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

C.C.NO. 8/Misc./2026
(CNR No.MHMM-110000372026)

State of Maharashtra ..Complainant.

Vs.

Sanjay Hariram Agarwal ..Accused No.1

ORDER BELOW DISCHARGE APPLICATION

The present application is filed under Section 239 of the Code of Criminal Procedure for discharge. Applicant is accused in Case No.255/PW/2023. Accused submitted that he has been charge-sheeted in view of FIR No. 65/2002 by Suvarnayug Sahakari Bank Limited. It is alleged that Home Trade company committed the offence of criminal breach of trust and cheating and thereby defrauded the Bank. This charge-sheet is against the employees of the Bank as well as the Managing Director and Directors of Home Trade. Present accused was arraigned only because he was a Director of Home Trade Limited. However, it is settled that there is no vicarious criminal liability in the absence of specific statutory provision. Directors and Officers of a company cannot be mechanically implicated. The prosecution material is bereft of any allegations against the applicant. The informant is trying to criminalize a commercial dispute and relates to non-delivery of Government Securities. The Bank had already taken civil remedies by filing Civil Suit and Arbitration Proceeding. Non-fulfilment of contractual obligations cannot give rise to cheating or criminal breach of trust. The charge-sheet does not

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lay the foundation for any of the offences including that of forgery. So also the abatement cannot also be inferred from the available charge-sheet. Hence this accused be discharged of the offences.

2. Learned APP filed reply and strongly objected the application. It is stated that the offences are serious and cognizable. Prima facie a case has been made out against the accused and it appears that this accused was involved in the crime. The case is very old and this application is filed at a very late stage to waste the time of the Court. Hence, the application be rejected.

3. I have heard learned Advocate for the accused and learned APP at length.

4. This crime came to be registered on the report lodged by Dadabhau Niloba Kale, Special Auditor of Co-operative Societies (Class-II), Co-operative Bank, Pune on 15.05.2002. C.R.No.65/2002 came to be registered with Vishram Baug Police Station, Pune. Record shows that initially the Investigating Officer filed charge-sheet against nine accused including the present applicant/accused and two were shown absconding. A supplementary charge-sheet appears to have been filed whereby one of the absconding accused was further charge-sheeted after arrest on 15.07.2003.

5. The crime in nutshell can be gauged from the report of the concerned Auditor. He is the Special Auditor and was given a task to

conduct the audit of Suvarnayug Sahakari Bank Limited Pune by the Divisional Deputy Registrar of Co-operative Societies, Pune by letter dated 03.05.2002. He was especially ordered to inspect the investment of the said Bank in the Government Bonds. Thereafter he went to the said Bank with Assistant Registrar Vilas Gawade on 08.05.2002 and conducted the inspection. This inspection revealed some misappropriation of the funds of the Bank.

6. He found that there were 14 investments of the Bank in Government Bonds at the end of 31.03.2002 and out of which 13 investments were found to be appropriate and in consonance with the directives issued by the Reserve Bank of India. This Suvarnayug Bank had also invested Rs.5.65 Crores in GOI-2010 (PHY) for 7.50% . But he did not find any such investments. This Bank had entrusted the Government Bonds of Maharashtra Jeevan Pradhikaran to Home Trade Limited for sale and for reinvestment of the amount again in the Government Bonds of year 2017 for 8.07%. Though the company executed contract note and gave it to the Bank, the company did not invest such Rs.5.65 Crores in any Government Bonds and did not hand over them to the Bank. The Board of Directors of the Bank has authority to take such decisions and as such the members of the Board, the General Manager of the Bank were indicted. So also, Home Trade Limited, accused Sanjay Agarwal and Ketan Sheth and Trivedi are also named in the said report.

7. Now this report is accompanied by the Special Report given by him in view of the said order. It also includes the details of Government

Securities of the said Bank as on 31.03.2002. Now the investigation goes to show that the Investigating Officer recorded statements of several witnesses namely Vilas Devram Gawade, Vasant Dattatray Kamat, Sunil Vishnuprasad Bari, Ulhas Nathoba Kalokhe, Ulhas Mahadeo Bhat, Suresh Shivajirao Kale, Ashok Prataprao Godse, Vilas Dattatray Bhujbal, K.K. Abdul Majid, Digambar Keshavrao Rachane, Laxmikant Rangnath Jade, Balkrishna Vitthal Raikar, Arun Parshuram Shinde, Gajanan Dhondiram Ganjawe, Vijaykumar Sudam Vambure, Manik Baburao Chavan, Sharmila Shirish Bhosale, Nivaji Balaji Pophale, Shankarrao Shivram Suryawanshi, Rajiv Devendraprasad Phule, Dinesh Pralhad Pardeshi, Jugna Paramsingh Lodhaya, Beena Navnitrai Sanghavi and Jaikumar Rasiklal Mehta.

