

IN THE HON'BLE HIGH COURT OF BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. _____ OF 2025

DISTRICT: MUMBAI

Sanjay Hariram Agarwal

...Petitioner

Versus

State of Maharashtra & Anr.

...Respondents

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Challenge in brief -

By way of the present Criminal Writ Petition the Petitioner *inter alia* seeks that this Hon'ble Court by invoking the Writ Jurisdiction under Article 227 of the Constitution of India and Inherent powers under Section 528 of BNSS may issue appropriate writ, order or direction and the order dated 21.03.2025 passed by the Ld. Additional Chief Judicial Magistrate, 3rd Court, Esplanade, Mumbai in C.C. No. 395/2023, whereby charges have been framed against the Petitioner for offences under Sections 420, 421, 422, 468 and 120-B IPC may kindly be quashed and set aside.

SYNOPSIS

The Petitioner herein is constrained to file the present Criminal Writ Petition being gravely aggrieved by the order whereby the Ld. A.C.J.M., Esplanade, Mumbai has directed framing of charges against the Petitioner under Sections 420, 421, 422 and 468 r/w 120-B r/w 34 of IPC, though the allegations in the

complaint and the material placed on record relate entirely to commercial transactions in Government Securities between the Valsad People's Co-operative Bank and various entities, including Home Trade Ltd. The impugned order is legally unsustainable, suffers from total non-application of mind, and has resulted in a manifest error in law.

In the present case, the real question before the Ld. Trial Court was to test whether any ingredients of Sections 420, 421, 422 or 468 are made out at all, particularly when the prosecution case is founded entirely on contract notes, Government securities, and cheques. A bare reading of the complaint reveals that the allegations concern alleged non-delivery of certain Government Securities which does not establish cheating at inception, removal of property, fraudulent prevention of debt, or forgery not attributable individually to the Petitioner and is purely a case of civil nature of specific performance or recovery of money.

The brief facts, are that Valsad People's Co-operative Bank entered into numerous contracts for Government Securities between 1996 and 2002 through different brokers, including M/s Home Trade Ltd., M/s Euro Asian Securities, M/s Ketan Seth & Co., and other entities. The bank issued payments through cheques directly to the entities concerned. Several securities were delivered and contracts were completed however the prosecution alleges that certain government securities were not delivered.

Pertinently the complaint itself states that the Bank made payments through cheques and received Government Security

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certificates, including (i) 5 crores of 10.70% GOI 2020 against consideration of 5,07,43,277.78, with AD-4 certificates delivered, and (ii) 1 crore of 10.25% GOI 2021 against 1,00,27,847.22, with AD-6 and AD-7 delivered. It also records that the Bank handed over its own AD-series Government Security certificates (including AD-13 to AD-17) to Home Trade Ltd. under sale transactions, and that Home Trade Ltd. refunded 3,61,98,750 and subsequently paid a difference of 12,83,81,902.78 through HDFC Bank towards settlement of earlier trades. At the same time, the complaint alleges non-delivery of certain later securities treating them as pending deliveries or amounts.

Even if taken at face value, the complainant's own narrative discloses long-standing, two-way commercial trading, involving several corporate entities, with substantial deliveries, transfers and refunds, and a later shortfall in delivery of some securities. No allegation is made that the Petitioner personally induced the Bank, held custody of any funds or securities, forged any document, or removed/concealed any property. The quintessence is thus, at highest, commercial non-performance or breach of contractual obligations in institutional G-Sec trading which is purely civil in nature and criminal proceedings are complete abuse of process to seek specific performance or recovery of money.

Notwithstanding this, the Ld. Trial Court framed charges without granting the mandatory pre-charge hearing under Section 239 CrPC, and passed a non-speaking, unreasoned order which does not identify any incriminating material or analyse how the

ingredients of Sections 420, 421, 422, 468 or 120-B IPC are made out against the Petitioner. This is contrary to the settled position that an order framing charge must reflect judicial application of mind, and violates the safeguards of Articles 14 and 21 of the Constitution, as pleaded in the present grounds.

On the legal plane, the Supreme Court has consistently held that cheating under Section 420 IPC requires fraudulent or dishonest intention at the inception of the transaction, and that mere breach of contract or subsequent non-performance cannot be criminalised (*Hridaya Ranjan Prasad Verma v. State of Bihar*, (2000) 4 SCC 168; *Inder Mohan Goswami v. State of Uttaranchal*, (2007) 12 SCC 1; *Vesa Holdings (P) Ltd. v. State of Kerala*, (2015) 8 SCC 293). Likewise, in *G. Sagar Suri v. State of U.P.*, (2000) 2 SCC 636, *R.K. Vijayasathy v. Sudha Seetharam*, (2019) 16 SCC 739 and *Anand Kumar Mohatta v. State (NCT of Delhi)*, (2019) 11 SCC 706, it has been reiterated that purely civil/commercial disputes cannot be given a criminal colour to exert pressure.

Most recently, in *Urmila Devi v. Balram*, 2025 SCC OnLine SC 1574, the Hon'ble Supreme Court quashed criminal proceedings where a civil land/will dispute had been disguised as a criminal case, emphasising that criminal process cannot be used as a roundabout tool to abuse the process of law and that continuation of such proceedings, when the allegations do not satisfy the ingredients of Sections 419, 420, 467, 468 and 471 IPC, is impermissible.

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Thus, the material on record does not disclose the essential ingredients of Sections 420, 421, 422, 468 or 120-B IPC against the Petitioner. The mandatory safeguards of Section 239 CrPC have been breached, and the impugned order framing charges suffers from total non-application of mind. The continuation of criminal proceedings would amount to a misuse of the criminal justice system. The impugned order framing charges is therefore illegal, perverse, and liable to be set aside.

Hence the present Writ Petition.

LIST OF DATES

Sr. No.	Dates	Events
1.	1996-2002	The Valsad People's Co-operative Bank carried out Government Securities transactions through Growth Avenues Research & Management Consultancy, Ketan Sheth & Co., Euro Asian Securities Ltd., Giltage/Giltedge entities, and thereafter through Home Trade Ltd., during which payments were made and securities was also delivered in such transactions, as recorded in the complaint.
2.	15.05.2001 &	That the Bank purchased 10.70% GOI 2020 Government Securities aggregating

	22.05.2001	5.00.00.000 under Contract Nos. 6573 and 6577. for a total consideration of 5.07.43.277.78. and that the Bank received AD-4 Government Security Certificates valued at 5 crores corresponding to the said transaction.
3.	31.05.2001	That the Bank further purchased 10.25% GOI 2021 Government Securities worth ₹ 1 crore from Hometrade Ltd. for a consideration amount of ₹1,00,27,847.22, and alleges and admits that the security certificates AD-6 and AD-7 valued at ₹ 1 crore were delivered to the Bank.
4.	31.05.2001- 02.06.2001	That the complainant states that the Bank delivered its own Government Security certificates to Hometrade Ltd., including AD-series certificates relating to 10.80% GOI 2008, 11.98% GOI 2004, and 11.19% GOI 2005 Government Securities.
5.	25.02.2002	That the Bank purchased 7.50% GOI 2010 worth ₹ 3.5 crores. The complaint states and alleges that Hometrade Ltd. refunded ₹ 3,61,98,750 and later deposited ₹ 2,83,81,902.78 through HDFC Bank towards this transaction.

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6.	15.05.2001- 19.03.2002	That the complaint alleges that during this period. the Bank paid a total of 34.11.78.338.89 to Hometrade Ltd.. received securities and cheques valued at 9.60.01.286.11. and that certain securities remained pending.
7.	06.06.2002	That thereafter the Complainant filed the complaint and FIR No. I-119/02 was lodged alleging offences under Sections 406, 409, 420, 421, 422, 423, 467, 120-B and 34 IPC against the Accused Persons on the non-delivery of certain government securities arising out of a commercial transaction between the Bank & Hometrade Ltd.
8.	18.11.2003 & 29.10.2008	That upon investigation, Chargesheet and Supplementary Chargesheet No. I-110/03 dated 18.11.2003 and Supplementary Chargesheet No. 115/08 dated 29.10.2008 were filed against 19 accused alleging commission of offences under Sections 406, 409, 420, 421, 422, 423, 467 r/w 120-B r/w 34 IPC.
9.	21.03.2025	That the Ld. Trial Court passed the impugned order framing charges under Sections 420, 421, 422, 468, and 120-B

		r/w 34 IPC against 6 accused, including the Petitioner, although the Chargesheet named 19 accused persons, and did so without first deciding any objections or conducting a hearing under Section 239 CrPC.
10.	2025	Hence, the present Criminal Writ Petition is filed assailing the impugned order dated 21.03.2025.

POINTS TO BE URGED:-

The Petitioner submits that the present dispute arises entirely from commercial G-Sec transactions, and no criminal intention at inception is alleged or made out.

The Petitioner submits that the Mandatory pre-charge hearing under Section 239 CrPC was denied. Further, the Impugned Order is non-speaking, mechanical and contrary to law.

The petitioner submits that no ingredients of 420, 421, 422, 468 or 120 – B r/w 34 IPC are made out. No allegation of forgery, dishonest removal of property, or conspiracy is attributable to the Petitioner. The proceedings are nothing but abuse of Criminal Law for a Civil Dispute.

ACTS TO BE REFERRED: i)BNSS ii) IPC

I

POINTS FOR ARGUMENT: Mentioned in Memo.

