

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, 37th Court, Esplanade, Mumbai in C.C. No. 388/2023, whereby charges have been framed against the Petitioner for offences under Sections 420, 467, 468, 471 r/w 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, 467, 468, 471 r/w 120-B r/w 34 of IPC, though the allegations in the complaint and the



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material placed on record relate entirely to commercial transactions in Government Securities between the Adajan Nagrik Sahkari 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, 467, 468, 471 or 120-B are made out at all, particularly when the prosecution case is founded entirely on contract notes, Government Securities, banking-transactions and correspondences. A bare reading of the complaint reveals that the allegations concern alleged non-delivery of certain Government Securities, after several transactions where securities were purchased, sold, paid for and delivered, which at its highest reflects a dispute arising out of commercial dealings in Government Securities.

The brief prosecution story, as alleged, is that the Adajan Nagrik Sahakari Bank Ltd., a co-operative bank on 28.09.2000 purchased 12% SDL-2010 Government Security of ₹1 Crore from the Company against Contract Note No. 10629 and paid ₹1,00,25,000/- by HDFC Bank cheque, which was encashed by the Company, and the security was delivered to the Bank for the same. Thereafter, on 15.01.2001, the complainant Bank purchased 10.25% CG-2012 Government Security of ₹50 Lakhs against Contract Note No. 6401 and paid ₹48,60,138.89 by cheque, which was encashed, and delivery was given.

It is further alleged that on 29.08.2001, the complainant Bank told the Company to purchase 10.25% GOI-2021 Government



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Security of ₹50 Lakhs, against Contract Note No. 6739, and paid ₹52,42,048.61 by HDFC Bank cheque, which was encashed by the Company. The complainant alleges that delivery of this security was not given.

Furthermore, it is alleged that on 05.12.2001, the complainant bank decided to sell Government Securities held by it through Home Trade Limited and entered into agreements to sell, aggregating to ₹2,38,80,173.62. The complaint also records that physical delivery of these securities were handed over to the Company.

On the same day, the Bank decided to purchase Government Security of ₹3 Crores, for which Contract Note No. 6919 was issued. The Bank delivered the securities sold by it vide Contract Notes Nos. 6905 and 6906, adjusted the sale consideration against the purchase consideration, paid the difference amount through HDFC Bank draft, and it is recorded that the Bank paid the full consideration of ₹3,06,06,250/-. Due to alleged delay in delivery of the said Government Security, the Bank addressed letters seeking delivery.

It is further alleged that a letter dated 12.04.2002, assuring delivery of Government Security, and that in the event of failure to deliver by that date, Cheque No. 984321 dated 27.05.2002 for ₹3,24,62,700/- drawn on HDFC Bank was issued by Home Trade Limited.

The complaint further states that, the complainant bank presented the cheque through HDFC Bank, Surat Branch, which was returned on 01.06.2002 with the endorsement "Account Blocked".



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Pursuant thereto, notice under Section 138 of the Negotiable Instruments Act was issued, followed by the lodging of the present criminal complaint alleging offences under the Penal Code.

The complaint narrative thus continues to centre on purchase and sale of Government Securities, issuance of contract notes, payments made through cheques, delivery of securities in earlier transactions, adjustment of consideration, and alleged non-delivery of certain securities in later transactions. Thus, even if taken at face value, the complainant's own narrative discloses commercial trading in Government Securities between the complainant bank and Home Trade Limited. 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, 467, 468, 471 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.

The grant of 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*, is



mandatory and its non-compliance is fatal. Moreover, the position of law has been well established in catena of judgements of Hon'ble Bombay High Court as mentioned below:

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

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

As stated above, the impugned order also does not record reasons, does not analyse the ingredients of the offences alleged, 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 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.



On the legal plane, the Supreme Court has consistently held that cheating under Section 420 IPC requires fraudulent or dishonest

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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. Vijayasarathy 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.

Thus, the material on record does not disclose the essential ingredients of Sections 420, 467, 468, 471 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.



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### LIST OF DATES

Sr. No.	Dates	Events
1.	2000-2002	The Adajan Nagrik Sahakari Bank Ltd. carried out Government Securities transactions pursuant to its Statutory Liquidity Ratio (SLR) requirements through Home Trade Ltd., a registered broker, as recorded in the complaint, during which payments were made through banking channels and securities were delivered in several transactions.
2.	28.09.2000	That the Bank purchased Government Security of ₹1 crore from Home Trade Ltd. under Contract Note No. 10629, and paid ₹1,00,25,000/- by HDFC Bank cheque, which was encashed by Home Trade Ltd., and the security was delivered to the Bank.
3.	15.01.2001	That the Bank purchased Government Security of ₹50 lakhs under Contract Note No. 6401, and paid ₹48,60,138.89 by cheque, which was encashed, and delivery of the security was given.



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4.	29.08.2001	That the Bank directed Home Trade Ltd. to purchase Government Security of ₹50 lakhs under Contract Note No. 6739, and paid ₹52,42,048.61 by cheque, which was encashed by Home Trade Ltd., and it is alleged that delivery of this security was not given.
5.	05.12.2001	<p>That the Bank decided to sell the aforementioned Government Securities through Home Trade Ltd. and entered into sale transactions aggregating ₹2,38,80,173.62, and physical delivery of the said securities was handed over to Home Trade Ltd., as recorded in the complaint.</p> <p>That on the same day, the Bank decided to purchase Government Security of ₹3 crores under Contract Note No. 6919, adjusted the sale and purchase transactions, and paid the difference amount through HDFC Bank draft to Home Trade Ltd.</p>
6.	25.01.2002, 18.03.2002, and 09.04.2002	That the Bank issued several letters dated 25.01.2002, 18.03.2002, and 09.04.2002 to Home Trade Ltd.