8. The record also shows that the concerned Investigating Officer also carried out panchanama on several times in relation to the crime and has carried out search in the property of the accused. So also he has carried out panchanama in relation to arrest of these accused. The record as well goes to show the efforts taken by the Investigating Officer in collecting the evidence against all the accused. This includes the correspondence with several authorities including the Department of Co-operative Societies, Reserve Bank of India and other entities. He has collected several documents including the statement from Giltedge Investment Banking Services Limited, Maharashtra Jeevan Pradhikaran, IDBI Bank, ICICI Infotech and so on. He has also filed copies of the Government Bonds on record.

9. Now the role of this applicant/accused has been stated to be prominent one by the Investigating Authority and the prosecution. The applicant/accused claims that he had joined this Home Trade Limited only as a director and it does not create any vicarious criminal liability. He states that he cannot be blanketly implicated as an accused without specifying his role. Learned Advocate for the accused further stated that there are no specific allegations against the accused crystallizing his role in the overall offence. He cannot be made an accused because he was an employee and when there is no material on record. This was strongly objected by the prosecution with submission that there is ample material on record to proceed against the accused by framing a charge.

10. Learned Advocate for the accused drew my attention to the ratio of Hon'ble Supreme Court in the case of **Tuhin Kumar Biswas @ Bumba V/s. State of West Bengal** in **Criminal Appeal No.5146 of 2025 decided on 02.12.2025.** He argued that the framing of charge is a crucial stage which would facilitate the Court to flush out the cases which do not have strong suspicion. So also a reference was made to ratio of Hon'ble Supreme Court in the case of **Delhi Race Club (1940) Limited and others Vs. State of Uttar Pradesh and another** reported in **(2024) 10 SCC 690,** in the case of **Shikhar Chemicals Vs. State of Uttar Pradesh and another** reported in **2025 SCC OnLine SC 1643** and in the case of **Mohd. Ibrahim and others Vs. State of Bihar and another** reported in **(2009) 8 SCC 751.**

11. So far the prime submissions are that the role of this accused as a director has not been carved out and there is no material to show that

there can be any suspicion much less strong one in respect of this accused. Indeed the accused being a director may not have to incur liability, that too, criminal one for his company. The informant himself has given a specific role to this accused. It has been the case of prosecution that this accused along with other accused namely the accused who were directors in Home Trade Limited had induced the Bank to part with the valuable security in the nature of Government Bonds and misused them for their own benefits. The role of the accused has been stated independently as the director of Home Trade Limited.

12. Having considered the record before this Court, it is clear that the prosecution has made out a strong case against the present accused. There are good grounds and material on record to have a strong suspicion against the present accused of having abetted the present offence along with others. The FIR and the overall circumstances on record clearly show that there was a larger involvement in this crime and this Court can have a strong suspicion that the accused was actually involved. So basically the submissions by the accused that there is no material or grounds to proceed against him fail flat on the floor.

13. The other submission is in relation to offence under section 406, 409 and 420 of the Indian Penal Code in view of the ratio in the Delhi Race Club cited supra. Now the ratio clearly states that the offence under section 406 of criminal breach of trust and the offence under section 420 of cheating are distinct and require completely different ingredients. So the accused has to be discharged of either of the offence. Apparently the

accused is charge-sheeted for several offences including these one. Indeed the offences under section 406 and 409 on the one hand and the offence under section 420 on the other hand will not run together.

14. However, the prosecution is taking recourse of section 221 of the Cr.P.C. whereby it has been stated that alternate charges can be framed when there is doubt about the nature of offence. Herein section 221 of the Code indeed empowers this Court to charge the accused for alternative offences and the accused can be tried at once for such charges. Sub-section 2 even empowers this Court to convict the accused of the offence for a different offence. Now having considered all these aspects, this Court finds that there are certain doubts with the prosecution case either to import the offences on one side or the offence on the other side. In these circumstances, this Court can very well take the recourse of section 221 of the Cr.P.C. and frame alternate charges so as to make the accused aware of the allegations against him and the charge he is facing.