AUTHORITIES TO BE CITED:

Supreme Court Judgments

1. Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168
2. Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1
3. Vesa Holdings Pvt. Ltd. v. State of Kerala, (2015) 8 SCC 293
4. Anil Mahajan v. Bhor Industries Ltd., (2005) 10 SCC 228
5. G. Sagar Suri v. State of U.P., (2000) 2 SCC 636
6. R.K. Vijayasathy v. Sudha Seetharam, (2019) 16 SCC 739
7. Anand Kumar Mohatta v. State (NCT of Delhi), (2019) 11 SCC 706
8. Urmila Devi v. Balram, 2025 SCC OnLine SC 1574
9. Delhi Race Club v. State of U.P., (2024) 10 SCC 690
10. M/s Shikhar Chemicals v. State of U.P., 2025 SCC OnLine SC 1643

Bombay High Court Judgments

11. Ambadas Kashirao Kharad v. State of Maharashtra (2007)

12. Wasumati Ashok Thakre v. State of Maharashtra (2010)
13. Bharat Uttam Rajurkar v. State of Maharashtra (2018)
14. Mohd. Sheikh Mujaffar v. State of Maharashtra (2024)
15. Khurshid Jaat Imran Jaat v. State of Maharashtra (2025)
16. Mahendra Nanjibhai Mehta v. State of Maharashtra. 2007
SCC OnLine Bom 1084

Place: Mumbai



Date: 15/12/2025

Advocate for Petitioner

IN THE HON'BLE HIGH COURT OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. _____ OF 2025

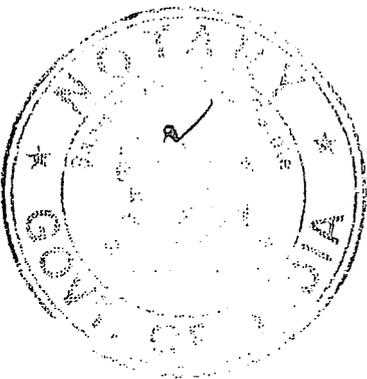
DISTRICT: MUMBAI

In the matter of Article 227 of the
Constitution of India;

AND

In the matter of Sec. 528 of the
BNSS;

AND



1.A

IN THE HON'BLE HIGH COURT OF BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. _____ OF 2025

DISTRICT: MUMBAI

In the matter of Article 227 of the
Constitution of India;

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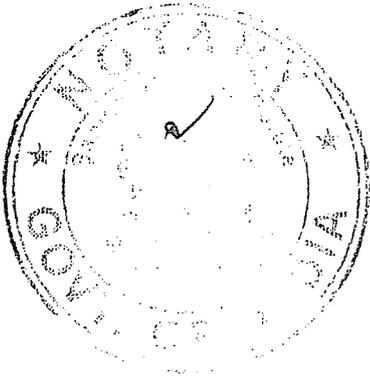
In the matter of Sec. 528 of the
BNSS;

AND

In the matter of C.C. No.
395/PW/2023 pending before the
Ld. Chief Judicial Magistrate First
Class, 3rd Court, Esplanade,
Mumbai.

AND

In the matter of impugned order
dated 21.03.2025 passed by the
Ld. Chief Judicial Magistrate First
Class, 3rd Court, Esplanade,
Mumbai, thereby mechanically
passing order framing charges
against the Petitioner for offences



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under Sections 420, 421, 422, 468
and 120-B r/w 34 of IPC.

Sanjay Hariram Agarwal

Aged: 60 years, Occ.: Business

Add: 7, Hari Sava Street, Kidderpore,

Kolkata – 700023

...Petitioner

Versus

1) State of Maharashtra

2) State of Gujrat

(through Valsad P.S., Gujrat)

...Respondents

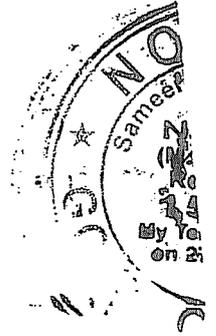
TO,

THE HON'BLE CHIEF JUSTICE AND OTHER HON'BLE
PUISNE JUDGES OF THE HON'BLE HIGH COURT OF
JUDICATURE AT BOMBAY.

HUMBLE PETITION OF THE
PETITIONER ABOVENAMED

MOST RESPECTFULLY SHOWETH:

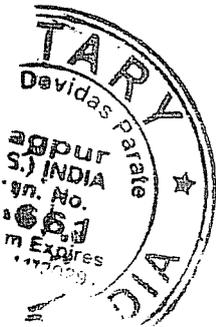
1. That the Petitioner is constrained to approach this Hon'ble Court to prevent grave abuse of the criminal process arising from the impugned order dated 21.03.2025 passed by the Ld. Judicial Magistrate First Class, Esplanade,



or

Mumbai in C.C. No. 395/PW/2023 whereby charges under Sections 420, 421, 422, 468 and 120-B r/w 34 of IPC have been mechanically framed against him in connection with certain Government Securities (G-Sec) transactions between Valsad People's Co-operative Bank (hereinafter referred to as "the Bank") and Home Trade Ltd. (hereinafter referred to as "the Company"). A copy of the impugned order alongwith Roznama of 21.03.2025 is annexed herewith as EXHIBIT 'A'.

2. The aforesaid C.C. No. 395/PW/2023 pending before the Ld. Addl. Chief JMFC, 3rd Court, Esplanade, Mumbai arises out of FIR No. I-119/02 registered with Valsad City P.S., Valsad, Gujrat which was lodged alleging offences under Sections 406, 409, 420, 421, 422, 423, 467, 120-B and 34 IPC against the Accused Persons. It is submitted that multiple cases/ FIRs were lodged against the Petitioner in different States, which were having common nature of allegations. Thus, the Petitioner had preferred a transfer petition before the Hon'ble Supreme Court and by order dated 09/09/2022, the transfer petition was allowed. The transfer petition was disposed of with the direction that cases be transferred from the courts, where those are pending, to the court of Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai. It was further directed that the Principal Judge would be at liberty to assign the cases to any of the Court situated in its jurisdiction to try all those cases. It is submitted that presently all these cases are pending before the Ld. Addl. Chief JMFC, 3rd Court, Esplanade, Mumbai. A copy of the



[Handwritten signature]

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order dated 09/09/2022 passed by the Hon'ble Supreme Court is annexed herewith as EXHIBIT 'B'.

Brief facts

3. That the facts which only relevant for the present issue are mentioned in this Petition, though there are several orders in between which has no relevance to the issue raised in the present case for brevity and clarity. That the FIR No. I-119/02 dated 06.06.2002 was filed by the Manager of B.B. Shroff Balsar People's Co-operative Bank Ltd., Valsad, alleging offences under Sections 406, 409, 420, 421, 422, 423, 467, 120-B and 34 IPC. Copy of the FIR is annexed herewith as EXHIBIT 'C'.
4. That as per the complaint, it is stated that the Bank is required to invest in Government Securities pursuant to RBI circulars and SLR obligations and that the Bank carried out Government Securities transactions pursuant to Investment Committee and Management Committee resolutions, and that transactions were executed through Growth Avenues Research & Management Consultancy, Ketan Sheth & Co., Euro Asian Securities Ltd., Giltage/Giltedge entities, and Home Trade Ltd.
5. That the complaint expressly records purchase and actual delivery of security certificates to the Bank, including:

Particulars	Face Value	Consideration Paid	Delivery Recorded
10.70% GOI 2020 (Contract	□5,00,00,00 0	□5,07,43,277.7 8	AD-4 Certificate s (□ 5



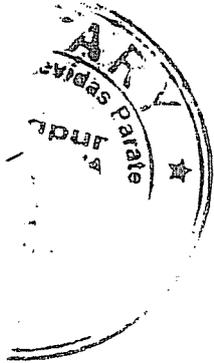
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Nos.6573/ 6577)			crore)
10.25% GOI 2021 (31.05.2001)	₹1,00,00,00 0	₹1,00,27,847.2 2	AD-6 and AD-7 Certificate s (₹ 1 crore)

Further, the complainant acknowledges receipt of several AD-series certificates corresponding to contract notes issued.

6. That it is alleged and admitted by the Complainant in his complaint that under various sale transactions, the Bank delivered its own Government Security certificates to Home Trade Ltd., including AD-series certificates handed over against the Bank's sale of 10.80% GOI 2008, 11.98% GOI 2004, and 11.19% GOI 2005 securities.
7. That it is alleged in the complaint that Home Trade Ltd. refunded certain amounts to the Bank, including an amount of ₹ 3,61,98,750, and additionally paid a further difference amount of ₹ 2,83,81,902.78 through HDFC Bank.
8. Thus. the transactions of the Company with the Bank were on continuous basis, however, the complaint however alleges that Home Trade Ltd. failed to honour the contract notes by delivering certain Government Securities.
9. That the complainant alleges that the Bank paid a total of ₹ 34,11,78,338.89 to Hometrade Ltd., received securities and cheques valued at ₹ 9,60,01,286.11, and certain



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securities were stated as pending. Thus, the complaint essentially relates to a case of unpaid seller or delivery of goods which is purely civil in nature.

10. That throughout the complaint, the Bank narrates the issue as one of non-delivery of certain Government Securities [while receiving securities of substantial amount] in later transactions and pending consideration amounts, arising out of continuous commercial dealings in Government Securities between 15.05.2001 and 19.03.2002. The complaint itself records purchase, sale, delivery, by both sides and payments/refunds made through banking channels.
11. However, upon investigation, Chargesheet and Supplementary Chargesheet No. I-110/03 dated 18.11.2003 and Supplementary Chargesheet No. 115/08 dated 29.10.2008 were filed alleging commission of offences under Sections 406, 409, 420, 421, 422, 423, 467 r/w 120-B r/w 34 IPC. The Petitioner craves leave to refer and rely upon the chargesheet as and when required.
12. That the Ld. Judicial Magistrate without affording any opportunity of hearing on charge vide Impugned Order dated 21.03.2025, framed charges under Sections 420, 421, 422, 468, 120-B r/w 34 IPC against the Petitioner, without first deciding any objections or conducting a hearing under Section 239 CrPC as held by Hon'ble Bombay High Court in *Bharat Uttam Rajurkar & Ors. v. State of Maharashtra – Criminal Writ Petition No. 1232 of 2017*. The impugned order also does not record reasons, does not analyse the ingredients of the offences alleged,



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and does not reflect application of judicial mind. It is a settled law which has been reiterated by the Hon'ble Bombay High Court in *Mahendra Nanjibhai Mehta v. State of Maharashtra, 2007 SCC OnLine Bom 1084*, that categorically held that an order under Section 239 CrPC must be a speaking order, recording reasons and demonstrating judicial application of mind. A mechanical dismissal of discharge without analysing the objections or the ingredients of the alleged offences is unsustainable in law.

13. That even assuming the complaint in its entirety, the events narrated therein pertain exclusively to commercial purchase-sale transactions of Government Securities, with several transactions completed, several certificates delivered, several amounts refunded, and certain later securities stated as remaining undelivered. No material discloses the statutory ingredients of Sections 420, 421, 422 or 468 IPC, nor any material showing conspiracy under Section 120-B IPC against the Petitioner.

14. That, a civil case pending between the Bank and the company.

15. That being aggrieved by the impugned order and the procedural as well as substantive errors therein, the Petitioner prefers the present petition, invoking the writ jurisdiction of this Hon'ble Court under Article 227 of the Constitution of India as well as inherent powers of this Hon'ble Court under Section 528 of the BNSS, on the following grounds:



GROUNDS

A. That the Petitioner is falsely implicated in the instant case and denies committing any of the offenses as alleged against him. The allegations made in the FIR are devoid of any merits and are baseless and is a clear attempt to give a criminal colour to a purely commercial dispute which is civil in nature.

