

IN THE COURT OF THE LEARNED ACMM, 47TH COURT,

ESPLANADE, MUMBAI

CRIMINAL CASE NO. PW/480/2023

THE STATE OF MAHARASHTRA ... COMPLAINANTS

VS.

SANJAY HARIRAM AGARWAL ... ACCUSED

**WRITTEN STATEMENT OF ACCUSED NO. 1 UNDER SECTION 313(5) OF THE
CODE OF CRIMINAL PROCEDURE, 1973.**

MAY IT PLEASE YOUR HONOUR:

I, Sanjay Hariram Agarwal, S/o Hariram Agarwal, aged about 60 years, occupation: Business, R/o. 7 Hari Sava street, Kidderpore Kolkata – 700023, accused no. 1 in the above matter, most respectfully submit this written statement under section 313(5) CrPC as under:

1. I have carefully read and understood the entire evidence recorded during the course of the trial and have also perused all the documents exhibited therein.
2. I state that this written statement is being filed by me strictly in my personal capacity and not in any representative capacity for Home Trade Limited [Hereinafter referred to as “company”] as the said company is not in operation since 2005. And I have no authority.
3. That based on the record, the allegations against me seems to be that one Triveni Singh, Senior Executive (Legal Cell) of M/s Bajaj Capital Ltd., has filed a complaint dated 3rd May 2002, alleging that during the period of 18th January 2002 to 21st February 2002, of M/s Bajaj Capital Ltd. had paid an amount of Rs. 1,42,65,096/- to M/S Home Trade Ltd., which is an approved Share and Govt. Security Broker and a member of Pune Stock Exchange and is also registered with SEBI under regd. No. INB 110624638. The said payment alleged as entrustment in the complaint is for the purchase of securities listed therein in the annexure of the complaint. In view of this

transaction, Deal confirmation notes, bills and contract notes were exchanged between both the companies. It is alleged that Home Trade Ltd. has failed to give the physical delivery of the securities to M/s Bajaj Capital Ltd and it misappropriated the entrusted amount. It is thus alleged that M/s Home Trade Limited and its directors have committed offences under section 120B read with 409 and 403 of Indian Penal Code.

4. Based on the above said allegations in the complaint, an FIR has been registered under section 409 r/w section 120B, IPC on 04.05.2002 and a chargesheet has been filed by the IO 16.10.03u/s 120B/409/420 IPC. Further, charges have been framed against me under section 120B of IPC r/w Section 420 IPC or in the alternative section 120B of IPC r/w Section 409 IPC vide an order dated 31.10.2014.
5. I state that I have been arrayed as an accused merely on the basis of my designation as a CEO of Home Trade Limited for the period in issue and not on the basis of any specific allegation, or evidence personally attributable to me.
6. I categorically deny all allegations of criminal breach of trust, conspiracy, cheating, misappropriation, dishonesty, or any other wrongful act alleged against me. I have never acted with any criminal intention, nor have I participated in any conspiracy, nor derived any personal benefit, gain, or advantage in respect of the transactions mentioned in the prosecution case.
7. During the relevant time, Home Trade Limited was a duly incorporated and lawfully functioning company engaged in legitimate capital market activities, including transactions in equity, debt, and securities. The company had distinct functional departments and authorized personnel responsible for dealing in Wholesale Debt Market.
8. As CEO, my role was administrative and managerial in nature. I was not involved in the day-to-day execution of trades in Wholesale debt segment or in dealing in securities, issuance of contract notes, negotiation or communication with the complainant, or handling or custody of securities, nor did I personally execute, sign, or authorize any document forming the basis of the allegations in this case.
9. I state that no prosecution witness has established:
 - a. any entrustment of securities or funds to me personally;
 - b. any direct dealings between me and the complainant;
 - c. that I gave any instruction relating to the alleged transactions;
 - d. that I had any role in custody, transfer, or settlement of securities; or

e. that any wrongful gain or intention to cause wrongful loss is attributable to me.