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		requesting delivery of the Government Security, as recorded in the complaint.
7.	12.04.2002	That a letter dated 12.04.2002, assuring delivery of Government Security, and that in the event of failure to deliver by that date, Cheque No. 984321 dated 27.05.2002 for ₹3,24,62,700/- drawn on HDFC Bank was issued by Home Trade Limited.
8.	01.06.2002	The complaint states that the said cheque was returned with the endorsement "Account Blocked", pursuant to which notice under Section 138 of the Negotiable Instruments Act was issued.
9.	20.08.2002	That thereafter, the Bank lodged an FIR bearing No. I-226/02 at Randher Police Station, Surat, alleging offences under Sections 406, 409, 420, 421, 422, 423, 34, 114, and 120-B IPC, arising out of the alleged non-delivery of certain Government Securities.
10.	06.01.2003 & 31.01.2004	That upon investigation, a Chargesheet and Supplementary Chargesheet No. 6/03 dated 06.01.2003 and Supplementary Chargesheet No. 6/04



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		dated 31.01.2004 were filed against alleging commission of offences under Sections 406, 409, 420, 421, 422, 423, 34, 114, r/w 120-B IPC against the accused persons including the Petitioner.
11.	21.03.2025	That the Ld. Trial Court passed the impugned order framing charges under Sections 420, 467, 468, 471 and 120-B r/w 34 IPC against 4 accused, including the Petitioner, and did so without first deciding any objections or conducting a hearing under Section 239 CrPC.
12.	2025	Hence, the present Criminal Writ Petition is filed assailing the impugned order dated 21.03.2025.



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**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, 467, 468, 471 and 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

**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



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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. Vijayasarathy 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: 20/12/2025



  
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

In the matter of C.C. No.  
388/PW/2023 pending before the  
Ld. Chief Judicial Magistrate First



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Class, 47<sup>th</sup> Court, Esplanade,  
Mumbai.

AND

In the matter of impugned order dated 21.03.2025 passed by the Ld. Chief Judicial Magistrate First Class, 37<sup>th</sup> Court, Esplanade, Mumbai, thereby mechanically passing order framing charges against the Petitioner for offences under Sections 420, 467, 468, 471 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

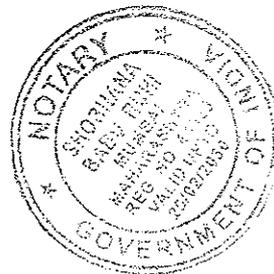
1) State of Maharashtra

2) State of Gujrat

(through Rander P.S., Gujrat)

...Respondents

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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 under Section 397 Cr.P.C. to prevent grave abuse of the criminal process arising from the impugned order dated 21.03.2025 passed by the Ld. Trial Court, whereby charges under Sections 420, 467, 468, 471 and 120-B r/w 34 IPC have been mechanically framed against him in connection with certain Government Securities (G-Sec) transactions between The Adajan Nagrik Sahakari Bank Ltd. (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. 388/PW/2023 pending before the Ld. Addl. Chief JMFC, 47th Court, Esplanade, Mumbai arises out of FIR No. I-226/02 registered with Randher P.S., Surat, Gujrat which was lodged alleging offences under Sections 406, 409, 420, 421, 422, 423, 34, 114, and 120-B 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



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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, 47th Court, Esplanade, Mumbai. A copy of the 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-226/02 dated 20.08.2002 was filed by the Manager of the Adajan Nagrik Sahakari Bank Ltd., Adajan Road Surat, alleging offences under Sections 406, 409, 420, 421, 422, 423, 34, 114, and 120-B IPC. Copy of the FIR is annexed herewith as **EXHIBIT 'C'**.
4. That the complainant Bank states that it was required to invest in Government Securities pursuant to the Statutory Liquidity Ratio (SLR) under the Banking Regulation Act and directions of the Reserve Bank of India, and that accordingly the Bank was carrying out purchase and sale of



*Dr*

Government Securities. The complaint records that the Bank had been purchasing and selling Government Securities through Home Trade Limited, and that in earlier transactions physical delivery of securities was handed over to the Bank.

5. That the complaint expressly records purchase transactions of Government Securities by the Bank along with issuance of contract notes and payment of consideration, including the following:

**Purchase Transactions (as recorded in the complaint)**

Date	Contract Note No.	Amount Paid	Delivery
28.09.2000	10629	₹1,00,25,000/-	Delivered
15.01.2001	6401	₹48,60,138.89	Delivered
29.08.2001	6739	₹52,42,048.61	Alleged not delivered

6. That the complaint further records that on 05.12.2001, the Bank decided to sell Government Securities through Home Trade Limited and entered into agreements for sale of the following securities:

**Sale Transactions (as recorded in the complaint)**

Contract Note No.	Amount (₹)
10629	1,21,36,666.67
6401	58,08,541.67
6739	59,34,965.28
<b>Total</b>	<b>2,38,80,173.62</b>



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7. That on the same day, the complaint records that the Bank decided to purchase Government Security of ₹3 Crores, for which Contract Note No. 6919 was issued. The Bank delivered the securities sold by it vide Contract Notes Nos. 6905 and 6906, adjusted the sale and purchase amounts, and paid the difference amount to Home Trade Limited through HDFC Bank draft.
8. That it is admitted in the complaint that the Bank paid the full consideration of ₹3,06,06,250/- for the said security, and that Home Trade Limited failed to hand over the physical delivery of the said security despite reminders.
9. That a letter dated 12.04.2002, assuring delivery of the said Government Security, and that in the event of failure to deliver by that date, Cheque No. 984321 dated 27.05.2002 for ₹3,24,62,700/- drawn on HDFC Bank was issued by Home Trade Limited.
10. That throughout the complaint, the Bank narrates a continuous chain of commercial Government Securities transactions, supported by:
  - purchase and sale of securities,
  - issuance of contract notes,
  - payment of consideration through banking channels,
  - delivery of securities in earlier transactions, and
  - allegation of non-delivery only in the last set of transactions

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



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11. That despite it being purely a commercial/ civil dispute arising from contract notes, surprisingly an FIR bearing No. I-226/02 came to be lodged at Randher Police Station, Surat, alleging offences under Sections 406, 409, 420, 421, 422, 423, 34, 114, and 120-B IPC in relation to the transactions between The Adajan Nagrik Sahakari Bank Ltd. and Home Trade Limited. The complaint itself records that the dispute arose from alleged non-delivery of certain Government Securities after payments had been made and contract notes issued.

