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IN THE HON'BLE HIGH COURT OF BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. _____ OF 2026

DISTRICT: MUMBAI

Sanjay Hariram Agarwal ...Petitioner

Versus

State of Maharashtra & Anr. ...Respondents

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SYNOPSIS

The Petitioner herein is constrained to file the present Criminal Writ Petition being gravely aggrieved by the order dated 21.03.2025 whereby the Ld. Trial Court has directed framing of charges against the Revisionist under Sections 420, 467, 468, 471, 114 and 120-B r/w 34 of the IPC, though the allegations in the complaint and the material placed on record relate entirely to commercial transactions in Government Securities between the Surat Mahila Nagarik Sahakari 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.

The brief prosecution story, as alleged in the complaint, is that during the period 31.10.2001 to 27.02.2002, the complainant Bank purchased four Government Securities through Home Trade Limited for an aggregate value of ₹9,68,10,666.67, for which payments were made through cheques drawn on HDFC Bank. In the complaint it is further stated that the complainant Bank was informed that the securities demanded by the Bank could not be obtained at that time and that other Government Securities could be provided in their place, pursuant to

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which a new contract dated 30.03.2002 was made wherein delivery was stated to be given by 15.05.2002. The complaint also records that ten cheques aggregating to ₹9,40,37,861.07 were issued, out of which Cheque No. 984317 dated 11.04.2002 for ₹80,72,206.25 was honoured, while the remaining cheques were returned when deposited.

The complaint records that copies of security certificates relating to IDBI securities of ₹5 crores carrying interest at 11.5% maturing in the year 2011 and Federal Bank securities of ₹1 crore carrying interest at 9.39% maturing in the year 2011 were sent by fax, however the original securities were not delivered, and on this basis the complainant has alleged that the Bank was cheated of ₹8,59,65,655.82.

Despite the aforesaid nature of the allegations, FIR bearing No. I-274/2002 dated 02.07.2002 came to be registered at Umra Police Station, Surat alleging offences under Sections 465, 467, 468, 471, 420, 114 and 120-B r/w 34 of 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 ingredients of the said offences are disclosed from the material on record.

Thus, the material on record does not disclose the essential ingredients of Sections 420, 467, 468, 471, 114 or 120-B r/w 34 of Indian Penal Code against the Revisionist, 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

Dates	Events
1995-2000	Surat Mahila Nagarik Sahakari Bank Ltd., as recorded in the complaint, had been dealing in Government Securities through brokerage firms, initially through Growth Avenue Co., Ketan Seth & Co., Euro Asian Securities Limited and thereafter through Home Trade Limited.
January 2000	The complainant Bank was informed that Euro Asian Securities Limited had changed its name to Home Trade, following which the Bank continued Government Securities transactions with Home Trade Limited.
31.10.2001- 27.02.2002	During this period, as stated in the complaint, the complainant Bank purchased four Government Securities through Home Trade Limited aggregating to ₹9,68,10,666.67, for which payments were made through cheques drawn on HDFC Bank.
30.03.2002	As recorded in the complaint, a new contract dated 30.03.2002 was entered into wherein it was stated that delivery of securities would be given by 15.05.2002.
April- May, 2002	As per the complaint, ten cheques aggregating to ₹9,40,37,861.07 were issued to the complainant Bank pursuant to

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	<p>the said arrangement, out of which Cheque No. 984317 dated 11.04.2002 for ₹80,72,206.25 was honoured, while the remaining cheques were returned when deposited. The complaint further states that despite reminders, telephonic calls and visits, the physical delivery of certain Government Securities was not received by the Bank.</p>
2002	<p>The complaint further records that copies of security certificates relating to IDBI securities and Federal Bank securities were sent by fax, however the original securities were not delivered. On this basis, the complainant has alleged that the Bank was cheated of ₹8,59,65,655.82/-.</p>
02.07.2002	<p>That thereafter, the Bank lodged FIR No. I-274/2002 at the Umra Police Station, Surat, alleging offences under Sections 465, 467, 468, 471, 420, 114 and 120-B r/w 34 of IPC, arising out of the alleged non-delivery of certain Government Securities.</p>
10.01.2004	<p>That upon investigation, Chargesheet dated 10.01.2004 was filed against alleging commission of offences under Sections 465, 467, 468, 471, 420, 114 and 120-B r/w 34 of IPC against the accused persons including the Petitioner.</p>

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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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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, 421, 422, 468 or 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: as per oral submission

Place: Mumbai

Date: 23 /03/2026


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

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In the matter of C.C. No. 389/PW/2023 pending before the Addl Chief Judicial Magistrate, 47th Court, Esplanade, Mumbai.

AND

In the matter of impugned order dated 21.03.2025 passed by the Addl. Chief Judicial Magistrate, 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.

