

IN THE HIGH COURT OF JUDICATURE OF
BOMBAY BENCH AT AURANGABAD
CRIMINAL WRIT PETITION NO. _____ OF 2026

DISTRICT: DHARASHIV (O'BAD)

In the matter of Article 227 Of The
Constitution Of India;

AND

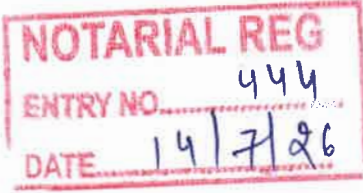
In the matter of Section 482 of the Code of
Criminal Procedure, 1973 (corresponding to
Section 528 of the Bharatiya Nagarik
Suraksha Sanhita, 2023);

AND

In the matter of Section 311 of the Code of
Criminal Procedure, 1973 (corresponding to
Section 348 of the Bharatiya Nagarik
Suraksha Sanhita, 2023);

AND

In the matter of Impugned Order dated
04.07.2026 passed by the Learned Chief
Judicial Magistrate, Osmanabad
(Dharashiv), below Exhibit 1202 in R.C.C.
No. 398 of 2002.



1] Sanjay Hariram Agarwal,

Age: 60 Years, Occupation: Business,

R/o : 7, Hari Sava Street, Kidderpore, Kolkata,

West Bengal.

.... Petitioner

(Orig. Accused No. 7)

VERSUS

1] The State of Maharashtra,

Through Police Station, Osmanabad,

Taluka & Dist.: Dharashiv (O'Bad) **.... Respondent**

TO,

THE HON'BLE CHIEF JUSTICE AND
OTHER HON'BLE PUISNE JUDGES OF
THE HIGH COURT OF JUDICATURE OF
BOMBAY, BENCH AT AURANGABAD.

THE HUMBLE PETITION OF THE
PETITIONER ABOVENAMED:

MOST RESPECTFULLY SHOWETH AS UNDER:

1] The Petitioner is filing this Criminal Writ Petition under Articles 227 of the Constitution of India, read with the inherent powers of this Hon'ble Court, to challenge the impugned order dated 04.07.2026. This order was passed by the Learned Chief Judicial Magistrate, Osmanabad, below



Exhibit 1202 in R.C.C. No. 398/2002. By the impugned order, the Learned Trial Court refused to set aside a "no cross", and rejected the Petitioner's request to recall Prosecution Witness No. 17 (PW-17) for cross-examination. The Trial Court rejected the application simply because the trial is time-bound. This refusal severely damages the Petitioner's right to a fair trial, as all other witnesses in this case have been cross-examined, leaving only this witness's testimony uncontested.

2] The Petitioner submits that, petitioner is arrayed as Accused No. 7 in R.C.C. No. 398/2002. The case is based on FIR No. 106/2002 under Sections 120B, 218, 406, 409, 420, 468, 471 r/w 34 came to be registered at the Osmanabad Police Station. The allegations involve complex commercial transactions regarding the purchase of Government Securities worth Rs. 30 Crores. It is alleged that, the Petitioner was a Director of Home Trade Ltd. (HTL) at the relevant time. The Petitioner has always respected the legal process and has actively participated in the trial. The petitioner submits that, petitioner filed application for discharge, which were unfortunately rejected. Subsequently, on 08.05.2014, the Trial Court framed charges against the Petitioner. As the trial progressed, the prosecution examined several witnesses. It is



a matter of record that all other prosecution witnesses have been duly cross-examined by the defence, except for Witness No. 17. That, On 17.11.2014, PW-17, Mr. Sunil Digambar Patil, was examined by the prosecution. However, on that specific day, the advocate representing the Petitioner was not present due to unavoidable personal difficulties. The petitioner submits that, as the advocate of the petitioner was absent, an application for adjournment (Exhibit 791) was filed. The Learned Trial Court rejected this application on the same day and passed a "no cross" order, closing the Petitioner's right to cross-examine this important witness. The petitioner submits that, petitioner was not aware of this fact. The copy of Evidence, copy of application seeking adjournment and copy of no cross order 17.11.2024, are annexed herewith and marked as **Exhibit – A.**

3] The petitioner submits that, after this event, the proceedings in this trial were stayed by this Hon'ble High Court, and later by the Hon'ble Supreme Court of India. The trial remained completely stayed and pending for over ten years, until the stay was finally came to an end on 19.05.2025.