B. That the failure to conduct a pre-charge hearing as required under Section 226, 227, 228 & 239 CrPC vitiates the charges, as it violated the Petitioner's right to a fair trial and due process guaranteed under Articles 14 and 21 of the Constitution.

B.1. That the record (Roznama) dated 21.03.2025 clearly demonstrates that the accused was not afforded a meaningful opportunity to be heard prior to the framing of charges. Section 239 CrPC mandates that an accused must be given the chance to address the Court on whether any offence is made out. This mandatory safeguard was completely denied.

B.2. That the Ld. Trial Court proceeded to frame charges without granting the opportunity of hearing to the accused under Section 239 CrPC. The Petitioner was present and had sought to address the Court on the question of charge, yet no such hearing was afforded. The statutory requirement of providing the accused a meaningful and



effective opportunity to show that no case is made out was completely bypassed.

B.3. That the position of law has been well established in catena of judgements of Hon'ble Bombay High Court as mentioned below that an order framing charge is vitiated if no opportunity has been granted prior to framing of charge to an accused to show from the materials on record that no offence has been committed by him and that no charge can be framed against the accused:-

(i) *Ambadas Kashirao Kharad & Ors. v. State of Maharashtra Criminal Revision Application No. 338 of 2006 decided on 18.01.2007.*

(ii) *Wasumati Ashok Thakre & Anr. v. State of Maharashtra – Criminal Revision No. 135 of 2010 decided 12.08.2010*

(iii) *Bharat Uttam Rajurkar & Ors. v. State of Maharashtra – Criminal Writ Petition No. 1232 of 2017 decided on 12.01.2018*

(iv) *Mohd. Sheikh Mujaffar S/o Shiek Rashid v. State of Maharashtra & Anr. Criminal Revision Application No. 74/ 2024 decided on 02.07.2024*

(v) *Khurshid Jaat Imran Jaat & Ors. v. State of Maharashtra – Criminal Revision Application No. 25 of 2025 decided on 24.02.2025*



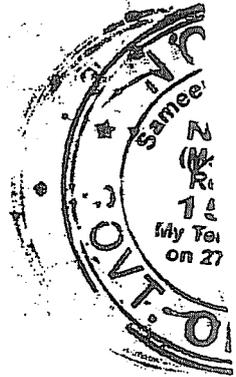
B.4 That it is apt to quote on judgement out of many i.e. *Bharat Uttam Rajurkar & Ors. v. State of Maharashtra – Criminal Writ Petition No. 1232 of 2017* where the Hon'ble Bombay High Court (Nagpur Bench) held that

the absence of a hearing was not a mere technicality but a substantive failure. His Lordships Justice S.B. Shukre, while quashing the charges, held:

“There cannot be any 'prima facie presumption' about the predecessor of the learned Magistrate having heard the accused persons before framing of the charge... Framing of charge is a serious business. When Sections 239 and 240 of Cr.P.C. mandate that charge must be framed after giving an opportunity of hearing to the accused, the mandate must be followed realistically and not presumptively.”

The court in the above case further observed:

“The impugned orders clearly show that no such opportunity of being heard was ever granted to the petitioners before framing of the charge and, therefore, for this reason alone, the charge, as framed, against the petitioners deserves to be quashed and set aside.” Thus, the failure to comply with Sections 239 and 240 Cr.P.C. has in itself resulted in a miscarriage of justice, warranting the present application.

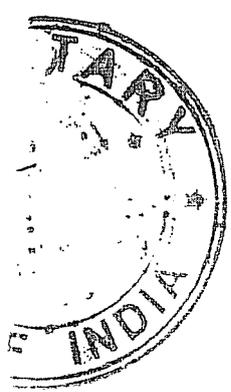


B.5 That the material on record does not disclose a prima facie case against the accused for Sections 421, 422, 468 or 120-B IPC and the petitioner never had an opportunity to explain it to the magistrate that in view of law declared by Hon'ble Supreme Court mere alleged

failure of delivery of certain Securities cannot justify framing of charges as the essential ingredients of the alleged offences is not made out.

B.6. That furthermore, the Investigating Officer also failed to adequately examine the documentary and testimonial evidence pertaining to the accused's conduct before recommending framing of charges, thereby violating the principle that charges must be framed only after evaluating whether a reasonable case exists.

B.7. That in addition to denying the statutory hearing, the impugned charge-framing order is vitiated for being a completely non-speaking and unreasoned order. It does not identify any incriminating material, or shows a single reason explaining how the offences under Sections 420, 421, 422, 468 or 120-B IPC are made out against the petitioner. It is settled law in *Mahendra Nanjibhai Mehta v. State of Maharashtra (Supra)* that an order framing charges must be a speaking order, reflecting judicial application of mind. The impugned order contains no reasoning whatsoever and merely reproduces the prosecution's allegations, rendering it unsustainable in law and violative of Articles 14 and 21.



C. That the dispute is civil/commercial in nature and does not disclose any criminal offence.

C.1. That the allegations in the Complaint, FIR and Chargesheet arise purely from commercial and contractual transactions relating to Government Securities with the

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Company. Even if taken at face value, they amount at best to breach of contract for non-delivery of securities by the Company and do not constitute any criminal offence.

C.2. That it is a settled law that mere breach of contract cannot give rise to criminal liability unless fraudulent or dishonest intention is shown at the inception of the transaction. The Hon'ble Supreme Court in *Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168* has observed:

“15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

(Emphasis supplied)

C.3. That pertinently the Companies prior and subsequent conduct, including honouring earlier

Dr

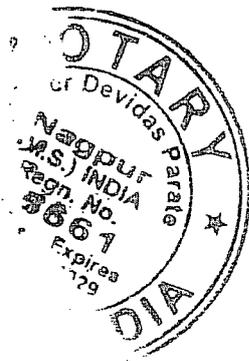


Government Securities transactions with the Complainant Bank, clearly indicates bona fide commercial dealings and negates any allegation of fraudulent intent at inception.

C.4. That the Hon'ble Apex Court has repeatedly cautioned that disputes which are essentially civil must not be dressed up as criminal offences (*Paramjeet Batra v. State of Uttarakhand, Usha Chakraborty v. State of West Bengal, Naresh Kumar v. State of Karnataka*).

C.5. That furthermore, it is pertinent to mention that the Hon'ble Supreme Court has further clarified in *Vesa Holdings (P) Ltd. v. State of Kerala, (2015) 8 SCC 293*, that every breach of contract does not amount to cheating, and criminal prosecution cannot be invoked unless fraudulent intention at the inception of the transaction is clearly established. It was observed that:

...8. From the decisions cited by the appellant, the settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise



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being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

(Emphasis supplied)

C.6. In *Anil Mahajan v. Bhor Industries Ltd., (2005) 10 SCC 228*, the Hon'ble Supreme Court held that criminal proceedings for cheating are liable to be quashed where the allegations disclose only a civil wrong, observing that "the substance of the complaint is to be seen; if it discloses a civil dispute, the criminal process should not be permitted to continue." The present case falls squarely within that principle.

C.7 The Hon'ble Supreme Court, in a recent and strong disapproval of the growing tendency to criminalise civil and commercial disputes, observed in *M/s Shikhar Chemicals v. State of U.P., 2025 SCC OnLine SC 1643*, as under:

"The Magistrate unfortunately remained unmindful of the fact that even as per the complainant's own say the case is one of sale of goods and recovery of some balance amount... It was expected of the Additional CJM to know that in a case of sale transaction where is the question of any entrustment of goods so as to bring the case within the ambit of criminal breach of trust punishable under Section 406 of the IPC. ... We are not taken by surprise with the Magistrate exhibiting complete ignorance of law... However, we expected at least the High Court to understand the fine distinction between the two



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offences... It was expected of the High Court to know the well-settled position of law that in cases of civil dispute a complainant cannot be permitted to resort to criminal proceedings as the same would amount to abuse of process of law."

C.8 The Court emphatically reiterated the settled principle that where the dispute arises from a commercial contract, such as sale, supply, or investment transactions, the remedy lies in civil law for recovery or damages, not in criminal prosecution. The criminal law cannot be used to enforce contractual obligations or to pressurise parties in commercial dealings.

C.9 That in the present case, the continuation of criminal proceedings is nothing but an attempt to give a cloak of criminality to a dispute that is purely civil and contractual, which is impermissible and constitutes abuse of process.



D. That no offence alleged under Sections 420 is made out as the continuous prior bona fide dealings between the Company and the Complainant Bank clearly negates any element of fraudulent or dishonest intention at the inception of the transaction.

D.1. Section 415 IPC defines "cheating" as follows:

"Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to

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deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'."

D.2 As delineated by the Hon'ble Supreme Court in ***Delhi Race Club v. State of U.P. (2024) 10 SCC 690*** the following are the ingredients of Section 420 IPC:

"(1) Deception of any person, either by making a false or misleading representation or by other action or by omission;

(2) Fraudulently or dishonestly inducing any person to deliver any property, or

(3) The consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit"

D.3 That Section 420 IPC requires (i) deception of a person, (ii) fraudulent or dishonest inducement at the inception of the transaction, and (iii) delivery of property or alteration of a valuable security pursuant to such inducement. Dishonest intention at the very inception is the foundational element of the offence. Subsequent



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failure to fulfil a promise. or inability to perform a contract, does not by itself constitute cheating.

D.4 That the Hon'ble Supreme Court also in *Inder Mohan Goswami v. State of Uttaranchal*, (2007) 12 SCC 1, as reiterated in *Arshad Neyaz Khan v. State of Jharkhand* (2025) SCC Online SC 2058, has categorically held that the intention at the inception is the gist of the offence of cheating, and that

17. "42....From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning."

Applying this settled principle, the absence of any dishonest intention at the inception of the transaction completely negates the applicability of Section 420 IPC.

D.5. That neither the Complaint, FIR or the chargesheet attributes any inducement, communication or act personally committed by the Petitioner which caused the Bank to enter into the Government Securities transactions. The complaint itself states that the transactions were undertaken pursuant to resolutions of the Bank's Investment and Management Committee, thereby demonstrating that the Bank acted independently, institutionally and on its own assessment with the Company, negating any allegation of inducement.

D.6. That the complaint also records two-way trading between the parties, including delivery of securities by the



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Bank itself to HTL, stating that "All these government security certificates (AD- 15, 16, 17, and AD-13 to 16) were handed over to the accused." These transfers thus shows a routine commercial trading relationship, and not a fraudulent scheme.