Sanjay Hariram Agarwal

Aged: 60 years, Occ.: Business

Add: 7, Hari Sava Street, Kidderpore,

Kolkata – 700023

...Petitioner

Versus

1) State of Maharashtra

2) State of Gujrat

(through Umra 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

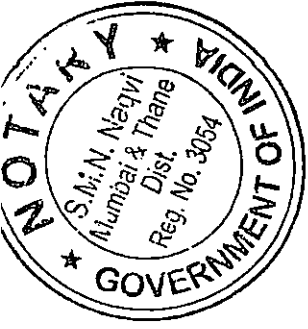
MOST RESPECTFULLY SHOWETH:



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 Surat Mahila Nagarik Sahakari Bank Limited (hereinafter referred to as "the complainant 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. 389/PW/2023 pending before the Ld. Addl. Chief JM, 47th Court, Esplanade, Mumbai arises out of FIR No. I-274/02 registered with Umra P.S., Surat, Gujrat which was lodged alleging offences under Sections 465,467,468,471,420,114 and 120-B r/w 34 IPC against the Accused Persons. It is submitted that multiple cases/ FIRs

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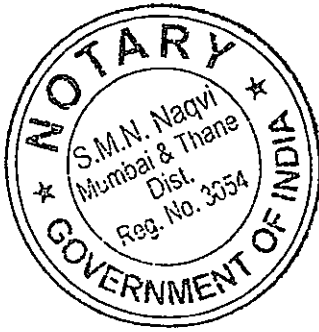
were lodged against the Petitioner in different States, which were having common nature of allegations. Thus, the Petitioner had preferred a transfer petition before the Hon'ble Supreme Court and by order dated 09/09/2022, the transfer petition was allowed. The transfer petition was disposed of with 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 JM, 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-274/02 dated 02.07.2002 was filed by the Surat Mahila Nagarik Sahakari Bank Ltd. Surat, alleging offences under Sections 465, 467, 468, 471, 420, 114 and 120-B r/w 34 of IPC. Copy of the FIR is annexed herewith as **EXHIBIT 'C'**.
4. That the complainant Bank states that the administration of the Bank is run as per the policy rules of the Reserve Bank of India and that from the funds raised by the Bank, loans are given to members and the remaining funds are invested

in securities issued by the Government of India after obtaining approval of the Board of Directors of the Bank.

5. That the complaint expressly records that the complainant Bank had been dealing in Government Securities through brokerage firms for several years and that earlier the Bank used to purchase Government Securities through a firm named Growth Avenue Company, and subsequently with M/s Ketan Sheth & Company, which dealt in Government Securities from Mumbai. That the complaint further records that the complainant Bank had been dealing with the aforesaid Companies since several years and through them the Bank also purchased Government Securities through companies promoted by them including Eurasian Securities Limited, and that the Government Securities purchased earlier were delivered to the Bank.
6. That the complaint records that in January 2000 certain representatives informed the complainant Bank that their earlier company would carry out brokerage work under the name Home Trade Limited (HTL). It is further recorded that the Company was a member of the National Stock Exchange and qualified to buy and sell Government Securities as per the policy rules of the Reserve Bank, following which the complainant Bank started purchasing Government Securities through the Company from January 2000.
7. That the complaint records that thereafter the complainant Bank decided to purchase Government Securities through Home Trade Limited pursuant to resolutions passed in the meeting of the Board of Directors of the complainant Bank.



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8. That pertinently the complaint records that during the period 31.10.2001 to 27.02.2002, the complainant Bank purchased four (4) Government Securities through Home Trade Limited for an aggregate value of ₹9,68,10,666.67 (Rupees Nine Crores Sixty-Eight Lakh Ten Thousand Six Hundred Sixty-Six and Sixty-Seven Paise Only), for which payments were made through cheques drawn on HDFC Bank. These transactions are recorded as purchase transactions of Government Securities undertaken by the complainant Bank.
9. That the complaint records that when the Government Securities were not received within the time period, the complainant Bank contacted the officials of Home Trade Limited through correspondence and telephone and demanded delivery of the securities.
10. That the complaint further records that thereafter the complainant Bank was informed that the Government Securities demanded by the Bank could not be obtained at that time and it was stated that other Government Securities could be provided in their place, pursuant to which a new contract dated 30.03.2002 was made wherein it was stated that delivery would be given by 15.05.2002.
11. That the complaint records that at the said time ten (10) cheques drawn on HDFC Bank were issued in favour of the complainant Bank aggregating to ₹9,40,37,861.07 (Rupees Nine Crores Forty Lakhs Thirty-Seven Thousand Eight Hundred Sixty-One and Seven Paise Only). The complaint further states that Cheque No. 984317 dated 11.04.2002 for



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an amount of ₹80,72,206.25 was passed, whereas the remaining cheques were returned when deposited.

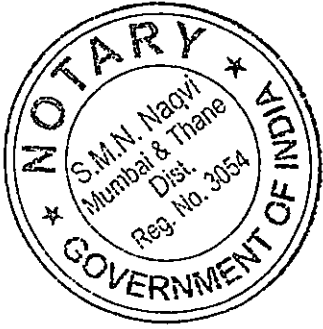
12. That pertinently the complaint and the chargesheet record that Government Securities transactions were undertaken between the complainant Bank and Home Trade Limited and that payments in respect of such transactions were made through banking channels. The grievance, as stated in the complaint, pertains to alleged non-delivery of certain Government Securities, and it is recorded that copies of security certificates relating to IDBI securities of ₹5 crores carrying interest at 11.5% maturing in the year 2011 and Federal Bank securities of ₹1 crore carrying interest at 9.39% maturing in the year 2011 were sent by fax, however the original securities were not delivered. On this basis, the complainant has alleged that the Bank was cheated of ₹8,59,65,655.82, which forms the subject matter of the present criminal proceedings.