10. The allegations in this case do not satisfy the basic ingredients of the offences alleged, and I submit that I am falsely implicated solely by virtue of my position in the company, without any evidence of personal involvement in the alleged events.
11. I deny the depositions of all Prosecution Witnesses in its entirety and I say that nowhere in the deposition, any specific role was attributed to me. The witnesses have not stated anything which establishes any personal role, instruction, authorization, entrustment of securities, or receipt of money by me. The witnesses have not deposed to any fact showing that I had any criminal intention or participated in any conspiracy. I did not personally deal with the complainant company nor was I responsible for the activities referred to in the testimony. I deny all statements made by the witnesses where reference has been made to "the accused", "directors", "management", "they", or any similar collective description without identifying me specifically or establishing any act personally attributable to me. Such statements do not disclose any role, participation, instruction, knowledge, or involvement on my part and cannot be treated as evidence against me. Any documents referred to or exhibited through the witnesses do not bear my signature or authorization. I do not admit those documents as against me.
12. In response to PW1, PW2, and PW3, I deny the correctness of the statement and state that it is hearsay. These witnesses nowhere mention any act done by me specifically. They have not stated any fact based on their personal knowledge or direct dealings with me or with the alleged transaction. Their statements appear to be based on information received from others or on documents they were shown at a later stage, and therefore do not establish any role or involvement attributable to me. The testimonies, therefore, does not establish any nexus between me and the alleged transaction, and I deny the correctness, applicability, and relevance of such statements against me.
13. I deny the correctness of the statement of PW 4 and the documents exhibited. This witness nowhere mentions any act done by me specifically.
14. I deny the correctness of the statement of PW 5. This witness nowhere mentions any act done by me specifically.

15. PW 6 states that he along with IO SI Ashok Sharma went to Mumbai to arrest me. It is to be noted that PW 6 does not remember whether any arrest memo was prepared as the same is not on record.

16. I deny the correctness of the statement of PW 7 and the documents exhibited by him.

With regards to me, he only submits:

- a. That Lyods Brokerage Ltd was purchased by me in the year 1998 and its name was changed to Euro Asian Securities Ltd. Thereafter in November 1999, I have changed the name of the company to Home Trade Ltd.
- b. That Ketan Seth, N.S. Trivedi and I used to ask for report regarding outstanding of client.
- c. That a document dated 25.11.99 related to Euro Asian Security Ltd which is Ex. PW7/A bears the signatures of N.S. Trivedi and me.

This doesn't show that I had any role or participation in the alleged transactions with Bajaj Capital Ltd. Accordingly, I deny the correctness, and relevance of the statements made by PW-7 insofar as they pertain to me.

17. I deny the correctness of the statement of PW 8 and the documents if any exhibited by him. With regards to me, he only submits:

- a. That Lyods Brokerage Ltd was purchased by me in the year 1998 and its name was changed to Euro Asian Security Ltd. and thereafter again changed the name to Home Trade Ltd.
- b. That he used to prepare contract notes/bills, maintain the register related to securities received and sent to the client as per the instructions from Arvind Rai, Kanan Mewawala, me, Ketan Set, N.S. Trivedi and Subhodh Bhandari.
- c. That, on the asking of Sanjay Aggarwal, Ketan Seth, N.S. Trivedi and Subodh Bhandari he used to prepare outstanding report client wise and submit the same or provide the same to them from time to time so that they were able to know the delivery position of the client.
- d. That I was the Chairman and CEO of the company and that I was one of the authorised signatories among Ketan Seth, N.S. Trivedi and Subodh Bhandari.

This doesn't show that I had any role or participation in the alleged transactions with Bajaj Capital Ltd. Accordingly, I deny the correctness, and relevance of the statements made by PW-8 insofar as they pertain to me.

18. I deny the correctness of the statement of PW 9 and the documents exhibited by him.

With regards to me, he only submits that I was the CEO and Director of Home Trade

Ltd and one of the authorised signatories among Nand Kishore Trivedi, Subodh Bandari and probably Ketan Seth. This doesn't show that I had any role or participation in the alleged transactions with Bajaj Capital Ltd. Accordingly, I deny the correctness, and relevance of the statements made by PW-9 insofar as they pertain to me.

19. I deny the correctness of the statement of PW 10 and documents exhibited by him. This witness nowhere mentions any act done by me specifically.
20. I deny the correctness of the statement of PW 11 and documents exhibited by him. This witness nowhere mentions any act done by me specifically.
21. I deny the correctness of the statement of PW 12 and all the documents exhibited by him. It is to be noted that in his deposition PW 12 has stated "After going through the report, I deposed that no specific role is assigned to any particular accused in said report. I voluntarily state that except the word 'Directors of Home Trade Limited'." This shows that neither the IO nor the investigation report attributes any involvement of me in relation to the alleged transactions.
22. I say that Criminal liability cannot be inferred against me merely from a designation without proof of personal involvement, knowledge or participation.
23. I further state that no material on record demonstrates that I was entrusted with any securities or funds belonging to the complainant. The evidence, even if taken at its highest, only reflects that Home Trade Ltd. engaged in commercial transactions, and not that I, in my personal capacity, received custody or control of any securities.
24. I also state that there is no evidence to show that I derived or intended to derive any personal gain or wrongful advantage from the alleged transaction. All payments, if any, were made to the company's official accounts, and there is nothing to show that I withdrew, diverted, or personally benefitted from any part of the amount in question.
25. The absence of any direct communication, or document issued by me to the complainant further demonstrates that my name has been dragged into this matter solely based on my position, rather than on any identifiable act constituting an offence.
26. In view of the above, I state that the evidence led by the prosecution fails to establish any of the ingredients of the offences alleged against me under the Indian Penal Code. The prosecution has not proved the existence of any mens rea, actus reus, conspiracy, inducement, entrustment, misappropriation, or personal benefit attributable to me.

