them at Akola, Amravati and Gondia. The accused are facing prosecution for the offences punishable under Sections 420, 406, 409 and 120-B read with Section 34 of the Indian Penal Code, 1860 and Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (hereinafter referred to as “the MPID Act”).

04] The accused are the directors of M/s. Wasankar Wealth Management Limited Company. The Company is involved in the business as an Advisory Firm and also Sub-Broker of ISE Shares

and Securities Pvt. Ltd. The investors invested their amount in the Company. The investment was made on the assurance of the applicants that the investors would get handsome return. The main allegation against the applicants is that the amount deposited by the investors with the Company was not returned. The investors from Nagpur, Akola, Amravati and Gondia Districts lodged the reports. On the basis of the reports, the First Information Reports came to be registered. The Police carried out investigations and filed the charge-sheets against the accused in the Courts at Nagpur, Amravati, Akola and Gondia. The details of the case numbers and crime numbers have been provided in the application.

05] It is the case of the applicants that after their arrest, they have been lodged in Central Jail Nagpur. They have been in jail for the last seven years. Six cases are pending against them in four different districts for the last seven years. The trial in a single case is not over. Out of the six cases, the trial in three cases has not yet been commenced. In the cases pending at Nagpur, 50% of the material witnesses have been examined. The three cases pending in the Sessions Court at Nagpur have been made time bound by the High Court. Substantial progress has not been made. The pending cases in different Courts of the different districts have resulted in

delay of the trial and caused prejudice to the applicants. According to the applicants for the purpose of convenience and speedy and expeditious disposal of their cases, it is necessary to transfer the cases pending against them in the Courts at Gondia, Amravati and Akola to the Court at Nagpur, wherein three cases are pending. It is submitted that no prejudice as such would be caused to the prosecution and the witnesses. It is further submitted that in order to ensure speedy and fair trial, the transfer of cases is necessary.

06] The State has filed reply and opposed the application. In the reply filed on behalf of the State, it is contended that this application made at a belated stage is without any substance. The progress of the cases pending before the different Courts has been set out in the reply. It is contended that in the cases pending at Nagpur, 61 witnesses have been examined. In the said cases, only the Investigating Officers and the witnesses directly connected with the investigation are remained to be examined. As far as the case pending at Akola is concerned, it is pointed out that the charge has been framed. The matter is now posted for evidence. In the said case, the prosecution is proposing to examine only 10 witnesses. As far as the case pending at Amravati is concerned, it is pointed out that in the said case, charge has been framed and the

prosecution is proposing to examine 26 witnesses. As far as the case pending at Gondia is concerned, it is stated that the charge has not yet been framed. It is further contended that the transfer of the cases from Amravati, Gondia and Akola to Nagpur will cause inconvenience to the witnesses, who are the investors. It is further contended that the witnesses in all these cases are not common. Similarly, the Investigating Officers in all these cases are not common. In short, it is the case of the prosecution that since there is no commonality of the witnesses and the Investigating Officers, it cannot be said that for the purpose of convenience and speedy disposal, the cases can be transferred to Nagpur.

07] I have heard Mr. G.S. Gour, learned advocate for the applicants and Ms. Mayuri Deshmukh, learned Additional Public Prosecutor for the State. Perused the record and proceedings.

08] It is true that the grievance made by the informants in all the cases is identical. It is further seen that the accused are facing identical charges. According to the applicants for the purpose of convenience and for the purpose of speedy and expeditious disposal of their cases, the transfer of cases from Akola, Amravati and Gondia to the Special Court at Nagpur is necessary. The

accused have been lodged in the Central Jail at Nagpur. While appreciating the submissions made on behalf of the applicants, certain relevant facts, which have bearing with the merits of the application, need to be stated. It is admitted fact that in the cases pending at Nagpur, the prosecution has examined 61 witnesses. All the three cases pending in the Sessions Court at Nagpur are clubbed together and the witnesses in all these cases are common. It is to be noted at this stage that in order to know the stage in each and every case, the report from the concerned Presiding Officers was called by this Court. In the report submitted by the learned Additional Sessions Judge, Nagpur, before whom the cases are pending, he has stated that 61 witnesses have been so far examined. It is further stated that the prosecution may examine near about 30 more witnesses. This fact would show that three cases pending at Nagpur are at the advanced stage. Substantial progress has been made. It is not the case of the applicants that any of the witnesses from the cases pending at Gondia, Amravati and Akola are common in the cases at Nagpur.

