

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

CASE NO. 387 OF 2023

IN

FIR No. I-64/2002 (Udhna Police Station, Surat)

State of Maharashtra

Complainant

Vs.

Sanjay Hariram Agarwal

Accused no 1

(applicant)

**APPLICATION UNDER SECTION 262 OF
BNSS/ SECTION 239 OF CRPC SEEKING
DISCHARGE**

MAY IT PLEASE THIS HON'BLE COURT:

On behalf of Applicant/Accused No. 1, it is humbly submitted as under:

1. The present application is filed on behalf of Applicant/Accused No. 1, Mr. Sanjay Hariram Agarwal, seeking discharge under Section 262 of BNSS/Section 239 of the CrPC, 1973, in connection with C.C. No. 387 of 2023 pending before this Hon'ble Court.
2. The Applicant has been arrayed as an accused pursuant to FIR No. I-64/2002 dated 30.07.2002, lodged at the instance of Udhna Citizen Co-operative Bank Ltd. (hereinafter referred to as "the Complainant Bank"), wherein allegations have been made in relation to alleged non-delivery of certain Government Securities in the course of commercial transactions between the

Complainant Bank and Home Trade Limited (hereinafter referred to as “HTL”). Upon investigation, Chargesheet No. 4/03 dated 18.01.2003 came to be filed alleging commission of offences under Sections 406, 409, 420, 421, 422 and 34 of the Indian Penal Code against several accused persons, including the present Applicant. The Applicant was arrayed as accused as he was at the relevant time one of the directors of HTL.

3. That thereafter, the Ld. Trial Court framed charges under Sections 420, 467, 468, 471, 114 and 120-B read with Section 34 IPC, which order was assailed before the Hon'ble High Court. The Hon'ble High Court has been pleased to remit the matter back to the Ld. Trial Court. Consequently, the matter presently stands at the pre-charge stage, where the Applicant is entitled to seek discharge on consideration of the police report and the material relied upon by the prosecution.
4. At the outset it is submitted that there is no allegation whatsoever against the Applicant in his personal capacity. The Applicant has been implicated solely by reason of his designation as a Director of Home Trade Limited at the relevant time. It is settled law that the Indian Penal Code does not create vicarious criminal liability in the absence of a specific statutory provision to that effect. In prosecutions under the IPC, directors or officers of a company cannot be mechanically implicated merely because of their position. In the present case, the prosecution material is completely bereft of any allegation against the Applicant, and no prima facie material exists to sustain any of the charges alleged under Sections 406, 409, 420, 421, 422, 467, 468, 471, 114 and 120-B read with Section 34 of the Indian Penal Code. In such circumstances, the continuation of proceedings against the Applicant herein would amount to a gross abuse of process of law.

5. Under Section 239 CrPC, if upon consideration of the police report and the documents submitted, the Ld. Magistrate finds that the charge against the accused is groundless, the accused shall be discharged.
6. The real test for determining whether the charge should be considered groundless under Section 239 CrPC is that if the material relied upon in the chargesheet and those produced by the accused are such that no case whatsoever is made out against the accused, the accused should be discharged under Section 239 CrPC. Hence, at the current stage, this Ld. Court must consider whether the materials relied upon by the prosecution against the Applicant herein for the purpose of framing of the charge and those referred to by the accused make out any case at all.
7. That the application is made on the following grounds.

MISUSE OF CRIMINAL PROCESS FOR RECOVERY OF MONEY IN A PURELY CIVIL/COMMERCIAL DISPUTE

8. It is respectfully submitted that the present proceedings are a clear attempt to give a criminal colour to what is, on the Complainant's own showing, a commercial dispute arising out of Government Securities transactions undertaken by the Bank in discharge of its statutory obligations under the Banking Regulation Act and directions of the Reserve Bank of India. The allegations, even if taken at their highest, relate only to non-delivery of Government of India Securities and an alleged consequent financial liability, which squarely falls within the realm of civil law remedies. The grievance of the Bank is thus one arising out of alleged contractual non-performance and commercial dealings between two corporate entities and does not disclose any independent criminal intent or dishonest inducement so as to justify invocation of penal provisions.

