

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

CASE NO. 200/PW/2005-2007

412

Exh. D-241

STATE OF MAHARASHTRA

(THROUGH EOW, CB, CID)

... COMPLAINANT

VERSUS

KETAN KANTILAL SHETH & Ors.

... ACCUSED

APPLICATION ON BEHALF OF ACCUSED
NO. 2 (SANJAY AGARWAL) TO DECIDE
THE PENDING APPLICATION UNDER
SECTION 216 CR.P.C. (EXHIBIT D-185) 233
FILED ON ~~23.09.2025~~ 23/9/25 PRIOR TO
RECORDING THE STATEMENT OF THE
ACCUSED UNDER SECTION 313 CR.P.C.:



MAY IT PLEASE YOUR HONOUR:

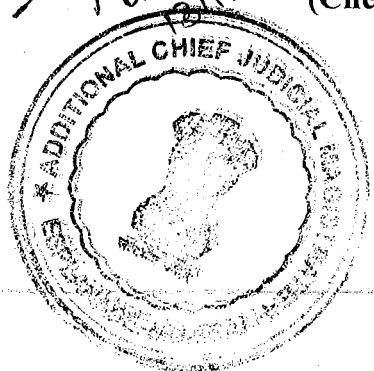
The Applicant/Accused No. 2, Sanjay Hariram Agarwal, most respectfully submits as under:

23/9/25

1. That on ~~23.09.2025~~, the Applicant filed an application under Section 216 of the Code of Criminal Procedure (Exh. D-185), 233 praying for the alteration of charges. The crux of the said application is that the charges currently framed against the Applicant—specifically the simultaneous framing of charges under Section 406 (Criminal Breach of Trust) and Section 420 (Cheating) of the Indian Penal Code—are legally antithetical

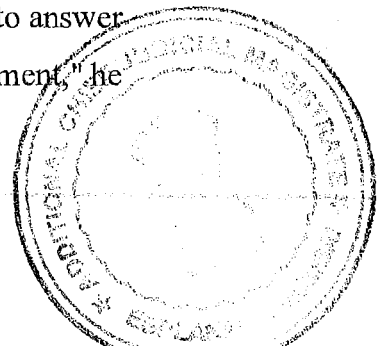
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and mutually exclusive. Relying on the law laid down by the Hon'ble Supreme Court in *M/s Shikhar Chemicals v. State of U.P.* (2025) and *Delhi Race Club (1940) Ltd. v. State of U.P.* (2024), the Applicant has demonstrated that these two offences cannot legally coexist on the same set of facts, as one implies lawful entrustment while the other implies dishonest inducement at inception.

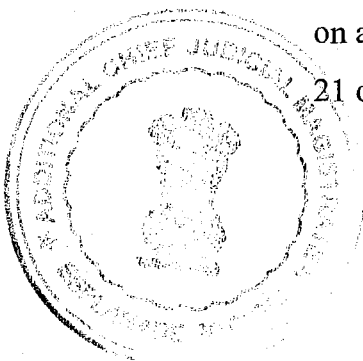
2. The matter is currently fixed/approaching the stage of recording the statement of the accused under Section 313 of the Cr.P.C. The Prosecution has closed its evidence, and the Court is set to question the accused regarding the circumstances appearing in the evidence against him.
3. It is submitted that the purpose of Section 313 Cr.P.C. is to institute a direct dialogue between the Court and the accused, enabling the accused to explain the incriminating circumstances appearing in evidence. However, for this explanation to be meaningful and for the defence to be effective, the accused must be clear about the precise nature of the offence he is alleged to have committed.
4. Currently, the Applicant faces a paradoxical situation. He is accused of *both*: having received property through lawful entrustment (Section 406 IPC); AND having induced the delivery of the same property through dishonest deceit at the inception (Section 420 IPC). If the Applicant attempts to answer questions under Section 313 Cr.P.C. regarding "entrustment," he



may inadvertently be prejudicing his defence against "cheating," and vice versa. Without the Court first deciding whether the transaction was one of entrustment OR one of inducement (or a civil dispute as alleged), the Applicant is not in a position to take up his defence or offer a coherent explanation. He effectively does not know the case he has to meet.

