



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 78 OF 2026

Sanjay Hariram Agarwal

...Petitioner

Versus

The State of Maharashtra And Anr.

...Respondents

Mr. Pawan Mali a/w Mr. Kushal Ambulkar & Ms. Yagni Sarrankar i/b Mr. Dipak Mane, learned Advocates for the Petitioner.

Mr. Tanveer Khan, learned A.P.P. for the State/Respondent.

CORAM : ASHWIN D. BHOBE, J.

DATE : 13th JANUARY 2026.

P.C. :

1. Heard Mr. Pawan Mali, learned Advocate for the Petitioner and Mr. Tanveer Khan, learned A.P.P. for the Respondent No. 1. Mr. Pawan Mali, learned Advocate states that Respondent No. 2 is a formal party to this Petition.

2. By this Petition filed under Article 226 of the Constitution of India and under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the Petitioner assails the order dated 21.03.2025 passed by the learned Additional Chief Judicial Magistrate, 3rd Court, Esplanade, Mumbai (“Magistrate”) in C.C. No. 396/PW/2023, framing charge against the Petitioner for the offences punishable under Sections 420, 467, 468, 471, 114 & 120-B of the Indian Penal Code, 1860.

3. In view of the limited challenge raised in this Petition, reference is made to the bare/minimum facts :-

3a. First Information Report was lodged as I-03/02 at Gandevi Police Station under Sections 420, 467, 468, 471 & 120-B of the Indian Penal Code, 1860, based on the complaint of Champatbhai R. Mali (Gandevi People's Co-operative Bank Ltd.).

3b. Upon Investigation, Charge-sheet No. 2/02 dated 04.12.2002 was filed before the Magistrate.

3c. Vide order dated 21.03.2025, Magistrate ordered framing of charge under Sections 420, 467, 468, 471, 114 & 120-B read with Section 34 of the Indian Penal Code, 1860, against the Petitioner.

3d. Roznama dated 21.03.2025 reads as follows :-

“This case is transferred from Ld. ACJM, 47th Court. This is time bound matter. Ld. APP is present. Accused are present. Ld. Adv. for accused are present. Order passed below Exh. 01. In view of order dtd. 21.03.2025 passed below Exh. 95 in Case Nos. 391/PW/2023, 392/PW/2023, 393/PW/2025 and 394/PW/2023, these cases are merged with C.C. No. 395/PW/2023. The record and proceeding of Supplementary Charge-sheets i.e. Case Nos. 391/PW/2023, 392/PW/2023, 393/PW/2025 and 394/PW/2023 be merged/clubbed together and treated as part of main C.C. No. 395/PW/2023.

Prosecution shall proceed with the trial under consolidated case and all evidence shall be recorded in single proceeding i.e. Case No. 395/PW/2023. Accused shall proceed with the trial under consolidated case and all evidence shall be recorded in single

proceeding i.e. Case No. 395/PW/2023. Exh. 96 – VP for Accused Nandkishore S. Trivedi – Filed. Accused Nos. 01 to 06 are present. Today Charge framed in the matter Exh. 97 – Charge Exh. 98 to Exh. 103 – Plea of Accused Nos. 01 to 06. Accused Pleaded not guilty. Issue summons to witnesses. Case Adj. for evidence.”

4. Grievance of the Petitioner is that charge was framed by the Magistrate without affording an opportunity of hearing to the Petitioner. Mr. Pawan Mali, refers to the Roznamas dated 17.03.2025 & 21.03.2025 and the order dated 21.03.2025 impugned in this Petition to contend that the Petitioner was not heard prior to framing of the charge.

5. Mr. Tanveer Khan, learned A.P.P for the State/Respondent on the basis of the records placed in this Petition viz. the Roznama and the order impugned, both dated 21.03.2025, fairly submits that the Petitioner apparently was not heard before framing of the charge.

6. Proceedings which are subject matter of the order dated 21.03.2025, impugned in this Petition are warrant triable case.

7. Scheme of Sections 239 and 240 of Code of Criminal Procedure, 1973, requires Magistrate to provide an effective opportunity of hearing to the Prosecution as well as to the Accused before charge is framed. Order dated 21.03.2025 does not indicate the Petitioner was afforded any opportunity of hearing before framing of charge. Rozanama dated 21.03.2025 relied by Mr. Pawan Mali does not record the Magistrate had heard the Prosecution or the Accused. Thus, the Petitioner had no opportunity. For this reason alone, the order dated 21.03.2025 of

framing charge against the Petitioner deserves to be quashed and set aside. Useful reference can be made to the view expressed in the case/s of *Bharat Uttam Rajurkar And Others v/s. The State of Maharashtra*¹; *Zenon John Pereira v/s. The State of Maharashtra And Anr.*²; *Khurshid Jaat Imran Jaat v/s. The State of Maharashtra*³; *Ajay Arun Kumar Chougule v/s. The State of Maharashtra*⁴; *Ambadas Kashirao Kharad v/s. The State of Maharashtra*⁵; *Wasumati Ashok Thakre And Another v/s. The State of Maharashtra*⁶ and *Sheikh Rashid v/s. The State of Maharashtra And Another*⁷, wherein this Court has held that an opportunity of hearing is required to be afforded to the Accused prior to framing of the charge.

8. In view of the above, the present Petition is partly allowed on the following terms :-

- a) Order dated 21.03.2025 impugned in this Petition as well as the charge as framed against the Petitioner, stand quashed and set aside.
- b) Petitioner shall appear before the learned Additional Chief Judicial Magistrate, 3rd Court, Esplanade, Mumbai on 28.01.2026.
- c) Learned Additional Chief Judicial Magistrate, 3rd Court, Esplanade, Mumbai shall pass an order on framing of

1. Criminal Writ Petition No. 1232 of 2017 decided on 12.01.2018.
2. Writ Petition No. 5915 of 2025 decided on 18.11.2025.
3. Criminal Revision Application No. 25 of 2025 decided on 24.02.2025.
4. Criminal Application No. 1298 of 2018 decided on 04.12.2019.
5. 2007(1) Bom.C.R. (Cri.) 881.
6. Criminal Revision No. 135 of 2010 decided on 12.08.2010.
7. Criminal Revision Application No. 74 of 2024 decided on 02.07.2024.

charge after providing an effective opportunity of hearing to the Prosecution and the Petitioner (Accused), in accordance with law.

d) No order as to costs.

[ASHWIN D. BHOBE, J.]

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by GITALAXMI
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