9. The entire prosecution narrative, as reflected from the FIR, chargesheet, is founded upon contract notes, banking transactions, and alleged non-performance of certain contractual obligations. The materials relied upon by the prosecution themselves disclose that multiple Government Securities transactions between the Complainant Bank and HTL were successfully completed for an aggregate value of ₹12,27,48,512/- across twelve transactions prior to the transaction in dispute, consideration was paid, and deliveries were effected in earlier transactions. The dispute arises only in respect of certain subsequent transactions, which at best gives rise to a claim of commercial non-performance or breach of contractual obligations.
10. Significantly, there is not a single material on record to suggest any fraudulent intent at the inception of the transaction, any entrustment being misused, or any dishonest inducement attributable to the Applicant. Mere non-fulfilment of contractual obligations or alleged financial loss cannot, by itself, give rise to offences of cheating or criminal breach of trust. In this regard, the Hon'ble Supreme Court has repeatedly deprecated the growing tendency to give criminal colour to civil disputes. In *M/s Shikhar Chemicals v. State of U.P., 2025 SCC OnLine SC 1643*, the Hon'ble Apex Court observed:

“The Magistrate unfortunately remained unmindful of the fact that even as per the complainant’s own say the case is one of sale of goods and recovery of some balance amount... It was expected of the Additional CJM to know that in a case of sale transaction where is the question of any entrustment of goods so as to bring the case within the ambit of criminal breach of trust punishable under Section 406 of the IPC. ... We are not taken by surprise with the Magistrate exhibiting complete ignorance of law... However, we expected at least the High Court to understand the fine distinction between the two offences... It was expected of the High Court to know the well-settled position of law that in cases of civil dispute a complainant

cannot be permitted to resort to criminal proceedings as the same would amount to abuse of process of law.”

11. It is a settled law that mere breach of contract cannot give rise to criminal liability unless fraudulent or dishonest intention is shown at the inception of the transaction. The Hon'ble Supreme Court in ***Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168*** has observed:

“15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

(Emphasis supplied)

12. That pertinently the Company's prior and subsequent conduct, including honouring twelve earlier Government Securities transactions with the Complainant Bank aggregating to ₹12,27,48,512/-, clearly indicates bona fide commercial dealings and negates any allegation of fraudulent intent at inception.

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

... 8. From the decisions cited by the appellant, the settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

(Emphasis supplied)

14. Thus, it is most humbly submitted that the criminal process cannot be permitted to be used as a tool for recovery of money or enforcement of contractual obligations. The continuation of the present criminal proceedings is founded entirely on alleged commercial non-performance and is therefore vexatious and amounts to a misuse of the criminal machinery. The charge against the Applicant is therefore ex facie groundless and the Applicant deserves to be discharged at the threshold.

CRIMINAL BREACH OF TRUST

15. In order to attract and prove allegations under Section 406 or Section 409 of IPC, the ingredients of Criminal Breach of Trust as defined under Section 405 should be satisfied. As delineated by the Hon'ble Supreme Court in **Delhi Race Club Ltd. v. State of U.P. [(2024) 10 SCC 690] [at para 36]** the following are the ingredients of Section 406 IPC:

“In order to constitute a criminal breach of trust (Section 406 IPC):

- 1) There must be entrustment with person for property or dominion over the property, and*
- 2) The person entrusted:*

- a) dishonestly misappropriated or converted property to his own use, or*
- b) dishonestly used or disposed of the property or wilfully suffers any other person so to do in violation of:*
 - i. any direction of law prescribing the method in which the trust is discharged; or*
 - ii. legal contract touching the discharge of trust”*

16. The very foundation of the offence of criminal breach of trust lies in entrustment of property or dominion over property. Unless such entrustment exists, no offence under Sections 406 or 409 IPC can arise.

17. That there is not a whisper of any allegation that the Applicant had personal knowledge or involvement with the impugned transaction or that he was personally entrusted with any property.

18. Even with regards to HTL, the allegations in the chargesheet arise purely out of commercial transactions relating to purchase and sale of Government Securities undertaken by the Complainant Bank for SLR compliance. The prosecution material itself records that multiple Government Securities were purchased and sold over a period of time, payments were made through cheques and banking channels, contract notes were issued for each transaction, and the complaint's grievance is limited only to the alleged non-delivery of physical possession of certain Government Securities, particularly in respect of Contract Note No. 7431 dated 05.03.2002 for ₹3,19,96,075/-. The materials relied upon by the prosecution themselves indicate that the transaction was undertaken as a commercial dealing between two independent contracting parties, and not in the nature of any fiduciary entrustment.

