

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 1512 OF 2019

1. Vipin Kumar Gupta

Age:- 38 years, Occ.: Business
R/at: B 51A, Near Metro Pillar
Number 617, Shankar Garden,
Vikaspuri, Tilak Nagar, West
Delhi, Delhi 110018.

... Applicant

V/s.

1. State of Maharashtra.

**2. Central Bureau of Investigation,
CBI-Economic Offences Wing,
Mumbai, Vide R.C. No. 3/E/2014.**

... Respondents

Mr. Arjun Siyal a/w Mr. Vijit Shinde, Mr. Advait Helekar, Mr. Veertej Patil i/b
Adithya R. Iyer for the Applicant.

Ms. Manisha Tidke, APP for the Respondent-State.

Mr. Amit Munde a/w Mr. Jai Vohra, SPP for the Respondent No. 2-CBI.

CORAM : RANJITSINHA RAJA BHONSALE, J.

RESERVED ON : 10th JULY 2026.

PRONOUNCED ON : 5th OCTOBER 2026.

JUDGMENT :-

1) By the present application filed under Section 482 of the Code of Criminal Procedure (for short, "CrPC"), the Applicant seeks to quash and set aside the Order dated 23rd September 2019 framing the Charge against the

Applicant and the Order dated 29th July 2019 passed by the learned Special Judge (CBI), Greater Bombay, thereby rejecting the Applicant's discharge application.

2) Heard Mr. Arjun Siyal, learned Advocate for the Applicant, Ms. Manisha Tidke, learned APP for the Respondent No. 1, Mr. Amit Munde, SPP for the Respondent No. 2.

3) The case as alleged by the prosecution is as under: -

3.1) On a written complaint filed by Mr. R. Madhusudan, Dy. General Manager, State Trading Corporation (STC), Mumbai Branch, CBI, EOW, Mumbai registered R.C. No. 3/E/2014-CBI EOW Mumbai dated 21st April 2014 against M/s. Mehek Overseas Pvt. Ltd. (Accused No. 1), Mr. Jatin J. Thakkar (Accused No. 2), Mr. Gaurang Jeevanlal Kataria (Accused No. 3), being Directors of M/s. Mehek Overseas Pvt. Ltd., under Sections 120B, 403, 406, 420, 465, 468 and 471 of the Indian Penal Code (for short, "IPC"). After investigation a total of 18 persons were arrayed as accused.

3.2) Accused No. 1 entered into a contract with a foreign buyer for export of various agricultural commodities, then approached and induced STC for arranging 70% of the pre-shipment finance. As per the agreement, STC, Mumbai Branch, agreed to finance M/s. Mehek Overseas Pvt. Ltd., Accused No. 1, to the tune of 70% of the value of the goods procured by Accused No. 1 for export to foreign buyers.

3.3) That, the 70% pre-shipment finance was availed by Accused No. 1

on the basis of certificate of receipts issued by its Handling Agent and other related documents pertaining to the purchase of the commodity.

3.4) That, Accused No. 1 availed pre-shipment finance for exports of Maize and informed STC, Mumbai, that the said goods were stored in various locations such as Kolkata, Kakinada, Nasik, Navi Mumbai. Accused No.1, further informed that the said goods were pledged to STC, Mumbai. Trust deeds of the respective Custom House Agents (CHA) were submitted to STC, indicating the place of storage and the quantity of the goods. That, Accused No. 1 did not export the goods within the stipulated period. Accused No. 1 had taken a General Insurance Policy from New India Assurance Co. Ltd. for the value of pre-shipment finance availed by paying an initial premium of Rs. 1,73,597/- through cheque dated 28th January 2013. The said Insurance Policy was cancelled due to insufficiency of funds.

3.5) That, when STC contacted the respective CHA, it was revealed that the Trust Deeds submitted by Accused No. 1 were forged. STC was informed that, Accused No. 1 had lifted the entire stocks and no stocks were available with the CHA. That, Accused No. 1, in furtherance of the criminal conspiracy, induced the STC to deliver the property to Accused No. 1, which they otherwise would not have done. That, wrongful loss to the extent of Rs. 110.44 Crores was caused to the STC.