13. That as per the complaint, the Cheque No. 984317 dated 11.04.2002 was honoured, and it was stated that the physical delivery of the purchased Government Security was to be made within a specified period. However, the complaint records that after expiry of the said period, the physical delivery of the said Government Security was not given despite demands made by the complainant Bank.

14. That throughout the complaint, the complainant Bank narrates that several Government Securities transactions was undertaken wherein:

- multiple purchase transactions were carried out,
- payments were made through banking channels,

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- contract notes were issued,
- 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.

15. That despite it being purely a commercial/ civil dispute arising from the aforesaid allegations relating to purchase of Government Securities and alleged non-delivery thereof, FIR No. I-274/2002 dated 02.07.2002 came to be lodged at Umra Police Station, Surat, alleging offences under Sections 465, 467, 468, 471, 420, 114 and 120-B of IPC against Home Trade Limited and its officials including the present Revisionist. 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.

16. That thereafter, upon investigation, Chargesheet dated 10.01.2004 came to be filed alleging commission of offences under Sections 465, 467, 468, 471, 420, 114 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.

17. 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 Revisionist, without first deciding any objections or conducting a hearing under Section 239 CrPC as held by Hon'ble



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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.



18. That even if assuming every allegation in the complaint, the events recorded therein pertain to purchase transactions of Government Securities undertaken by the complainant Bank through brokers, payments made through banking channels and issuance of contract notes, and the grievance recorded in the complaint relates to alleged non-delivery of Government Securities after the transactions were entered into. 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.
19. 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:

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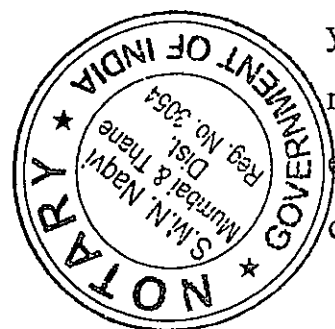
GROUND

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 Revisionist's right to a fair trial and due process guaranteed under Articles 14 and 21 of the Constitution.

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

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



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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



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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, 34, 114 or 120-B IPC and the Revisionist never had an opportunity to explain it to the magistrate that in view of law declared by Hon'ble Supreme Court mere alleged failure of delivery of certain Securities cannot justify framing of charges as the essential ingredients of the alleged offences is not made out.

B.6. That furthermore, the Investigating Officer also failed to adequately examine the documentary and testimonial evidence pertaining to the accused's conduct before recommending framing of charges, thereby violating the principle that charges must be framed only after evaluating whether a reasonable case exists.



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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, 34, 114 or 120-B IPC are made out against the Revisionist. 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:



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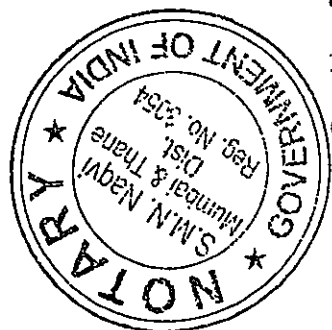
“15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct 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. 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:



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...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



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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.

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



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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."

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Applying this settled principle, the absence of any dishonest intention at the inception of the transaction completely negates the applicability of Section 420 IPC.

D.5. Applying the aforesaid settled position, the complaint itself records that the complainant Bank had been carrying out Government Securities purchase and sale transactions through Growth Avenue Company, Ketan Sheth & Co., Euro Asian Securities Limited and thereafter through Home Trade Limited, and had been purchasing Government Securities through the said company from January 2000 onwards. The complaint further records that during the period 31.10.2001 to 27.02.2002, the complainant Bank purchased Government Securities through Home Trade Limited for an aggregate value of ₹9,68,10,666.67, for which payments were made through cheques drawn on HDFC Bank.

D.6 That the complaint further records that thereafter, pursuant to discussions between the parties, a new contract dated 30.03.2002 was entered into and ten cheques aggregating to ₹9,40,37,861.07 were issued to the complainant Bank, out of which Cheque No. 984317 dated 11.04.2002 for ₹80,72,206.25 was honoured, clearly showing that the issue was treated as arising from ongoing transactional dealings between the parties. That neither the Complaint, FIR or the chargesheet attributes any inducement or act personally committed by the Petitioner which caused the Bank to enter into the Government Securities transactions.



[Handwritten signature]

D.7 That the complaint further shows that upon non-delivery, the Bank issued reminders and made repeated demands for physical 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.8 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:

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

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

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

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

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



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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.



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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 Revisionist.

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.9. 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.10. 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.11. That therefore, even accepting the prosecution case at its highest and without disputing the signatures, the allegations do not satisfy the statutory ingredients of



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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 several 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 Revisionist to suggest conspiracy as understood under Section 120-B IPC.



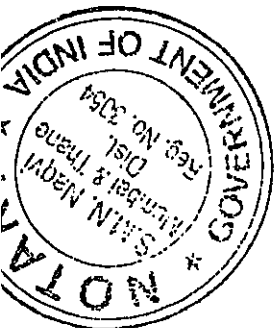
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F.4. That similarly, the invocation of Section 34 IPC is unsustainable in the absence of any material showing common intention. Common intention requires a pre-arranged plan and participation in furtherance of such plan. The prosecution does not attribute any specific overt act to the Revisionist which could demonstrate that he acted in furtherance of a shared criminal intention.