12. That thereafter, upon investigation, a Chargesheet and Supplementary Chargesheet No. 6/03 dated 06.01.2003 and Supplementary Chargesheet No. 6/04 dated 31.01.2004 were filed alleging commission of offences under Sections 406, 409, 420, 421, 422, 423, 34, 114, r/w 120-B IPC against the accused persons including the Petitioner. The Petitioner craves leave to refer and rely upon the chargesheet and supplementary charge sheet as and when required.

13. 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, 467, 468, 471 and 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, and



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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.

14. That even if assuming every allegation in the complaint, the events recorded therein pertain exclusively to commercial purchase-sale transactions of Government Securities, where:

- contract notes were issued,
- multiple securities over the years were fully delivered,
- and only certain securities were allegedly not delivered.

Thus, the complaint discloses no material satisfying the statutory ingredients of Sections 420, 467, 468, and 471 nor any material disclosing conspiracy under Section 120-B IPC.

15. That, being aggrieved by the impugned order and the procedural as well as substantive errors therein, the Petitioner prefers the present Writ Petition on the following grounds:

**GROUND**

A. That the Petitioner is falsely implicated in the instant case and denies committing any of the offenses as alleged



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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



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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*



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*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 420, 467, 468, 471 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,



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467, 468, 471 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 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



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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 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



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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 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 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*



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*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 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'."*



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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 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."

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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 settlements and monetary adjustments, including issuance of cheques by Home Trade Limited. It is specifically admitted that Home Trade Limited received payments through HDFC Bank cheques for purchase transactions, and that difference amounts were adjusted through banking channels, including payment of the full consideration of ₹3,06,06,250/- for 7.50% GOI-2010 Government Security. Such admitted payments and adjustments are inconsistent with any allegation of dishonest inducement.

D.7 That even in respect of the transactions forming the subject matter of the present complaint, the Bank records issuance of multiple contract notes, receipt of full consideration, adjustments of sale and purchase values, and



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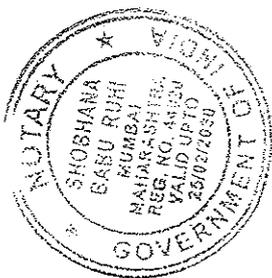
issuance of cheques. The dispute, as narrated, arises only in relation to non-delivery of certain securities in the final set of transactions, after substantial performance had already taken place.

D.8 That the complaint itself shows that upon non-delivery, the Bank treated the issue as one of commercial settlement, by issuing reminders, engaging in correspondence, accepting assurances, and acting upon substitute arrangements. Such conduct is wholly inconsistent with an allegation of cheating or deception at inception.

D.9 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. 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 offence alleged under Sections 467, 468 and 471 is made out.**

E.1. That before an offence under Sections 467, 468 or 471 IPC can be attracted, it is mandatory for the prosecution to



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first establish the making of a “false document” within the meaning of Sections 463 and 464 IPC, which form the statutory foundation of all forgery-related offences.

E.2. Section 463 IPC defines “forgery” as:

*“[Whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”*

Thus, the sine qua non of forgery is the making of a “false document.

E.3. Section 464 IPC exhaustively defines when a document can be said to be “false.” As explained by the Hon’ble Supreme Court in *Mohd. Ibrahim v. State of Bihar (2009) 8 SCC 751*, a document is false only in the following situations:

- When it is made or executed a document claiming to be someone else or authorised by someone else; or
- When someone alter or tamper a document; or
- When a document is obtained by practising deception, or from a person not in control of his senses.

E.4. The Hon’ble Supreme Court has categorically held that mere execution of a document by a person in his own name, even if the underlying transaction is disputed, does not amount to making a false document. For the first



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category of Section 464 IPC to apply, the Hon'ble Court held that

*16. "...There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed..."*

E.5. The Hon'ble Apex Court further clarified that when a person executes a document claiming a right or obligation in his own name, "*he is not claiming that he is someone else nor is he claiming that he is authorised by someone else.*" Such execution, even if the claim later turns out to be incorrect, does not constitute a false document and therefore no forgery is made out.

E.6. Thus, applying the above settled law, even as per prosecution case that the Petitioner signed the cheques and letters in his own name and capacity completely excludes the essential requirement of a "false document." There is no allegation in the complaint that:

- are not alleged to be signed in the name of another person,
- are not alleged to bear false signatures,
- are not alleged to be fabricated or altered,
- and are not alleged to have been obtained by deception.

Thus, the execution of such documents squarely falls outside all three categories of "false documents" under Section 464 IPC.



*[Handwritten signature]*

E.7. Moreover, it is pertinent to mention that the prosecution case does not even whisper or specifies which particular contract note or document is alleged to have been forged by the Petitioner, nor does it plead how or in what manner any such document answers the statutory requirements of a "false document" under Section 464 IPC. The allegations in the complaint primarily arise from non-delivery of certain Government Securities pursuant to contract notes, and the dispute centres around performance of contractual obligations rather than identification of any forged document attributable to the Petitioner.