D.7 That the complaint further records adjustments, and payments made by HTL, including:

"...Earlier, Hometrade Ltd. was unable to deliver the 7.50% GOI 2010 Government Security Certificates worth Rs. 3,50,00,000 as per contract no. 7151. As a result, they refunded Rs. 3,61,98,750, which was lower than the agreed consideration amount. This made the total amount refunded Rs. 15,35,40,027.78 for certificates with a face value of Rs. 13 crores. The certificates involved included numbers AD-13, AD-168 to 171, AD-6 to 8, and AD-308. Hometrade Ltd. subsequently paid a difference of Rs. 2,83,81,902.78 to the plaintiff bank through HDFC Bank to settle this discrepancy..."

Such bona fide settlements and payments cannot coexist with an allegation of dishonest inducement.

D.8 In the present case, the complaint itself demonstrates that for several years prior to the disputed period, the Complainant Bank had been routinely purchasing and selling Government Securities first through Growth Avenues Research & Management Consultancy, thereafter through M/s Ketan Sheth & Co., and subsequently through Home Trade Ltd. The complaint expressly admits



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that in all such prior dealings, deliveries were duly made. This long-standing pattern of successful and bona fide performance categorically negates any possibility of fraudulent intention at inception.

D.9 That even in respect of the March 2002 transactions forming the subject matter of the present proceedings, the complaint acknowledges substantial performance by Home Trade Ltd. The Bank records that security certificates bearing series numbers AD-4 (₹ 5 crores), AD-6 and AD-7 (₹ 1 crore) and several other AD-series securities were actually delivered to the Bank. Moreover, the Bank itself handed over Government Securities (including AD-13 to AD-17) to Home Trade Ltd. in reciprocal settlement transactions. These facts conclusively establish that the parties were engaged in a genuine course of commercial trading, inconsistent with any theory of deception.

D.10 That the complaint further demonstrates that the Bank treated the alleged shortfall as a matter of commercial settlement, not as a criminal act. It raised delivery reminders, communicated telephonically, and accepted substitutions of securities. Such conduct shows that the Bank itself perceived the issue as a settlement discrepancy, not criminal fraud.

D.11 That the complaint also records that certain securities were stated to be unavailable in the market, and that delivery would be effected subsequently. Delay in delivery



is a typical commercial contingency in securities trading and would amount, at the highest, to non-performance or breach of contractual obligations, not criminal misconduct under the IPC.

D.12 That, therefore, even if the allegations in the complaint are taken at face value, they amount only to commercial non-performance or breach of contract arising out of multi-party securities settlements. The totality of these admitted facts consisting of independent decision-making by the Bank, substantial deliveries by Companies repeated settlements, and absence of any personal inducement of the Petitioner clearly establishes that the essential ingredients of Section 420 IPC are conspicuously absent. Such disputes cannot be criminalised, and the continuation of criminal proceedings on this purely civil-commercial foundation constitutes a gross abuse of process. Accordingly, the charge under Section 420 IPC is wholly unsustainable and liable to be quashed.

E. That no offences alleged under Sections 421 and 422 is made out.

E.1. That Sections 421 and 422 IPC deal respectively with
(i) dishonest or fraudulent removal or concealment of property to prevent its distribution among creditors and
(ii) dishonestly or fraudulently preventing any debt or demand from being made available for payment to creditors. The essential ingredients common to both provisions are (a) existence of property or a legally



enforceable debt; (b) such property or funds being in the possession, custody or dominion of the accused; (c) an act of dishonest removal, concealment, diversion or obstruction; and (d) an intention to prevent distribution or defeat payment to creditors.

E.2. That none of these statutory ingredients are even alleged, much less established, in the present case. The complaint nowhere states that any property of the Bank was in the personal possession, custody or control of the Petitioner. All transactions were carried out between the Bank and Home Trade Ltd. (HTL) as a corporate entity, through formal banking channels and institutional contract notes. The Petitioner, had no personal dominion over any funds or securities.

E.3. That further the complaint records multiple settlement payments and refunds by HTL, such as:

- *"Hometrade Ltd. subsequently paid a difference of ₹2,83,81,902.78..."*
- *"This made the total amount refunded ₹15,35,40,027.78..."*
- *"Hometrade Ltd. deposited ₹3,02,14,813.89 with the plaintiff bank..."*

Refunding and settling accounts is the opposite of preventing distribution to creditors, and therefore Section 421 and 422 IPC is wholly inapplicable.

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E.4. That at no point does the complaint allege that the Petitioner personally diverted, hid, removed, or took possession of any property belonging to the Bank, nor that he intended to prevent distribution of any debt or asset to creditors. Absent such allegations, the offence under Section 421 and 422 IPC cannot be invoked.

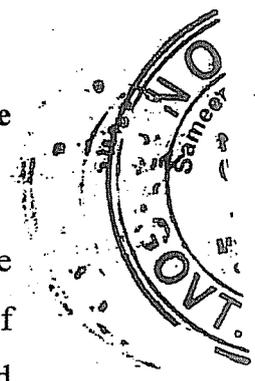
E.5. That the Hon'ble Supreme Court in *G. Sagar Suri v. State of U.P., (2000) 2 SCC 636* cautioned against stretching civil disputes into criminal prosecutions by invoking penal provisions without factual foundation. The present case is a textbook example of such mechanical invocation of sections.

E.6. That the simultaneous invocation of multiple penal provisions, without any factual foundation connecting the Petitioners to the essential ingredients of the alleged offences, reflects a mechanical application of mind and renders the charges under section 421 and 422 wholly unsustainable in law and liable to be quashed.

F. That no offence alleged under Sections 468 is made out.

F.1. That Section 468 IPC penalises forgery for the purpose of cheating. The essential ingredients are proof of (a) a forged document, (b) authorship by the accused, and (c) intention to cheat, are mandatory.

F.2. That neither the Complaint, FIR or the chargesheet identifies any particular document alleged to be forged,



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nor specifies how or by whom such document was created, altered or fabricated. There is not a single averment that the Petitioner prepared, signed, authorised or participated in the creation of any forged document.

F.3. That the complaint itself describes the disputed documents as part of routine institutional securities trading. The complainant attributes discrepancies to non-delivery, not to forgery. The complaint nowhere states that any contract note was fabricated or falsified by the Petitioner.

F.4. That the complaint expressly records that the Bank acted on multiple contract notes issued over several years through Ketan Sheth & Co., Euro Asian Securities, Giltedge Management Services and Home Trade Ltd. The existence of a long-standing trading relationship eliminates the possibility of a sudden insertion of forged documents.

F.5. That the charge under Section 468 IPC is based purely on speculation and not on any material indicating the making of a false document, authorship by the Petitioner, or intent to cheat. Accordingly, no prima facie case is made out.

G. That no offence alleged under Sections 120-B is made out.

G.1. That Section 120-B IPC requires proof of an agreement between two or more persons to commit an



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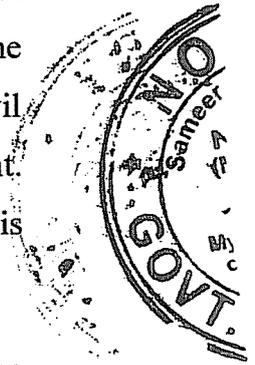
illegal act or a legal act by illegal means. The essence of conspiracy is the meeting of minds. Mere association or participation in commercial transactions does not constitute conspiracy.

G.2. That the complaint itself records that the Bank carried out Government Security transactions through several independent brokerage entities, including Growth Avenue Research & Management Consultancy, Ketan Sheth & Co., Euro Asian Securities Ltd., and Giltage/Giltedge entities, and that all dealings narrated therein pertain to commercial transactions executed through them. The existence of such an expansive institutional trading negates any possibility of a concerted criminal design.

G.3. That the invocation of Section 120-B IPC appears to be purely mechanical, without reference to the statutory requirements or supporting material. A conspiracy cannot be inferred from commercial non-performance, which the Hon'ble Supreme Court has consistently held to be a civil matter unless attended by explicit fraudulent intent. Accordingly, the charge under Section 120-B IPC is wholly misconceived and deserves to be quashed.

H. There is no concept of vicarious liability under the Indian Penal Code the proceedings against the Petitioner are unsustainable.

H.1 It is respectfully submitted that the Indian Penal Code does not create or recognise the concept of vicarious



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criminal liability except where the statute specifically so provides. In the absence of such statutory mandate, no director or officer can be held criminally liable for acts allegedly committed by the company unless there is evidence of his individual role coupled with requisite mens rea.

H.2 In *Sunil Bharti Mittal v. Central Bureau of Investigation*, (2015) 4 SCC 609, the Hon'ble Supreme Court categorically held that a director or officer of a company cannot automatically be held liable for offences committed by the company unless there is material showing his active role in the commission of the offence and the presence of criminal intent. The Court observed that "the principle of alter ego" cannot be invoked to implicate an individual unless there is material to lift the corporate veil and show his personal involvement in the alleged acts.

H.3 Likewise, in *GHCL Employees Stock Option Trust v. India Infoline Ltd.*, (2013) 4 SCC 505, it was held that a director cannot be prosecuted merely by virtue of his designation or position. There must be specific allegations of acts done by him and intent attributable to him individually. A bald assertion that he was a director at the relevant time is insufficient to attract criminal liability.

H.4 Further, in *Delhi Race Club Ltd. v. State of Delhi* [(2012) 8 SCC 680], the Hon'ble Supreme Court observed as follows:



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"When the company itself is alleged to have committed the offence, there is no question of attributing vicarious liability to its office-bearers for offences such as cheating or criminal breach of trust. The office-bearers can be prosecuted only if direct and specific allegations are levelled against them individually. The complainant must demonstrate that he was deceived or cheated by the personal acts of the office-bearers."

H.5 In the present case, even assuming the prosecution's allegations to be true, the entire transaction forming the basis of the charge-sheet pertains to Home Trade Ltd., a registered company, which acted as a contracting party in its own corporate capacity. The allegations of issuance of contract notes, receipt of funds, or non-delivery of securities, all relate to acts of the company in the course of its business.

H.6 The prosecution has chosen to charge only its directors, including the present Petitioner, without attributing any specific role or act done by them individually. The charge-sheet contains no material showing any meeting, communication, or act of inducement by the Petitioner. The allegations, even if taken at their face value, are not against the Petitioner in his personal capacity.

H.7 In such circumstances, the prosecution of the Petitioner alone, is contrary to settled principles of



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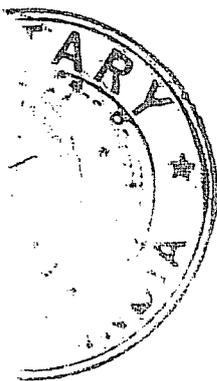
criminal jurisprudence and is liable to be quashed. The continuation of proceedings against the Petitioner amounts to attributing vicarious criminal liability, which is impermissible in law and constitutes an abuse of the process of Court.