27. I reiterate that I have been falsely implicated solely due to holding the designation of CEO. No part of the prosecution evidence advances the case against me and the proceedings against me are unwarranted and unsustainable in law.
28. I state that the evidence on record does not attribute any specific act or involvement to me, and even assuming without admitting the prosecution case at its highest, no offence is made out. The transaction in question was a principal-to-principal commercial transaction, and not one based on agency or fiduciary obligation. In a sale or purchase of securities conducted on a principal basis, there can be no entrustment, which is an essential ingredient for the offence of criminal breach of trust. The complainant had paid the amount as consideration under a commercial contract and not as a deposit or trust. The evidence brought on record demonstrates that only Mr. Aravind Rai was responsible for and involved in the Wholesale Debt Market (WDM) operations of Home Trade Ltd., including execution of trades, issuance of contract notes, delivery follow-up and corresponding with counterparties. The payment received by Home Trade Ltd. was in the ordinary course of commercial business and not as a trust or fiduciary receipt.
29. This position is supported by the prosecution evidence itself, including but not limited to the following:
- a. PW 1:
 - i. That he was not involved in buying and selling of Government bonds by the company.
 - ii. That as far as the three transactions mentioned in his complaint are concerned, he was not personally involved in the same.
 - iii. That his knowledge is based on the inter department discussion and documents maintained by the company including the official notes.
 - iv. That he came to know about the transaction only when it came to lime light and not at the time when they took place.
 - v. That she is aware of the previous transactions between Bajaj Capital and Home Trade Ltd.
 - vi. That it is correct that as per document Ex. PW-1/A, the gross transaction amount is Rs. 1,42,65,096/- and the total cheque amount comes out to be Rs. 2,00,65,678/-. As far as the balance amount of Rs. 58,00,582/- is concerned, the deliveries had already been made.

- vii. That it is correct that as per deal notes, even the supplier had 2 to 3 weeks time to deliver the securities to them. It is correct that 2-3 weeks time was required to deliver the securities because even the accused was not having physical form of securities immediately. Vol. but he had assured that same would be available within 2-3 weeks.
 - viii. That the amount was transferred in the name of the company directly and no person had visited the office for this purpose.
 - ix. That the offence is actually the failure of the accused to honour its deals within the stipulated period.
 - x. That he was never in touch with any of the accused persons personally. That he had never had any dealing with them. That he never met them during any such deal. Therefore, he cannot tell if any deal was personally confirmed or acknowledged by any of these accused persons.
- b. PW 2:
- i. That he recalls that some transactions had taken place between the two (Bajaj capital and Home Trade) even prior to the transaction in question but he does not remember the details thereof.
 - ii. That he was never personally involved in the transaction in question but he only came to know about the same when there was some problem noticed in the company.
- c. PW 3:
- i. That he does not recall if the names of directors and officials of the company M/s Home Trade Limited had been disclosed and their roles discussed in the meeting.
- d. PW 7:
- i. That he joined with Lyods Brokerage Ltd dealing in shares as share and stock brokers. The said company was purchased by Sanjay Agarwal in the year 1989 and its name was changed to Euro Asian Securities Ltd. Thereafter in November 1999 the Sanjay Agarwal again changed the name of the company to Home Trade Ltd.
 - ii. There was an employee Arvind Rai, in Home Trade Ltd. who used to deal with Bajaj Capital. On behalf of Home Trade Ltd, Arvind Rai used to buy and sell the securities from one company to another and

the margin was taken as profit. Around January 2002 another employee at Calcutta Branch Indernil Dey was also used to buy and sell the securities from one company to another and the margin was taken as profit.

