

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.141 OF 2024

Sanjay Hariram Agrawal

Age: 58 years, Occ.: Business

7 Hari Sava Street,

Kidderpore, Kolkata - 700 023

...Applicant

Versus

1. **The State of Maharashtra**
through the Public Prosecutor Office.
2. Ganesh Peth Police Station, Nagpur,
through its Superintendent of Police.
3. City Kotwali Police Station, Amravati,
through its Superintendent of Police.
4. The Economic Offence Wing, Osmanabad,
through its Superintendent of Police.
5. Wardha Police Station,
through its Superintendent of Police. ...Respondents

Mr. Faran Khan a/w Mr. Ashok Varma, Mr. Vishal Kanojia i/by Mr.
Mittal Munoth, for Applicant.

Ms. Sharmila S. Kaushik, APP, for Respondent-State.

CORAM: MADHAV J. JAMDAR &
R. N. LADDHA, JJ

DATE: 6th March 2024

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1. Heard Mr. Faran Khan, learned Counsel for the Applicant and
Ms. Sharmila Kaushik, learned A.P.P. for the Respondent - State.

2. By this Application preferred under Section 482 read with
Section 407 of the *Code of the Criminal Procedure, 1973*, ("CrPC")

the Applicant *inter alia* seeks following relief:

"(a) *It is humbly prayed that this Hon'ble Court be pleased to modify its order dated 9th July 2021 and stay the proceedings in the following cases:*

- (i) *C.C. No.147 of 2002 pending on the files of the 2nd Additional Chief Judicial Magistrate at Nagpur;*
- (ii) *C.C. No.847 of 2003 pending on the files of the Chief Judicial Magistrate at Amravati;*
- (iii) *C.C. No.398 of 2002 pending on the files of the Chief Judicial Magistrate at Osmanabad;*
- (iv) *C.C. No.573 of 2002 pending on the files of the Chief Judicial Magistrate at Wardha;*

until the completion of the trial in the 16 Mumbai cases; 1) C.C. No.361 of 2023, 2) C.C. No.395 of 2023, 3) C.C. No.396 of 2023, 4) C.C. No.387 of 2023, 5) C.C. No.388 of 2023, 6) C.C. No.389 of 2023, 7) C.C. No.390 of 2023, 8) C.C. No.398 of 2023, 9) C.C. No.244 of 2002 (Morbi Court), 10) C.C. No.399 of 2023, 11) C.C. No.255 of 2023, 12) C.C. No.256 of 2023, 13) C.C. No.200 of 2002, 14) C.C. No.412 of 2007, 15) C.C. No.480 of 2023, 16) C.C. No.266 of 2023; "

3. Thus what is sought by the Applicant is in-effect modification of Order dated 9th July 2021 passed by the Division Bench comprising one of us as member [A. A. Sayed and Madhav J. Jamdar, JJ] in Criminal Application No.628 of 2014 and connected matters.

4. This Criminal Application preferred under Section 482 r/w Section 407 of the CrPC was placed before a Division Bench of this Court comprising of Revati Mohite Dere and Manjusha Deshpande, JJ and by Order dated 5th February 2024, the Division Bench observed that what is sought is not a simplicitor modification and therefore the

Division Bench has stated that it would be appropriate to direct the Registry to place the aforesaid Application before the bench of which Justice Madhav J. Jamdar is a member. Accordingly, papers were placed before Hon'ble the Chief Justice and the Hon'ble the Chief Justice has assigned the matter to this Bench.

5. Before considering the relief sought by the Applicant, it is necessary to note the factual position.

(i) In the said Criminal Application No.628 of 2014 and connected matters filed in this Court the present Applicant has sought transfer of various criminal cases pending in various Courts at Mumbai, Nagpur, Amravati, Osmanabad, and Wardha to the competent Court in Mumbai. Total 9 cases were subject matter of the proceedings in which said Order dated 9th July 2021 was passed. The details of said proceedings are mentioned in paragraph No.1 of the Order dated 9th July 2021 and the same is reproduced herein below for ready reference:

<i>Criminal Application No.</i>	<i>C.R.No. Police station</i>	<i>Case No. and Court</i>	<i>Offence punishable under sections</i>	<i>Status of Applicant</i>
624/2014	83/2005 and 13/2005 Santacruz Police Station	C.C.No.412/ PW/2007 Add.Chief Metropolitan Magistrate, 47 th Court, Esplanade, Mumbai.	409, 420, 34 IPC	Accused No.2