19. As held by the Hon'ble Supreme Court in **Delhi Race Club Ltd. v. State of U.P., (2024) 10 SCC 690**, the concept of entrustment does not extend to ordinary commercial transactions. The Hon'ble Court held:

“From the aforesaid, there is no manner of any doubt whatsoever that in case of sale of goods, the property passes to the purchaser from the seller when the goods are delivered. Once the property in the goods passes to the purchaser, it cannot be said that the purchaser was entrusted with the property of the seller. Without entrustment of property, there cannot be any criminal breach of trust. Thus, prosecution of cases on charge of criminal breach of trust, for failure to pay the consideration amount in case of sale of goods is flawed to the core. There can be civil remedy for the non-payment of the consideration amount, but no criminal case will be maintainable for it.”

20. The Hon'ble Supreme Court in **M/s Shikhar Chemicals v. State of U.P., 2025 SCC OnLine SC 1643**, has reiterated that a commercial or sale transaction cannot amount to entrustment so as to attract criminal breach of trust. The Hon'ble Court observed:

“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 IPC. This position of law came to be explained by this Court almost six decades back in the landmark decision titled ‘State of Gujarat v. Jaswantlal Nathal’, 1968 (2) SCR 408, wherein this Court stated that a mere transaction of sale cannot amount to an entrustment.”

21. In absence of such entrustment or dominion, the first and indispensable ingredient of Sections 406 and 409 IPC collapses against the Applicant. Without a fiduciary relationship or personal custody of another's property, no offence of criminal breach of trust can arise in law.

22. In light of the above, the essential precondition for invoking either Section 406 or Section 409 IPC, that is entrustment of property in a fiduciary or agency capacity is wholly absent. Consequently, the very substratum of the alleged offences collapses.

CHEATING

23. It is respectfully submitted that even if the allegations contained in the chargesheet are accepted in their entirety, the essential ingredients of the offences punishable under Sections 420, 421 and 422 of IPC are not disclosed against the Applicant.

24. Section 415 IPC defines “cheating” as follows:

“Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to ‘cheat’.”

25. As delineated by the Hon’ble Supreme Court in ***Delhi Race Club (Supra)*** 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”

26. It is further submitted 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.

27. The Hon’ble Supreme Court in ***Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1***, as reiterated in ***Arshad Neyaz Khan v. State***

of Jharkhand (2025) SCC Online SC 2058, has categorically held that the intention at the inception is the gist of the offence of cheating, and that:

17. "42...From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning."

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

28. Moreover, neither the Complaint, FIR nor the chargesheet attributes any inducement, communication or act personally committed by the Applicant which caused the Bank to enter into the Government Securities transactions. The complaint itself records that the transactions were undertaken pursuant to decisions of the Bank's Investment Committee, thereby demonstrating that the Bank acted independently, institutionally and on its own assessment, negating any allegation of inducement.

29. Pertinently, the complaint records a continuous trading relationship in Government Securities between the Bank and several brokers, namely M/s. Ketan Sheth & Co., Euro Asian Securities Limited, and thereafter Home Trade Limited. The admitted history of regular purchase-sale, payment, and physical delivery of securities over several years and twelve completed transactions shows a routine commercial trading relationship, inconsistent with any allegation of fraudulent inception.

30. Nowhere in the complaint, FIR or chargesheet is it alleged that the Applicant personally concealed, removed, transferred, or disposed of any property with intent to prevent distribution among creditors or to defeat lawful claims. There is no material to suggest any fraudulent disposal of property so as to

attract Section 421 IPC. Similarly, the prosecution material does not disclose any act on the part of the Applicant which could amount to fraudulent prevention of debt under Section 422 IPC. The complaint itself records that payments were made, contract notes were issued, and the dispute arose only at the stage of alleged non-delivery.

31. Even qua Home Trade Limited, the material on record fails to show any allegation that the company possessed dishonest intention at the inception. Failure of performance or subsequent financial loss cannot retrospectively import mens rea or deception.

32. 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.

33. Accordingly, the essential ingredients of offences under Sections 420, 421 and 422 IPC are wholly absent. Even taking the prosecution's case at its highest, the allegations reveal at best a breach of contractual obligations, not offences punishable under Sections 420, 421 and 422 of IPC. The continuation of criminal proceedings against the Applicant would, therefore, amount to a misuse of the criminal process and deserves to be discharged.