The Petitioner is in no way responsible for this ten-year time consumed. The copy of order passed by the Hon'ble Bombay High Court and Hon'ble Supreme Court, are annexed herewith and marked as **Exhibit – B**.

4] The petitioner submits that, after the stay came to an end, the Petitioner filed an application under Section 216 of the Criminal Procedure Code to alter the charges, pointing out that charges for criminal breach of trust and cheating cannot exist together. The petitioner submits that, the Trial Court rejected said application, the Petitioner approached this Hon'ble Court. On 11.12.2025, this Hon'ble Court partly allowed Criminal Revision Application No. 366 of 2025 and directed the Trial Court to frame the charges in the alternative. The charges were then re-framed on 15.01.2026. The copy of the order dated 11.12.2025, passed by this Hon'ble Court in Criminal Revision Application No. 366 of 2025, is annexed herewith and marked as **Exhibit – C**.

5] The petitioner submits that, unfortunately, the senior advocate previously engaged by the Petitioner suffered a serious medical condition and was hospitalized. As a result, the Petitioner had to appoint a new advocate on 10.06.2026.



On this very day, the Petitioner's statement under Section 313 of the Criminal Procedure Code was recorded. The petitioner submits that, when the newly appointed advocate inspected the old case files, it came to light that PW-17 had never been cross-examined due to the 2014 "no cross" order. The petitioner submits that, to ensure a fair trial, the Petitioner immediately filed an application (Exhibit 1202) on 22.06.2026 to recall PW-17 under Section 311 of the CrPC (Section 348 of the BNSS). The petitioner submits that, however on 04.07.2026, the Learned Chief Judicial Magistrate, Dharashiv, rejected this application. The Magistrate noted that the Supreme Court had directed the trial to be completed by 15.07.2026, and wrongly concluded that the Petitioner's genuine request was merely a tactic to delay the trial. The copy of application Exh. 1202 & copy of order dated 4/7/2026, are is annexed herewith and marked as **Exhibit – D.**

6] The petitioner being aggrieved and dissatisfied by the impugned order dated 04.07.2026, passed by Learned Chief Judicial Magistrate, Dharashiv, below Exh. 1202, in Regular Criminal Case No. 398/2002, prefers this writ



petition under Article 227 of The Constitution of India & Section 482 of the Code of Criminal Procedure, 1973 (corresponding to Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023) on the following amongst the others grounds and same are raised without prejudice to each other :

GROUND

- I] That the Learned Trial Court committed a serious mistake by punishing the Petitioner for the absence of his advocate on 17.11.2014. It is a well-settled principle of law that a party should not suffer due to the fault, absence, or illness of their counsel. When the advocate was not present, the Court should have allowed the recall of the witness to ensure a fair trial.
- II] The Learned Trial Court has failed to consider that if a counsel is unavailable, the Court should take a liberal view and use its power to recall witnesses so that justice is done.
- III] That the Learned Magistrate has committed error in rejecting the application simply because the trial is "time-bound" by the orders of the Supreme



Court. The purpose of a speedy trial is to help the accused, not to take away their basic rights.

IV] The Learned Trial Court has failed to consider that even if the Supreme Court has made a trial time-bound, the trial court cannot refuse to recall a witness if the advocate was previously unavailable. The right to a fair trial under Article 21 of the Constitution is supreme.