- iii. The Home Trade Ltd had taken money from Bajaj Capital for delivering securities but due to the poor financial condition was unable to deliver the security to Bajaj Capital. And during this period Home Trade Ltd. almost closed.
 - iv. Arvind Rai used to regular deal with Bajaj Capital on behalf of company.
 - v. It is correct that Mr. Subodh Bhandari was incharge of day to day finance and WDM Department of Home Trade and the Group companies and he was authorised to sign contract, note and other security related documents.
 - vi. That there were 6-7 transactions with Bajaj Capital during his tenure. Except the last transaction, all other securities were either delivered or settled with Bajaj Capital.
 - vii. That the company M/s Home Trade was member of Mumbai Stock Exchange, National Stock Exchange and Pune Stock Exchange.
 - viii. That Ex. PW1/H is a bill of pune Stock Exchange and Ex. PW1/I is a contract note of Pune Stock Exchange. That it is correct that on the document Ex. PW1/I, it is written "principal to principal transaction".
 - ix. That only Arvind Rai used to give instruction with respect to Bajaj Capital.
 - x. That if there is no brokerage, the system generates Form B and in case of the brokerage the system generates Form A.
- e. PW8:
- i. That post the year 1998, his role was shifted to Wholesale Debt Market (WDM). Apart from him, there were two other dealers working in the said department namely Arvind Rai and Kanan Mewawala. At the relevant time, Subodh Bhandari was looking after the work of Finance Department as an Head.

- ii. Mr. Arvind Rai was a dealer. Ms Kanan was also a dealer and was looking after the work of preparing bills, making entries in the system, related to security matters.
- iii. That it is correct that Arvind Rai and Ms. Kanan Mewawala used to talk with the client and accordingly gave instruction to him to prepare the bills and contract notes.
- iv. That he does not know about Form A or Form B, but the contract notes were prepared for principal to principal and for brokerage.
- v. That it is correct that in none of the contract notes, the word brokerage is written and all the contract notes are principal to principal.

f. PW 9:

- i. That he initially joined as Data Entry Operator and later on started working with Company Secretary's Department.
- ii. That debt market department was looked after by Arvind Rai, Kanana Mewawala, Jai Mehta and Ketan Maskaria.
- iii. That he does not know whether Home Trade used to deal with Bajaj Capital or not.

g. PW 10

- i. That there was mutual transfer transaction whereby Boral Co-operative Bank agreed to transfer certain bonds to Home Trade against which they were supposed to receive government securities. But they did not receive government securities. Half of the bonds of Boral Co-operative Bank were transferred to Home Trade Limited but transfer of half of the bonds was stayed.

h. PW 12.

- i. That after going through the report, he deposed that no specific role is assigned to any particular accused in said report except the word Directors of Home Trade Limited.
- ii. That as per contract note (Exh-P-8) transaction was principal to principal basis and securities were sold to Bajaj Capital Limited and name of third party is not involved in it and period of delivery is also not mentioned in it.

30. From the above depositions, even taken cumulatively and without admitting correctness, the only conclusion that can be drawn is that the dealings between Bajaj

Capital Ltd. and Home Trade Ltd. were purely commercial in nature. The witnesses consistently state that:

- i. Home Trade Ltd. was engaging in transactions as a principal and not as an agent;
- ii. payments were made as consideration for sale and purchase of securities in the ordinary course of trade;
- iii. operational dealings, negotiations, contract notes, delivery follow-up and communication were handled exclusively by personnel in the Wholesale Debt Market Department, particularly by Arvind Rai and other operational staff; and
- iv. there were prior transactions between the same parties where deliveries were successfully completed.

31. None of the witnesses have stated that any funds or securities were entrusted to me personally, nor that I made any false representation, inducement or assurance to the complainant, nor that I diverted any amount for personal benefit. At its highest, the testimony of the prosecution witnesses only indicates that a commercial obligation arising out of a principal-to-principal sale transaction could not be fulfilled due to financial distress of the company. Such circumstances, even if accepted on face value, constitute a civil or contractual failure and do not satisfy the mandatory legal ingredients of the criminal offences alleged. Accordingly, no criminality is disclosed by the prosecution evidence and nothing in the depositions advances the case against me.

32. I reserve my right to lead defence evidence, if necessary.

33. I also reserve my right to file a supplementary statement, if required, in the event any clarification, additional material, or further response becomes necessary.

Thus, as the prosecution has failed to prove any offence against me, I humbly pray before this Hon'ble Court to acquit me of all charges.


Advocate for Accused


SANJAY AGARWAL.

Accused No. 1

Place: Mumbai

Date: 8/12/2025

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