

IN THE COURT OF ADD. CHIEF JUDICIAL MAGISTRATE

47TH COURT AT, ESPLANADE, MUMBAI

MISC. APPLICATION NO. OF 2026

IN

CASE NO. 256/ PW/2023

IN

C.R. No. 102 of 2002

Ex-D 393

THE STATE OF MAHARASHTRA

}... RESPONDENT

Versus

Sanjay Hariram Agarwal

} ...APPLICANT/

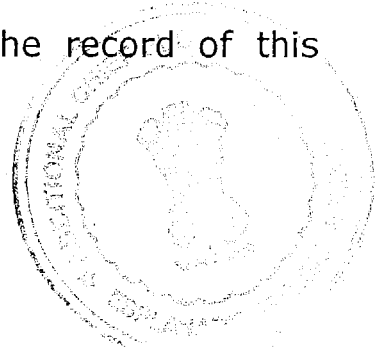
ACCUSED

**APPLICATION UNDER SECTION 348 OF
BNSS FOR RECALLING PREVIOUSLY
EXAMINED WITNESSES:-**

MAY IT PLEASE YOUR WORSHIP

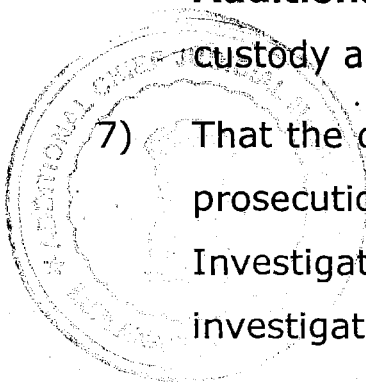
It is most respectfully submitted on behalf of the above named Accused as under

- 1) That the charge sheet in the present case was filed by the investigating officer in the year 2002, for the offence under section _____ of IPC 406, 408, 420, 465, 467, 468, 471, 34
- 2) That the Accused was supplied with the copies of the charge sheet, which include the statement of witness and documents which are the on the record of this Hob'ble Court.



PP to
CJM 14/7/23

- 3) That on the basis of said charge sheet, statement of witness and documents, this Hon'ble Court was pleased to frame charges against he accused.
- 4) That from October 2023 to November 2025, the evidence of as many as 18 prosecution witnesses, including the complainant (PW-1), has been recorded by this Hon'ble Court.
- 5) The cross-examination of all these witnesses was conducted by the learned counsel for the accused strictly on the basis of the documents and materials referred to and annexed with the charge-sheet supplied to the accused/applicant, in the year 2002.
- 6) That the Investigating Officer (IO) (PW-19) was summoned as a witness by the prosecution and his examination-in-chief has been recorded. During the said evidence, vide letter dated 19.11.2025, the IO has sought to produce more than 36 additional documents/materials (hereinafter referred to as "**the Additional Documents**") which were allegedly in his custody and lying with the Muddamal Department.
- 7) That the documents now sought to be produced by the prosecution are stated to be seized by the Investigating Officer during the course of the investigation under various seizure panchanamas.
- 8) That it is highly pertinent to note that while the said seizure panchanamas form part of the charge-sheet papers originally supplied to the Accused, the actual



documents seized thereunder were never produced along with the charge-sheet. They were withheld by the IO with him for the ground best know to him

- 9) That these seized documents were neither included in the charge sheet nor given to the Accused. It is only recently, through a letter dated 19/11/2025, that the Investigating Officer trying to suggest that these documents as Muddemal and proposed to submit them to this Hon'ble Court.
- 10) That shockingly, none of the aforesaid Additional Documents were ever referred to, mentioned, described, or listed in the original charge-sheet, the list of documents under Section 173 of the erstwhile Code of Criminal Procedure, 1973, or any supplementary report filed by the prosecution at any stage from 2002 till date. These Additional Documents are being sought to be tendered for the first time in November 2025, i.e., over 23 years after the filing of the charge-sheet.
- 11) That the documents withheld from the Accused are not mere formal papers but include several highly important and substantive documents, such as **contract notes, bills, adjustment letters, correspondence, minutes of meetings, and other allied documents.** All of these are material documents having a direct and profound bearing on the facts in issue.

- 12) That the contents of these specific commercial and administrative documents have a direct bearing on the facts in issue and will inherently contradict, corroborate, or materially affect the testimonies of the 18 witnesses already examined.
- 13) That despite these documents having a direct bearing on the facts in issue, neither a physical nor a digital copy has been supplied to the Accused till date.
- 14) That the Accused has strongly objected to the production of these documents. However, without prejudice to the said rights and objections, if this Hon'ble Court is inclined to take the same on record, the Accused asserts their statutory rights under Section 230 of the BNSS.
- 15) That denying the Accused the opportunity to confront these 18 witnesses with these newly produced material documents would result in a grave miscarriage of justice and violate the right to a fair trial.
- 16) That it is a settled principle of law that an accused cannot be expected to defend themselves against material they have not seen.
- 17) Under the circumstances, Accused most respectful submits that accused may be given the opportunity further cross examination of 18 witness to confront these documents to them.

IT IS THEREFORE PRAYED

- a) Allow the present application and issue summons to recall the 18 previously examined prosecution witnesses for further cross-examination in light of the newly produced documents, under Section 348 of the BNSS;
- b) Pass any other order(s) as deemed fit in the interest of justice.