E.8. Thus once the statutory requirement of a "false document" under Sections 463 and 464 IPC is not satisfied, the consequential offence under Section 467 (forgery of valuable security, will, etc.) and Section 468 of IPC (forgery for the purpose of cheating) cannot survive, as it is entirely dependent upon the existence of forgery in the first place.

E.8. Similarly, Section 471 IPC presupposes the use of a forged document as genuine and since the prosecution case does not disclose the existence of any forged document in the first place, the offence under Section 471 IPC is also *ex facie* not made out.

E.9. 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



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present case is a textbook example of such mechanical invocation of sections.

E.10. That therefore, even accepting the prosecution case at its highest and without disputing the signatures, the allegations do not satisfy the statutory ingredients of Sections 467, 468 or 471 IPC. The initiation and continuation of criminal proceedings under these provisions are thus bad in law and unsustainable

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

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

F.2. That in the present case, the complaint itself records that the transactions in question pertain to purchase and sale of Government Securities undertaken by The Adajan Nagrik Sahakari Bank Ltd. through Home Trade Limited, pursuant to resolutions of the Bank, issuance of contract notes, payment of consideration through banking channels, and reciprocal transfer of securities. The complaint narrates a course of commercial dealings and does not disclose any averment of an agreement or concerted plan to commit any illegal act.



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F.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.

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

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

G.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



*[Handwritten signature]*

individual unless there is material to lift the corporate veil and show his personal involvement in the alleged acts.

G.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.

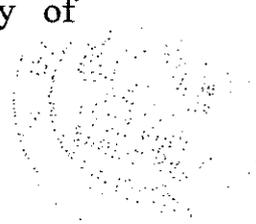
G.4 Further, in *Delhi Race Club Ltd. v. State of Delhi [(2012) 8 SCC 680]*, the Hon'ble Supreme Court observed as follows:

*“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.”*

G.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



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securities, all relate to acts of the company in the course of its business.

G.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.

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

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

H.1 That the charges framed under Sections 420, 467, 468, 471 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.



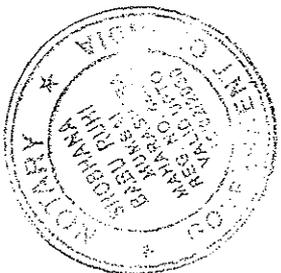
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H.2 That the impugned order is *non-speaking*, as it does not identify any specific act attributed to the Petitioner, does not discuss the role of the accused in the transactions, and does not demonstrate that the Ld. Magistrate examined whether the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

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

H.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.

H.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.



*[Handwritten signature]*

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## 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, 37th Court, Esplanade, Mumbai in C.C. No. 388/2023, whereby charges have been framed against the Petitioner for offences under Sections 420, 467, 468, 471 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, 37th Court, Esplanade, Mumbai in C.C. No. 388/2023, 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.



BM

Mumbai,

Date: 20.12.2025

  
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.

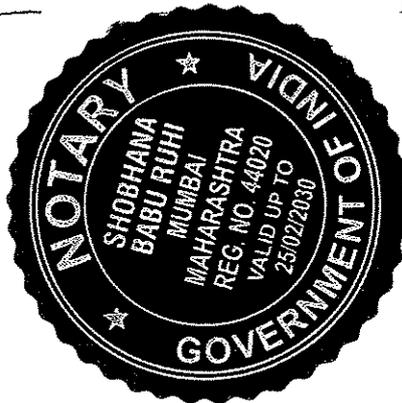
Solemnly affirmed at Mumbai )  
Dated this 20 day )  
December, 2025 )



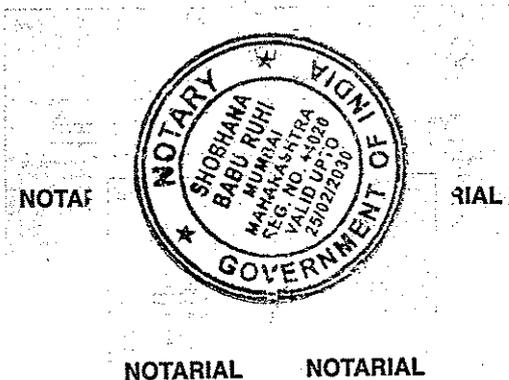
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*S. Harimurad*  
Petitioner

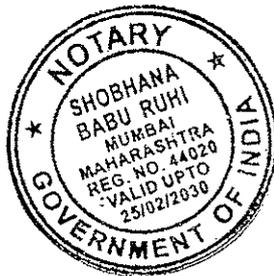
BEFORE ME



**BEFORE ME**  
*[Signature]*  
20-12-2025  
**SHOBHANA BABU RUHI**  
NOTARY  
Government of India  
Mumbai Dist.



S. No. 250 P. No. 16  
NOTARY Register. 07 Date 20/12/25



Exh - A

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C. C. No. 388/PW/2023

EXH 59

IN THE COURT OF THE ADDL. CHIEF JUDICIAL MAGISTRATE,  
37TH COURT, ESPLANADE, MUMBAI.

C. C. No. 388/PW/2023

CHARGE

I, Vinod R. Patil, Addl. Chief Judicial Magistrate, 37<sup>th</sup> Court, Esplanade, Mumbai do hereby charge you:

1. Ketan Kantilal Seth
2. Subodh Bhandari
3. Sanjaybhai Hariram Agarwal
4. Nandkishor Shankarlal Trivedi

as follows :

That you accused No.1. Ketan Kantilal Seth being Director, accused No.2. Subodh Bhandari, accused No.3 Sanjaybhai Hariram Agarwal being Chairman and Chief Executive, accused No.4. Nandkishor Shankarlal Trivedi being Executive Director of Hometrade Limited along with other absconding accused from 25.09.2000, to 01.06.2002 at the Adajan Nagrik Sahkari Bank Ltd. "Mandhan" Apartment, Near Gujarat Gas Circle, Adajan Road, Surat in furtherance of your common intention cheated the informant the Adajan Nagrik Sahkari Bank Ltd. by dishonestly inducing it to deliver an amount of Rs.2,38,80,173.62/- to M/s. Home Trade Limited to purchase government securities and thereby committed an offence punishable under section 420 r/w. 34 of the Indian Penal Code and within my cognizance.

