

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE,
47TH COURT, ESPLANADE, MUMBAI.
Misc. Application No.491/Misc./2026

IN

C.C.NO.396/PW/2023
(CNR No.MHMM-11-2252-2026)

Sanjay Hariram Agarwal

...Applicant/Accused.

V/s.

State of Maharashtra

...Respondent.

ORDER BELOW EXHIBIT-1

The present application is filed under Section 239 of the Code of Criminal Procedure for discharge. Applicant is accused in Case No.396/PW/2023.

2. He came of with submission that, the C.R.No.M-03/2002 came to be registered on 16.07.2002 at the instance of Gandevi People's Co-Operative Bank. It is alleged that, the present accused and others have committed offences punishable under Sections 406, 409, 420, 467, 468, 120-B of the Indian Penal Code. The charge was framed only for some of the offences and that has been set aside by order dated 13.01.2026. There are no allegations against this accused in personal capacity. He has been implicated as he was director of Home Trade Limited. The present proceeding is an attempt to give a criminal colour to the commercial dispute. The entire prosecution

case is founded upon contract notes and transactions which do not constitute any offence. There is no material to show fraudulent intent from the inception and there is no entrustment. Every breach of contract will not result into cheating and cannot be an offence. Furthermore, offence under Section 406 and 420 cannot run together. There is no evidence to show any inducement, communication at the hands of accused. The offences of forgery are also not made out. There cannot be a vicarious liability in respect of transactions of Home Trade Limited. Hence, there is no sufficient material to show that, accused has committed any offence. Hence, the accused be discharged.

3. Learned APP filed reply and strongly objected the application. She submitted that, there is strong prima-facie case against the accused and the chargesheet shows the involvement. The accused has committed the present offence and there is strong suspicion emanating from the record. There are reasonable grounds to frame charge against this accused and hence, the application be rejected.

4. I have heard learned Advocate for the accused and learned APP at length on several sittings.

5. C.C.No.396/PW/2023 was earlier pending before the Hon'ble Court at Gujarat. But as per the order of Hon'ble Supreme

Court, this matter came to be transferred to this Court. The Hon'ble Supreme Court has directed to decide this case along with other matters in a time bound manner which is going to complete on 24.07.2027. The matter was earlier pending before the Court of Additional Chief Judicial Magistrate, 37th Court, Esplanade, Mumbai. The Hon'ble Court framed charge against the accused for the offences punishable under Section 420, 467, 468, 471, 114, 120(B) read with 34 of Indian Penal Code on 21.03.2025.

6. This applicant/accused challenged the framing of charge before Hon'ble Bombay High Court by filing Writ Petition No.78/2026. Hon'ble High Court passed order on 13.01.2026 and thereby partly allowed the petition by setting aside the charge against the applicant/accused framed on 21.03.2025. It was directed that, this Court shall pass an order of framing of charge after providing an effective opportunity of hearing to the prosecution and the accused in accordance with law. Thereafter, the accused has appeared before this Court and filed the present discharge putting up his grounds.

7. Present chargesheet came to be filed at the behest of Gandevi Police Station from the abovesaid crime. Apparently Champakbhai R. Mali was the employee of Gandevi People's Co-Operative Bank Ltd. He lodged the report on behalf of said bank and

has named the present accused and other accused. The said report is there on record, which goes to show that the said bank is established under the Gujrat State Co-operative Societies Act of 1961.

8. Learned advocate for the accused drew my attention to several aspects and submitted that there were mutually beneficial commercial transaction between the parties from year-1999 to 2002 and the several transactions were successful. The informant bank itself had waived the requirement for physical delivery of Securities. Furthermore the bank went on authorizing new trades though did not receive physical Securities for earlier trades. So the bank cannot state that it was deceived. There is no evidence or material on record to show the personal involvement of this accused. There are no specifications to show who had prepared false documents. The offences under Section 406 and 420 are antithetical and can not co-exist. Hence, the accused needs to be discharged of the present matter.

