

HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR

Case No.	M.Cr.C NO.34709 OF 2021
Parties Name	Manoj Parmar vs. Union of India and others
Date of order	21/12/2021
Bench Constituted	Division Bench : Justice Sheel Nagu and Justice Purushaindra Kumar Kaurav
Order passed by	Justice Purushaindra Kumar Kaurav
Whether approved for reporting	Yes.
Name of counsel for parties	For petitioner: Shri Manoj Sharma and Shri Anvesh Shrivastava. For Respondents/ : Shri J.K. Jain, Assistant Solicitor General Union of India-respondent No.1. Shri A. Rajeshwar Rao, Government Advocate-respondent No.2.
Law laid down	<u>Held:</u> 1. Section 407 of Cr.P.C. is an assurance of fair trial. 2. A litigant cannot choose a Bench of his choice. It is only an exceptional circumstances, where the existence of “bias” or “likelihood of bias” when apparent on the facts and circumstances of the case, the High Court can invoke its discretionary power under Section 407 of Cr.P.C. In the absence of an allegation of “pre-existing bias”, the power of transfer of a case should normally not be invoked.
Significant paragraph numbers	7 and 8

ORDER

-:- 2 -:-
(Passed on 21/12/2021)

1. This is an application under Section 407 of Cr.P.C. filed by the applicant for transfer of the case No.RC0082017A0013 of 2017 pending before the Court of Additional Sessions Judge, Astha District Sehore to the Court of Special Judge CBI, Bhopal.

2. Brief facts of the case are as under:-

(i) On the basis of a complaint lodged by Senior Branch Manager, Shri Rajendra Mohan Nayak of Punjab National Bank, Branch Astha District Sehore, an FIR No.858/2017, was registered for offence punishable under Sections 420, 467, 468, 471, 409 and 120-B of IPC. The allegations were that the applicant in connivance with certain officials of the Bank has dishonestly and fraudulently obtained the loan which has resulted in causing loss to the public exchequer. After investigation, the charge-sheet was filed against the applicant and other accused persons and the trial is pending before the Court of Additional Sessions Judge Astha District Sehore as ST No.13/2018.

(ii) Another FIR No.RC0082017A0013 dated 01.12.2017 was also registered against the applicant and other accused persons by the Police Station CBI, ACB Bhopal for offence punishable under Sections 120-B read with Section 420, 467, 468 and 471 of IPC and under Section Section 13 (1) (d) read with Section 13(2) of the Prevention of Corruption Act 1988. The Second FIR was registered on the basis of written complaint dated 22.11.2017 of Shri Mulji Bhai Nanji Bhai Parmar, Circle Head, Punjab National Bank, Circle Office

-:- 3 -:-

Bhopal (MP). the said complaint that Shri M.P. Karari, the then Senior Branch Manager, Punjab National Bank, Astha Branch District Sehore by abusing his official position, entered into criminal conspiracy with the present applicant, who is proprietor of M/s. Parmar Machinery and Krishi Seva Kendra Astha and with other accused persons and in pursuance thereof, they dishonestly and fraudulently sanctioned and disbursed 18 loans accounts on the basis of forged documents, thereby causing wrongful loss to the Bank to the tune of Rs.6.20 Crore, beside availing subsidy amounting to Rs.32.50 Lacs. After investigation, the charge-sheet was filed by the CBI and the said case is pending before the Special Court, CBI at Bhopal as Case No.RC0082017A0013 of 2017 titled as CBI ACB, Bhopal vs Mark Piyush Karari.

3. The applicant in the present application submits that the allegations in both the cases are similar. It is difficult for him to pursue both the matters simultaneously and to defend himself. He states that in the interest of justice the Sessions Trial pending before the Court of ASJ Astha District Sehore be transferred to Special Judge, CBI, Bhopal. He further submits that one Satyanarayan Vishwakarma is the witness in the CBI case, whereas, the same person is made an accused in the Police case pending at Astha. According to him, the aforesaid facts will prejudice his rights to defend himself in a fair and impartial manner.

4. Vide order dated 28.10.2021, this Court noticed that the accused in both the trials are not common and not only the prosecuting agency but the witnesses are also different and, therefore, time was granted to the petitioner to examine this aspect of the matter and to make his submissions.

5. In pursuance to the said order, the applicant filed an application for impleadment of respondents No.3, 4 and 5 which was allowed, despite issuance of notice to respondents No.3 and 4 no one appeared on their behalf.

6. We have heard learned counsel appearing for the applicant, Union of India and for the State of M.P.

7. Careful reading of Section 407 of Cr.P.C., makes it clear that the assurance of fair trial is the main criteria for exercise of power under Section 407 of the Cr.P.C. In the present case, the applicant has mainly stated that the allegation in both the trials are almost same and, therefore, the trial of both the cases should take place before one Bench.

8. It is well settled that a litigant cannot choose a Bench of his choice. It is only an exceptional circumstances, where the existence of “bias” or “likelihood of bias” when apparent on the facts and circumstances of the case, the High Court can invoke its discretionary power under Section 407 of Cr.P.C. In the absence of an allegation of pre-existing bias, the power of transfer of a case should normally not be

invoked. The judgment relied upon by the applicant in the case ***P.R. Behere and another vs. Ganpatrao Shrinivas Chouhan and others***¹ is of no help to him, as the said case pertains to cases relating to offence under Section 500 and 501 read with Section 34 of the IPC., and those cases were filed at a different places and almost the same allegations were made. Here, in the present case, we have seen the list of witnesses to be examined before the CBI Court and also before the Court of ASJ, Astha, District Sehore, the witnesses are not common. The witnesses of police case before the Court of ASJ Astha are mostly from that place only. We have been informed that the trial at Astha Court is at advance stage.

9. We do not see any legal or valid ground so as to exercise power under Section 407 of Cr.P.C. and in absence thereto, we decline the prayer of the applicant. Accordingly, the present application is rejected.

[SHEEL NAGU]
Judge

[PURUSHAINDRA KUMAR KAURAV]
Judge

pb

¹ 1990 Suppl. SCC 139

HIGH COURT OF MADHYA PRADESH,

PRINCIPAL SEAT, JABALPUR

M.Cr.C No.34709/2021

Manoj Parmar

VERSUS

Union of India & Others

Order for Consideration

(PURUSHAINDRA KUMAR KAURAV)

JUDGE

/12/2021

HON'BLE SHRI JUSTICE SHEEL NAGU

(SHEEL NAGU)

Judge

/12/2021

POST FOR: /12/2021.

(PURUSHAINDRA KUMAR KAURAV)

JUDGE

/12/2021