I. That the Ld. Magistrate failed to apply judicial mind, and both the investigation and the charge-framing have been conducted in a mechanical manner.

I.1 That the charges framed under Sections 420, 421, 422, 468 and 120-B r/w 34 IPC have been imposed in a mechanical manner without any analysis of the material placed on record. The impugned order does not record what material was relied upon, how the statutory ingredients were satisfied, or why a prima facie case was considered to be made out.

I.2 That the impugned order is *non-speaking*, as it does not identify any specific act attributed to the Petitioner, does not discuss the role of the accused in the transactions, and does not demonstrate that the Ld. Magistrate examined whether the ingredients of each alleged offence were disclosed. The absence of reasons reflects complete non-application of judicial mind.

I.3 That the investigation itself proceeded mechanically, the investigating agency reproduced allegations from the complaint without verifying which specific document or transaction was attributable to which accused, and without distinguishing institutional acts from individual acts. No



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effort was made to correlate documentary material with the offences alleged.

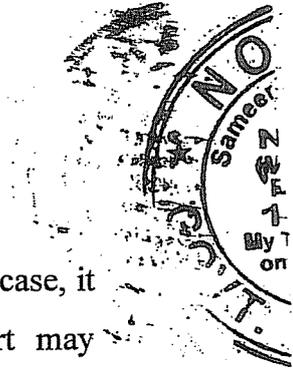
I.4 That the investigating agency mechanically invoked multiple penal sections without identifying the factual foundation necessary for each of them, resulting in a chargesheet that merely repeats allegations without demonstrating mens rea, specific overt acts, or satisfaction of statutory elements.

I.5 That in these circumstances, the charge-framing order passed without reasons and without reference to any material stands vitiated for want of application of mind. Such mechanical exercise of jurisdiction causes serious prejudice to the Petitioner and renders the impugned order unsustainable in law.

PRAYER

In the facts and circumstances of the present case, it is most humbly prayed that this Hon'ble Court may graciously be pleased to:

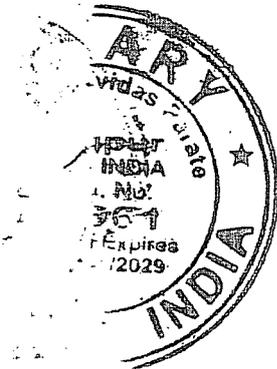
- a. This Hon'ble Court by invoking the Writ Jurisdiction under Article 227 of the Constitution of India and Inherent powers under Section 528 of BNSS may issue appropriate writ, order or direction and the order dated 21.03.2025 passed by the Ld. Additional Chief Judicial Magistrate, 3rd Court, Esplanade, Mumbai in C.C. No. 395/2023, whereby



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charges have been framed against the Petitioner for offences under Sections 420, 421, 422, 468 and 120-B IPC may kindly be quashed and set aside;

- b. Pending the hearing and final disposal of the present Petition the effect, operation and implementation of the impugned order dated 21.03.2025 passed by the Ld. Additional Chief Judicial Magistrate, 3rd Court, Esplanade, Mumbai in C.C. No. 395/2023, be stayed;
- c. Pass any such other or further orders and/or directions as this Hon'ble Court may deem fit, proper, just and equitable in the facts and circumstances of the case.



AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Mumbai,

Date: 15.12.2025

Advocate for Petitioner

VERIFICATION

I, Sanjay Hariram Agarwal, Aged: 60 years, Indian Inhabitant, Residing at: 7, Hari Sava Street, Kidderpore, Kolkata – 700023, the Petitioner hereinabove, do hereby state on solemn affirmation, that whatever stated in foregoing paragraphs is true and correct to my own knowledge and belief and also on the legal advice I've received, which I believe to be true and correct and the contents last para is my humble prayers.

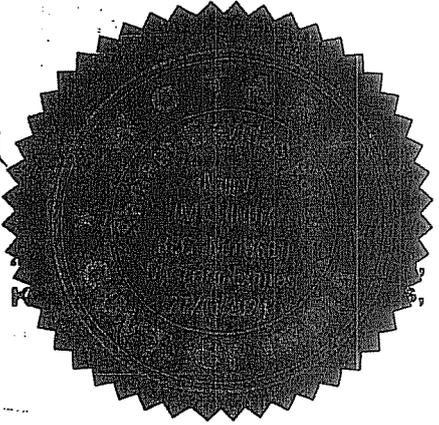
Solemnly affirmed at Nagpur)
Dated this 15th day)
December, 2025)

NOTARIAL REG.
ENTRY NO. 19
DATE 15/12/2025

S. Agarwal
Petitioner

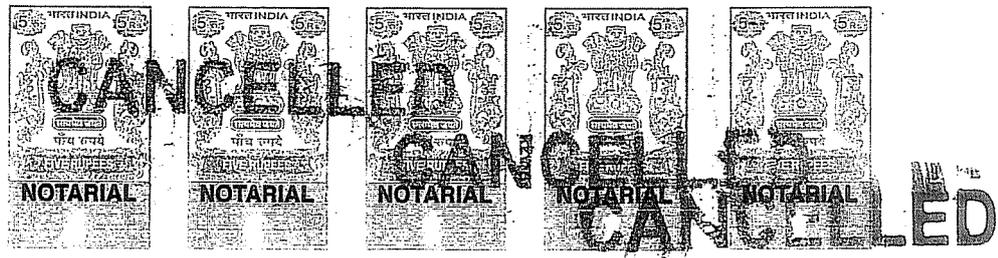
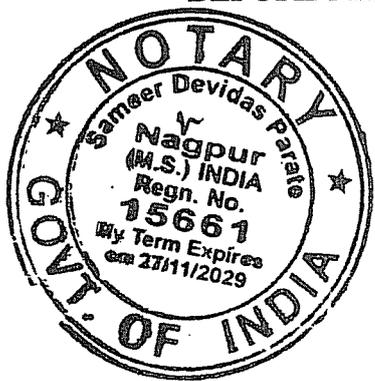
Identified by me
P. Tamboli
Adv. Pankaj Tamboli

Sworn before me on this 15 dt.
day of 12 2025 at Nagpur by
Shri/Smt./Ku. Sanjay H. Agarwal
Kolkata who has been identified
by Shri/Smt. P. A. Tamboli
Advocate, Nagpur.



[Signature]
NOTARY
GOVT. OF INDIA
Nagpur (M.S.) INDIA

BEFORE ME



Exh-A 31

IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
3rd COURT, ESPLANADE, MUMBAI.

C. C. No.395/PW/2023
(CNR NO.MHMM11-004423-2023)

Exh.No.97

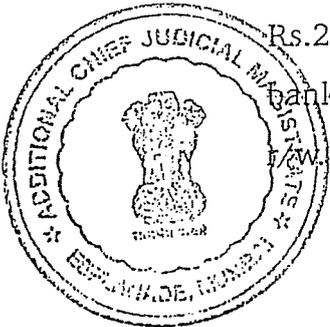
CHARGE

I, R. D. Chavan, Addl. Chief Judicial Magistrate, 3rd Court,
Esplanade, Mumbai hereby charge you :-

- Name : 1. Ketan Kantilal Sheth.
2. Sanjay Hariram Agrawal.
3. Ketan Rameshbhai Mashkariya.
4. Subodh Chand Dayal Bhandari.
5. Nand Kishore Shankarlal Trivedi.
6. Niraj Amighar Surti.

as follow:

Firstly, that from 15.05.2001 to 19.03.2002 at Navsari, Surat, Valsad Districts, in pursuance of criminal conspiracy and in furtherance of your common intention, cheated the informant bank i.e. Sheth Bhagwan Das Brij Bhukhan Das Shrof Bulsar People's Bank at Valsad by dishonestly inducing it to deliver amount of Rs.28,75,31,758.33 to you, which was the property of the said bank and thereby committed an offence punishable U/sec. 420 r/w. 120-B r/w. 34 of Indian Penal Code and within my cognizance.



Secondly, on the aforesaid date, time and place you accused

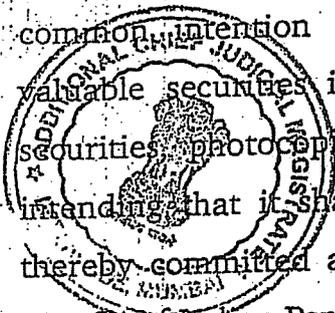
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in pursuance of criminal conspiracy and in furtherance of your common intention dishonestly and fraudulently caused to be transferred to your company the amount of Rs.28,75,31,758.33 intending thereby to prevent distribution of that property among the creditors of the said bank and thereby committed an offence punishable U/sec. 421 r/w. 120-B r/w. 34 of Indian Penal Code and within my cognizance.

Thirdly, on the aforesaid date, time and place you accused in pursuance of criminal conspiracy and in furtherance of your common intention prevented a debt of Rs.28,75,31,758.33 of the Sheth Bhagwan Das Brij Bhukhan Das Shrof Bulsar People's Bank at Valsad from being made available, according to law for payment of creditors of the said bank and thereby committed an offence punishable U/sec. 422 r/w. 120-B r/w. 34 of Indian Penal Code and within my cognizance.

Fourthly, on the aforesaid date, time and place you accused in pursuance of criminal conspiracy and in furtherance of your common intention forged certain documents purported to be valuable securities i.e. fake contract notes for the Government securities, photocopies of the security bonds, blank forms, etc., intending that it shall be used for the purpose of cheating and thereby committed an offence punishable U/sec. 468 r/w. 120-B r/w. 34 of Indian Penal Code and within my cognizance.



And I hereby direct that you be tried by this court on the said charge.

Dated : This 21st Day of March, 2025.

(Signature)
२१/३/२०२५

(R. D. Chavan),
Addl. Chief Judicial Magistrate,
3rd Court, Esplanade, Mumbai.

The charges are read over and explained to the accused in the language known to them.

(Signature)
२१/३/२०२५

(R. D. Chavan),
Addl. Chief Judicial Magistrate,
3rd Court, Esplanade, Mumbai.

Date : 21.03.2025.

Mbc/-



TRUE COPY

(Signature)
२१.०३.२०२५

Judicial Clerk
Addl. Chief Judicial Magistrate
3rd Court, Esplanade, Mumbai.

T. C.
se
Ad

Exh-B

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NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION**

TRANSFER PETITION (CRIMINAL) Nos. 333-348/2021

Ketan Kantilal Seth

.....Petitioner

VERSUS

State of Gujarat & Ors.