THAT THE CHARGES UNDER SECTIONS 406 AND 420 ARE ANTITHETICAL TO EACH OTHER AND CANNOT COEXIST

34. It is respectfully submitted that the charges under Sections 406 and 420 of the Indian Penal Code are antithetical, and the essential ingredients of

criminal breach of trust and cheating cannot coexist in respect of the same transaction.

35. That the chargesheet contains charges under Sections 406 and 420 IPC together. Section 420 IPC requires proof of dishonest intention at the inception of the transaction, i.e., when inducing the delivery of property through deceit. Conversely, Section 406 IPC applies when property is lawfully entrusted to the accused, who subsequently develops a dishonest intention and misappropriates it. These two offences cannot arise from the same act or transaction.

36. The Supreme Court, in ***Delhi Race Club (supra)***, in clear words clarified this distinction, holding:

“38. In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405IPC, punishable under Section 406IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415 IPC, punishable under Section 420 IPC.

...

41. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence.

42. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence

i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept.

43. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.”

37. The Court further observed that:

“55. It is high time that the police officers across the country are imparted proper training in law so as to understand the fine distinction between the offence of cheating viz-a-viz criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other.”

38. This proposition of law has been furthered in ***Arshad Neyaz Khan v. State of Jharkhand, 2025 SCC OnLine SC 2058.***

39. The framing of such antithetical charges is impermissible in law, violates the principles of criminal jurisprudence and undermines the accused’s ability to prepare a coherent defence, thereby infringing upon the right to a fair trial guaranteed under Articles 14 and 21 of the Constitution. Thus, the Applicant has to be discharged from the charges alleged.

FORGERY

40. In order to prove allegations under Sections 467, 468 and 471 of the Indian Penal Code, the ingredients of the offence of forgery as defined under Sections 463 and 464 IPC must first be satisfied. These foundational provisions delineate when a document can be said to be “false” and when its making amounts to “forgery.”

41. Section 463 IPC defines forgery as follows:

“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.”

42. Section 464 IPC explains when a person is said to make a false document or electronic record. Broadly, a false document is made when a person dishonestly or fraudulently makes, signs, seals or executes a document intending it to be believed that it was made or signed by another person; or alters or tampers with an existing document without lawful authority; or causes another to sign or execute a document knowing that such person does not know the contents or the nature of what he is signing.

43. From these provisions, it is clear that forgery is the act of making a document that purports to be made by someone else or under false authority. Merely writing false recitals, or including incorrect or misleading contents in a document, does not by itself amount to forgery unless it is shown that the accused made the document pretending it was made or signed by another person.

44. The Hon'ble Supreme Court in ***Mohd. Ibrahim v. State of Bihar, (2009) 8 SCC 751***, has clarified the true import of Sections 463 and 464 IPC. It was held that forgery involves the making of a document which is intended to be believed as having been made by someone else. The Court observed:

“16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes

that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of “false documents”, it is not sufficient that a document has been made or executed dishonestly or fraudulently. 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.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.”

45. 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. The prosecution case does not specify which particular contract note or document is alleged to have been forged by the Applicant.

46. 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 Applicant herein.

47. 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 IPC (forgery for the purpose of cheating) cannot survive, as they are entirely dependent upon the existence of forgery in the first place. 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.

48. Accordingly, the allegations under Sections 467, 468 and 471 IPC are ex facie groundless and unsupported by the prosecution material. The Applicant is therefore entitled to be discharged from the said offences.

COMMON INTENTION & CRIMINAL CONSPIRACY

49. It is submitted that the allegation invoking Sections 34 and 120-B of the Indian Penal Code are wholly mechanical and unsustainable, inasmuch as the foundational requirements of common intention or criminal conspiracy are completely absent from the prosecution material.

50. 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.

51. 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 Limited by issuance of contract notes and payment of amounts through banking channels. The existence of such long-standing, institutional trading across twelve prior transactions negates any allegation of a concerted criminal design. 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.

52. 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 Applicant which could demonstrate that he acted in furtherance of a shared criminal intention.

53. It is further submitted that Sections 34 and 120-B IPC are derivative in nature and cannot survive independently. When the substantive offences themselves are not made out, the allegations of abetment, common intention or conspiracy automatically fail. Accordingly, the invocation of Sections 34 and 120-B IPC is ex facie groundless and unsustainable, and the Applicant is entitled to be discharged from the said allegations as well.

