

IN THE HON'BLE HIGH COURT OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. \_\_\_\_\_ OF 2025

DISTRICT: MUMBAI

Sanjay Hariram Agarwal

...Petitioner

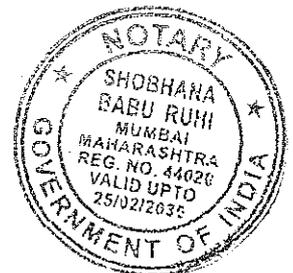
Versus

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. 396/2023, whereby charges have been framed against the Petitioner for offences under Sections 420, 467, 468, 471,114 and 120-B r/w 34 of 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, 471,114 and 120-B r/w 34 of IPC, though the allegations in the complaint and



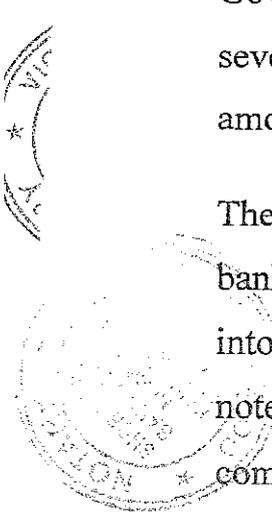
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the material placed on record relate entirely to commercial transactions in Government Securities between the Gandevi People's Co-op Bank Ltd. (hereinafter referred to as "complainant Bank") and Home Trade Limited (hereinafter referred to as "the Company"). 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, 114 or 120-B are made out at all, particularly when the prosecution case, as emerging from the complaint itself, is founded entirely on purchase and sale of Government Securities through contract notes, payments through banking channels, and alleged non-delivery of certain securities.

A bare reading of the complaint shows that the allegations arise from a series of Government Securities transactions undertaken by the complainant bank for the purpose of maintaining Statutory Liquidity Ratio (SLR). The grievance, as narrated, pertains to alleged non-delivery of physical possession of certain Government Securities pursuant to specific contract notes, after several transactions involving purchase, sale, adjustment of amounts and payment of difference sums.

The brief prosecution story, as alleged, is that the complainant bank, being required to invest in Government Securities, entered into transactions with Home Trade Limited through contract notes. The complaint records that payments were made by the complainant bank through cheques and banking channels for



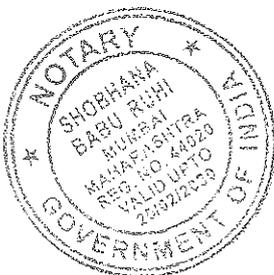
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purchase of Government Securities and that, in the course of certain sale transactions, difference amounts were paid by Home Trade Limited to the complainant bank.

The complaint further alleges that in respect of certain transactions, particularly relating to Contract Note No. 7437 dated 26.02.2002 for 8.07% GOI 2017 Government Security involving an amount of ₹2,90,10,162.50, the physical delivery of the said Government Security was not given to the complainant bank despite reminders, telephonic calls and visits.

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 failure to deliver physical securities in certain transactions. 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.

Despite the above nature of the allegations, a FIR being C.R. No. 03/2002 dated 16.07.2002 came to be registered at Gandevi Police Station alleging offences under Sections 406, 420 and 120-B IPC. Upon investigation, a chargesheet came to be filed, and ultimately, vide the impugned order dated 21.03.2025, charges were framed under Sections 420, 467, 468, 471, 114 and 120-B read with Section 34 IPC, without analysing whether the statutory



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ingredients of the said offences are disclosed from the material on record.

The impugned order framing charge is a non-speaking and unreasoned order, which does not identify any specific incriminating material against the Petitioner, does not analyse how the ingredients of Sections 420, 467, 468, 471, 114 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 Ld. Trial Court has also framed charges without affording the mandatory pre-charge hearing under Section 239 CrPC, which has been held to be obligatory by the Hon'ble Bombay High Court in *Bharat Uttam Rajurkar & Ors. v. State of Maharashtra, Criminal Writ Petition No. 1232 of 2017*. Non-compliance with this safeguard vitiates the entire exercise of framing of charge. The position of law has been consistently reiterated by the Hon'ble Bombay High Court in the following decisions, holding that an order under Section 239 CrPC must be a reasoned order reflecting judicial application of mind:

(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*

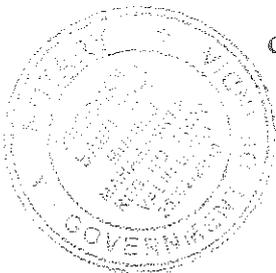


(iii) *Mohd. Sheikh Mujaffar S/o Shiek Rashid v. State of Maharashtra & Anr. Criminal Revision Application No. 74/ 2024 decided on 02.07.2024*

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

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



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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, 114 or 120-B IPC against the Petitioner, the mandatory safeguards of Section 239 CrPC have been breached, and the impugned order framing charges suffers from total non-application of mind. The continuation of criminal proceedings would amount to a misuse of the criminal justice system. The impugned order framing charges is therefore illegal, perverse, and liable to be set aside.

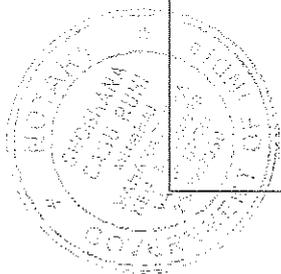
Hence the present Writ Petition.

#### LIST OF DATES

Sr.No.	Dates	Events
1.	1999-2002	Gandevi People's Co-operative Bank Ltd., being required to maintain Statutory Liquidity Ratio (SLR), carried out transactions of purchase and sale of Government Securities through



		<p>brokers, initially through Euro Asian Securities Limited and thereafter through Home Trade Limited, as recorded in the complaint.</p> <p>As stated in the complaint, the Bank paid an amount of ₹25,77,358.61 by cheque drawn on Maharashtra State Co-operative Bank Ltd. for purchase of Government Securities, and the transaction was executed.</p>
2.	16.01.2001 to 26.02.2002	<p>During this period, as stated in the complaint and charge-framing order, the Bank entered into several purchase and sale transactions of Government Securities with Home Trade Limited through issuance of multiple contract notes and payments through banking channels.</p>
3.	26.02.2002	<p>As per the complaint, the Bank purchased Government Security of 8.07% GOI 2017 under Contract Note No. 7437 involving an amount of ₹2,90,10,162.50, in respect of which physical delivery of the security was allegedly not given. The complaint further states that despite reminders, telephonic calls and visits, the physical</p>



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		delivery of certain Government Securities was not received by the Bank.
4.	16.07.2002	That thereafter, the Bank lodged an FIR bearing No. M- 3/2002 at Gandevi Police Station, Surat, alleging offences under Sections 406, 409, 420, 467, 468 and 120-B IPC, arising out of the alleged non-delivery of certain Government Securities.
5.	04.12.2002	That upon investigation, a Chargesheet No. 2/02 dated 04.12.2002 was filed against alleging commission of offences under Sections 406, 409, 420, 467, 468 and 120-B IPC against the accused persons including the Petitioner.
6.	21.03.2025	That the Ld. Trial Court passed the impugned order framing charges under Sections 420, 467, 468, 471, 114 and 120-B r/w 34 IPC against accused persons, including the Petitioner, and did so without first deciding any objections or conducting a hearing under Section 239 CrPC.