F.5. That 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, FIR and chargesheet do not plead any act of instigation, intentional aiding or conspiracy attributable to the present Revisionist, nor do they disclose how the Revisionist is alleged to have abetted the commission of any offence while being present at the time of its commission.

F.6. That the charge-framing order invokes Sections 120-B, 34 and 114 of Indian Penal Code in a composite and mechanical manner, without identifying the factual basis for either a prior agreement constituting conspiracy, common intention or any act of abetment as statutorily required. In the absence of such foundational pleadings, the invocation of Sections 120-B, 34 and 114 IPC are wholly unsupported by the material on record and deserves to be quashed.



[Handwritten signature]

G. There is no concept of vicarious liability under the Indian Penal Code the proceedings against the Revisionist 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.

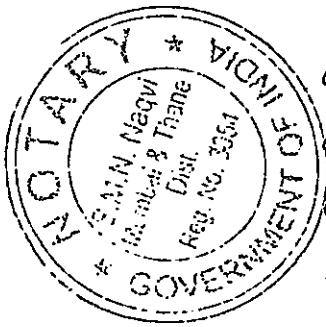
G.2 In *Sunil Bharti Mittal v. Central Bureau of Investigation, (2015) 4 SCC 609*, the Hon'ble Supreme Court categorically held that a director or officer of a company cannot automatically be held liable for offences committed by the company unless there is material showing his active role in the commission 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:



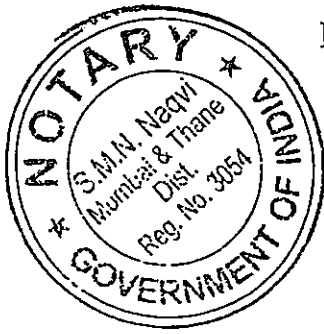
“When the company itself is alleged to have committed the offence, there is no question of attributing vicarious liability to its office-bearers for offences such as cheating or criminal breach of trust. The office-bearers can be prosecuted only if direct and specific allegations are levelled against them individually. The complainant must demonstrate that 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 Revisionist 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.

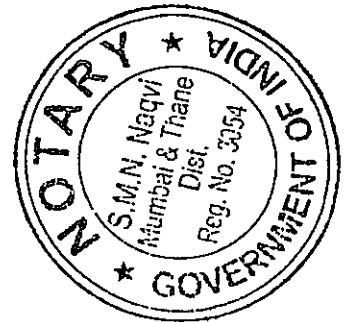
H.1 That the charges framed under Sections 420, 467, 468, 471, 114 and 120-B r/w 34 IPC have been imposed in a mechanical manner without any analysis of the material placed on record. The impugned order does not record what material was relied upon, how the statutory ingredients were satisfied, or why 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 Revisionist, does not discuss the role of the accused in the transactions, and does not demonstrate that the Ld. Magistrate examined whether the ingredients of each alleged offence were disclosed. The absence of reasons reflects complete non-application of judicial mind.

H.3 That the investigation itself proceeded mechanically, the investigating agency reproduced allegations from the complaint without verifying which specific document or transaction was attributable to which accused, and without distinguishing institutional acts from individual acts. No effort was made to correlate documentary material with the offences alleged.

H.4 That the investigating agency mechanically invoked multiple penal sections without identifying the factual foundation necessary for each of them, resulting in a chargesheet that merely repeats allegations without demonstrating mens rea, specific overt acts, or satisfaction of statutory elements.

H.5 That in these circumstances, the charge-framing order passed without reasons and without reference to any material stands vitiated for want of application of mind. Such mechanical exercise of jurisdiction causes serious prejudice to the Petitioner and renders the impugned order unsustainable in law.



PRAYER

In the facts and circumstances of the present case, it is most humbly prayed that this Hon'ble Court may graciously be pleased to:

- a. This Hon'ble Court by invoking the Writ Jurisdiction under Article 227 of the Constitution of India and

Inherent powers under Section 528 of BNSS may issue appropriate writ, order or direction and the order dated 21.03.2025 passed by the Ld. Additional Chief Judicial Magistrate, 37th Court, Esplanade, Mumbai in C.C. No. 389/PW/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 Indian Penal Code;

- b. may kindly be quashed and set aside;
- c. 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, 3rd Court, Esplanade, Mumbai in C.C. No. 389/PW//2023, be stayed;
- d. 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: 01 .03.2026

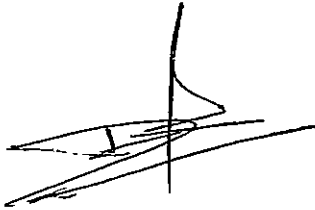
Advocate for Petitioner

VERIFICATION

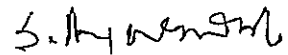
I, Sanjay Hariram Agarwal, Aged: 60 years, Indian Inhabitant, Residing at: 7, Hari Sava Street, Kidderpore, Kolkata – 700023, the Petitioner hereinabove, do hereby state on solemn affirmation, that whatever stated in foregoing paragraphs is true and correct to my own knowledge and belief and also on 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)

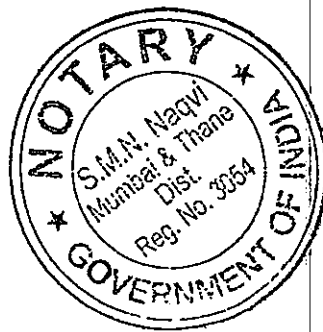
Dated this 11 day March, 2026.)