625/2014	C.R.No.81 /2002 L.T. Marg police station, Mumbai	C.C.No.324/P/2002 Add. Chief Metropolitan Magistrate, 47 th Court, Esplanade, Mumbai.	409, 420, r/w.120(B) of IPC	Accused No.3
626/2014	C.R.No.50/2004 E.O.W. Mumbai C.R.No.298 /2004 Santacruz police station	C.C.No.197/PW/2007 Add.Chief Metropolitan Magistrate, 47 th Court, Esplanade, Mumbai.	409, 465, 120(B) of IPC	Accused No.1
627/2014	C.R.110 of 2002 and No.124/2002 Wardha Police Station	C.C.No.573/2002 Chief Judicial Magistrate, Wardha	406, 409, 420 r/w. 34 IPC	Accused No.1
628/2014	C.R.No. 101/2002 (Original C.R. No. 97/2002 of Ganeshpeth Police Station, Nagpur.	C.C.No.147/2002 Additional Chief Judicial Magistrate, Nagpur	406, 409, 468, 471 r/w. 120-B r/w. Section 34 of IPC	Accused No.3
629/2014	C.R. No. 65 of 2002 Vishrambag Police Station, Pune	C.C.No.357/2002 J.M.F.C., Shivaji Nagar, Pune	406, 409, 420, r/w. 34 of IPC	Accused No.1
630/2014	C.R. No. 75 of 2002 City Kotwali Police Station, Amravati	C.C.No.847/2003 Chief Judicial Magistrate, Amravati	406, 409, 420, 468, 34, 120B of IPC	Accused No.21

631/2014	C.R.No. 102/2002 Pimpri Police Station, Pune	C.C.No.498/ 2002 Judicial Magistrate First Class, Pimpri, Pune	465, 467, 468, 471, 406, 408, 420, 34 of IPC	Accused No.20
1022/ 2014	C.R.No.45/ 2002 of EOW (Original C.R. No. 158/2002.	C.C.No.398/ 2002 Chief Judicial Magistrate, Osmanabad	406, 409, 420, 468, 471 r/w. Section 34 IPC	Accused No.7

(ii) By above referred Order dated 9th July 2021 passed in Criminal Application No.628 of 2014 and connected matters, the Division Bench [A. A. Sayed and Madhav J. Jamdar] passed the following operative order:

"71. Thus we dispose of all these matters by passing the following order :

(i) All Criminal Applications are dismissed with costs, subject to clarification as contained in paragraph 70.

(ii) We direct that the respective Trial Courts dealing with respective criminal cases as mentioned in para No.1 to complete the trial of said cases expeditiously.

(ii) We direct that the trial in said C.C.No.147/2002 (Crime No.101/2002 registered with Ganesh Peth police station, Nagpur) be completed by passing final Judgment and Order within maximum period of four months from today. We make it clear that we are granting maximum four months time in view of Covid-19 restrictions. With these directions although we are disposing of the PIL

No.15/2020, however, we direct that the learned Presiding Officer dealing with said criminal case shall file monthly report of progress of trial of C.C.No.147 of 2002 to this Court.

(iii) We make it clear that after completion of trial in said C.C.No.147/2002 (Crime No.101/2002 registered with Ganesh Peth police station, Nagpur) against other accused except the Applicant, the trial against Applicant be commenced by conducting the same expeditiously and preferably on day to day basis and the same be completed within a period of four months after commencement of trial against present Applicant.

(iv) In view of dismissal of all Criminal Applications, Interim Application made therein do not survive and disposed of as such."

(iii) Another co-accused Ketan Kantilal Seth in some of the criminal cases preferred a transfer petition bearing case number 'Transfer Petition (Criminal) Nos.333-348 of 2021' under Section 406 of the CrPC before the Supreme Court of India. A total of 16 cases were subject matter of said transfer petition, including 9 cases from various Courts in Gujarat, 2 cases from New Delhi, one case each from Kolkata, Nagpur, and Amravati, and 2 cases from Pune.

(iv) Insofar as the Order dated 9th July 2021 passed by the Division Bench, it concerns 9 cases out of which 3 are from Mumbai, 2 are from Pune, 1 is from Nagpur and 1 each is from

Wardha, Amravati, and Osmanabad. Mr. Faran Khan, learned Counsel for the Applicant fairly stated that cases from Wardha and Osmanabad were not the subject matter of said transfer Application preferred before the Supreme Court of India.