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7.	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, 471,114 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



- J
1. Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168
  2. Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1
  3. Vesa Holdings Pvt. Ltd. v. State of Kerala, (2015) 8 SCC 293
  4. Anil Mahajan v. Bhor Industries Ltd., (2005) 10 SCC 228
  5. G. Sagar Suri v. State of U.P., (2000) 2 SCC 636
  6. R.K. 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 On Line 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)

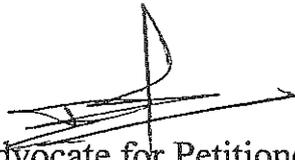


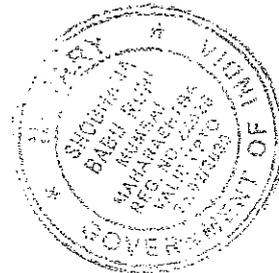
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16. Mahendra Nanjibhai Mehta v. State of Maharashtra, 2007  
SCC OnLine Bom 1084

Place: Mumbai

Date: 23/12/2025

  
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. 396/PW/2023 pending before the Ld. Chief Judicial Magistrate First Class, 47th Court, Esplanade, Mumbai.

AND

In the matter of impugned order dated 21.03.2025 passed by the Ld. Chief Judicial Magistrate First Class, 37th Court, Esplanade, Mumbai, thereby mechanically passing order framing charges against the Petitioner for offences under Sections 420, 467, 468, 471,114 and 120-B r/w 34 IPC.

Sanjay Hariram Agarwal

Aged: 60 years, Occ.: Business

Add: 7, Hari Sava Street, Kidderpore,

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...Petitioner

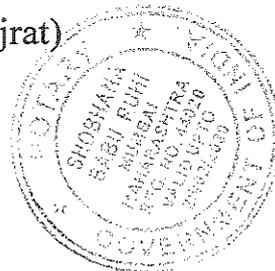
Versus

1) State of Maharashtra

2) State of Gujrat

(through Gandevi P.S., Gujrat)

...Respondents



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TO,

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

**HUMBLE PETITION OF THE**  
**PETITIONER ABOVENAMED**

**MOST RESPECTFULLY SHOWETH:**

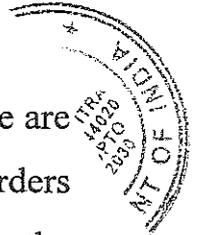
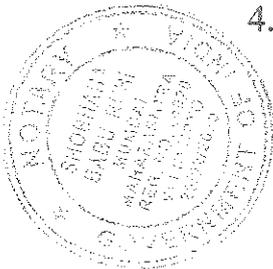
1. That the Petitioner is constrained to approach this Hon'ble Court under Section 397 Cr.P.C. to prevent grave abuse of the criminal process arising from the impugned order dated 21.03.2025 passed by the Ld. Trial Court, whereby charges under Sections 420, 467, 468, 471, 114 and 120-B r/w 34 IPC have been mechanically framed against him in connection with certain Government Securities (G-Sec) transactions between the Gandevi People's Co-operative 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. 396/PW/2023 pending before the Ld. Addl. Chief JMFC, 47th Court, Esplanade, Mumbai arises out of FIR No. I-03/02 registered with Gandevi P.S., Gujrat which was lodged alleging offences under Sections 420, 467, 468, 471 or 120-B of IPC against the 20 Accused Persons. It is submitted that multiple cases/ FIRs were lodged against the Petitioner in different States, which were



having common nature of allegations. Thus, the Petitioner had preferred a transfer petition before the Hon'ble Supreme Court and by order dated 09/09/2022, the transfer petition was allowed. The transfer petition was disposed of with the direction that cases be transferred from the courts, where those are pending, to the court of Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai. It was further directed that the Principal Judge would be at liberty to assign the cases to any of the Court situated in its jurisdiction to try all those cases. It is submitted that presently all these cases are pending before the Ld. Addl. Chief JMFC, 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**

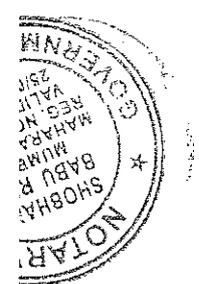
3. That the facts which only relevant for the present issue are mentioned in this Petition, though there are several orders in between which has no relevance to the issue raised in the present case for brevity and clarity. That the FIR No. I-03/02 dated 16.07.2002 was filed by Complainant Champakbhai R. Mali of Gandevi People's Co-operative Bank Ltd., alleging offences under Sections 406, 409, 420, 467, 468 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



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accordingly the Bank was carrying out purchase and sale of Government Securities through brokers.

5. That the complaint records that initially the complainant Bank entered into Government Securities transactions through Euro Asian Securities Limited and in October 1999, the complainant Bank paid an amount of ₹25,77,358.61 through cheque drawn on Maharashtra State Co-operative Bank Limited for purchase of Government Securities, and that the transaction was executed. Thereafter the complaint further records that in May 2000, Euro Asian Securities Limited was renamed as Home Trade Limited, and that Home Trade Limited was a member of the National Stock Exchange. The complaint records that the Bank thereafter carried out Government Securities transactions through Home Trade Limited.
6. That pertinently the complaint and the chargesheet expressly records that several Government Securities were purchased and sold in the course of such transactions and that payments were made through banking channels. The grievance, as stated in the complaint, pertains to alleged non-delivery of physical possession of certain Government Securities in respect of specific contract notes, including Contract Note No. 7437 dated 26.02.2002 for an amount of ₹2,90,10,162.50, which forms the subject matter of the present criminal proceedings.
7. That as per the prosecution case, the complainant bank records that in respect of several sale transactions, Home Trade Ltd. paid the difference amounts to the Bank, which were received by the Bank. Throughout the complaint, the

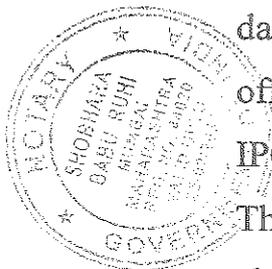


Bank narrates a that several Government Securities transactions was undertaken for SLR compliance, wherein:

- multiple purchase transactions were carried out,
- multiple sale transactions were carried out,
- payments were made through banking channels,
- contract notes were issued,
- difference amounts were paid by Home Trade Ltd., and
- the dispute is stated to have arisen only with respect to alleged non-delivery of physical securities in certain transactions.