15. Another submission was in relation to the offences under section 465, 468 and 471 of the Indian Penal Code. The reliance is being placed on the ratio of Mohd. Ibrahim case cited supra. It is being stated that the offences alleged cannot by any stretch of imagination will be attracted against this accused. So far it has been stated that the accused took the original bonds, sold them and failed to deliver the new bonds and had also manipulated the entries in the record of the Bank. Now indeed this accused was not an employee or office bearer of the Bank and he will not be the key person to handle such registers of the Bank. However, again

the offence under section 109 of the Indian Penal Code will come into play wherein the role of this accused has to be adjudicated by testing the evidence against him. For the time being this Court is not expected to see whether the accused will be convicted. But it is the responsibility of this Court to see whether a strong suspicion has been made out. Apparently the investigating agency and prosecution has been able to make out such strong suspicion on record.

16. While concluding this order the conduct of this accused cannot be overlooked and has to be given a thorough consideration. The charge-sheet came to be filed in year 2003 before the Court of Judicial Magistrate First Class, Court No.4, Pune. Record further goes to show that accused No.6 and 8 had filed a discharge application, which was rejected by said Court. Thereafter a Revision was filed, which was also rejected. It resulted in accused No.6 and 8 filing Writ Petition No. 2463/2006 before Hon'ble Bombay High Court. A protection was given by Hon'ble High Court to accused No.6 and 8 by order dated 22.02.2007.

17. Meanwhile some of the accused filed Transfer Petition before Hon'ble Supreme Court bearing No. 333-348 of 2021. As per the order dated 09.09.2022 this matter alongwith other 12 matters came to be transferred to the Courts at Mumbai. Initially these matters were transferred to this Court. Thereafter all the matters were again distributed between other Courts. However, Hon'ble Supreme Court again passed an order on 24.07.2025 and thereby directed that all these matters be placed before One Judge/Court to decide analogously by passing the judgment.

Thereafter these matters came to be transferred to this Court in October-2025.

18. Meanwhile Hon'ble Bombay High Court passed order in said Writ Petition No. 2463/2006 on 20.11.2025 and dismissed the same. It came to the notice of this Court on 05.12.2025 when this Court verified the status of that Writ Petition from the website of Hon'ble Bombay High Court. Thereafter this Court started to take further steps to frame charge against all present accused. This accused took the shield of the said order of protection against accused Nos. 6 and 8 and did not file any application for discharge. But once the said Writ Petition came to be dismissed, this application has been deliberately filed.

19. The intent of this accused to file this application is malafide and only to prolong the matter any how. It has to be kept in mind that this application came to be filed on 02.01.2026. Now a very convenient and flimsy reason is given that once the Court stated the intent to frame charges, then only the accused got this opportunity to file the application for discharge. This reason is absolutely flimsy and shows the want of complete bonafides at the hands of this accused. It has to be kept in mind that Hon'ble Supreme Court while passing the order dated 24.07.2025 gave a period of two years to dispose of all the matters involved. This accused is well aware of these circumstances at least from year 2023.

20. The first opportunity for this accused to file the application for discharge was immediately after filing of chargesheet against him. Even

the bonafide could have been understood if such application would have been filed immediately after initial order of transfer of these matters in year 2022. Accused/applicant should have shown these bonafides, but he intentionally waited for others to exhaust their remedies and thereafter filed this application. It has to be stated that it is also the responsibility of present applicant/accused to follow the directions of the Hon'ble Supreme Court and assist this Court in disposal of this matter within the given time frame. However, the accused under the garb of his so called rights waited for the final orders in the Writ Petition and then only moved this application. The application is devoid of any merit and this Court is stopping itself from imposing exemplary costs on this applicant/accused. The conduct of this accused is hereby noted and the following order is passed.

ORDER

Application is rejected.

13/1/2026

Dt. 13.01.2026

(Abhijit R. Solapure)
Addl. Chief Judicial Magistrate,
47th Court, Esplanade,Mumbai.

True Copy

03/2/26

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

Applied on 21/01/2026
Granted on
Ready on
Delivery on 03/02/2026