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

THAT THERE CAN BE NO VICARIOUS LIABILITY UNDER IPC

55. It is submitted that the entire set of allegations contained in the chargesheet pertains to the acts and transactions of Home Trade Limited (HTL), the company through which the dealings with the Bank were undertaken.
56. The prosecution has not alleged that the said funds were paid to or retained by the Applicant in his personal capacity. On the contrary, all payments were made to HTL's official accounts, and all documents emanated from or were executed on behalf of the company. The company, being a distinct legal entity, is alone answerable for its acts done in the ordinary course of business.
57. Though the company itself has not been arrayed as an accused, the prosecution seeks to fix criminal liability solely upon the Applicant, merely by virtue of his position as one of its Directors. Such prosecution is impermissible in law and contrary to settled principles governing corporate criminal liability.
58. The Indian Penal Code does not create or recognise the concept of vicarious criminal liability except where specifically provided by statute. In absence of a statutory mandate, a director cannot be held criminally liable for acts allegedly committed by the company unless there is evidence of his personal role and mens rea.
59. In *Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609*, the Hon'ble Supreme Court authoritatively held that a director or officer of a company cannot automatically be held liable for offences committed by the company unless there is sufficient evidence of his active role coupled with criminal intent, or the statutory provision itself specifically provides for vicarious liability.

60. In ***GHCL Employees Stock Option Trust v. India Infoline Ltd.***, (2013) 4 SCC 505, it was held that a director cannot be proceeded against merely on the basis of his designation or position in the company. Specific acts and intent must be alleged and established against him individually.

61. In ***Delhi Race Club Ltd. v. State of U.P.*** (2024) 10 SCC 690, it was observed:

“When Appellant 1 is the Company and it is alleged that the company has committed the offence then there is no question of attributing vicarious liability to the office-bearers of the Company so far as the offence of cheating or criminal breach of trust is concerned. The office-bearers could be arrayed as accused only if direct allegations are levelled against them. In other words, the complainant has to demonstrate that he has been cheated on account of criminal breach of trust or cheating or deception practised by the office-bearers.”

62. In the present case, even assuming the prosecution’s allegations to be true, the entire transaction forming the basis of the chargesheet pertains to Home Trade Limited, 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.

63. The prosecution has chosen to charge only Directors, including the present Applicant, without attributing any specific role or act done by them individually. The chargesheet contains no material showing any meeting, communication, or act of inducement by the Applicant. The allegations, even if taken at their face value, are not against the Applicant in his personal capacity. In such circumstances, the continuation of proceedings against the Applicant amounts to penalising corporate office per se, which is impermissible under criminal law.

64. It is thus finally submitted that even if the entire material relied upon by the prosecution is taken at its face value, no offence under Sections 406, 409, 420, 421, 422, 467, 468, 471, 114 and 120-B read with Section 34 of IPC is disclosed against the Applicant. The allegations, when analysed in light of the statutory ingredients and judicial principles discussed hereinabove, do not satisfy the basic elements of any of the charged offences.
65. The chargesheet discloses at best a series of commercial transactions between the Complainant Bank and HTL, undertaken in the ordinary course of business. There is no allegation or material showing that the Applicant, in his personal capacity, either conceived, directed, or participated in any unlawful act.
66. The law is settled that a criminal prosecution cannot be founded on conjecture, suspicion, or mere association, and that the Ld. Magistrate must discharge the accused if the charge is “groundless.” The cumulative effect of the above submitted grounds shows that no material exists that could lead to a reasonable suspicion that the Applicant has committed any offence. The charge, therefore, is “groundless” within the meaning of Section 239 CrPC. Continuing the proceedings would result in a misuse of the process of law and cause grave prejudice to the accused.
67. It is humbly submitted that the Applicant reserves his right and craves leave of this Ld. Court to adopt further grounds, advance additional submissions, and amend, modify the present submissions at the time of hearing of the present discharge application, if so required, for proper adjudication of the matter and to assist this Hon’ble Court in appreciating the factual matrix and legal propositions involved.

68. Thus, it is most humbly and respectfully prayed that the Applicant/Accused may be discharged from the present case from all the offences against him.

Mumbai

Dated: /05/2026

C.F. Accused No. 1