Secondly, that you along with other absconding accused during the above said period and place in furtherance of your common intention forged documents namely SEBI certificates, government securities contracts, and other related documents purported to be a



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C. C. No. 388/PW/2023

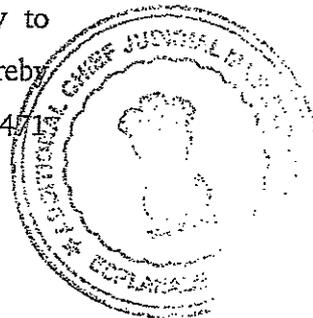
valuable security and thereby committed an offence punishable under section 467 r/w. 34 of the Indian Penal Code and within my cognizance.

Thirdly, that you along with other absconding accused during the above said period and place in furtherance of your common intention forged documents namely SEBI certificates, government securities contracts, and other related documents intending that it shall be used for the purpose of cheating and thereby committed an offence punishable under section 468 r/w. 34 of the Indian Penal Code and within my cognizance.

Fourthly, that you along with other absconding accused during the above said period and place in furtherance of your common intention fraudulently used as genuine documents namely SEBI certificates, government securities contracts, and other related documents which you knew at the time when used it to be forged documents and thereby committed an offence punishable under section 471 r/w. 34 of the Indian Penal Code and within my cognizance.

Fifthly, that you along with other absconding accused during the above said period and place in furtherance of your common intention abetted the informant in committing an act and you were present at the time the act was committed in pursuance of your abetment and thereby committed an offence punishable under section 114 r/w. 34 of the Indian Penal Code and within my cognizance.

Lastly, that you along with other absconding accused during the above said period and place were party to criminal conspiracy to commit criminal breach of trust, cheating and forgery and thereby committed an offence punishable u/sec. 120-B r/w. 420, 467, 468, 471 of the Indian Penal Code and within my cognizance.



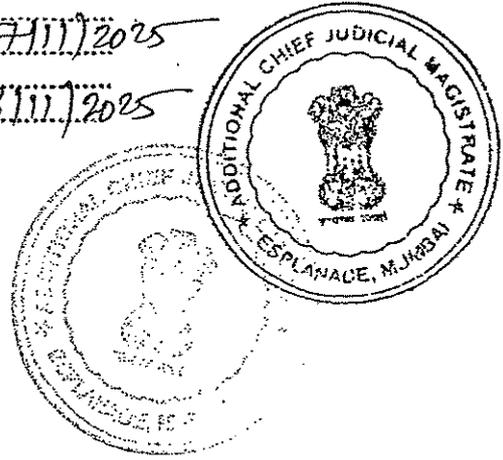
And I hereby direct that you be tried by me on the above said offence.

Dated 21st day of March, 2025.

*[Signature]*  
(Vinod R. Patil),  
Addl. Chief Judicial Magistrate,  
37<sup>th</sup> Court, Esplanade, Mumbai

The charge is framed, read over and explained to the accused in vernacular language.

Applied on 07/11/2025  
Granted on 07/11/2025  
Ready on 18/11/2025  
Delivery on 18/11/2025



*[Signature]*  
(Vinod R. Patil),  
Addl. Chief Judicial Magistrate,  
37<sup>th</sup> Court, Esplanade, Mumbai

True Copy  
*[Signature]*  
Judicial Clerk, 18/11/25  
Additional Chief Judicial Magistrate's,  
37<sup>th</sup> Court, Esplanade, Mumbai

T.C  
SC  
Adl

Daily Status

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In The Court Of :Addl. Chief Judicial Magistrate , 37th Court

CNR Number. :MHMM110044252023

Case Number. :Police Cases PW/4700388/2023

RANDER POLICE STATION Versus KETANBHAI KANTILAL

SHETH - Supplementary Chargesheet

Date :21-03-2025

Business	: Ld. APP present. All accused present with Advocates. Exh. 59 - Charge framed against all accused. Exh. 60 - Plea of accused no. 1 recorded. Exh. 61 - Plea of accused no. 2 recorded. Exh. 62 - Plea of accused no. 3 recorded. Exh. 63 - Plea of accused no. 4 recorded. Accused no. 1 to 4 pleaded not guilty. Exh. 64 - Application for issue summons to Informant and Investigation Officer filed by Ld. APP. Order - Issue summons as prayed. Exh. 65 - Vakalatnama on behalf of accused no. 4 filed by Advocate. Issue summons to Informant and Investigation Officer. Adjourned for evidence and production of translated copies.
Next Purpose	: TIME BOUND CASES
Next Hearing Date	: 07-04-2025
Addl. Chief Judicial Magistrate , 37th Court	

T-C  
SC  
Adv

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

Validity: unknown  
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GEETA KANTILAL SETH  
Date: 2021.09.26  
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Reason:

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;

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- 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

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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

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

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

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.