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

8. That despite it being purely a commercial/ civil dispute arising from contract notes, surprisingly a FIR bearing No. M- 3/2002 came to be lodged at Gandevi Police Station, Surat, alleging offences under Sections 406, 409, 420, 467, 468 and 120-B of IPC in relation to the transactions between the Gandevi People's Co-operative 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.
9. That thereafter, upon investigation, a Chargesheet No. 2/02 dated 04.12.2002 was filed against alleging commission of offences under Sections 406, 409, 420, 467, 468 and 120-B IPC against the accused persons including the Petitioner. The Petitioner craves leave to refer and rely upon the chargesheet as and when required.



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10. 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, 114 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 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.

11. 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 or any act of abetment under Section 114 IPC.

12. 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:

### GROUNDS

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

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

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



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

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

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

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

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

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



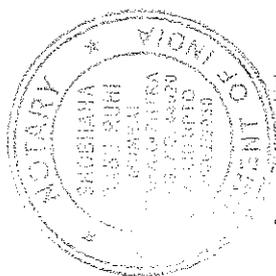
(v) *Khurshid Jaat Imran Jaat & Ors. v. State of Maharashtra – Criminal Revision Application No. 25 of 2025 decided on 24.02.2025*

B.4 That it is apt to quote on judgement out of many i.e. *Bharat Uttam Rajurkar & Ors. v. State of Maharashtra – Criminal Writ Petition No. 1232 of 2017* where the Hon’ble Bombay High Court (Nagpur Bench) held that the absence of a hearing was not a mere technicality but a substantive failure. His Lordships Justice S.B. Shukre, while quashing the charges, held:

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

The court in the above case further observed:

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



B.5 That the material on record does not disclose a prima facie case against the accused for Sections 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

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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, 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 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.*



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*State of Uttarakhand, Usha Chakraborty v. State of West Bengal, Naresh Kumar v. State of Karnataka).*

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

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



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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'."*

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."

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 the complaint itself records that the Complainant Bank had been engaging in Government Securities transactions through brokers over a period of time and that such transactions involved both purchase and sale of Government Securities through issuance of contract notes and payments through banking channels. 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.

D.6 That the complaint further records that in the course of such transactions, difference amounts were paid by Home Trade Ltd. to the Complainant Bank through cheques and



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banking channels, which payments were received by the Bank. Such adjustments and payments form part of the transaction narrative pleaded by the complainant itself.

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 for purchase and sale of Government Securities and receipt of payments. The grievance, as narrated, arises only in relation to alleged non-delivery of physical possession of certain Government Securities in respect of specific transactions.

D.8 That the complaint further shows that upon non-delivery, the Bank issued reminders and made repeated demands for delivery of securities, thereby treating the issue as arising out of the transactional dealings between the parties, rather than as an act of deception at the 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 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 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



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- 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 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. That in the present case, the charge-framing order refers in general terms to alleged forged documents such as SEBI certificates, government securities contracts and other related documents. However, neither the complaint nor the chargesheet specifies:

- which particular document is alleged to be false,
- who is alleged to have made such false document,



- in what manner such document answers the definition of a “false document” under Section 464 IPC, or
- whether any document was made in the name of another person, altered, forged or obtained by deception.

Thus, 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.

E.7. That 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 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 and 114 of IPC 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 Complainant



Bank through Home Trade Ltd. by issuance of contract notes and payment of amounts through banking channels. The complaint narrates a sequence of transactional dealings and alleges non-delivery of certain Government Securities, but does not plead any agreement, understanding or concerted plan between the accused persons to commit any illegal act.

F.3. That neither the complaint nor the chargesheet discloses any specific act, communication or circumstance from which a meeting of minds or prior agreement can be inferred. The allegations are omnibus in nature, arising from the same set of transactions, without delineating any role attributable to the present Petitioner to suggest conspiracy as understood under Section 120-B IPC.

F.4. That similarly, Section 114 IPC contemplates abetment by presence, namely that the accused must have abetted the commission of an offence and must be present at the time when the offence is committed. The foundational requirement is the existence of a principal offence coupled with a prior act of abetment. In the instant case, the complaint and chargesheet do not plead any act of instigation, intentional aiding or conspiracy attributable to the present Petitioner, nor do they disclose how the Petitioner is alleged to have abetted the commission of any offence while being present at the time of its commission.

F.5. That the charge-framing order invokes Sections 120-B and 114 IPC in a composite and mechanical manner,



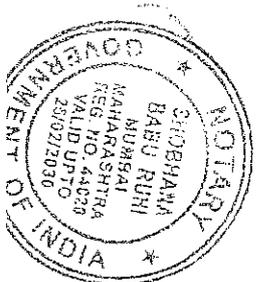
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without identifying the factual basis for either a prior agreement constituting conspiracy or any act of abetment as statutorily required. In the absence of such foundational pleadings, the invocation of Sections 120-B and 114 IPC is wholly unsupported by the material on record.

F.6. That the invocation of Section 120-B and 114 of IPC appears to be purely mechanical, without any reference to the statutory requirements or supporting material. A conspiracy any act of abetment 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 charges under Section 120-B and 114 of 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 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*

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*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 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.

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



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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.

### PAYER

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. 396/2023, whereby charges have been framed against the Petitioner for offences under Sections 420, 467, 468, 471, 114 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. 396/2023, be stayed;

- c. Pass any such other or further orders and/or directions as this Hon'ble Court may deem fit, proper, just and equitable in the facts and circumstances of the case.

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

Mumbai,

Date: 23.12.2025

  
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 23<sup>rd</sup> day )

December, 2025 )

  
Identified by me

  
Petitioner

BEFORE ME



BEFORE ME

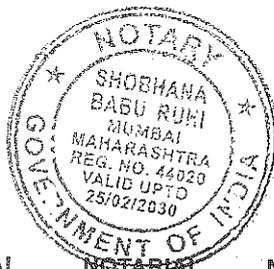
  
23-12-2025

SHOBHANA BABU RUHI  
NOTARY  
Government of India  
Mumbai Dist.