(v) The Supreme Court of India by Order dated 9th September 2022 passed in said Transfer Petition (Criminal) Nos.333-348 of 2021 transferred all these cases from the Courts where they were pending to the Court of the Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai. The Operative part of the Order dated 9th September 2022 passed by the Supreme Court of India in paragraph No.13 reads as under:

"13. In view of the foregoing discussion, considering the common nature of allegations raised against the petitioner in all FIRs and criminal proceedings emanating therefrom which are yet pending before respective Trial Courts in four States, I am of the opinion that to meet the ends of justice and fair trial, the transfer petitions deserve to be allowed. Therefore, the instant transfer petitions are disposed-off with the following directions:—

a) The criminal cases, as specified in para 1 (clause (i) to (xvi)) of this order shall be transferred from the courts, where those are pending, to the court of Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai - 400032, Maharashtra;

b) the Principal Judge is at liberty to assign the cases to any of the Court situated in his jurisdiction to try all those cases. He is also at liberty to assign some of the cases to any other

courts also, if necessary;

c) it is further directed that the transferor courts shall immediately transmit the record of concerned cases to the Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai - 400032, which should reach on or before 31.10.2022;

d) all the accused in the concerned cases shall appear before the Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai on 14.11.2022;

e) on assignment of those cases to the concerned Court(s), as directed herein above, the said Court(s) shall frame the charges within a period of two months from the date of appearance, or on securing presence of the accused persons, if absent; and thereafter the trial be concluded as expeditiously as possible, not later than two years. It is needless to observe that the examination of the witnesses in all cases will be recorded by the Court(s) separately, thereby it should not cause any prejudice to any accused.

(vi) The Interim Application No.156023 of 2022 and Miscellaneous Application No.1935 of 2022 were preferred in the Supreme Court of India seeking modification/recall of the said Order dated 9th September 2022. It is the contention of the Applicant seeking modification/recall of the Order of the Supreme Court that insofar as said R.C.C. No.147 of 2002 which is pending before the Nagpur Court, the Supreme Court of India was not informed that the stage of the said proceedings was 'arguments were finally heard and

judgment was reserved'. Even some accused from the Amravati case also approached the Supreme Court of India and sought modification of said Order of transfer to the Bombay City Civil and Sessions Court, Mumbai. Accordingly, the Supreme Court of India modified its Order dated 9th September 2022. The relevant paragraph no.21 of the Order dated 4th August 2023, reads as under:

"21. In view of the foregoing discussion, these applications be treated as disposed-off modifying the order dated 09.09.2022 to the extent indicated herein below -

I. The order dated 09.09.2022 passed in Transfer Petition (Criminal) Nos. 333-348/2021 is hereby modified and maintained subject to -

I-A. Criminal proceedings relating to Respondent/Accused Nos. 20, 23, 25, 26, 30, 31, 32 and 34 pending before transferor Court at Amravati, if already transferred to transferee Court, shall be returned to the transferor Court and continue at the transferor Court from the stage as received;

I-B. The review petition filed by Respondent/Accused Nos. 20, 23, 25, 26, 30, 31, 32 and 34 bearing Diary No. 36121/2022 and titled as 'Ghanshyam Lahaunji Mudgal v. Ketan Kantilal Seth' is dismissed as infructuous in view of observations made in paragraph 19 herein.

II. The transfer of R.C.C. No. 147/2002 by order dated 09.09.2022 passed in Transfer Petition (Criminal) Nos. 333-348/2021 is restrained to the transferor Court with a clarification that the trial shall proceed from the stage of final arguments by the Presiding Officer uninfluenced by the directions in para 13(e) of order dated 09.09.2022.

III. Directions issued in para 13(e) in order dated 09.09.2022 be now read as under -

“On receiving the cases as mentioned in para 13(a), the transferee Court shall proceed in those cases from the stage of the case in which it had received from the transferor Court(s). The cases in which charges have not been framed, it shall be framed within two months and the trial shall start immediately. In cases in which charges have already been framed and evidence has been started after submitting the trial program, those cases shall proceed from that stage of trial. Meaning thereby, de-novo trial in such cases from stage of framing of charge is not required. The transferee Court(s) shall conclude all the trials as expeditiously as possible within a period of two years.”

IV. Lastly, we make it clear that this Court vide order dated 09.09.2022 never intended or meant to set-aside the order dated 24.06.2021 passed by Bombay High Court. It is clarified that the concerned trial Court at Nagpur shall make all the endeavor to comply with the timeline as given by Bombay High Court and decide the case in accordance with law."

The present Criminal Application seeking modification of Order dated 9th July 2021 is sought in the above mentioned background.

6. It is significant to note that the Division Bench by Order dated 9th July 2021 directed that the trial in said C.C. No.147 of 2002 be completed by the Nagpur Court by passing final Judgment and Order within a maximum period of four months and further directed that the said trial in said C.C. No.147 of 2002 (Crime No.101/2002 registered with Ganesh Peth Police Station, Nagpur) against the

Applicant be commenced by conducting the same expeditiously and preferably on a day-to-day basis and the same be completed within a period of four months after commencement of trial against the present Applicant.

