2026:BHC-NAG:9884

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL REVISION APPLICATION NO. 45 OF 2026

Sanjay Hariram Agarwal

-- VERSUS --

The State of Maharashtra

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's Orders.	Court's or Judge's orders.

Mr. Nikhil Jagu, Advocate Through V.C. a/w. Mr. Sagar Kishor Lambat, Advocate for the Applicant.

Mr. A.B. Badar, A.P.P. for the Non-applicant/State.

CORAM : M.M. NERLIKAR, J.

DATE : JULY 29, 2026.

Heard.

2. The applicant is challenging the order dated 11/11/2025, whereby the application for discharge was rejected by the learned 2nd Additional Chief Judicial Magistrate (Special Court for Section 138 of the N.I. Act), Nagpur, as well as the order dated 26/11/2025 whereby charges were framed against the applicant.

3. The learned counsel for the applicant submits that there is absolutely no material on record to show that the applicant is involved in the crime. The trial Court has miserably failed to take into consideration the observations and findings recorded in the same matter, wherein the trial in respect of the other co-accused persons, except the present applicant, was conducted and the trial Court convicted accused Nos.1, 2, 4, 7, 8 and 9. He submits that the trial Court ought not to have considered the observations in the said trial, however, while rejecting the application, the trial Court came to the conclusion on the basis of the findings arrived at in the said trial. The applicant is nowhere concerned with the alleged misappropriation, though he was a Director. So far as the criminal conspiracy is concerned, there is no material available with the Investigating Officer. He further submits that, while considering the application for discharge, the Court did not consider whether there was sufficient material against the applicant and only relied upon the report of the Investigating Officer annexed to the charge-sheet. Therefore, under such circumstances, he submits that the impugned order is bad in law. He has relied on the following judgments:

(i) ***Delhi Race Club (1940) Limited and Others -Vrs.- State of Uttar Pradesh and Another,*** (2024) 10 SCC 690;

(ii) ***Sunil Bharti Mittal -Vrs.- Central Bureau of Investigation,*** (2015) 4 SCC 609;

(iii) ***Shikhar Chemicals -Vrs.- State of Uttar Pradesh and Another,*** (2025) SCC OnLine SC 1643;

(iv) ***A.T. Mydeen and Another -Vrs.- Assistant Commissioner, Customs Department,*** (2022) 14 SCC 392;

Therefore, he submits that since the trial Court has apparently committed an error on the face of the record, this Court may interfere with the impugned order by quashing the same. He also submits that, since there is no material against the applicant, the trial Court ought not to have framed charges against him. Therefore, he submits that even the order of framing charge dated 26/11/2025 passed by the learned 2nd Additional Chief Judicial Magistrate, Nagpur, is erroneous and deserves to be quashed.

4. On the other hand, the learned A.P.P. submits that the order dated 30/04/2024 passed by the trial Court, wherein before framing the charge the applicant was heard and thereafter a detailed order was passed, has not been challenged at any point of time. He further submits that the trial Court has rightly passed the order by observing that there is more than sufficient material, including documentary evidence, available along with the charge-sheet. The applicant and others have committed a serious offence wherein the NDCC Company has been duped of Rs.241 crore. He further submits that accused Nos.1, 2, 4, 7, 8 and 9 have been convicted and the others have been acquitted. Under such circumstances, it cannot be said that there is no material against the applicant. In the report itself, it is mentioned that the applicant, who was running the HTL Company, was entrusted with the said amount and, instead of purchasing Government securities, the amount was utilised for other purposes. He invited my attention to the note appended to the charge-sheet, wherein the Investigating Officer has levelled detailed allegations. He further submits that filing of the present proceedings is nothing but an attempt to protract the trial. Now since the charges have been framed and eight witnesses have already been examined, according to the learned A.P.P., the revision application ought not to be entertained.