S. No. 047 P. No. 21

NOTARY Register... 07 Date... 23/12/25



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Exh-A

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C. C. No. 396/PW/2023

EXH \_\_\_\_

IN THE COURT OF THE ADDL. CHIEF JUDICIAL MAGISTRATE,  
37TH COURT, ESPLANADE, MUMBAI.  
C. C. No. 396/PW/2023

CHARGE

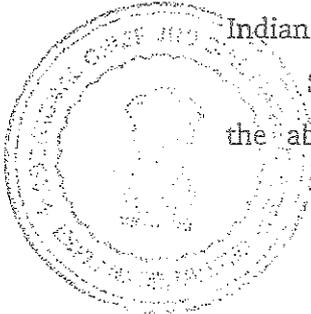
I, Vinod R. Patil, Addl. Chief Judicial Magistrate, 37<sup>th</sup> Court, Esplanade, Mumbai do hereby charge you:

1. Ketan Kantilal Seth
2. Sanjay Hariram Agrawal
3. Nandkishor Shankarlal Trivedi
4. Subodh Chanddayal Bhandari
5. Niraj Amidhar Surti

as follows :

That you accused No.1. Ketan Kantilal Seth being Director, accused No.2. Sanjay Hariram Agarwal being Chairman and Chief Executive, accused No.3. Nandkishor Shankarlal Trivedi being Secretary and Executive Director, accused No.4. Subodh Bhandari being Authorized Signatory and accused No.5. Niraj Amidhar Surti being Secretary and Executive Director of Hometrade Limited Hometrade Limited along with other absconding accused from 16.01.2001 to 26.02.2002 at Gandevi People's Co.Op. Bank Ltd. in furtherance of your common intention cheated the informant the Adajan Nagrik Sahkari Bank by dishonestly inducing it to deliver an amount of Rs.2,90,162.50/- to M/s. Home Trade Limited to purchase government securities and the security was not given to the informant 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



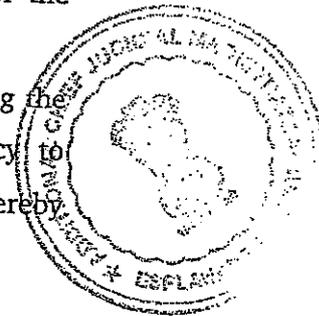
intention forged documents namely SEBI certificates, government securities contracts, and other related documents purported to be a valuable security and thereby committed an offence punishable under section 467 r/w. 34 of the Indian Penal Code and within my cognizance.

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



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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.

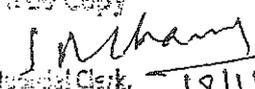
  
(Vinod R. Patil),  
Addl. Chief Judicial Magistrate,  
37<sup>th</sup> Court, Esplanade, Mumbai

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

Applied on .....  
Granted on 20/3/25  
Recd. on .....  
Delivery on 23/3/25



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

True Copy  
  
Judicial Clerk, - 19/11/25  
Additional Chief Judicial Magistrate's,  
47<sup>th</sup> Court, Esplanade, Mumbai.

T-C  
se  
Adv

Daily Status

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

CNR Number. :MHMM110044182023

Case Number. :Police Cases PW/4700396/2023

GANDEVI POLICE STATION Versus KETANBHAI KANTILAL SHETH

Date :21-03-2025

Business	: Ld. APP present. All accused present with Advocates. Exh. 223 - Charge framed against all accused. Exh. 224 - Plea of accused no. 1 recorded. Exh. 225 - Plea of accused no. 2 recorded. Exh. 226 - Plea of accused no. 3 recorded. Exh. 227 - Plea of accused no. 4 recorded. Exh. 228 - Plea of accused no. 5 recorded. Accused no. 1 to 5 pleaded not guilty. Exh. 229 - Application for issue summons to Informant and Investigation Officer filed by Ld. APP. Order - Issue summons as prayed. Exh. 230 - Vakalatnama on behalf of accused no. 3 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	

Dr. C  
Adv

Exh-B . 34

**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

cases of which transfer are being sought -

Validity unknown  
Digitally signed by  
GEETA (GUJARAT)  
Date: 2022.09.28  
17:58:52  
Reason:

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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

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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

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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

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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.**

P-C  
K  
Adv

**First Information Report****(U/s 154 of CrPC)****Gandevi Police Station M Case no. 3/02**

1. Sub-District: Navsari District: Navsari Time of offence: At any time  
From Date: 26/02/2002 till date.

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1. Date and time of reporting of the offence: Date: 16/07/02 Time: 14:30 o'clock.
2. Place of offence and the direction and distance from PS: at Gandevi People's Co. Op. Bank Ltd., on the east at 200 m, Town Beat, Ta. Gandevi.
3. Date of sending from Police Station: 16/07/2002
4. Name and address of the complainant / informer: Champakbhai R. Mali, aged about 55, occupation: Business, Res. Uganam Street, Gandevi, Ta. Gandevi, Dist. Navsari.
5. Name and addresses of the accused:
- (1). Home Trade Ltd
  - (2). Nandkishor Shankarlal Trivedi
  - (3). Ketan Sheth
  - (4). Vijay Hariram Agrawal
  - (5). Subodh Bhandari
  - (6). Hiten Bhupendra Shah
  - (7). Hiren Gada
  - (8). Sashank Gopal Ranade
  - (9). Vijay Himmatlal Modi
  - (10). Salil Dinkarlal Gandhi, All residents of Mumbai

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- (11) Allen James
- (12) Rasal Bank Vegar, No. 11-12 both residing at USA
- (13) Mike alias Manoj Ambelal Shah, Res.
- (14) Dhananjay Agrawal
- (15) Shilpa Hiten Shah
- (16) Jagruti Ketan
- (17) Kanan Mevawala
- (18) Ketan R, Maskariya, No. 14 to 18, R/o. Mumbai.
- (19) Niraj Surati
- (20) Smt. Kruti Niraj Surati, No. 19-20 both R/o. Bharuch.

6. Brief Fact of Offence and if any property stolen, its short description:

Under IPC Section-406, 420, 120B. The fact of the offence is that at the above mentioned time and place, the accused persons mentioned in column no. 5, the office bearers of Home Trade Ltd, Mumbai, committed fraud of Rs. 2, 90,162.50/-, the amount that was given to the accused by Gandevi People's Co. Op. Bank Ltd to purchase the government securities, and the accused caused financial damage to the bank by hatching the conspiracy and committed fraud.

7. Action taken regarding the investigation and the explanation in case there is delay in writing down the first information.