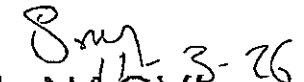
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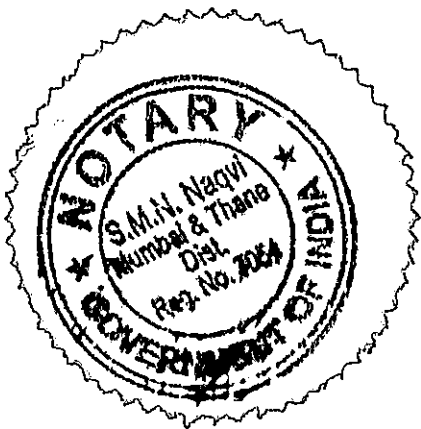

Petitioner

BEFORE ME



BEFORE ME


S.M.N. NAQVI
NOTARY
Government of India
Mumbai & Thane Dist.



SR No. 120 P No. 08

NOTARY Register. 4.12.26 Date. 11/3/26

Exh-A.

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Case Number. :Police Cases PW/4/00389/2023
UMRA POLICE STATION Versus KETANBHAI KANTILAL
SHAH- SUPPLEMENTARY CHARGESHEET

Date :21-03-2025

Business

: Ld. APP present. All accused present with Advocates. Exh. 70 - Charge framed against all accused. Exh. 71 - Plea of accused no. 1 recorded. Exh. 72 - Plea of accused no. 2 recorded. Exh. 73 - Plea of accused no. 3 recorded. Exh. 74 - Plea of accused no. 4 recorded. Exh. 75 - Plea of accused no. 5 recorded. Accused no. 1 to 5 pleaded not guilty. Exh. 76 - Application for issue summons to Informant and Investigation Officer filed by Ld. APP. Order - Issue summons as prayed. Exh. 77 - 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

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C. C. No. 389/PW/2023

EXH _____

IN THE COURT OF THE ADDL. CHIEF JUDICIAL MAGISTRATE,
37TH COURT, ESPLANADE, MUMBAI.
C. C. No. 389/PW/2023

CHARGE

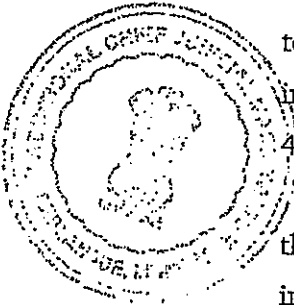
I, Vinod R. Patil, Addl. Chief Judicial Magistrate, 37th Court,
Esplanade, Mumbai do hereby charge you:

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 and of Hometrade Limited along with other absconding accused from 25.09.2000 to 02.06.2002 at the Adajan Nagrik Sahkari Bank, Manthan Apt., Adajan, Surat in furtherance of your common intention cheated the informant the Adajan Nagrik Sahkari Bank by dishonestly inducing it to deliver an amount of Rs.9,68,10,667/- 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



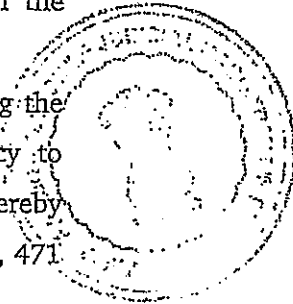
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 securities contracts, and other related documents purported to be a valuable security and thereby committed an offence punishable under section 467 r/w. 34 of the Indian Penal Code and within my cognizance.

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 committed an offence punishable u/sec. 120-B r/w. 420, 467, 468, 471.



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of the Indian Penal Code and within my cognizance.

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

Dated 21st day of March, 2025.

[Signature]
(Vinod R. Patil),
Addl. Chief Judicial Magistrate,
37th Court, Esplanade, Mumbai

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

Accepted: *[Signature]* 20.7.11.2025
Copies: *[Signature]*
Ready on: *[Signature]*
Delivery on: 28.11.11.2025



[Signature]
(Vinod R. Patil),
Addl. Chief Judicial Magistrate,
37th Court, Esplanade, Mumbai

True Copy
[Signature]
Judicial Clerk, 18/11/15
Additional Chief Judicial Magistrate's,
37th Court, Esplanade, Mumbai.

T.C
Adv.

Lh-B

35

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

Signature in

by
Date
17 3
Recd

Mumbai, where 3 cases are already pending. Following are the

cases of which transfer are being sought -

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- i. Criminal Case No. 101878/2003 arising out of FIR No. C.R. No. I-64/2002, dated 30.07.2002 registered at Police Station Udhana, Surat, Gujarat, pending before Additional Chief Judicial Magistrate, Surat;
- ii. Criminal Case No. 9166/2002 arising out of FIR No. I.C.R. No. 274/2002, dated 02.07.2002 registered at Police Station Umra, Surat, Gujarat, pending before Additional Chief Judicial Magistrate, Surat;
- iii. Criminal Case No. 174/2003 arising out of FIR No. C. R. No. I-226/2002, dated 30.08.2002 registered at Police Station Rander, Surat, Gujarat, pending before Additional Chief Judicial Magistrate, Surat;
- iv. Criminal Case No. 100521/2003 arising out of FIR No. 274/2002, dated 06.08.2002 registered at Police Station Varachha, Surat, Gujarat, pending before Additional Chief Judicial Magistrate/Judicial Magistrate First Class, Surat;
- v. Criminal Case No. 2778/2004 arising out of FIR/M. Case No. 3/2002, dated 16.07.2002 registered at Police