5. I have considered the rival submissions. *Prima facie,* it appears that while considering the application for discharge, the trial Court relied upon the observations in the judgment of conviction dated 22/12/2023, wherein the role of the present applicant was carved out. For that purpose, the learned counsel has relied upon the judgment dated 22/12/2023 passed by the learned Additional Chief Judicial Magistrate, Nagpur, in the case of ***State of Maharashtra -Vrs.- Sunil Chhatrapal Kedar and Others***. No doubt, so far as the observations in the said judgment are concerned, wherein the other accused have been convicted, even if there are certain observations in respect of the present applicant, those cannot be relied upon. To that extent, the trial Court has committed an error, which is in consonance with the principle laid down in ***A.T. Mydeen (supra)***. So far as the other submissions are concerned, namely that the trial Court did not consider the material on record and only considered the note appended to the charge-sheet, the same cannot be accepted. It further appears from the impugned order, particularly Paragraph No.19, that the Court has considered the statements of several witnesses as well as the documentary evidence annexed to the charge-sheet and has, *prima facie,* recorded a finding that the conclusion drawn by the Investigating Officer on the basis of the said evidence involves the present applicant. Under such circumstances, it cannot be said that the trial Court did not consider the material forming part of the charge-sheet. It is further to be noted that, even in Paragraph No.25, it is observed that there is sufficient material on record to frame charges against the present applicant. There is nothing on record to show that the trial Court did not consider the material.

6. Under such circumstances, in my opinion, the findings recorded by the trial Court cannot be quashed. Not only that, it is further observed in the said order that a criminal conspiracy had been hatched for the purpose of misappropriation of public money and offence of forgery was also committed. It needs to be borne in mind that, while considering an application for discharge under Section 239 of the Cr.P.C., two important aspects are required to be considered: first, the police report, and second, the documents forwarded with it under Section 173 of the Cr.P.C. Upon perusal of the order, I do not find any infirmity in the same. The Court has considered the police report also in Paragraph No.11, wherein it is specifically stated that there are statements of several witnesses and voluminous documentary evidence which, *prima facie,* support the conclusion drawn by the Investigating Officer against the present applicant. Further, as observed above, there is sufficient material on record to frame charges. However, it is necessary to mention at this juncture that a detailed enquiry is not contemplated under this provision. The Court is only required to satisfy itself after going through the record available along with the charge-sheet. Therefore, I do not find that the Court passed the order without considering the material.

7. It is further to be noted that the order dated 30/04/2024 has not been challenged at any point of time wherein before framing charge the applicant was heard and detailed order has been passed. The order reads as under:

> *" Perused the chargesheet and heard the learned Spl. P. P. Today, the accused and his learned counsel are absent. One exemption application has been handed over by their clerk to the bench clerk of this Court which has already been rejected. Considering the conduct of the accused and his learned counsel, it is seen that they are not interested to argue the matter. Ample opportunities have been given to the accused for hearing before framing of charge but he has failed to avail the same. Hence, it is proceeded without hearing of the accused.*
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> *2. The learned Spl. P. P. has submitted that there is ample material on record to demonstrate the involvement of the accused No.3 in the alleged offence. The accused No.3 alongwith other co-accused has committed the alleged offences. There is ample material on record to show that the accused has common intention to commit the alleged offences and has committed the same.*

> *3. Perused the chargesheet and its annexures. The material on record prima facie shows the involvement of the present accused No.3 in commission of the alleged offences. At this stage, there is sufficient material to frame the charge against the accused under Sections 120(B), 406, 409, 468, 471 read with section 120(B), in alternative read with Section 34 of Indian Penal Code. The material on record further shows that the accused No.3 alongwith other co-accused had mens rea to form a criminal conspiracy of withdrawing the money of Nagpur District Central Co-operative Bank by obtaining sanction for withdrawal of such amount by using illegal means obtained the same from the headquarter of the bank at Nagpur. Hence, I hold that this is a fit case for framing of charge against the accused and to proceed with trial. Accordingly, the following order is passed :-*
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> *ORDER*
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> *The matter is proceeded further for framing of charge against the accused No.3 Sanjay Hariram Agrawal."*

8. At this stage, it would be appropriate to consider the decisions relied upon by the learned counsel for the applicant. The submissions advanced on behalf of the applicant is that merely on the account that the applicant was a Director of Home Trade Ltd., he cannot be prosecuted in the absence of any material disclosing his individual role and that no material has been collected during investigation to disclose his individual role so as to justify the framing of charge cannot be accepted.