T. C  
x  
Adh

**First Information Report**

(U/s 154 of CrPC)

1. District: Surat PS: Rander Police Station FIR No. I-226/02
2. Occurrence of offence:  
From Date: 25/09/2000 to Date: 01/06/2002
3. Reported the offence at the Police Station: Date: 30/08/2002 10:25 hrs.
4. Place of offence and direction and distance from PS: Adajan Nagarik Sahakari Bank Ltd., Manthan Apartment, near Gujarat Gas Circle, Adajan, Surat.
5. Reported to the PS Date: 30/08/2002.
6. Name of the complainant / informer: Shri Ashok Jayantilal Sheth, aged 46, Res. Anjan, authorized manager, for and on behalf of Adajan Nagarik Sahakari Bank Ltd. "Manthan Apartment, near Gujarat Gas Circle, Adajan Road, Surat.
7. Names and addresses of the accused:-
  - (1). Home Trade Limited, Registered Company, Occupation: Broker of Share Securities etc. (1) International InfoTech Park, Tower No. 3, 5<sup>th</sup> Floor, Vashi Railway Station Complex, New Mumbai, Dist. Illegible, Maharashtra.
  - (2). Shri Nandkishor Shankarlal Trivedi, aged about 45, occupation: business, Res. Devbhuvan, 2<sup>nd</sup> Floor, Chira bazaar, Mumbai.
  - (3). Shri Ketan Kantilal Sheth, aged about 40, occupation: business, Res. 193, Lalit Kutir, Gulmahor Cross road, 9, Juhu, Mumbai.
  - (4). Shri Sanjay Hariram Agrawal, aged 35, occupation: business, Res. Juhu, Shalimar, CAS, Gulmahor Crossroad, Juhu.

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- (5). Subodh Bhandari, aged about 46, occupation: Business, 704-B, Govind Complex, Vasi, New Mumbai-40005.
- (6). Shri Hiten Bhupendra Shah, adult aged, occupation: , Res. 102, Gandhi Nivas, Ashoknagar, Mumbai.
- (7). Shri Hiren Gada, adult aged, occupation: business, Senior Vice President, Home Trade Limited, Registered Company. Business: broker of share securities etc. Office address (1) International InfoTech Park, Tower No. 3, 5<sup>th</sup> Floor, Vashi Railway Station Complex, New Mumbai, Dist. Illegible, Maharashtra. (2) 709, Raheja Centre, 214, Free Press Journal Marg, Mumbai-400002, Maharashtra.
- (8). Shri Sashank Gopal Rande, aged 40, occupation: business, Res. 3/1, Radhakrishna Nivas, Ground Floor, SK Bole Road, Dadar (CWJ), Mumbai.
- (9). Shri Vijay Himmatlal Modi, aged 46, occupation: business, Res. A-203, Amita Co. O. Housing Society, Kulupadavi road, Borivali (East), Mumbai-400063.
- (10). Shri Salil Dinkarlal Gandhi, aged 43, occupation: Business, Res. 11/13, Gold Coin Co. O. Ha. Society, Tardev, Mumbai-400034.
- (11). Shri Allan James Macmillan, aged 41, occupation: business, Res. 785, Castro Street, Montenuie, CA 94041, USA.
- (12). Shri Rasal Bankcam Vegar, adult aged, occupation: Business, Res. Timber Hill Terrace, Iron Field, MA 1940, USA.
- (13). Shri Maick alias Manoj Ambelal Shah, aged about 58, occupation: business, Res. Belari Road, RMV Extension, Bangalore-506080.
- (14). Shri Dhananjay Achaval, adult aged, occupation: business, Director, Home Trade Limited, Registered Company, occupation: Broker of Share, securities etc., Office addresses (1) International

InfoTech Park, Tower No. 3, 5<sup>th</sup> Floor, Vashi Railway Station Complex, New Mumbai, Dist. Illegible, Maharashtra. (2) 009, Raheja Centre, 214, Free Press Journal Marg, Mumbai-400002, Maharashtra.

(15). Smt. Shilpa Hiten Shah, Res. 102, Gandhi Nivas, Ashok Nagar, Vadala, Santacruz, Mumbai.

(16). Smt. Jagruti Ketan Sheth, Res. 193, Lalit Kutir, 9, Gulmahor road, Kuku Munda.

(17). Kanan Mevavala, Res. Jayant Mahal, 5<sup>th</sup> Floor, Opp. Vankhede Stadium, Marine Drive, Mumbai.

(18). Ketan R. Maskariya, Director, Home Trade Limited, Office address: 709, Raheja Centre, 214, Free Press Journal Marg, Mumbai. Office address (1) International InfoTech Park, Tower No. 3, 5<sup>th</sup> Floor, Vashi Railway Station Complex, New Mumbai, Dist. Illegible, Maharashtra. (2) 709, Raheja Centre, 214, Free Press Journal Marg, Mumbai-400002, Maharashtra.

**Brief Fact:**

Under IPC section-406, 409, 420, 421, 422, 423, 34, 114, 120(b). With the intention of committing fraud with the bank and to grab the amount, stated that they can make the delivery of the government security in time, and forged false and fake documents and produced the documents bearing the signature and the stamp in the Court and in order to commit fraud and cheating with the bank, gained its trust and confidence and in order to obtain the amount of the government security, put signature on the contract note and falsely stated that they will sell the government security and produced false documents before the bank and committed fraud of Rs. 3,06,06,250/- with the complainant bank, and committed the offence.



SB

Complaint

Date: 30/08/2002

I state my complaint that our bank has been established under The Banking Regulation Act, 1949 and Gujarat Cooperative Act and Sub-Rules at Adajan Road, Surat, and it is a cooperative bank and in order to do the banking activities, our bank has been given the license by Reserve Bank of India, Ahmedabad and the office of our bank is located on Adajan Road, Surat. As per the Resolution passed by the Board of Directors of the said bank, I the complainant has been authorized to lodge the complaint and carry out legal proceedings against the accused of this offence and accordingly, I have lodged the present complaint against the accused of this case.