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- 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;

- 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 adverting 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

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FIRs and criminal proceedings emanating therefrom which are yet pending before respective Trial Courts in four States, I am of the opinion that to meet the ends of justice and fair trial, the transfer petitions deserve to be allowed. Therefore, the instant transfer petitions are disposed-off with the following directions:-

- a) The criminal cases, as specified in para 1 (clause (i) to (xvi)) of this order shall be transferred from the courts, where those are pending, to the court of Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai – 400032, Maharashtra;
- b) the Principal Judge is at liberty to assign the cases to any of the Court situated in his jurisdiction to try all those cases. He is also at liberty to assign some of the cases to any other courts also, if necessary;
- c) it is further directed that the transferor courts shall immediately transmit the record of concerned cases to the Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai – 400032, which should reach on or before 31.10.2022;

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- d) all the accused in the concerned cases shall appear before the Principal Judge, Bombay City Civil and Sessions Court, Fort, Mumbai on 14.11.2022;
- e) on assignment of those cases to the concerned Court(s), as directed hereinabove, the said Court(s) shall frame the charges within a period of two months from the date of appearance, or on securing presence of the accused persons, if absent; and thereafter the trial be concluded as expeditiously as possible, not later than two years. It is needless to observe that the examination of the witnesses in all cases will be recorded by the Court(s) separately, thereby it should not cause any prejudice to any accused.

.....J.
(J.K. MAHESHWARI)

**New Delhi;
September 9, 2022.**

T. C
R
AK

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Op. Shriramnagar, Gulmohar Cross Road No. 9, Thane

Details of the offence -

Attached herewith.

(4) PSC

Note: The first information should be written below, and the signature or mark of the informant should be taken below it as a token of its correctness, or the officer recording it should sign it, and the left thumb impression should be taken.

Panch. (5) Dilip Shankarlal Trivedi, owner of Home Food, Residing at: Dalal Building, Bhimrad Road, Flat No. 32, Besides Bombay Market, Morarji

Panch. (6) Bhupesinghbhai Bansidhar, Signatory, Residing at: 401, The Greenville, Link Road, Sector-4, Vashi, Mumbai

Panch. (7) Milan Chaturbhuj Tali: Sangi Aparts 101, Gam Surya Apartment

I state that the above writing

(8) Shrikant Shriramial Sharma: Maneklal Pawar Chawl, Bhiwandi

Shriram Soc. Salim Mubarak

Brief Details: Regarding offence under Sections 465, 467, 468, 471, 420 of the Indian Penal Code.

The facts are that the accused, in connivance with each other, hatched a conspiracy and with the malafide intention of obtaining money from the complainant's bank, created forged documents in the name of the complainant's bank and thereby committed cheating to the tune of Rs. 8,59,45,552/- with the complainant's bank.

Date 27/2/2002

Today, Sunilbhai Khimjibhai Lal Parmar, personally present at the Police Station - Occupation: Service, Residing at: 302, Central Apartment, Behind Sargam Complex, Near Umra Juna Naga, Surat (Guj) 395001 (Mob) 9427181511, 24408512

submitted a written application and dictated the facts of the complaint that I am employed at the Oriental Co-operative Bank, Registered Office Nagarik Sahakari Bank Limited, wherein the directors of the registered office at Lalpura, after

obtaining prior permission, I work on creating accounting software on a daily basis.

The administration of our aforementioned bank runs according to the rules of Shri Z Bank and the member bank operates, copies of the details of which are attached. As part of the details I am narrating, the directors' report on the bank's administration and accounts will be taken into consideration. Whatever decisions are taken by our bank are taken in accordance with the rules and keeping in mind the other co-members. The directors manage the bank with the objective of facilitating members to easily obtain loans for trade and business through shares, thereby increasing the bank's profit, by utilizing the bank's funds.

To become a member of the said bank, the member makes a representation in person and appropriate action is taken subject to the rules of the bank.

C. P. C. 14

No 030

First Information of a Cognizable Offence under Section 154 of the Code of Criminal Procedure

Police Station – District –

Date and time of occurrence of offence –

1. Date and time of information received –

2. Place of offence, distance and direction from the Police Station –

Date of dispatch from the Police Station –

4. Name and address of the informant and complainant –

5. Name and address of the accused –

6. Brief description of the offence with section, and description of property lost, if any –

Umra P.S. I Guj. Reg. No. 274/02 Date 27/02

7. Steps taken regarding investigation, explanation for delay in recording the

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information –

8. Disposal of the case –

(Signature) P.S.

Note: The first information should be written below, read over to the informant to ensure it is legible and correct, and the signature or mark or thumb impression of the informant should be taken below it, and the officer recording the information should attest to it.

The reason is that the firm Glorious Syndicate is a partnership. That firm also acts as a manager (broker). That firm, Glorious Global Finance, has lured investors by promising to facilitate the buying and selling of shares through a share broker and earn them profits. And in this manner, by giving inducement, through Prof. Griva Rameshchandra Bhatt, caused investment of money from a national institution with a Madhupuri certificate, which they say is at the Raas meeting place.