Sd/- Illegible

PSI, Gandevi (PSO)

Write the first information below and obtain the signature or thumb impression of the informer to confirm that it is true, and the officer writing down the first information will put his countersignature.

In the Court of Hon'ble Judicial Magistrate,

Criminal Case No. 11/2002

Complainant: Champakbhai R. Mali, aged about 55 years, occupation: Job,  
Res. Ugaman Street, Gandevi, Ta. Gandevi, Dist. Navsari.

Res.

(1) Home Trade Limited, Address: Mittal Court, "A" Wing, 143, 14<sup>th</sup> Floor, Nariman Point, Mumbai-400021. (2) Mr. Nandkishor Shankarlal Trivedi, aged 45, occupation: Business, Res. Devbhuvan, 2<sup>nd</sup> floor, Chira Bazaar, Mumbai. (3) Mr. Ketan Kantilal Sheth, aged about 40, occupation: business, Res. 193, Lalit Kutir, Gulmahor cross road, Road No. 9, Juhu, Mumbai. (4) Mr. Sanjay Hariram Agrawal, aged about 35, occupation: business, Res. Juhu, Shalimar CHS Gulmahor cross road no. 10, Juhu, Mumbai. (5) Mr. Subodh Bhandari, aged about 46, occupation: business, Res. 704-B, Govind Complex, Sector No. Vasi, Vubre, Navi Mumbai-400705. (6) Mr. Hitendra Bhupendra Shah, adult aged, occupation: business, Res. 102, Gandhi Nivas, Ashok Nagar road, Vakola, Shantakruz, Mumbai-400055. (7) Mr. Hiren Gada, adult aged, occupation: business, senior vice president, Home Trade Limited, Address: Mittal Court, 'A' Wing, 143, 14<sup>th</sup> Floor, Nariman Point, Mumbai-400021. (8) Mr. Sashank Gopal Ranade, aged 40, occupation: business, Res. 3/1, Radhakrishna Nivas, Ground Floor, SK Bole Road, Dadar (CWJ), Mumbai. (9) Mr. Vijay Himmatlal Modi, aged about 46, occupation: Business, Res. A-203, Amita Co. O. Housing Society, Kulupavadi road, Borivalli (East), Mumbai-400063. (10) Salil Dinkarlal Gandhi, aged about 43, occupation: Business, Res. 11/13, Gold Coin Co. O. Ha. Society, Tardev, Mumbai-400034. (11) Allen James Macmillan, aged about 41 years, occupation: Business, Res. 785, Castro Street, Montague, CA-94041, USA. (12) Rasal Bankcam Vegar, adult aged, occupation: business, Res. Timber Hill Terrace, Aayan Field, M. A. 1940,

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USA. (13) Mr. Mike alias Manoj Ambelal Shah, aged about 58 years, occupation: Business, Res. Belari road, RMV Extension, Bangalore-506080. (14) Mr. Dhananjay Agrawal, adult aged, occupation: business, Director, Home Trade Ltd., Address: Mittal Court, 'A' Wing, 143, 14<sup>th</sup> Floor, Nariman Point, Mumbai-400021. (15) Smt. Shilpa Hiten Shah, adult aged, occupation: Business, Res. 102, Gandhi Nivas, Ashok Nagar Road, Vakola, Shantakruz, Mumbai-400055. (16) Smt. Jagruti Ketan Sheth, adult aged, Res. 193, Lalit Kutir, Gulmahor Cross Road, Road no. 9, Juhu, Mumbai. (17). Kanan Mevawala, aged about 28, occupation: Business, Res. Jayant Mahal, 5<sup>th</sup> Floor, Opp. Vankhede Stadium, Marine Drive, Mumbai. (18). Mr. Ketan R. Maskariya, aged about 35 years, occupation: business, Director, Home Trade Ltd., Address: Mittal Court, 'A' Wing, 143, 14<sup>th</sup> Floor, Nariman Point, Mumbai-400021. (19) Mr. Niraj A. Surati, aged about 34, occupation: Business, Res. Surya Flats, 1<sup>st</sup> Floor, above Surya Shopping Complex, Sevashram Road, Bharuch-392001. (20). Smt. Kruti Niraj Surati, adult aged, occupation: business, Res. Matru Ashish, beside Rungata Eye Hospital, Singhvai road, Bharuch-392001.

Gandevi People's Co. O. Bank has been established as per the Gujarat Cooperative Act and its sub-rules and in order to do the banking work, Reserve Bank of India, Ahmedabad has granted necessary license to the bank for the banking activities. The head office of our bank is located at Gandevi and the other offices are located at Bilimora and Chikhali. The Board of Directors of the bank, vide the resolution no. 2 (A) 3 dated 19/05/2002. has authorized me the complainant to carry out legal proceedings against the accused of this case. Accordingly, I have lodged the present complaint against the accused of this

Accused no. 1 has the firm titled Messrs Home Trade Limited and the said firm is registered in the National Stock Exchange as the share and stock broker and the accused no. 1 to 18 of this case are the directors of the said firm,

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while accused no. 19 and 20 are doing business at Bharuch and he identify himself as the agent of the firm of accused no. 1 and he has stated so before me the complainant.

I, the complainant, trusted his statements and accepted him as agent of Accused No. 1's firm while proceeding with the transactions. Accused Nos. 2 to 18 directly manage and oversee the operations of Accused No. 1's firm, making them responsible for its administration. Accordingly, the present complaint has been filed against the accused.

(3) In this case, Accused No. 3, Mr. Ketan Sheth, is a leading stockbroker in Mumbai. He presented himself as a reputed stockbroker and, around 1999, claimed to be a director of Euro Asian Securities Limited, which was a member of the National Stock Exchange. The said company operated under the Banking Regulation Act of 1949. Additionally, all cooperative banks were mandated to comply with the Reserve Bank of India's directives, and accordingly, the complainant bank was also required to invest in government securities through the SLR (Statutory Liquidity Ratio).

Based on the above facts and legal requirements, and trusting the statements of Accused No. 3, Ketan Sheth, in October 1999, the complainant bank paid ₹ 25, 77,358.61 via cheque number 33956 drawn on Maharashtra State Co-operative Bank Limited, Mumbai, for the purchase of government securities. The accused ensured that the transaction was executed in a manner that satisfied the complainants.

Later, in May 2000, Accused No. 3, Ketan Sheth, along with Accused No. 4, Sanjay Agarwal, and Accused No. 2, Nandkishor Trivedi, visited the complainant bank's main branch and informed that they had changed the name of Euro Asian Securities Limited to Home Trade Limited. They stated that Home Trade Limited was a member of the National Stock Exchange, and its management consisted of highly skilled technocrats. They requested that future government securities transactions be conducted through Home Trade Limited.