7. The Supreme Court of India in the Order dated 4th August 2023 has specifically directed that the said R.C.C. No.147 of 2002 be retained with the transferor Court i.e. the Nagpur Court, with a clarification that the trial shall proceed from the stage of final arguments by the Presiding Officer, uninfluenced by the directions in paragraph No.13(e) of the Order dated 9th September 2022 concerning the trial. It is significant to note that the Supreme Court by Order dated 4th August 2023 has clarified that by Order dated 9th September 2022, it never intended or meant to set aside the Bombay High Court Order dated 9th July 2021 passed in Criminal Application No.628 of 2014 and connected matters. It is further clarified that the concerned Trial Court at Nagpur shall make all endeavours to comply with the timeline as given by the Bombay High Court and shall decide the case in accordance with law. It is to be noted that the Bombay High Court has given separate timeline to conclude the trial of other Accused and that of the present Applicant.

8. Thus, the Hon'ble Supreme Court of India has explicitly clarified that the Order dated 9th July 2021 has not been set aside and issued further direction that the concerned Trial Court at Nagpur

shall make all endeavours to comply with the timeline as given by the Bombay High Court and shall decide the case in accordance with law.

9. The Applicant is *inter alia* seeking stay of said C.C. No.147 of 2002 pending on the files of the 2nd Additional Chief Judicial Magistrate at Nagpur. If any Order staying the proceedings is passed in favour of the Applicant, the same will amount to modifying the directions issued by the Supreme Court of India by Order dated 4th August 2023.

10. As far as the relief relating to C.C. No.847 of 2003 pending on the files of the Chief Judicial Magistrate at Amravati, C.C. No.398 of 2002 pending on the files of the Chief Judicial Magistrate at Osmanabad and C.C. No.573 of 2002 pending on the files of the Chief Judicial Magistrate at Wardha is concerned, the other Accused who are going to be affected have not been made party to the present Application.

11. Apart from that, it is required to be noted that the Accused Nos.20, 23, 25, 26, 30, 31, 32 and 34 in the Amravati case had approached the Supreme Court after the Supreme Court passed the Order dated 9th September 2022 and on their Application, the Supreme Court has directed that the said criminal case be retained before the transferor Court at Amravati.

12. It is to be noted that while dismissing the Criminal Application preferred by the present Applicant by Order dated 9th July 2021, we

directed the respective Trial Courts dealing with the respective criminal cases to complete the trial of said cases expeditiously as the said cases are of the year 2002.

13. Mr. Khan, learned Counsel for the Applicant submitted that as all trials are expedited and are in progress at Mumbai, Nagpur, Amravati, Wardha, and Osmanabad, the Applicant is not in a position to attend the trials and that this is the main reason for pressing the above mentioned prayer. However, insofar as the said difficulty of the Applicant, if the Applicant's presence is not required then he may prefer an exemption Application and the concerned Court to pass orders on such exemption Application in accordance with law.

14. In any case, as noted by the Division Bench in the Order dated 9th July 2021, the offence is very serious and the hearing of the said case which was lodged in the year 2002 is delayed on one pretext or another.

15. In fact the Division Bench of this Court [Nagpur Bench] by Order dated 4th October 2019 has recorded that the case involves serious offence punishable under Sections 406, 409, 468, and 471 read with section 120-B and Section 34 of the *Indian Penal Code, 1860* involving a fraud of 150 Crore Rupees perpetrated way back in the year 2002 and that even until the year 2019, the trial had not moved even an inch. The relevant observations of the Division Bench are as under:

"These steps are necessary because the criminal case, which is pending, involves serious offences like those punishable under Sections 406, 409, 468 and 471 read with section 120-B and Section 34 of Indian Penal Code involving a scam of 150 crores of rupees, perpetrated way back in the year 2002 and today in the year 2019, the trial has not moved even an inch. It stands almost at same stage at which it stood in the year 2002. Definitely, the justice administration system owes an explanation to the society for such inordinate delay, especially when public money to the tune of Rs.150 crores and interests of unsuspecting victims, largely poor agriculturists and depositors are at stake."

16. Accordingly, in view of the facts and circumstances of the case, the Applicant fails to make out a case for granting reliefs sought under prayer clause (a).

17. The Criminal Application is dismissed.

[R. N. LADDHA, J.]

[MADHAV J. JAMDAR, J.]

BHALCHANDRA
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