5. If the Statement under Section 313 is recorded now, based on the current defective charges, and this Hon'ble Court subsequently allows the Section 216 application (finding that the charges are indeed contradictory), the entire exercise of Section 313 will be rendered otiose. The Court would be required to frame fresh charges and examine the accused *de novo* based on the altered charge. To save judicial time and prevent a multiplicity of proceedings, the issue of charge must be settled first. Furthermore, Section 216 Cr.P.C. empowers the Court to alter the charge "at any time before judgment is pronounced." However, judicial propriety demands that when a fundamental defect in the charge affecting the very nature of the defence is pointed out, it should be adjudicated before the accused is compelled to disclose his defence under Section 313.

6. The Hon'ble Supreme Court in *Delhi Race Club* (Supra) has explicitly held that framing both charges simultaneously on the same facts is illegal. To compel the accused to answer questions on an illegal charge violates his right to a fair trial under Article 21 of the Constitution.



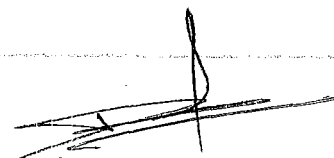
7. In light of the above, it is essentially necessary in the interest of justice that the ambiguity regarding the charge be resolved before the accused is questioned.

8. IT IS THEREFORE PRAYED THAT:

- a. This Hon'ble Court be pleased to take up and decide the Application under Section 216 Cr.P.C. filed by the Applicant on 23.09.2025 (Exh. D-185) on its merits **PRIOR** to proceeding with the recording of the statement of the accused under Section 313 of the Cr.P.C.;
- b. The stage of recording the statement under Section 313 Cr.P.C. be deferred until the passing of the order on the said Section 216 Application;
- c. Pass any such other and further orders as this Hon'ble Court deems fit and proper in the interest of justice.

PLACE: MUMBAI

DATED: 13/01/2026


ADVOCATE FOR ACCUSED NO. 2

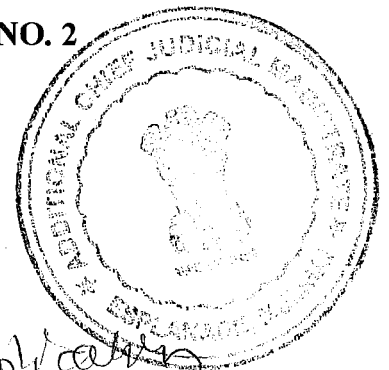
Say of APP:-

prosecution strongly opposed
present application

Accused gave this application

Applied on 17/01/26
Granted on 17/01/26
Ready on 03/02/26
Delivery on 03/02/26

only for delay in trial, case is 22 year old
True APP



True Copy


Judicial Clerk,

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

IN THE COURT OF THE ADDL. CHIEF METROPOLITAN MAGISTRATE,
47TH COURT, ESPLANADE, MUMBAI
CASE NO. ⁴¹²200/PW/2005 ⁰⁷

EAD-242

STATE OF MAHARASHTRA

(THROUGH EOW, CB, CID).

... COMPLAINANT

VERSUS

KETAN KANTILAL SHETH & Ors.

... ACCUSED

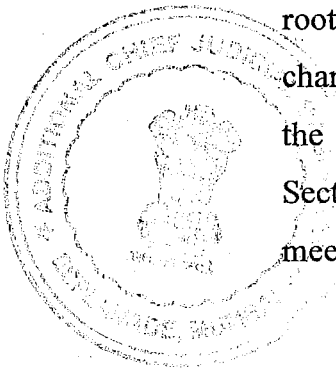
PURSIS ON BEHALF OF ACCUSED NO. 2 (SANJAY AGARWAL)