Since, the Hon'ble Supreme Court has observed in the case of ***Sunil Bharti Mittal (supra)***, that the criminal liability cannot be fastened upon a Director merely by virtue of the office held by him unless the statute specifically provides for such liability. At the same time, it was also observed that where the material collected during investigation *prima facie* discloses the individual's active role coupled with the requisite criminal intent, such person can certainly be proceeded against. The said principle is also consistent with the observations of the Hon'ble Supreme Court in ***Iridium India Telecom Ltd. -Vrs.- Motorola Inc.***, **(2011) 1 SCC 74,** wherein it was held that the corporate character of a company does not, by itself, exclude criminal liability where the acts complained of are attributable to those constituting its directing mind and will. This Court has also considered the decision of ***Shikhar Chemicals (supra)***, which is distinguishable on facts.

9. Examined in the light of the aforesaid principles, the prosecution in the present case cannot be said to rest merely upon the applicant's designation as a Director. As discussed hereinabove, the charge-sheet, the statements of witnesses and the documentary material collected during investigation *prima facie* disclose the applicant's role in the alleged transactions. Upon an independent scrutiny of the charge-sheet and the material accompanying it, this Court is satisfied that sufficient grounds exist for proceeding against the applicant.

10. The further submission founded upon the decision in the case of ***Delhi Race Club (supra)*** have explained the distinction between the offences of cheating and criminal breach of trust, however the subsequent decision in ***V.D. Raveesha -Vrs.- State of Karnataka***, **(2024) SCC OnLine SC 5590,** after noticing the decision in Delhi Race Club, clarified that the applicability of the principles governing Sections 406 and 420 of the Indian Penal Code depends upon the factual foundation of each case and upheld the continuation of prosecution where the allegations *prima facie* disclosed the ingredients of both offences.

11. Therefore, twice the material was considered by the trial Court. Under such circumstances, no case is made out to interfere with the impugned order.

12. So far as the other aspects are concerned, what shocks the conscience of this Court is that this is a classic example of protracting and dragging the matter from pillar to post. In the year 2002, the charge-sheet was filed against the applicant. It further appears that the applicant has been charge-sheeted in 22 matters, meaning thereby that 22 F.I.Rs. have been registered against him. When the charge-sheet was filed in the year 2002, it was only in the year 2014 that the applicant filed a petition before the High Court seeking clubbing of all the proceedings pending against him. Stay was granted, however, the said writ petition came to be rejected by this Court in the year 2021. Again, almost after two years, the applicant approached the Hon'ble Supreme Court challenging the order of the High Court, wherein once again stay was granted. Ultimately, in the year 2025, even the Hon'ble Supreme Court rejected the SLP filed by the applicant. Thereafter, for the first time, the applicant moved an application for discharge on 09/01/2025, however, the said application came to be rejected on 11/11/2025. Accordingly, charges were framed on 26/11/2025, and thereafter, after about three months, the present revision was filed, i.e., on 11/02/2026. Before framing of charge, i.e., on 30/04/2024, the parties had already been heard and thereafter a detailed order was passed, which was reproduced above, wherein it was specifically observed that there was sufficient material for framing charges against the applicant. In spite of the said order, the application for discharge was filed almost ten months thereafter. This fact itself shows the conduct of the applicant, namely that he does not want to face the trial and, for one reason or another, has been approaching the trial Court, the High Court and the Hon'ble Supreme Court, thereby dragging and protracting the proceedings. Even the trial Court has recorded the conduct of the applicant and has also considered the conduct of his learned counsel, observing that they were not interested in arguing the matter despite ample opportunities having been given to the applicant before framing of charge, which he failed to avail of. Even in the said order, it was observed that, upon perusal of the charge-sheet and its annexures, there was sufficient material on record showing the involvement of the present applicant. It is necessary to mention at this juncture that, at no point of time, was even this order challenged.

13. Under such circumstances, I do not find any merit in the petition. Needless to observe that the present proceedings have been filed only to protract the trial. It is necessary to mention at this juncture that, except for the present applicant, all the other accused have already faced the trial and the trial Court, after appreciating the evidence, has convicted those accused. Under such circumstances, I do not find any error in the findings arrived by the trial Court while rejecting the application for discharge. I do not find any jurisdictional error, perversity or irregularity in the impugned order, except to the extent of the findings recorded on the basis of the conviction of the other accused persons. Hence, there is no merit in the application and the same is **rejected**.

[M.M. NERLIKAR, J]