25 percent of the money received from the invested funds

was distributed properly until 2002. And thereafter, Sunil Naval

Kishore alias M. J. Pandey, making an excuse of a downturn in the stock market, has duly deposited Ms. Griva's amount into another's sub-account.

Thereafter, upon demanding the amount, Roshan Shekhar and Niraj Rajni

were giving threats regarding the recovery of this money. In this matter

were giving threats regarding the recovery of this money. In this matter

pressure was also applied implicitly in this matter. Daily, they would

threaten to extort money by force. Despite this, Sunil

Pandey, while taking the responsibility of a broker, Sunil

Therefore, in exchange for the invested amount,

Roshan Shekhar and Niraj Rajni did not pay the money for the given cheque either.

As a result, it appears that Griva Bhatt's invested money is lost.

Now that this company has closed down,

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this complaint has been filed. And this company, after taking money from investors, has closed the company and absconded with the money.

And a request has been made to investigate and take appropriate action in this matter.

And an application has been made to investigate and take appropriate action in this matter.

As per which, after receiving the amount, Sunil Sanjay of Syndicate company have disappeared. This money having absconded after committing a major scam, has come with this application. has come with this application.

(Name not legible)

C. P. C. Hg.

No 031

First Information of a Cognizable Offence given at the Police Station under Section 154 of the Code of Criminal Procedure

Sub-District-

District -

Date and hour of occurrence of offence-

1. Date and hour of information-

2. Place of offence, distance and direction from the Police Station-

Date of dispatch from Police Station-

3. Name and address of the informant and complainant-

4. Name and address of the accused-

5. Brief description of the offence (with section) and brief description of property carried away, if any-

6. Steps taken regarding investigation, explanation for delay in recording the

66

information-

7. Result of the case-

(Signature) Umra P.S. I 274/02 Dt. 11/12/02

(Signature) PEO

-The first information should be recorded below, and to attest its correctness, the signature or mark or thumb impression of the informant should be taken below it, and it should be attested by the officer recording the information.

In January 2002, Ketan Seth and Milan Surti, with the intention of establishing a bank in Surat and also providing loan schemes in Surat City, were collecting daily interest. Surti and Sindhu Seth invested the amount on reasonable assurance. Among them, Sanjay alias Ram Rajputlal and Bhagatchand Zaverchand Ravi Shankar Sharma operate a property account. Out of which, after obtaining a reasonable return on the financial amount, illegal interest was received. Which is within the jurisdiction of Umra P.S. at Nayab Residency.

The accused Ketan Seth and Milan Surti, having conspired together, started a money-lending business in the name of a bank in Surat city. The aforesaid financial institution was running an illegal financial business, wherein since 2001, Milan Surti and Ketan Seth were jointly collecting interest in the aforesaid bank. In relation to which, Umra Police Station

on 13/12/02, we received information that in the aforesaid bank, on 10.12.02, Government of India securities worth Rs. 2,39,29,105/- were purchased. The said securities of Rs. 2,39,29,105/- were given as the bank's security no. 275313. Thereafter, on 26th March, securities with a 10.30% interest rate maturing in the year 2020, worth Rs. 2,81,22,911/60 paise, were purchased, which are considered H.E.F.C. Bank's shares, and given as no. 275312. Thereafter, IDBI securities with a 44.5% rate, maturing in the year 2011, worth Rs. 3,37,11,111/97 paise, were purchased. On the date of HDFC Bank share number 27532, this financial institution, on 27/12/02, purchased the aforesaid Government of India securities maturing in the year 2011 with a 9.30% rate for Rs. 1,13,13,458/33 paise, regarding which HDFC share number 27533 was purchased. Ratnikar 3111010111 on Dt. 27/12/02 was purchased by the aforesaid bank, the value of which was calculated at Rs. 9,48,70,667/77 paise. Regarding which, two directors were appointed from among the 2+2 members of the bank, and in relation to which, information was received on 26th March regarding 42.7% of the shares. Upon investigating the

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matter, as per the instructions of the Hon'ble Police Commissioner Shri B.B. Bhatt,
on 26th March 2012, Milan

City

No 032

C. R. C. 14

First Information of a Statement or Complaint given at the Police Station as prescribed under Section 154 of the Code of Criminal Procedure

District –

1. Date and time of occurrence of offence
2. Date and time of information–
3. Place of offence, distance and direction from the Police Station–
4. Date of dispatch from Police Station–
5. Name and address of the informant and complainant–
6. Name and address of the accused–
7. Brief description of the offence (with section) and brief description of property carried away, if any –
8. Steps taken regarding investigation, explanation for delay in recording the information–
9. Result of the case–

(Signature):

(Mark)

Note: The exact statement should be recorded, read over, and the signature or mark or thumb impression of the informant should be taken below it, and it should be attested by the officer recording the information.

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Complainant's Name: V. P. Joshi, correspondence address Dena Bank Ltd.

Against: 1. Bhupen B. Nagjini, was a resident of... (now deceased). And others, Dhobi Talao.