..... Respondent(s)

With I.A. No. 134476 of 2021

ORDER

1. With the consent of the parties, these transfer petitions have been taken up for final hearing. The present petitions have been filed by petitioner/accused for invoking the power under Section 406 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC'), seeking transfer of 16 criminal cases pending against him in four different States to one Court in Mumbai, where 3 cases are already pending. Following are the

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cases of which transfer are being sought -

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- i. Criminal Case No. 101878/2003 arising out of FIR No. C.R. No. I-64/2002, dated 30.07.2002 registered at Police Station Udhana, Surat, Gujarat, pending before Additional Chief Judicial Magistrate, Surat;
- ii. Criminal Case No. 9166/2002 arising out of FIR No. I.C.R. No. 274/2002, dated 02.07.2002 registered at Police Station Umra, Surat, Gujarat, pending before Additional Chief Judicial Magistrate, Surat;
- iii. Criminal Case No. 174/2003 arising out of FIR No. C. R. No. I-226/2002, dated 30.08.2002 registered at Police Station Rander, Surat, Gujarat, pending before Additional Chief Judicial Magistrate, Surat;
- iv. Criminal Case No. 100521/2003 arising out of FIR No. 274/2002, dated 06.08.2002 registered at Police Station Varachha, Surat, Gujarat, pending before Additional Chief Judicial Magistrate/Judicial Magistrate First Class, Surat;
- v. Criminal Case No. 2778/2004 arising out of FIR/M. Case No. 3/2002, dated 16.07.2002 registered at Police

- Station Gandevi, Navsari, Gujarat, pending before Additional Chief Judicial Magistrate, Gandevi;
- vi. Criminal Case No. 6840/2002 arising out of FIR No. I-93/2002, dated 18.08.2002 registered at Police Station Navsai Town, Navsari, Gujarat, pending before Chief Judicial Magistrate, Navsari;
- vii. Criminal Case No. 2121/2002 arising out of FIR No. I-119/2002, dated 10.06.2002 registered at Police Station Valsad City, Valsad, Gujarat, pending before Chief Judicial Magistrate, Valsad;
- viii. Criminal Case No. 1578/2006 arising out of FIR/M. Case No. 29/2002, dated 13.06.2002 registered at Police Station Vidya Nagar, Anand, Gujarat, pending before Additional Chief Judicial Magistrate, Anand;
- ix. Criminal Case No. 244/2002 arising out of FIR/M. Case No. 22/2002 (C.R. No. I-226/2002), dated 07.06.2002 registered at Police Station Morbi, Gujarat, pending before II Additional Chief Judicial Magistrate, Morbi;

- EB 37
- x. Criminal Case No. 40449/2016 arising out of FIR No. 280/2002, dated 04.05.2002 registered at Police Station Connaught Place, New Delhi, pending before Additional Chief Metropolitan Magistrate, Patiala House Court, New Delhi;
- xi. Criminal Case No. 2034203/2016 arising out of FIR No. 242/2002, dated 17.06.2002 registered at Police Station Sarojini Nagar, New Delhi, pending before Chief Metropolitan Magistrate, Saket Court, New Delhi;
- xii. Criminal Case No. ____/2002 arising out of FIR No. 298/2002, dated 22.08.2002 registered at Police Station Jagatdal, 24 North Paraganas, West Bengal, pending before Barrackpore Court, Kolkata;
- xiii. Criminal Case No. 147/2002 arising out of F.I.R. No. 97/2002, dated 25.04.2002 and C.R. No. 101/2002, dated 29.04.2002, both registered at Police Station Ganeshpeth, Nagpur, Maharashtra, pending before 155-II Additional Chief Judicial Magistrate First Class, Nagpur;

- xiv. Criminal Case No. 847/2002 arising out of F.I.R. at C.R. No. 75/2002, dated 15.05.2002 registered at Police Station City Kotwali, Amravati, Maharashtra, pending before Chief Judicial Magistrate, Amravati;
- xv. Criminal Case No. 498/2002 arising out of F.I.R. at C.R. No. 102/2002, dated 08.05.2002 registered at Police Station Pimpri, Pune, Maharashtra, pending before Chief Judicial Magistrate, Pimpri, Pune;
- xvi. Criminal Case No. 357/2002 arising out of F.I.R. at C.R. No. 65/2002, dated 15.05.2002 registered at Police Station Vishrambaug, Pune, Maharashtra, pending before III Judicial Magistrate First Class, Shivaji Nagar, Pune.

In fact, the basic object to file these transfer petitions is to get all cases transferred at one place and may be directed to try together.

2. In a nutshell, the prosecution story in majority of the cases revolves around one accused company namely M/s Home Trade Limited, which is alleged to have engaged in the business of

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Stock, Securities, Brokering and Trading. The allegations against the petitioner herein and one Sanjay Hariram Agarwal are that they were the authorized signatories of the accused company and while acting in the capacity of Directors of the said accused company, they entered into several transactions dealing with government

securities and further sold the said securities without any authorization. Further, it has also been alleged that the government securities were not delivered within time and the money raised thereby has been misappropriated by the accused persons including the petitioner herein.

3. During the pendency of the instant petitions, application for intervention (bearing I.A. No. 134476 of 2021) has also been filed on behalf of one applicant namely; Omprakash Bhaurao Kamdi, seeking permission to intervene on the grounds of being a 'necessary' and 'proper' party as stated in the application.

4. Before advertng to merits of the transfer petitions, the application seeking intervention is being taken up for disposal. The intervenor claims to be an agriculturist who is dependent on

financial aid provided by Nagpur District Central Cooperative Bank Limited (hereinafter referred as NDCCB) for his day-to-day agricultural activities. It is said Chairman of NDCCB, who lodged an FIR in 2002 against the petitioner and other accused persons alleging non-delivery of the government securities worth Rs. 125 crores which NDCCB purchased through accused company in which petitioner and other accused persons were directors. The petitioner also sought transfer of concerned trial in the instant transfer petitions.

5. It is a settled principle of law in criminal jurisprudence that intervention application filed by a third party should not ordinarily be allowed in criminal cases unless the Court is satisfied that on the grounds on which the person seeking intervention is directly or substantially related to the case and question of law which may affect him adversely; or in the opinion of Court, joining the intervenor in the case is expedient in public interest. Having perused the contents of intervention application, nothing is averred in the application, how non-joining of applicant may cause prejudice or affect the public interest. The

6/41

applicant is neither a complainant in any of the cases of which transfer is being sought, nor he has any direct involvement or ground of his joining in public interest. The intervenor has no locus to intervene in the present petition, therefore, I am of the opinion that the grounds as mentioned by the intervenor are not proper to allow the application. It is to observe that prayer in the present petition

is confined to transfer the criminal trials pending before Trial Courts in different States for trial by one Court in one State and in such circumstances, the prayer for intervention cannot be allowed for reasons mentioned above. Consequently, I.A. No. 134476 of 2021 seeking intervention stands dismissed.

6. Reverting to the merits of the transfer petitions, learned counsel for petitioner has contended that multiple FIRs were registered against petitioner and other accused persons in different States having similar set of allegations, which has led into multiple trials being pending before various Trial Courts in different States for adjudication. Most of the accused persons in all FIRs and witnesses thereof are common. However, for the

42 42

purpose of trial, all the accused as well witnesses have to attend hearing dates before various Courts leading to delay and huge expenses. Moreover, most of the transactions pertaining to the alleged offence have taken place in Mumbai, Maharashtra and as per the chart supplied by the petitioner, majority of the witnesses relevant for the purpose of trial are also from Mumbai. However, the petitioner has prayed the transfer of all cases for trial by one

Court primarily on the grounds of convenience, expeditious disposal and no-prejudice may be caused to the defence of the accused for fair trial and to secure ends of justice.

7. Per contra, the learned counsel for respondent has opposed the transfer petitions primarily on the ground that the transfer petitions have been filed belatedly. It has been contended that, High Court of Bombay vide order dated 24.06.2021 passed in Criminal Application No. 628/2014, directed the concerned Trial Court to complete the trial in C.C. No. 147/2002 (i.e. one of the cases of which transfer is being sought in the instant petitions) by passing final judgment and order within a maximum period of

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four months. The proceedings in the said case are already at the final stage. Hence, the prayer of the petitioner seeking transfer of cases as mentioned deserves to be dismissed.

8. After having heard both the sides, the primary issue for consideration before this Court is *'Whether the criminal cases pending before different Trial Courts in four States can be transferred to one Trial Court in one State?; Whether transfer of case of one of the criminal case which is at the final stage of trial before concerned Court in Nagpur, can be directed to be transferred at such belated stage?'*

9. To answer the aforesaid questions, first of all it is necessary to know the underlying intention of Section 406 of CrPC. Section 406 deals with the power of Supreme Court to transfer the cases. The Court can exercise such power for fair trial and to secure the ends of justice. The language impliedly left the transfer of the cases on the discretion of the Court. If the Court is satisfied that it is imperative to transfer the cases in the interest of justice or to secure ends of justice, then it may do so.

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10. In the instant case, it is not in dispute that since 2002, multiple FIRs across four States namely; Gujarat, Maharashtra, New Delhi and West Bengal have been filed against petitioner and other accused persons containing broad and common allegations pertaining to act done in collusion by accused persons to defraud the complainants and misappropriate the money raised thereby while dealing/trading in government securities in the name of accused company M/s Home Trade Limited. The State in its counter affidavit has stated that during investigation, the accused

Company was found not to be eligible to deal in transactions relating to government securities, whereas, petitioner and other accused person namely Sanjay Hariram Agarwal were acting as Directors and authorized signatories of accused Company. From a bare perusal of the facts and FIRs, it is seen that there is commonality of facts in each FIR and that most of the transactions have taken place in Mumbai. Further, the FIRs mainly have petitioner and Sanjay Hariram Agarwal as common accused persons.

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11. As per the details provided by petitioner in a chart annexed with petition, out of all the nineteen FIRs registered against petitioner and other accused persons, one FIR has been registered in Kolkata, West Bengal; two FIRs are registered in Delhi; nine FIRs are registered in different districts of Gujarat and seven FIRs are registered in different districts of Maharashtra. Furthermore, as stated by petitioner and unrefuted by respondent State, out of total 689 witnesses in all nineteen cases pending before respective Trial Courts, 236 witnesses are from Mumbai. It is further not disputed that in multiple cases, almost 20 years have lapsed and yet majority of the trials are pending at the initial stage. It wouldn't be out of place to mention that primary reason for such delay is the multiplicity of proceedings alongwith practical difficulties for the Trial Court to secure the presence of witnesses as well as accused for concluding the trial.