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Additionally, the accused claimed that another sister company of Home Trade Limited, Ways India Limited, was engaged in business transactions involving celebrities like Shah Rukh Khan, Hrithik Roshan, Sachin Tendulkar, and Priyanka Chopra. They invited the complainant bank's directors to visit their office in Mumbai to understand the company's operations firsthand. Due to this request, the complainant bank's directors visited the accused company's software park office in Navi Mumbai. The said office was ultra-modern (some sentences are missing), and as per the accused's statements, most stock exchange operations in Mumbai were handled through their firm.

From the beginning, the accused misrepresented information to the complainant bank, making false claims and attempting to build a misleading reputation for efficient operations.

(6). Trusting the statements of the accused and to maintain the SLR (Statutory Liquidity Ratio), we, the complainants, engaged in the following financial transactions with the accused:

Details of Financial Transactions:

(A) In October 1999, a transaction was made to purchase government securities worth ₹25, 77,358.61. Payment was made via cheque number 63956 from Maharashtra State Co-operative Bank Limited.

(B) In May 2002, among the accused, Ketan Sheth, Sanjay Agarwal, and Trivedi visited Gandevi and informed that the firm previously known as Euro Asian Securities Limited had been renamed as Home Trade Limited. They claimed that Home Trade Limited was involved in government securities transactions and was a member of the stock exchange. They further requested future transactions to be conducted through their firm. Additionally, they presented Home Trade Limited as a highly professional institution managed by

expert professionals. They said that prominent personalities such as Shahrukh Khan, Hrithik Roshan, Sachin Tendulkar, and Priyanka Chopra were involved in expanding the firm's operations.

Taking their representation and request into consideration, we visited their office in Navi Mumbai. They provided (1-2 sentences missing).

(C) As per the representation of the accused, on 16/01/2001, we had asked to purchase government securities and provided the accused with contract note numbers 6405 and 6407, dated 16/ (unclear). The contract was valued at ₹1,98, and 95,641.66.

(D) Vide Contract Note No. 6403 and 6 (illegible/ unreadable) of the accused, we had purchased the securities and in this regard we were supposed to make the payment of Rs. (illegible/unreadable) and in this regard, we have deposited the said amount vide cheque no. 069109 of HDFC Bank.

(E) As the second deal, we asked the accused to sell the government securities of Rs. 2,21,90,375/-, the accused had given the contract note no. 6815 and 6817 in this regard and we had given the securities to the accused in this regard. Against the said selling, we had purchased the security of GOI 2015 of 9.85% of Rs. 2,02,38,305.56 vide the contract note no. 6813 of the accused and the accused had paid the amount of difference of Rs. 19,52,069.44 paisa. Despite this, the accused had not given the physical possession of the securities of the note no. 6813.

(F). During the period of November, 2001, we had asked the accused to give the security of the note no. 381 (Illegible). So, the accused said that the said security will bring benefit at the time of selling. So, we had asked the accused to sell the said security and the accused had said that the said security has been

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sold at the price of Rs. 2,16,68,694.44 vide contract note no. 6867 dated 15/11/2001.

(G). In order to fulfill the requirement of SLR, we had asked the accused to purchase the security of GOI 2019,10.03%, and the accused had given the contract note no. 6869 dated 15/11/2001 of Rs. 2,72,93,665.67 in this regard, the accused had given the note no. 6869 dated 15/11/2001 of Rs. 2,72,93,665.67 in this regard, and we had paid the amount of difference of Rs. 56,24,972.23 paisa to the accused vide the cheque no. 297812 of HDFC bank. In this regard, the accused were supposed to give the security to us in December 2001.

(H). During the period of date 13/12/2001, instead of accepting the delivery of the said security, we the complainant had asked the accused to sell the said security and in this regard, the accused had given the contract note no. 6939 dated 16/12/2001 of Rs. 2,90,16,743/-.

(I). In order to fulfill the requirement of our SLR, we had (one line missing in photocopy of source language) purchased the security vide contract note no. 6941 dated 16/12/2001 of Rs. 2, 79,333.33 and the accused has paid the amount of difference of Rs. 10, 58,409.33 paisa was paid to us by the accused vide the cheque, and the accused was supposed to make the delivery of the said security to us the complainant. In this regard, we had asked the accused and the accused had sent the contract note no. (Illegible/missing in photocopy) dated 26/02/2002 of Rs. 2, 86, 79,062.50 paisa to us.

(7). To fulfill our requirement, we had asked the accused of this case to purchase the security of GOI 2017, 6.07%. So, the accused has given the contract note no. 7437 dated 26/02/2002 of Rs. 2, 90, 10,162.50 paisa and the accused were supposed to give the said security to us the complainant. But the accused, in connivance with one another from the very beginning, misrepresented themselves before us and enticed us with mala fide intention

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and siphoned off crores of rupees from us and it will cause financial damage to us. Despite knowing this, the accused obtained the amount from us and embezzled the money for their personal benefit and committed fraud of crores of rupees with us and despite our repeated demands, the accused do not return the security of the note no. 7437 dated 23/02/2002 of 8.07% GOI 2070 to us, do they give it to us, and despite the fact that we the complainant made repeated attempts to contact the accused on phone, fax and in person now and again, the accused do not come to their usual business place, nor do they come to their residential place, nor do they give us the security that we have been demanding from them. They do not act as per what they have promised to us. Then, we came to know from the newspapers, TV and the other sources that the accused who had purchased the security of the contract note no. 2017 dated 26/02/2002 of Rs. 2,90,10,162.50 paisa and the accused of this case have (last bottom line of the source language is missing) and the accused intentionally committed the said acts mentioned in the complaint with us the complainant and have committed the offences of serious nature punishable under IPC Section 406, 420, 421 etc., therefore, on 09/07/2002, I lodge my complaint against the said accused. My witnesses are as follows.

- (1). I complainant myself
- (2). Mr. Akshay R. Desai, Director, The Gandevi People's Co. Op. Bank Ltd,  
Res. Gandevi.
- (3). Mr. Mukesh Mehta, Director, The Gandevi People's Co. Op. Bank Ltd.,  
Res. Bilimora.
- (4). Mr. Manharlal D. Shah, Director, Gandevi People's Co. Op. Bank Ltd.,  
Res. Gandevi.

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- (5). Mr. Kishor T. Patel, Director, The Gandevi People's Bank Ltd., Res. Gandevi.
- (6). Mr. Gulabbhai B. Patel, Director, The Gandevi People's Bank Limited, Res. Gandevi.