Accused no. 1 "Messrs Home Trade Limited" is a firm and it has been registered with National Stock Exchange as a Share and Stock Broker and accused no. 2 to 18 are the directors and the agents of the said firm and have stated that the accused firm is engaged in the trading of the share securities etc., and as the accused stated so before me the complainant, and I the complainant relied on what the accused said and accepted him as an agent of the accused no. 1 firm and accused no. 2 to 18 are the directors and the agents of the accused no. 1 firm. He said that he himself does the administration of the firm as the director and agent of the firm and he is responsible for the administration of the firm and in that capacity, the present complaint has been lodged against the accused persons.

The complainant bank is supposed to make the investment of the statutory liquidity amount addressed as the SLR and as per the SLR, the amount has to be invested in the government security and the ratio of the SLR is decided by the Reserve Bank of India from time to time as per the provision of the Banking Regulation Act, 1949, and it is compulsory for all

the cooperative banks to abide by such orders of the Reserve Bank, and thus, it was compulsory for the complainant bank also to make the investment in the government security to maintain the SLR.

Accused no. 3 Ketan Sheth, with Niraj Surati, the chartered accountant, Res. Bhruch, had come to the office of the complainant bank located at the address Muktanandnagar, near Adajan Circle, on 25<sup>th</sup> September 2007. In person and accused no. 3 stated that he is a leading share broker at Mumbai and Messrs. Home Trade Ltd is engaged in the trading of Government securities, and said that he is the director of the Company. Besides, accused no. 4 Sanjay Agrawal is the chairman and chief executive of the said company, and accused no. 2 Nandkishor Trivedi is the executive director of the company, and all the three of them are the main office bearers of Home Trade Ltd and are the authorized signatories, he had said. Besides, Home Trade Ltd is registered with National Stock Exchange, and as its evidence, he has produced the photocopy of the certificate in this regard and he further said that they have the fully computerized air-conditioned office with ultra-modern facilities at Mumbai and most of the works of Mumbai-Pune Stock Exchange are done by their firm and had produced the claims regarding the works of the firm.

Taking into account the above mentioned fact stated by the accused no. 3, the complainant bank had entered into the contract with the said company in order to purchase the government security of 12% of Rs. 1 crore and regarding the said contract, the complainant bank had given a cheque of HDFC bank and the accused had made the delivery of the government security to the complainant bank.

Thereafter, in order to purchase the securities of 50 lakh of 10.25%, the complainant bank had entered into the contract with the said company on 15/01/2001 and the complainant bank had made the payment of it through the cheque of HDFC bank and the accused had made the delivery



said in person on 05/12/2001 at the office of the complainant bank, was said with the mala fide intention of committing fraud and cheating with the complainant bank, and the accused firm had taken the delivery of all the securities of the selling contract and the accused then did not make the delivery of the new security that was purchased as per the contracts. Thus, the accused made false claims with the intention of committing the offence and fraud with the complainant bank and did not make the delivery of the security and committed fraud with the bank.

Trusting the claim of the accused, and we the complainant have made the financial transactions with the accused of this case in order to maintain the SLR as follows.

#### Details of the Financial Transactions:

On 28/09/2000, the complainant bank had asked Messrs. Home Trade Ltd to purchase the security of 1 crore rupees of SDL-2010 of 12% and accordingly, the accused had given the contract note (10629). In this regard, the complainant bank had given the cheque of Rs. 1, 00, 25,000/- of HDFC Bank and Messrs. Home Trade Ltd had encashed the said cheque. Regarding this payment, the delivery of the said security has been made to the bank.

On 15/01/2001, the complainant bank had asked to purchase the security of Rs. 50 lakh of CG-2012 of 10.25% and in this regard, Home Trade Ltd had given the Contract Note no. 6401. The complainant bank had given the cheque of Rs. 48, 60,138-89 of HDFC Bank and the accused firm had encashed the said cheque and had given the delivery of the securities.

On 29/08/2001, the complainant bank had asked the accused firm to purchase the government security of Rs. 50 lakh of GOI-2021 of 10.25% and the accused firm had given the contract note no. 6739. The complainant

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bank had given the cheque of Rs. 52, 42,048.61 regarding the said transaction and Home Trade Ltd had encashed the said cheque but did not make the delivery of the securities.

On 05/12/2001, the complainant bank had decided to sell the government security that it had through Home Trade Ltd. In this regard, the bank had made the contracts with the accused firm at the rate mentioned beside the security.

Sr. No.	Name of security	Amount of selling (total price)
1.	12% SDL-2010	1,21,36,666.67 physical delivery
2.	10.25% CG-2012	58,08,541.67 Home Trade received
3.	10.25% GOI-2021	59,34,965.25 they had the delivery

Rs. 2, 38, 80,173.62 paisa

The same day, the complainant bank decided to purchase the security of CG-2010 of 7.50% of Rs. 3,06,06,250/- and accordingly, the accused company had issued and given contract note no. 6911, and accused no. 5 had put his signature on it on behalf of the accused no. 1.

Regarding the said contract, the complainant bank had sold the security through contract note no. 6905 and 6907, and had made the delivery of the said security to Home Trade Ltd., and the security sold through contract note no. 6909 was in the custody of the Home Trade, and the security purchased by the bank was pending through the contract note no. 6739. The amount of difference of Rs. 67, 26,076.38/- of the above mentioned purchase and selling was given to Messrs. Home Trade by the bank by the draft of HDFC bank. Despite this fact, the complainant bank has paid the full consideration against the total price of Rs. 3, 06, 06,250/-

of the security of GOI-2010 of 7.5% purchased from accused Messrs. Home Trade. Despite this, Home Trade Ltd has failed in making the delivery of the security. The copies of the contract mentioned in this paragraph has been attached herewith.