AND FOR THE ACT OF THIS KINDNESS APPLICANT SHALL PRAY FOR EVER

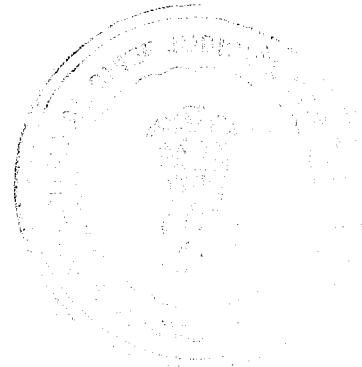
Date 5-3-26

Mumbai



Adv. For Applicant

S. M. NAWAL
Applicant/accused



May It Please Your Honour -

That the Prosecution most respectfully submitted say as under -

That the said matter is time bound (Superior Court time bound matter)

That the charge sheet filed in the year 2002

That 2023 to 2025 prosecution taken the evidence of 18 Prosecution witness examine and the cross-examination of all these witness was conducted by the defence. and (P.M-19) also examine by the cross examine by the defence counsel and Honble Court given opportunity to the defence counsel to examine

That the defence counsel only want to delay the matter & in his case.

Hence, application of counsel kindly reject

DATE: 05/03/26

True Copy

Harsh
18103126
Judicial Clerk,

Additional Chief Judicial Magistrate's,
47th Court Road, Mumbai.

Harsh
I/CAP

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, 47TH COURT,
ESPLANADE, MUMBAI.

C.C. No. 256/PW/2023

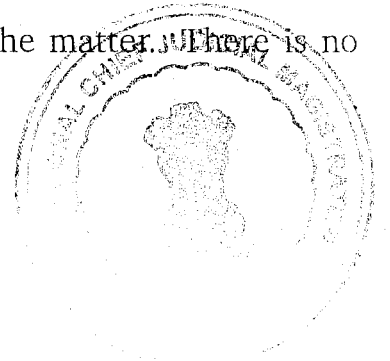
ORDER BELOW EXH-343

Present application is filed by accused No.1 to issue summons to earlier 18 witnesses and recall them in view of documents filed by the Concerned Investigating Agency. It is stated that the Investigating Officer was summoned and he has filed 36 additional documents on 19.11.2025. These documents were not mentioned in the charge-sheet and they are brought suddenly before the Court. The copies were never given to the accused and there is strong objection to the production of these documents. Hence, there is requirement of opportunity to further cross-examine the earlier examined witnesses.

2. Learned APP filed reply and strongly objected the claim. It is stated that this case is made time bound by the Hon'ble Supreme Court. 18 witnesses are already examined and the Investigating Officer is being examined. The accused will get opportunity to defend the case. Hence, the application be rejected.

3. Heard both the parties.

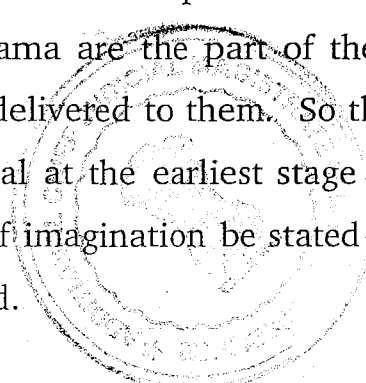
4. It is a known fact to the prosecution as well as to the accused that the present matter is transferred to this Court and it is made time bound by the Hon'ble Supreme Court. Still such type of applications are being deliberately filed with an intent to prolong the matter. There is no



dispute about the fact that the prosecution faltered big time by not bringing the muddemal on record from the start of the evidence itself. The prosecution was oblivious of the fact that there is muddemal shown in the present chargesheet by the Investigating Officer. The prosecution became aware of this fact only when PW-19 Pradeep Aphale, Investigating Officer was called as a witness before this Court.

5. The prosecution thereafter filed application Exhibit-257 on 14.11.2025 to issue notice to Senior PI of the Police Station for production of documents. The notice was issued and thereafter these additional documents which are shown as muddemal in muddemal receipt were produced by the concerned Officer of Police Station on 20.11.2025. Now it is the intent of the prosecution to rely upon these documents, but till the end of February, the prosecution deliberately failed to provide copies to the accused of these seized muddemal, which includes several cheques, contract notes, forms, registers, minute books and so on.

6. Apparently the prosecution has much to explain about the delay. But it is incumbent upon the prosecution to provide the copies of the documents on which it is trying to rely upon. Now the submissions of the accused that some new evidence is being brought on record cannot be accepted for the simple reason that the muddemal receipt and the seizure panchanama are the part of the charge-sheet, the copies of which were already delivered to them. So there may be a mistake of not bringing the muddemal at the earliest stage by the prosecution, but it cannot by any stretch of imagination be stated that some new evidence is being brought on record.

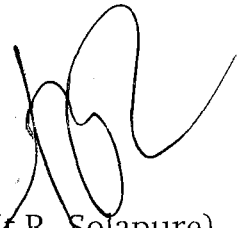


7. Now the accused has found a novel idea of filing several applications which clearly show the intent. Indeed the accused is entitled to the copies and reasonable period. But the present application to recall all 18 witnesses to cross-examine them on these documents in muddemal is absolutely not acceptable. Indeed some of these documents have been given exhibit and articles in the course of examination-in-chief of the Investigating Officer. But it has to be kept in mind that they are by way of mere identification of muddemal and point of proof of all these documents in muddemal is kept open. So when the prosecution should say to recall these witnesses, the accused is trying to put the wheels back.

8. Apparently recalling all these witnesses when the documents in muddemal are given exhibit and article only for the identification purposes, is absolutely not called for and the application itself is not tenable. This Court does not find any reason much less necessity to recall these witnesses for cross-examination by the accused. Hence, the order follows.

ORDER

Application is rejected.



(Abhijit R. Solapure)
Addl. Chief Judicial Magistrate,
47th Court, Esplanade, Mumbai.

Date: 09.03.2026

True Copy

M. Prasad
18/03/26
Judicial Clerk,

Additional Chief Judicial Magistrate's,
47th Court, Esplanade, Mumbai.

Appointed on
Created on 16/03/2026
Ready on
Delivery on 18/03/2026