The complaint is against one named Kirit and against Amit Nitin. Complainant in the investigation conducted by the Director, Enforcement Division, Mumbai, a case has been filed against the accused before the Mumbai and Vadodara (Mumbai) authorities

and proceedings have been initiated, and a judicial decision has been sought. Which is currently pending in the Mumbai court. Furthermore,

the accused (deceased) Bhupen B. Nagjini, resident of... as well as the accused Kirit B. Nagjini, during the period from 31.03.1998 to 11.04.2002, misappropriated the bank's funds of Rs. 91,36,50,621/- and Rs. 23,50,000/- of banking financial and other bank funds

by conspiring with each other, committed cheating and criminal breach of trust with the bank and illegally obtained financial benefits from 30/03/02

to date, and have violated the Banking Regulation Act. As per the bank's

list issued on 11/04/02, it has occurred as stated. From all these facts,

a prima facie case appears to be made out, therefore, as per Section 154 of the Cr.P.C.,

this has been registered. Further in-depth investigation is underway.

Sr. No.

Cheque No.

Date-

Amount.

1. 964317

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11/4/02. Rs. 90,12,206/21 paise.

2. 964302.

21/4/02. Rs. 6,33,250/-

3. 964317.

16/4/02. Rs. 53,91,241/63 paise.

4. 964309.

29/4/02. Rs. 5,14,92,565/99.

5. 964308.

23/4/02. Rs. 1,09,45,663/33.

6. 964310.

7/5/02. Rs. 1,06,11,066/67.

7. 964311.

13/5/02. Rs. 1,11,49,828/33

8. 964313.

15/5/02. Rs. 1,21,12,121/-

9. 964324

11/1/04 Rs. 1,24,04,961/-

10. 964324.

11/1/02. Rs. 1,26,02,761/-

All the above-mentioned cheques were from the following HDFC Bank account number, account holder of 001-2001-1012, for a total amount of Rs. 9,40,31,859 49 paise. Of which, on 07.07.01, a cheque no. 7964311 for Rs. 90,12,206/21 paise was passed. Furthermore, the remaining amount was not deposited in the account, and the accused, the late Bhupen B. Nagjini, is deceased.

The remaining actions were carried out by the other accused. Due to all these

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incidents,

the bank has suffered a financial loss. Upon this coming to the knowledge of the bank officials,

an investigation has been initiated into the matter. In which the accused have violated banking

laws. The late Dena Bank to IDBI on 11/04/02

caused a loss of approximately Rs. 500,00,00,000/- by settling the account.

In which the bank was able to recover compensation for the loss incurred.

P.T.O

C. P. C. 14 2.

No 033

Miscellaneous Matter. In 14 2, a total of 6 have given information to the Police Station

First Information of a Cognizable Offence

District-

District -

1. Date and time of occurrence of offence-

Date and time of information-

2. Place of offence and its distance and direction from the Police Station-

3. Date of dispatch from Police Station-

4. Name and address of the informant and complainant-

5. Name and address of the accused

6. Brief description of the offence (with section) and brief description of property, if any, stolen-

7. Steps taken regarding investigation, explanation for delay in recording the

information-

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8. Result of the case-

9. Signature

(Note) PSO

Note: The first information should be written below, and to attest to its truthfulness, the signature or mark of the informant or his/her thumb impression should be taken below it, and the officer recording the information shall attest the same.

Statement of Natha. Ek Vishnu- Chhailal Bhanjan Sindhu. 9 34/1. That in 2011, if there was no time limit. On 1st Jan, when it was upon us, then 1947 was written. If the law had a clear time limit, then you did wrong regarding us. 1945, that this Sindhu was given to these people. In which Bapu was freed.

Natha

It is requested that regarding the case of Sindhu... [unclear text]... was done wrongly. Sindhu. Allahabadi... by taking money from us first, gained our trust and by cheating, committed fraud with us for Rs. 8 Crore, 19 Lakh, 65 Thousand. (Inquiry) (Date 9.6.11/12). If there is any time limit, then against our Tehsil, as per law... witness. In your copy, a decision for inquiry and investigation has been taken.

The facts of the complaint are as stated.

Regarding the certified copy issued by order.

By Order.

9 C.P. Samaj

P.S.C.

Umra P.S.

Surat City

Forwarded to,

The D.F. New. Magistrate Saheb

Chief Addl. Surat City

72

Date: 2/7/02

P.S.O.

Copied by

Compared by

K. J. Patel

28/8/2

Submitted,

The Chief Judicial Magistrate Saheb,

Surat.

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manuworks.ai

T-C
SE
Mek

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 2026

Dist.: -Mumbai

Sanjay Hariram Agarwal

) ...Petitioner

V/s

State of Maharashtra & Anr.

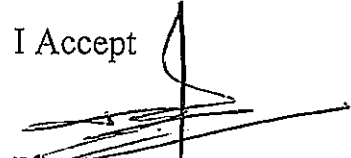
) ... Respondents


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 13 day of March, 2026.

I Accept


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


Petitioner
(Sanjay H. Agarwal)
petitioner

Category :-

**IN THE HIGH COURT OF JUDICATURE
AT BOMBAY**

Stamp No. :-

Ordinary Original Civil Jurisdiction

Cri. up (Pr) No. of 2026

Sanjay Agarwal

Plaintiff/s
Applicant/s
Petitioner/s

Versus

State of mah.

Defendant/s
Respondent/s

Advocate: _____

Filed 13th day of 03 2028

Adv. Dipak. mane

ADVOCATE HIGH COURT

Advocate for Plaintiff/Defendant/Appellant/Respondent