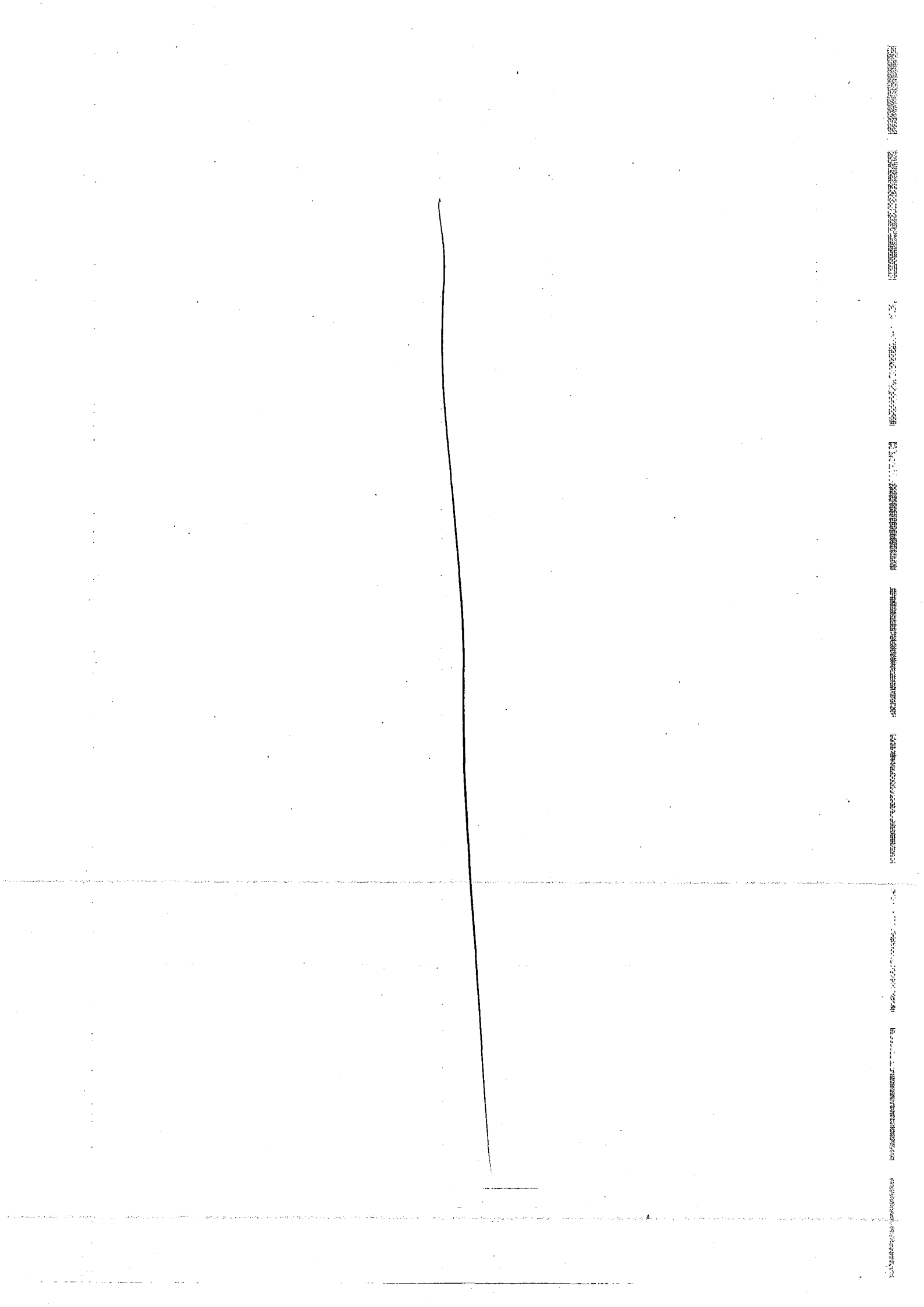
MAY IT PLEASE YOUR HONOUR:

The Accused No. 2 above named most respectfully submits as under:

1. That the Accused No. 2 has filed an Application today praying that this Hon'ble Court be pleased to decide the pending Application under Section 216 of Cr.P.C. (Exhibit D-185) regarding alteration of charges prior to recording the statement of the accused under Section 313 of Cr.P.C.
2. The Hon'ble Court was pleased to call for the say of the Ld. Public Prosecutor on the said application. The Ld. PP has filed their reply to the same today.
3. It is submitted that the issue raised in the Section 216 Application goes to the root of the matter regarding the nature of the offence (mutually exclusive charges under Section 406 and 420 IPC). Until the charges are clarified/alterd, the Accused is unable to offer his explanation or answer questions under Section 313 Cr.P.C. effectively, as he is not aware of the precise case he has to meet (whether entrustment or cheating).

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4. In view of the above, the Accused No. 2 is not in a position to record his statement under Section 313 Cr.P.C. today.

5. It is therefore requested that this Hon'ble Court may kindly take note of this.

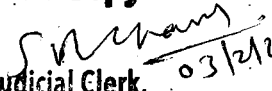
PLACE: MUMBAI

DATED: 13/01/2026


ADVOCATE FOR ACCUSED NO. 2



True Copy


Judicial Clerk, 03/2/26

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

Applied on.....
Granted on.....12/01/2026
Ready on.....
Delivery on.....03/02/2026