12. The contention of the State that prejudice will be caused if the transfer is allowed at such a belated stage when one of the criminal proceedings is at the final stage is bereft of merit. At

46 47

this juncture, it is apt to refer order dated 24.06.2021 passed by High Court of Judicature at Bombay in Criminal Application No. 628/2021 filed by accused Sanjay Hariram Agarwal seeking transfer of criminal cases pending against him. The same is reproduced for ready reference as thus:

".....(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....."

(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."

As is evident from the aforesaid order, the High Court directed completion of trial in C.C. No. 147/2002 in a time bound

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manner against other accused persons except the applicant i.e., Sanjay Hariram Agarwal (accused no. 3 in C.C. No. 147/2002). The High Court further directed that once the trial against other accused persons is completed, then only trial against applicant therein shall commence. The High Court effectively split the trial of other accused persons from trial of Sanjay Hariram Agarwal and caused serious prejudice. As is gathered from the records and also stated above, accused Sanjay Hariram Agarwal alongwith petitioner herein were acting in the capacity of the Directors of accused company. The person who could have put the best defence (oral as well as documentary) before Trial Court where evidence led by prosecution was common and mostly related to same transaction, was effectively excluded by the order of High Court. In my considered view, such an approach taken by High Court is prima-facie amounts to differential treatment, causing serious prejudice to the right of fair trial of other accused persons including the petitioner herein.

13. In view of the foregoing discussion, considering the common nature of allegations raised against the petitioner in all

48 43

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;

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- 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 hereinabove, 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.

.....J.
(J.K. MAHESHWARI)

New Delhi;
September 9, 2022.

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First information of a Cognizable Crime
Reported under section 154 of Code of Criminal
Procedure,

Sub-District: Varachha Police Station, District
Surat

No.I. Cr.R.No. 274/2002.

Date and hour of Occurrence: Dt.6/12/2001 to
till today.

1. Date and hour when reported : Dt.6/8/2002

Hour: 10.15

2. Place of occurrence and distance and
direction from the Police Station: Surat
Nagarik Sahkari Bank Limited, Behind Gitanjali
Cinema, Varachha Road, North of Police Station,
Rafarlon Sardar Choki.

3. Date and Time of despatch from Police
Station: Dt.6/8/2002.

4. Name and residence of informer and complainant: Mr. Naineshbhai Arvindbhai Chitaniya, Age-33 years, Occupation-Service, Resi. 27/8, Fifth Floor Samrat Apartment, Soni Faliya, Surat.

5. Name & Address of the Criminal: Competent Authority Surat Nagarik Co-operative Bank Ltd.

(1) Om Trade Limited, having its head office at 4-5, Vashi, Railway Station Complex, Mumbai-400703.

(2) Mr. Nandkishor Shankarlal Trivedi, Age-45 years, Occupation-Business, Resi. Dev Bhuvan, Second Floor, Room No. 32, Gajdar Mahollo, Mira Bazar, Mumbai-2.

(3) Mr. Ketan Kantilal Sheth, Age-40 years, Occupation-Business, Resi. 193, Lalit Kutir (C.H.50) Third Floor, Gulmahor Cross Road, Road No. 9 (J.V.P.D.), Mumbai-400049.

(4) Mr. Sanjay Hariram Agrawal, Age-35 years, Occupation-Business, Resi. Juhu

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Shalimar, C.H.S. Limited, Seventh
Floor, Gulmahor Cross Road, Road No.9
(J.V.P.D.), Mumbai-400049.

(5) Mr. Subodh Bhandari, Age-46 years,
Occupation-Business, Resi. 704/B,
Govind Complex, Sector-14, Vashi,
Vubrey, Navi Mumbai-400705.

(6) Mr. Hiten Bhupendra Shah, Age-Adult,
Occupation-Business, Resi. 102, Gandhi
Nivas, Ashoknagar Road, Vakola Shanta
Kruz, Mumbai-400005.

(7) Mr. Hiren Gada, Age-Adult, Occupation-
Business, Resi. Mumbai, whose address
is unknown at present.

(8) Mr. Shashank Gopal Ranade, Age-40
years, Occupation-Business, Resi. 3/1,
Radhakrushna Nivas, Ground Floor,
Dasvadi, S.K. Bole Road, Dadar,
(C.W.J.) Mumbai-400028.

(9) Mr. Vijay Himatlal Modi, Age-46 years,
Occupation-Business, Resi. A/203, Amita

Co.Op. Housing Society Limited, Kulupa
Vadi Road, Borivali (East), Mumbai-
400066.

(10) Mr. Salil Dinkarlal Gandhi, Age-43
years, Occupation-Business, Resi.
11/13, Gold Coin Co.Op. Housing Society
Limited, Tar Dev, Mumbai-400034.

(11) Alan James Megmilan, Age-41 years,
Occupation-Business, Resi. 785, Kestro
Street Monteneu, C.A. 94041, U.S.A.

(12) Rasal Bankfem Vegar, Age-Adult,
Occupation-Business, Resi. Timber Hill,
Teriz Aayan Field, M.O. 1940, U.S.A.

(13) Mr. Mike alias Manoj Ambelal Shah, Age-
58 years, Occupation-Business, Resi.
Belari Road, R.M.V. Extension Bangalore-
5060080.

(14) Mr. Dhananjay Agrawal, Mumbai, Age-
Adult, Occupation-Business, Resi.
Mumbai, whose address is unknown at
present.

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- (15) Mrs. Shilpa Riten Shah, Age-Adult, Occupation-Business, Resi. 102, Gandhi Nivas, Ashok Nagar Road, Vakola, Shant Kruz Road, Mumbai-400055.
- (16) Mrs. Jagruti Ketan Sheth Age-Adult, Occupation-Business, Resi. 193, Lalit Kutir, (C.H.5) Third Floor, Gulmahor Cross Road Number 9 (J.V.P.D.) Mumbai-400049.
- (17) Ms. Kanan Mevawala, Age-28 years, Occupation-Business, Resi. Jayant Mahal, Fifth Floor, Opp. Wankhede Stadium, Marine Drive, Mumbai-18.
- (18) Mr. Ketan R. Maskiya, Age-35 years, Occupation-Business, Resi. Mumbai, whose address is unknown at present.
- (19) Mr. Niraj A. Surati, Age-34 years, Occupation-Business, Resi. Surya Flat, First Floor, Surya Shopping Complex, Bharuch, Dist. Bharuch.

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6. Brief description of offence along with section and of property carried off, if any-
7. Steps taken regarding investigation explanation of delay in regarding information.
8. Dispose off the case:

Sd/-

(Sign)

Designation

NOTE:- The signature of the seal or thumb impression of the informer should be at the end of the information and the signature of the Writer of (FIR) should be existed as usual.

C.P.C. 14 g

No.051

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- 2 -

First information of a Cognizable Crime Reported under section 154 of Code of Criminal Procedure,

Sub-District: Varachha Police Station, District Surat

No. I.Cr.R.No. 274/2002 continue.

Date and hour of Occurrence:

1. Date and hour when reported : -
2. Place of occurrence and distance and direction from the Police Station: -
3. Date and Time of despatch from Police Station: -
4. Name and residence of informer and complainant: -
5. Name & Address of the Criminal: Competent :

(20) Mrs. Shruti Niraj Surti, Age-Adult,
Occupation-Business, Resi. Surya Flat,

57

1427

First Floor, Surya Shopping Complex,
Bharuch, Dist. Bharuch.

6. Brief description of offence along with section and of property carried off, if any.

From the beginning, accused, with their intention to defraud, could not deal in government securities in SEBI, however, they gave false SEBI certificates and made sales-purchase with the complainant, and neither did they have any government securities nor did they contract to buy government securities with anyone else.

However, the accused who gave false contracts etc., documents knew from very beginning that they knew all the wrong deeds. All the aforesaid accused in connivance with each other have made misrepresentations and false promises to the complainant bank from the beginning, maliciously, fraudulently induced with dishonest intention to defraud and betray

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and has cheated by usurping a huge amount of Rs.16,09,60,500/- (in words Rupees Sixteen Crore Nine Lakh Sixty Thousand Five Hundred Only. And forged valuable documents, contracts, SEBI certificates and used them as contracts. Thus, the said matter of committing an offense under IPC Sections 406, 420, 406, 465, 467, 468, 471 and 114.

7. Steps taken regarding investigation explanation of delay in regarding information.

8. Dispose off the case:

Sd/- illegible

(Sign)

Designation

NOTE:- The signature of the seal or thumb impression of the informer should be at the end of the information and the signature of the Writer of (FIR) should be existed as usual.

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Complaint

Dt. 6/8/2002

The complainant Mr. Naineshbhai Arvindbhai Chitaniya, Age-33 years, Occupation-Service at Surat Nagarik Cooperative Bank Limited Competent Authority, Resi. 27-C Samrat Apartment, Fifth Floor, Soni Faliya, Soni, on 1/8/2002 filed a written complaint to Police Commissioner, Surat City Office vide letter No. J/App/21886/2002 and crime registered on 5/8/2002, according to which the complaint is as follows:

The brief facts of the complaint of the complainant is that,

- (1) The complainant is working as a Competent Authority at Surat Nagarik Cooperative Bank Limited and conducting banking activity since last 29 years, and it is also registered as Cooperative Board of

District Registrar Co-operative Society.
The resolution No. 8(7) dated 24/5/2002 was passed by the Board of Directors of Surat Nagarik Co-operative Bank, and allocates powers to proceed legally against the accused in this complaint, and thus, this complaint is filed accordingly.

- (2) Surat Nagarik Co-operative Bank which is hereinafter referred to as the Said Bank. The said bank has to operate in accordance with the circular issued by the Reserve Bank of India from time to time, and thus to maintain the security liquidity reserve fund limit in a circular to invest 25% of net time and demand liabilities in government securities or approved securities as specified by the Reserve Bank.

Accused No. 19 and 20 met the Said Bank on behalf of Accused No. 1 Om Trade Limited. And

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accused No.1 along with the directors often used to give information about Government security on his mobile also. And they used to induce to buy various government securities from Mumbai frequently and to buy the securities saying that there will be profit in that security. Accused Nos. 19 and 20 had frequent talks with directors 2 to 18 of accused No. 1.

C.P.C. 14 g

No.052

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11-22

First information of a Cognizable Crime
Reported under section 154 of Code of Criminal
Procedure,

Sub-District: Varachha Police Station, District
Surat

No. I.Cr.R.No. 274/2002 continue.