In order to get the delivery of the above mentioned government security that it has purchased, the complainant bank contacted the accused on phone and in person now and again and the complainant took the follow up and wrote letter on 25/01/2002 to get the early delivery of the government security and asked Home Trade Ltd to make the delivery of the security. Then, a reminder letter was written on 18/03/2002 again and there was no response or reply of it. So, at last, the bank sent a letter to the accused on 09/04/2002 by registered AD asking to make the delivery instantly. A copy of it is attached herewith.

At the time of the confirmation and the payment of the contract of purchase of the security of GOI-2010 of 7.5%, the accused persons gave promise and assurance to the complainant bank for the physical delivery in specific time limit but despite the time period was over, and despite the repeated demand of the delivery of the security, the accused did not make the physical delivery of the securities with mala fide intention fraudulently. So, the complainant bank informed the accused that it will take legal action against them. So, against the said security, the accused made the physical delivery of GOI-2017, 8.07% vide the letter dated 12.04.2002 and said that with the promise of giving GOL, 7.50%, the contract bearing the signature could not be found from the security market on 29.03.2002, so they had executed the contract (the copy is attached herewith in the list). Besides, the accused said that they will make the delivery of the government security by 30.04.2002 and if they cannot make the delivery by 30.04.2002, the accused had sent the cheque no. 984321 dated 27.05.2002 of Rs.



3,24,62,700/- of HDFC bank, Nariman Point branch, and had asked the complainant bank to encash it (the copy of it is attached herewith).

Thereafter, I the complainant and the director of the bank Pankaj Shah had gone to the office of the accused firm at Mumbai to get the said security and the director of the firm Shri Nandkishor Trivedi who is accused no. 2 of this case was present and they had met him and he had assured that the delivery of the security will be made in very short period. He had said that if the delivery is not received, the bank can encash the said cheque but then, despite the time period was over, the accused could not make the delivery of the said government security to the complainant bank.

Therefore, the complainant presented the cheque given by the accused I the HDFC bank on 27/05/2002 and the said cheque returned with the remark 'account blocked' on 01/06/2002, and when the accused had given the said cheque, the accused knew that the cheque will get returned, and despite this fact, the accused had given the cheque with the mala fide intention of committing fraud and cheating with the complainant bank. As the said cheque got returned, a notice has been given under the Negotiable Instrument Act section-138. Despite the said notice, the accused have not paid the said amount in time limit and therefore, we are entitled to lodge the separate complaint under the Negotiable Instrument Act. This complaint has been lodged for the offences punishable under the Penal Code.

In the above circumstances, the accused of this case, with the intention of committing fraud with the complainant bank and to siphon off the money of the bank, falsely promised that they can make the delivery of the government security in time and showed forged and fake documents and gained the trust of the complainant bank by doing so, and besides, in order to get the amount of the government security, the accused also put signatures on the contract note. But at the time of issuing such contract

note, the accused knew very well that they did not have the government security that they were supposed to give to the complainant bank, and they also knew that they will never be able to give the physical delivery of it to the complainant bank. Despite this fact, they had given the cheque that got returned. Thus, with the mala fide intention of committing fraud and cheating with the complainant bank, the accused falsely said to sell the government security and took the money and then did not make the physical delivery of the securities and the accused have committed the punishable offences of serious nature. Chartered accountant Niraj Surati had introduced accused Ketan Sheth to the bank and he knows regarding the transactions mentioned in the complaint and he had attempted to sell the securities to the bank and he had helped in giving the said cheque as well. Therefore, he is our main witness.

After the cheque given by the accused got returned, the complainant bank came to know that the accused have committed fraud with the bank and meanwhile, the accused of this case hatched the criminal conspiracy and in order to get the illegal financial benefit in connivance with one another, committed fraud with the bank and besides, the bank has come to know that the accused have done so with the mala fide intention of committing fraud with the bank. Despite the attempts to contact the accused persons of this case, they could not be traced or found at their residential and office addresses. Besides, there is the possibility that they may flee from India and therefore, I lodge this complaint against the accused persons and request to seize their properties and to seize their passport and take necessary legal action in this regard.

The complainant bank is a cooperative bank and the money of the complainant bank is the money of the public and the accused, in connivance with one another, committed the fraud with the complainant bank with pre-planning and siphoned off the money of the bank. Therefore,

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Page 1 of 1



I lodge my complaint to take legal action against the accused for the offences punishable under IPC section-406, 409, 420, 421, 422, 423, 465, 467, 468, 471, 114, 34, 120(b).

The witnesses for the complainant bank are the directors and the staff members of the bank and the chartered accountant Niraj Surati and those whose names may surface as witnesses in the investigation.

Date: 20/08/2002

Sd/-

Adajan Sahakari Bank Manager

The above written complaint was received vide the Local Application No. 443/02 dated 20/08/2002 of the Police Inspector, Rander Police Station, the offence registered on the basis of the said application, and dispatched to the Court with compliments.

To,  
Hon'ble Chief Judicial First Class Magistrate,  
Chief Court, Surat.

Date: as above.

Police Sub Inspector  
Rander Police Station  
Surat City

T-C  
se  
Adv.

pl 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.

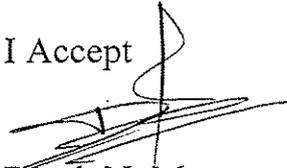
) ... Respondents

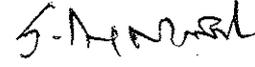
VAKALATNAMA

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 22<sup>nd</sup> day of December, 2025.

I Accept

  
Dipak N. Mane  
Advocate High Court  
7, 1<sup>st</sup> Floor, Building no.6,  
M.K. Amin Marg, Borabazar,  
Fort, Mumbai – 400 001,  
Cell No. 9271777197  
Email [dipakmane777@gmail.com](mailto:dipakmane777@gmail.com)  
Adv. Code: I-9128, MAH/2287/2008

  
Petitioner  
(Sanjay Hariram Agarwal)  
Petitioner