9. The accused further relied upon the ratio of Hon'ble Supreme Court in the case of **M/s. Shikhar Chemicals Vs. State of U.P.** reported in **2025 SCC OnLine SC 1643**, in the case of **Hridaya Ranjan Prasad Verma Vs. State of Bihar** reported in **(2000) 4 SCC 168**, in the case of **Vesa Holding (P) Limited Vs. State of Kerala** reported in **(2015) 8 SCC 293**, in the case of **Delhi Race Club Limited**

Vs. State of U.P reported in (2024) 10 SCC 690, in the case of **Indermohan Goswami Vs. State of Uttaranchal** reported in (2007) 12 SCC 1, in the case of **Arshad Neyaz Khan Vs. State of Zharkhand** reported in 2025 SCC OnLine SC 2058, in the case of **Anil Mahajan Vs. Bhor Industries Limited** reported in (2005)10 SCC 228 and in the case of **Mohd. Ibrahim Vs. State of Bihar** reported in (2009)8 SCC 751. He forwarded several submissions in the line of ratio laid down in these cases.

10. I have gone through these submissions. Now the matter has been transferred from the concerned Court at Gujrat and the documents with chargesheet are in Gujarati language. The concerned police station has filed the translated copies, which are being relied upon by the accused, prosecution and this Court as well. The accused drew my attention to several aspects in the chargesheet. So far the Investigating Officer has carried out the investigation. It appears that he has recorded statements of Mahendrabhai Bhanabhai Tailor, Akshaybhai Rameshchandra Desai, Manharlal Dahyalal Shah, Gulabbhai Bhagwandas Patel, Champakdas Ranginlal Mali.

11. Now the allegations in the case at hand start from cheating to criminal breach of trust and went on to the forgery of documents. So far as per the ratio laid down in the case of Delhi Race Club, it becomes clear that the offence under Section 406 or 409

cannot run with the offence under Section 420. It has been laid down that these offences are completely different and cannot co-exist. So basically the allegations must go on to state either of these offences and not both of them. So the prosecution cannot go on relying upon both the set of offences and has to clarify the situation.

12. While considering the framing of charge and consequent discharge in the case at hand, the aspects need to be looked is whether the prosecution is able to create a strong suspicion about the commission of these offences or any of them. The criteria is clear. It has to be kept in mind that the Court is not expected to do a roving inquiry in the truthfulness of the allegations. That would amount to a mini trial and discharge would be actually an acquittal. So basically the Court has to see whether the material on record justify framing of charges against the accused for any or all the offences.

13. Herein the Investigating Officer has carried out thorough investigation and has filed a voluminous chargesheet. He has examined several witnesses, some of whom are the office bearers of the affected bank. If the allegations in the report lodged by the informant are considered, he has given all the details. He submitted that these accused including the present one are the directors of Home Trade Limited and they are conducting business thereof. The present accused and other are said to be personally managing and

administering the business. The informant bank was expected to maintain statutory liquidity ratio and it was required to be invested in Government Securities. Informant bank had issued cheque to Ketan Shah earlier in October-1999 and the transaction was completed. The bank was lured by the present accused and others for future transactions. So they went on with several transactions. The accused delivered Securities from time to time, but from 26.02.2002 they started issuing contract notes.

14. The Investigating Officer has taken several details, collected various documents, which includes adjustment letter, other correspondence, cheques, return memo, resolution passed by the bank time to time and so on. The Investigating Officer as well recorded supplementary statements of the informant and other witnesses. These witnesses who are equally aware of the affairs of the bank have in clear terms submitted similar facts and the transactions.

15. So far it was argued that there were series of transactions between the bank and the Home Trade Limited and many of them went through without any hassle or complaint. But the dispute started from some last transaction and it cannot be said that there was intention on the part of the company or the accused since beginning to deceive the bank and as such the offence under Section 420 is not established. There is no iota of statement showing the

entrustment by the bank in favour of accused. It was further stated that a civil dispute was converted into a criminal one so as to harass the present accused.