Date and hour of Occurrence:

1. Date and hour when reported : -
2. Place of occurrence and distance and
direction from the Police Station: -
3. Date and Time of despatch from Police
Station: -
4. Name and residence of informer and
complainant: -
5. Name & Address of the Criminal: Competent :
6. Brief description of offence along with
section and of property carried off, if any.

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7. Steps taken regarding investigation explanation of delay in regarding information.

8. Dispose off the case:

Sd/-

(Sign)

Designation

NOTE:- The signature of the seal or thumb impression of the informer should be at the end of the information and the signature of the Writer of (FIR) should be existed as usual.

And accused Nos. 2 to 18 were also involved and taking active part in the business of accused No. 1. And therefore, they often told the Said Bank to buy government securities. And through them and if the security suggested by them is to be bought, then they were also saying to get a huge profit from it. The said bank has repeatedly bought government security from

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the accused after trusting him with such tempting and alluring talk. And the first government security was purchased to give the said bank more confidence. And also given its physical delivery. And Government Security has also been transferred in the name of the said Bank. And thus, gradually instilled absolute confidence in the Board Of Directors of the said bank.

- (4) A meeting dated 6/12/2001 was also held at the Said Bank by the accused. In the meeting at around 4.30pm evening, On behalf of accused no.1 Om Trad, Accused No.19 Niraj Surti, Accused No.3 Ketan Sheth, Accused No.17 Miss Kanan Mevawala and Accused No.2 M.S. Trivedi were present. And in that meeting, the said bank was further enticed by the security that was with the bank mentioned below worth Rs.12.50 crore.
- G.O.I.10.47% -2014-7.50 crore (face value)

and

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G.O.I. 10-70% -2020-5.00 Crore (face value)
They enticed the said bank to sell and give them more leverage and to buy another security against it if they sold it. And the above four accused persons on be hand of said Accused have been induced to furnish the under mentioned security at a low price

Security detail

G.O.I. 2010-7.50%- 10.00 crore
(face value) and
G.O.I. 2009-7.00%- 5.00 crore
(face value),

total 15.00 crore

These persons enticed the officials of the said bank with tempting talk and sold the above security face to face with the bank, and settlement was made on 7/12/2001; according to the settlement, the accused who were present gave an agreement to

deliver the security of Rs.15 crore in 4 to 6 weeks.

- (5) The said security was not delivered within the time as stated and stipulated by the accused. So the said bank made repeated calls by phone, fax. The accused did not give the security of 15 crores despite a long time. And on 21/2/2002 instead of giving delivery of that security, Accused No.19 Niraj Surti, Accused No.3 Ketan Sheth, Accused No.17 Miss Kanan Mevawala and Accused No.2 M.S. Trivedi visited the bank. And the accused said that if the security of 15 crores purchased is sold and below mentioned new security is purchased, the interest compensation will be increased.

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C.P.C. 14 g

No.053

First information of a Cognizable Crime
Reported under section 154 of Code of Criminal
Procedure,

Sub-District: Varachha Police Station, District
Surat

No. I.Cr.R.No. 274/2002 continue.

Date and hour of Occurrence:

1. Date and hour when reported : -
2. Place of occurrence and distance and
direction from the Police Station: -
3. Date and Time of despatch from Police
Station: -
4. Name and residence of informer and
complainant: -
5. Name & Address of the Criminal: Competent :
6. Brief description of offence along with
section and of property carried off, if any.

7. Steps taken regarding investigation explanation of delay in regarding information.

8. Dispose off the case:

Sd/- illegible

(Sign)

Designation

NOTE:- The signature of the seal or thumb impression of the informer should be at the end of the information and the signature of the Writer of (FIR) should be existed as usual.

Security details

G.O.I. 2017-8.07%- 15.00 crore (face value)

The above accused on behalf of the accused no.1 has lured the said bank with higher interest and has already been bought with a new security loan. And that security with face value of 15 crores along with interest, said that our bank has to give a

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new total amount of Rs.16,09,60,500/- (in words Rupees Sixteen Crore Nine Lakh Sixty Thousand Five Hundred Only), and said to give delivery of this security within four weeks. The accused have given a contract in this regard and also said to deliver it in four weeks.

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- (6) The complainant Bank had to correspond with the accused, and made telephone them as the said bank did not get delivery of government security. Pursuant to which, the accused gave a reply to the bank on 23-1-2002 that as the Security is to be transferred from R.B.I. offices in different states, part delivery will be completed on 30-1-2002 and 7-2-2002. And thereafter Accused No. 1 of Om Trade Limited sent a fax of Rs.5 Crores of 7.50% and Rs.3 Crores of 7.00% to Riddhi Co-operative Bank Limited RBI Bangalore Receipt No.312 dated 8/12/2001 and then 5 crores of 7.50%-2010 and 2 crores of 7%-2009 of Borat District Co-Op. Bank Limited Reserve Bank Calcutta T.D.O. Receipt No. 14447 dated 8-12-2001. Thereafter, Security of Rs.15 crore of 8.07%-2017 dated 20-2-2002 was purchased by the bank through the Directors of Accused No.1. In the meeting he promised to deliver

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the said Security in four to six weeks and delivery would be done on 25-3-2002 i.e. before March ending. Therefore, an urgent letter was written to accused no. 1 and accused no. 19 through fax and courier on 26-3-2002 and stated that instead of the security receiving on 25-3-2002, the delivery has not been received till today. In response to that, a message from the accused No. 1 was received through fax dated 26-3-2002 that delivery of security worth Rs. 15 crores would be received in the first week of April. During this time, the security worth Rs 15 crore was sought for delivery several times over the telephone. However, when the delivery was not received as mentioned by the accused, the bank called on 3-4-2002 and asked for an urgent meeting on 4-4-2002. And in that meeting, it seemed from the discussion with the accused that the accused knew about the contracts they

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had given to the bank so far were bogus and false. So, when the bank forced the accused, they gave the following two cheques in the name of the bank.

- (1) H.D.F.C. Bank, Nariman Mumbai Cheque
No.984290 dated 14-6-2002 worth
Rs.7,85,47,058.33/-
- (2) H.D.F.C. Bank, Nariman Mumbai Cheque
No.984291 dated 21-6-2002 worth
Rs.8,98,93,600.00/-.

Moreover, the accused have given Riddhi Sahakari Bank Limited RBI Bangalore Receipt No. 312 dated 8-12-2001 and Borat District Co-Op. Bank Limited Calcutta Reserve Bank T.D.O. Receipt No.14447 dated 8-12-2001 to this bank. Upon verification of the receipts by the Reserve Bank, it came to the notice of the Reserve Bank of India that the said receipts were bogus and fabricated, the Reserve Bank of India informed the bank about it through the letter dated 13-6-2002.

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Also, instructions have been given to take criminal action against the accused.

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No.054

First information of a Cognizable Crime
Reported under section 154 of Code of Criminal
Procedure,

Sub-District: Varachha Police Station, District
Surat

No. I.Cr.R.No. 274/2002 continue.

Date and hour of Occurrence:

1. Date and hour when reported : -
2. Place of occurrence and distance and
direction from the Police Station: -
3. Date and Time of despatch from Police
Station: -
4. Name and residence of informer and
complainant: -
5. Name & Address of the Criminal: Competent :
6. Brief description of offence along with
section and of property carried off, if any.

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7. Steps taken regarding investigation explanation of delay in regarding information.

8. Dispose off the case:

Sd/-

(Sign)	Designation
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NOTE:- The signature of the seal or thumb impression of the informer should be at the end of the information and the signature of the Writer of (FIR) should be existed as usual.

(7) From the beginning, the accused, with their intention to defraud, could not deal in government securities in SEBI, however, they gave false SEBI certificates and made sales-purchase with the complainant, and neither did they have any government securities nor did they contract to buy government securities with anyone else. However, the accused who gave false

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contracts etc., documents knew from the very beginning that they knew all the wrong deeds. All the above-mentioned accused in connivance with each other have made misrepresentations and false promises to the complainant bank from the very beginning, maliciously, fraudulently induced with dishonest intention to defraud and betray and have cheated by usurping a huge amount of Rs.16,09,60,500/- (in words Rupees Sixteen Crore Nine Lakh Sixty Thousand Five Hundred Only) And forged valuable documents, contracts, SEBI certificates and used it as contracts. Thus, the said matter of committing an offense under IPC Sections 406, 420, 409, 465, 467, 468, 471 and 114.

- (8) The Bank has filed this complaint against the accused mentioned hereinabove and also a complaint against the persons during the

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course of investigation, if anyone else who may have participated or assisted in the criminal activity mentioned in this complaint

Our witnesses are as follows:

- (1) Mr. C.C. Shah
- (2) Mr. Mahesh K. Vaidya

More witnesses will be taken if required.

Surat Nagarik Co-
Op.Bank Limited,
Surat
Stamp of Bhagal
Branch
Dt. 6-8-02

For Surat Nagarik
Co-Op.Bank Limited,
Surat
Sign
Mr. N.A. Chitaniya
Competent Authority
Stamp

Photocopies of the required documentary evidence No.1 to 30 is enclosed herewith.

Copy f.r.t.:

Hon'ble Chief Judicial Magistrate Sir

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Surat City

Dt.6-8-2002

Sd/- and Roud Seal of

(G.K.Chaudhari)

Police Inspector

Varachha Police Station

Surat City

Copy from the original

Sd/- illegible

Police Inspector

Varachha Police Station

Surat City

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AW

I am not member of Advocate welfare fund therefore stamp of Rs 2 is not affixed
herewith

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. OF 2025

Dist.: -Mumbai

Sanjay Hariram Agarwal

) ...Petitioner

V/s

State of Maharashtra & Anr.

) ... Respondents

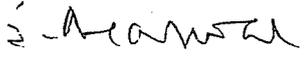
VAKALATNAMA

I Sanjay Hariram Agarwal, Petitioner hereinabove, do hereby,
nominate and appoint Mr. DIPAK N. MANE, Advocate High
Court, to act, appear and plead for me in the above Application.

IN WITNESS WHEREOF, we have set and subscribed our
respective hands to this writing on this 15th day of December, 2025.

I Accept


Dipak N. Mane
Advocate High Court
7, 1st Floor, Building no.6,
M.K. Amin Marg, Borabazar,
Fort, Mumbai - 400 001,
Cell No. 9271777197
Email dipakmane777@gmail.com


Petitioner
(Sanjay Hariram Agarwal)
petitioner

Adv. Code: I-9128, MAH/2287/2008

Adv. P.A. Tamboli; CMAH/490/11