V] That the Learned Trial Court failed to understand the severe damage caused to the Petitioner. All other witnesses in this trial have been cross-examined. PW-17 is the only exception. If the evidence of PW-17 goes uncontested, it will be treated as admitted truth and will come directly into the way of the Petitioner's defence. The failure to test this evidence is fatal to the Petitioner's case and results in a complete miscarriage of justice.

VI] That recalling this witness will not harm the prosecution's case. The matter is currently pending for the examination of defence witnesses. If PW-17 is called for re-examination and cross-



examination at this stage, it can be done quickly and alongside the defence witnesses. The Petitioner undertake not to seek any further adjournments for this witness. Therefore, no prejudice will be caused to the prosecution.

VII] That the Learned Magistrate incorrectly assumed the application was filed to delay the case. The time consumed in progress of prosecution from 2014 to 2025 was due to the stay orders from the High Court and Supreme Court. Furthermore, the new advocate was appointed on 10.06.2026, and the application to recall the witness was filed promptly on 22.06.2026. The Applicant's intention is solely to afford an opportunity for a fair trial, not to delay the matter.

VIII] That the law regarding the recall of witnesses under Section 311 of the CrPC (now Section 348 of the BNSS) is clear. The provision states that a Court shall recall a witness if their evidence appears essential to the just decision of the case. Since PW-17's uncontested testimony would



unfairly harm the Petitioner, cross-examining him is absolutely essential for a just decision. The Trial Court failed to exercise its mandatory duty under this law.

IX] Even otherwise impugned order is bad in law needs to be quashed and set aside.

X] That, the Learned Trial Court has failed to properly exercise the jurisdiction and discretion vested in it.

7] The petitioner crave leave to add, amend or alter the ground of writ petition if and when necessary.

8] That the petitioner undertakes to supply the English translation of Marathi documents as and when directed by this Honorable Court.

9] The petitioner has not filed any other or similar appeal in the Supreme Court of India or in any other Court touching the subject matter of this writ petition.



10] **IT, IS THEREFORE, PRAYED THAT :-**

- A] Writ Petition may kindly be allowed.
- B] That, impugned order dated 04.07.2026, passed by Learned Chief Judicial Magistrate, Dharashiv, below Exh. 1202, in Regular Criminal Case No. 398/2002, may kindly be quashed and set aside.
- C] Pending hearing and final disposal of the present criminal writ petition, further proceedings in Regular Criminal Case No. 398/2002 pending before Learned Chief Judicial Magistrate, Dharashiv, may kindly be stayed and suspended.
- D] Ad-interim relief in term of prayer clause 'C' may kindly be granted.
- E] And/ or to grant any other relief to which petitioner is found entitle to in the fact of the present case and law.



AND FOR THIS ACT OF KINDNESS THE PETITIONER, AS
IN DUTY BOUND, SHALL EVER PRAY.



DATE : 13/07/2026

PANKAJ A. TAMBOLI

PLACE : AURANGABAD

ADVOCATE FOR PETITIONER



:: VERIFICATION ::

I, Sanjay Hariram Agarwal, Age: 60 Years, Occupation: Business, R/o : 7, Hari Sava Street, Kidderpore, Kolkata, West Bengal, do hereby state on solemn affirmation that, content of this writ petition in para 1 to 10 and payer clause A to E are read over to me and are explained to me in english and same are true and correct to the best of my knowledge and belief.

Hence, verified on this 13th day of July, 2026 at

Nagpur.



Identified by :

Pankaj A Tamboli

PANKAJ. A TAMBOLI
Advocate.

Deponent,

S. Hariram

Sanjay Hariram Agarwal



SWORN BEFORE ME ON THIS 14th
DAY OF July 2026 AT NAGPUR BY
SHR/SMT./KU. Sanjay Hariram Agarwal
R/O Kolkata WHO HAS BEEN IDENTIFIED
BY SHR/SMT. Pankaj Tamboli
ADVOCATE, NAGPUR.

NOTARY
Govt. of India
NAGPUR DIST, (M.S.) INDIA