16. Indeed the material on record and the statements do go to show that there were series of transactions between the parties and some of them were duly complied with by the accused and Home Trade Limited. There were some disputes from the transaction on 16.01.2001 and afterwards which prompted the filing of present chargesheet. Indeed as per the ratio in **Delhi Race Club**, the intention to cheat must be from the beginning i.e. since inception. Herein the accused is trying to club all the transactions between the parties as one and it is being tried that there was no such intention to cheat earlier as some of the earlier transactions have been successful.

17. But this approach of the accused in looking towards the allegations is basically flawed. Each transaction is independent and it is after the negotiations between the parties as per the record. All the transactions cannot be clubbed together so as to form it as one. These independent transactions must be considered independently and the intention of the parties need to be gauged. Herein if the allegations in the chargesheet are considered, the intention to cheat at one point of time before the disputed transactions is apparent and crystal clear. These allegations cannot be overlooked and cannot be

brushed aside branding them as omnibus. So this Court finds that the offence under Section 420 is clear. Furthermore when there are ingredients of Section 420 on record, the ingredients of offence under Section 406, 409 of the Code are ruled out in view of the ratio.

18. Furthermore it is being stated by the present accused that he cannot be included as accused being the office bearer of Home Trade Limited and there cannot be any vicarious criminal liability. Indeed this settled position of law cannot be ignored and denied. The accused or any accused cannot be implicated merely being the office bearer of the company. However the accused herein was the director of Home Trade Limited. His name appears in the initial report lodged by the informant himself. There are specific allegations against the directors as the co-conspirators. These allegations by way of statement and document create a strong suspicion as against the present accused and it cannot be said by any stretch of imagination that this accused has been implicated only because he was the director of Home Trade Limited or that the principal of vicarious liability is being brought into this matter.

19. There are also submissions that there is a mere breach of contract and it gives rise only to a cause of action to file a suit or civil dispute. Every such breach cannot be stretched to create an offence. This aspect is clear even from the ratio laid down in the cases cited

supra. Every breach or failure to perform a contract cannot turn into a criminal offence. But the present case does not cover such every breach or failure to perform. There are specific allegations showing the failure on the part of accused and the others in delivering the physical securities and faltering on their promises. Such an act has been clearly brought on record by the chargesheet and the documents therewith. So the submissions of this accused in this behalf do not hold any water.

20. The discussion draws this Court to a conclusion that only the offence punishable under Section 420 of the Code has been clearly shown from the material on record. Indeed there are also allegations of forgery and the offences punishable under Section 467 and 468 of the Indian Penal Code. However if the material on record is thoroughly perused, even the informant has not made clear allegation of such forgery or use of forged documents. The ratio in the Mohd. Ibrahim's case cited supra is clear and lays down the basic ingredients required for such offence. The chargesheet and the material therein fails to even lay down basic foundation for these two offences.

21. The discussion hereinbefore clarifies the situation. Now the efforts of the accused in meticulous pointing out of the flaws in the case of prosecution and discussing the same in details, shows that

the accused is trying to enter into the merits of the case. As discussed earlier, this Court is not expected to see the merits of the case in minute details and should not see whether there will be conviction or acquittal. A strong suspicion that the accused has committed the offence is sufficient for framing of charge. Such strong suspicion is clear and has been demonstrated by the prosecution through the chargesheet. So the submissions of the accused that he be discharged from the present case is not at all acceptable and he has to face the charge under Section 420 of the Indian Penal Code. Hence, the order follows.

ORDER

- 1) Application is rejected.
- 2) The accused Sanjay Hariram Agarwal shall remain present on next date to face the charge under Section 420 of the Indian Penal Code.

Dt. 06.05.2026

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