If required, we will produce further witnesses in connection with the investigation.

Date: 10/07/2002.

Acknowledgement

Today I the complainant do acknowledge at Gandevi and state that the above facts stated in the complaint are true and correct to be best of my knowledge and belief.

Date: 10/07/2002.

The above written complaint was received from Hon'ble Judicial Magistrate First Class, Gandevi, bearing outward no. 763/02 it being Criminal Miscellaneous Application No. 11102 dated 12/07/2002 for investigation, the offence has been registered with Gandevi Police Station vide CR No. 03/02 date: 16/07/2002 and the report under Section 157 has been made.

Sd/- Illegible

Police Sub Inspector

Gandevi

Dispatched with compliments to:-

Hon'ble Judicial First Class Magistrate, Gandevi Court

Date: 16/07/2002.

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Exh-2

To,  
Hon'ble Judicial Magistrate First Class,  
Gandevi.

I, A. M. Sarang, Circle Police Inspector, Bilimora, kindly report that,  
In connection with Gandevi Police Station M-Case No. 3/2002 registered  
under IPC Section- 406, 409, 420, 120b, 467, 468, accused Ketan Kantilal  
Sheth, aged 40, Res. 193, Lalit Kutir, Gulmahor Crossroad No. 9, was arrested  
at 22:00 o'clock on 06/09/2002 and has been sent to the Court custody of this  
Hon'ble Court in time. It is requested to take him in the Court custody.

Date: 07/09/2002

Sd/- Illegible  
(A. M. Sarang)  
Circle Police Inspector  
Bilimora

The accused produced before me on 07/09/2002 at 18:00 hrs. There is no  
complaint against the police. Released on bail. Taken in police custody till  
12:09:2002.

Sd/- Illegible Judicial Magistrate, First Class, Gandevi. 07/09/2002.

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Exh-3

To,  
Hon'ble Judicial Magistrate First Class,  
Gandevi.

Subject: To grant 12 days' police custody remand of the accused in connection with Gandevi Police Station M-Case No. 3/2002 under IPC section-406, 420, 467,468,120b.

I, A. M. Sarang, Circle Police Inspector, Bilimora, kindly report that,

In connection with Gandevi Police Station M-Case No. 3/2002 under IPC section-406, 420, 467,468,120b, The Gandevi People's Co. Op. Bank Ltd., Gandevi had given the contract note no. 7437 dated 26/02/2002, 8.07% GOI 2070, Rs. 2,90,10,162.50 to the director Ketan Kantilal Sheth, and other office bearers of Home Trade Ltd, Mumbai to purchase the government securities. The office bearers of Home Trade gained the trust of the office bearers of the bank committed fraud with the bank.

The accused Ketan Kantilal Sheth, aged 40, Res. 193, Lalit Kutir, Gulmahor Cross Road No. 9, JVPD Scheme, Andheri West, Mumbai, No. 49, the director of Home Trade Ltd, Mumbai has been arrested at 22:00 o'clock on 06/09/2002 and the presence of the said accused is required in connection with the investigation for the following reasons, therefore, it is requested to grant 12 days' police custody remand of the said accused in connection with the investigation. The copy of the case diary of the investigation is attached herewith.

- (1). To collect the documents of the contract related to the government security made with The Gandevi People's Co. Op. Bank Ltd, Gandevi from Mumbai.
- (2). To investigate who others are involved in forging the contract Note issued regarding the security?

- (3). To investigate in which banks the amount of Rs. 2,90,10,162.50 invested in the security has been invested at Mumbai?
- (4). To find out whether the amount of the security has got deposited in the bank of RBI at Ahmedabad? And in order to collect the related documents.
- (5). Since only this accused know the co-accused of this offence, therefore, he will have the information about the co-accused regarding their addresses and residences, therefore, in order to carry out the investigation at Mumbai, Bharuch and at Ahmedabad in this regard.

For the reasons stated above, the accused Ketan Kantilal Seth, residing at 193, Lalit Kutir, Gulmahor Cross Road No. 9, Andheri West, Mumbai No. 49, is very much required for the investigation, as other accused can be reached through him. Additionally, his presence is necessary to ascertain in which banks/companies in Mumbai the funds of the securities purchased by Gandevi People's Co. Op. Ltd., Gandevi, have been invested. His presence is also required for investigations in Mumbai, Bharuch, and Ahmedabad. Therefore, considering the above reasons, it is requested to grant 12 days' police custody remand of the accused in the interest of justice.

The copy of the case diary of the investigation is attached herewith.

Date: 07/09/2002

Sd/- Illegible  
(A.M. Sarang)  
(Circle Police Inspector)  
Bilimora

ORDER:

Heard. Taking into account the seriousness of the case, to ensure that the police is given the chance of investigation, the accused is sent to police custody remand till 05:00 o'clock of 12/09/2002.

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Sd/- Illegible

07/09/2002

Judicial Magistrate, First Class, Gandevi.

Sd/- Illegible

Accused and remand warrant received.

CPI (Circle Police Inspector)

64

**Exh-4**

**In the Court of Hon'ble Judicial Magistrate First Class of Valsad.**

**M. Case No. 3/2002**

**Complainant: The State Government**

**Accused : Ketan Kantilal Sheth**

**103, Liberty Apartment, Sarojini road, Vile Parley,  
(West), Mumbai.**

**Whose advocates**

**Mr. Ayaz Ahmad Shekh (M. Sc., LLB)**

**Mr. Anish K. Ghanchi (B. Com., LLB)**

**Mr. Manish N. Rana (B. A., LLB)**

**Mr. H. M. Kureshi**

Have been appointed as an advocate to represent me in court, manage the case, conduct private negotiations, sign on my behalf in those negotiations, and handle all matters related to the said case.

In witness thereof, we have signed on the date 7-9-2002.

We the advocates are not the members of the welfare fund.

**Signature**

1. Sd/- Illegible

2. ....

3. ....

4. ....

5. ....

Sd/- Illegible

Sd/- Illegible

Sd/- Illegible

65

111

Sd/- Illegible

Address:-

Ayaz Ahmad Shekh,  
M. Sc., LLB, Advocate,  
G-1, Imam Apartment,  
Dhanbhura Road, Valsad.  
Tel. O. 56574 R. 43539

Exh-5

To,  
Hon'ble Judicial Magistrate First Class,  
Gandevi.