09] In my view, therefore, the submission that for the purpose of speedy and fair trial and to ensure the convenience of the accused, the transfer of the cases from Amravati, Akola and

Gondia would be necessary, is not at all acceptable. In my view, in those cases the evidence has yet to commence. The transfer of those cases and clubbing of those cases with the three cases pending at Nagpur would stall the progress of the three cases, which are at the advanced stage at Nagpur. It has been stated in the application by the applicants that the learned Judge before whom three cases are pending is overburdened. It has also been stated that due to the other workload, substantial progress has not been made in the matter, despite the matter having been made time bound by this Court. In my view, this would give an idea of the real state of affairs. The learned Judge seized with the three cases at Nagpur has made the substantial progress. It is seen that there is no commonality as far as the witnesses and the Investigating Officers in all the cases. Therefore, in my view, the transfer of the cases from Gondia, Amravati and Akola to Nagpur will not ensure the speedy trial. In my view, in the fact situation it may further delay the proceeding. It can cause inconvenience to the Court at Nagpur, which is bound to dispose of the matter in a time bound manner within stipulated time. It is seen that all the efforts have been made by the Court to comply the order of this Court. Therefore, in my view, the transfer of the three cases from Akola, Amravati and Gondia instead of ensuring the speedy trial would stall the progress

of the cases, which are pending at Nagpur, wherein 61 witnesses have already been examined.

10] I have already noted that the commonality factor is missing in all cases except the commonality of the offences and accused. The accused are required to face the prosecution. They have been lodged in jail. As far as the issue of speedy trial is concerned, in my view, the facts stated in the reply as well as in the report submitted by the Courts at Amravati, Akola and Gondia would show that those three cases can be disposed of expeditiously by the Courts at Amravati, Akola and Gondia. In the case pending before the Sessions Court, Gondia, the charge has not yet been framed. The learned Judge would be required to frame the charge. If this case, which is at the stage of framing of charge, is transferred and made over to the Court at Nagpur, it would delay the progress of trial at Nagpur. It will burden the learned Presiding Officer at Nagpur. In my opinion, the speedy disposal can be made, if the matter is conducted by the Sessions Court at Gondia. The witnesses in the case at Gondia are from Gondia District. They are not common witnesses in the cases at Nagpur. Therefore, this fact apart from being convenient to the witnesses, prosecution and to the accused, would ensure the speedy trial. It is further pertinent

that speedy trial of the said case can be ensured by expediting the said trial. If the said trial is expedited, the learned Additional Sessions Judge at Gondia would be in a position to record the evidence of the witnesses and dispose of the case at the earliest.

11] As far as the cases pending in the Sessions Court at Amravati and Akola are concerned, it has been categorically stated in the reply by the State as well as in the reports received from the Presiding Officers of the Courts at Amravati and Akola that the charges in the said cases have been framed. The cases are posted for evidence. In the case pending before the learned Additional Sessions Judge, Amravati, the prosecution is proposing to examine 26 witnesses. In the case pending before the learned Additional Sessions Judge, Akola, the prosecution is proposing to examine 10 witnesses.

12] It is to be noted that the witnesses in the cases pending at Nagpur and Akola are not common. The prosecution in those cases would be required to examine the witnesses cited in those cases. It would be convenient for the prosecution to examine those witnesses expeditiously before the separate Courts instead of having those cases transferred to Nagpur by adding extra workload

on the Court at Nagpur, which is already overburdened. If the cases from Amravati, Akola and Gondia are not transferred to Nagpur, then the three Courts namely Gondia, Amravati and Akola can simultaneously proceed with the trial and dispose of the same expeditiously.

13] It is to be noted that if the object of the applicants is to ensure the speedy trial, then in my view, the prayer made by them is not justifiable in the above background. It is true that the accused may be required to be produced from the jail at Nagpur to the Courts at Gondia, Amravati and Akola on the date of the recording of the evidence of the witnesses. It is to be noted that the production of the accused is possible via video conferencing. It is to be noted that the video conferencing facility has been provided in all these Courts. The accused, therefore, have an option to make a request to the concerned Courts. If the accused are interested in the speedy trial, then they should not have any objection for their production via video conferencing. Their inconvenience on this count, if compared with the inconvenience likely to be caused to the witnesses in all these cases, it would show that the applicants are not justified in making this application.

14] In my view, in the fact situation, the transfer of the cases from Amravati, Akola and Gondia to Nagpur apart from adding extra pressure on the overburdened Court, will stall the progress of the cases at Nagpur. On the contrary, the simultaneous hearing of the cases by different Courts can ensure the speedy trial. In order to redress the grievance made by the applicants about the delay in the trials at Akola, Amravati and Gondia, in my view, the trials can be expedited. The transfer of cases, in my view, in the fact situation is not the answer to their grievance. In fact, direction to have a speedy and expeditious trial is the answer to their grievance. Therefore, I am not inclined to grant this application. Therefore, the application is **rejected**.

15] In the fact situation, the Presiding Officers of the Courts at Akola, Amravati and Gondia are directed to dispose of the cases pending before them, expeditiously and in any case within a period of six months from today.

16] The compliance report be sent to this Court.

(G. A. SANAP, J.)