I, A. M. Sarang, Circle Police Inspector, Bilimora, kindly report that,

In connection with Gandevi Police Station M-Case No. 3/2002 registered under IPC Section- 406, 409, 420, 120b, 467, 468, accused Ketan Kantilal Sheth, aged 40, Res. 193, Lalit Kutir, Gulmahor Crossroad No. 9, was arrested at 22:00 o'clock on 06/09/2002 and the police custody remand of the accused was received till 17:00 o'clock of 12/09/2002, therefore, as the remand period of the said accused is ending, he has been sent to the Court custody of this Hon'ble Court today in time and it is requested to take him in the Court custody. The warrant of the accused is attached herewith.

Date: 12/09/2002.

Sd/- Illegible  
(B. M. Sarang)  
Circle Police Inspector  
Bilimora

The accused was produced before me at 17:00 hrs. On 12/09/2002. There is no complaint against the police. Released on bail. Taken in the Judicial Custody till date: .....

Date: 12/09/2002.

Sd/- Illegible  
Judicial Magistrate, First Class,  
Gandevi.

67  
Exh-6

To,  
Hon'ble Judicial Magistrate First Class,  
Gandevi.

Subject: To grant 04 days' police custody remand of the accused in connection with Gandevi PS M Case No. 3/2002 under IPC Section 406, 409, 420, 467, 468, 120B.

I, A. M. Sarang, Circle Police Inspector, Bilimora, kindly report that,

In connection with Gandevi Police Station M-Case No. 3/2002 registered under IPC Section- 406, 409, 420, 120b, 467, 468, accused Ketan Kantilal Sheth, aged 40, Res. 193, Lalit Kutir, Gulmahor Crossroad No. 9, was arrested at 22:00 o'clock on 06/09/2002 and the police custody remand of the accused was received till 17:00 o'clock of 12/09/2002, but for the below mentioned reasons, the investigation has remained uncompleted and the presence of the accused is very much required during the investigation. Therefore, it is requested to grant 04 days' police custody remand of the accused in the interest of justice in connection with the investigation.

- (1). The presence of the accused is required at the office of the Registration of Companies (ROC), at Pune.
- (2). In order to conduct the live detective test of the accused at Ahmedabad.
- (3). To conduct the investigation of the co-accused who are involved in the office with the accused.
- (4). As the record regarding the financial transactions made by Home Trade Ltd and the accused made in different banks will become available in Mumbai in 2 days, and in order to interrogate the accused on the basis of the said information regarding the financial transactions, the presence of the accused is required.

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(5). As the statements of the officers of Reserve Bank of India, Ahmedabad who had conducted the audit of the Gandevi People's Bank are to be taken, the accused and the bank audit officer will be cross-interrogated, and therefore, the presence of the accused is required.

For above reasons, the presence of the accused is necessary in connection with the investigation, therefore, it is requested to grant 04 days' police custody remand of the accused.

Sd/- Illegible

(C. M. Sarang)

Circle Police Inspector, Bilimora

*Heard. In order to see that the police gets enough chance of the investigation, it is ordered to grant the 05 days' police custody remand of the accused till 13/07/2002.*

*Sd/- Illegible, 12/07/2002*

*Judicial Magistrate, First Class, Gandevi*

The custody of the accused and the warrant have been received.

Sd/- Illegible, PC 754

69

Exh-7

To,  
Hon'ble Judicial Magistrate, First Class,  
Gandevi.

I, A. M. Sarang, Circle Police Inspector, Bilimora, kindly report that,  
In connection with Gandevi Police Station M-Case No. 3/2002 registered under IPC Section- 406, 409, 420, 120b, 467, 468, accused Ketan Kantilal Sheth, aged 40, Res. 193, Lalit Kutir, Gulmahor Crossroad No. 9, Andheri West, Mumbai, was produced on 12/09/2002, and his one day police custody remand was received till 17:00 o'clock of 13/09/2002. As the remand period of the said accused is ending today, he has been sent today to take him in the Court custody in time. Therefore, it is requested to take him in the court custody. The original warrant is attached herewith. This is for your kind information.

Date: 13/09/2002

Sd/- Illegible

(A.M. Sarang)

Circle Police Inspector

Bilimora

The accused was produced before me at 17:00 o'clock on 13/09/2002, and he has not made any complaint against the police, and has got released on bail. Taken in the judicial custody till 27/09/2002.

Date: 13/09/2002

Sd/- Illegible

Judicial Magistrate, Gandevi.

The custody of the accused and the warrant have been received.

Sd/- Illegible

PC 754

70

Exh-8

Navsari Town Police Station.

Date: 12/09/2002. Exh-8

To,  
Hon'ble J. C. J. (JD) and  
Judicial Magistrate, First Class,  
Gandevi.

Subject: To hand over the custody of the accused through  
transfer warrant.

I, R. S. Patel, Police Sub Inspector, Navsari Town Police Station, kindly  
report that,

In connection with the offence registered with Navsari Town Police  
Station vide I-CR No. 93/2002 under IPC Section 406, 409, 420, 421, 422, 423,  
467, 468, 120B, 34, accused Ketanbhai Kantilal Sheth (Shah), aged 42, Res.  
193, Lalit Kutir, CHS, 3<sup>rd</sup> floor, JVPD, Mumbai - 40049 is still to be arrested  
in the said offence, and at present he is in the police custody of Gandevi Police  
since 22:30 o'clock of 06/09/2002 in connection with Gandevi Police Station  
M-Case No. 3/2002 registered under IPC Section-406, 409, 420, 467, 468 etc.,  
a transfer warrant of my name has been obtained from Hon'ble Chief Judicial  
Magistrate, Navsari in order to arrest the said accused in connection with  
Navsari Town Police Station vide I-CR No. 93/2002 under IPC Section 406,  
409, 420, 421, 422, 423, 467, 468, etc., is annexed herewith, therefore, it is  
requested to grant the custody of the accused to us once his custody in Gandevi  
Police Station is over. This is for your kind information. Date: 13/09/2002.

Sd/- Illegible

Police Sub Inspector

Navsari Town Police Station

T.C  
re  
Adh

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

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.

OF 2025

Dist.: -Mumbai

Sanjay Hariram Agarwal

) ...Petitioner

V/s

State of Maharashtra & Anr.

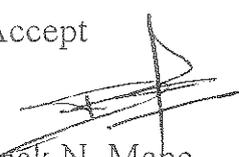
) ... Respondents

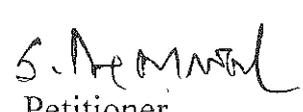
VAKALATNAMA

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

IN WITNESS WHEREOF, we have set and subscribed our respective hands to this writing on this      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

  
S. Harimani  
Petitioner  
(Sanjay Hariram Agarwal)  
petitioner