3.6) As against the present Applicant, it is alleged that the Applicant was Director of M/s. Sahara Exim Pvt. Ltd. That, on 31st August 2009, though

the Applicant was not the Director of the Company, he was still managing the business affairs of M/s. Sahara Exim Pvt. Ltd.

3.7) That, Accused No. 2 fraudulently diverted an amount of Rs. 5,00,00,000/- which was released by STC as pre-shipment finance for the export of Indian Toasted Soyabean Extractions. The Applicant had not supplied the Soyabean Extractions for export, but in pursuance of the criminal conspiracy with Accused No. 2, out of the said 5,00,00,000/- the Applicant assisted Accused No. 2 in fraudulently diverting Rs. 2,00,00,000/- (Two Crores) meant for the exports. That, by the said conduct, the Applicant along with Accused No. 2 cheated STC.

3.8) That, Mr. Jatin Thakkar (Accused No. 2), in connivance with the Applicant, fraudulently transferred Rs. 2 Crores to the current account of M/s. Sahara Exim Pvt. Ltd. in its account held with HSBC Bank. The said transfer was pursuant to the criminal conspiracy between Accused No. 2, the Applicant and Vivek Gupta, Proprietor of HR & CA Traders (Accused No. 18), and M/s. Durga Enterprises (Accused No. 4). On 28th February 2009, the aforesaid amount of Rs. 2,00,00,000/- was credited to the current accounts of HR & CA Traders (Accused No. 18) and Durga Enterprises. (Accused No. 4). The said amount were then transferred to the account of M/s. Sahara Exim Pvt. Ltd.

3.9) That, Accused No. 2 collected the amount in cash from the Applicant. That, Vivek Satish Gupta (Accused No. 18), acting in criminal conspiracy with the Applicant (Accused No. 17), diverted Rs. 2,00,00,000/-

from the current account of M/s. HR and CA Traders and M/s. Durga Enterprises to the current account of M/s. Sahara Exim Pvt. Ltd. maintained with HSBC Bank, New Delhi. That, the aforesaid acts of Accused Nos. 2, 17 and 18 caused loss of Rs. 2,00,00,000/- to STC, Mumbai Branch.

4) The Applicant (Accused No. 17) preferred a discharge application (Exh. 129) in CBI Special Case No. 31 of 2019. The learned Special Judge, Greater Bombay, by Order dated 29th July 2019, was pleased to reject the discharge application. By Order dated 23rd September 2019, charge was framed against the accused, including the present Applicant. The Applicant, along with other accused, has been charged under Section 467, 471 read with 120B of the IPC. By the present Application, the Applicant seeks to challenge the Order dated 29th July 2019 rejecting the discharge application and the Order dated 23rd September 2019 framing the charge.

5) Mr. Arjun Siyal, learned Advocate appearing for the Applicant, submitted that: -

5.1) There is no material against the Applicant in the chargesheet. The Investigating Officer has himself stated that the Applicant is not in the business of export of Soyabean Extracts and that, on 31st August 2019 when the transaction of Rs. 2,00,00,000/- is alleged to have taken place, the Applicant was not a Director of Sahara Exim Pvt. Ltd. That, when the amount of Rs. 2,00,00,000/- was transferred to the account of Sahara Exim Pvt. Ltd., one Mr. Luv Bharadwaj and Mr. Yogesh Jain were the Directors. That, said

persons/Directors have not been made accused.

5.2) The allegations of the Investigating Officer that the Applicant was managing the affairs of Sahara Exim Pvt. Ltd. are without any basis and totally untenable. That, the chargesheet does not contain any material i.e. communication via email, messages, etc., which would connect the Applicant with any of the accused (Accused Nos. 1 to 16) and more particularly with Mr. Jatin Thakkar (Accused No. 2). Though, Mr. Vivek Gupta (Accused No. 18) has stated that, he handed over the blank cheques to the Applicant, the said cheques were in fact in the custody of Mr. Arvind Poddar, the authorized signatory of Sahara Exim Pvt. Ltd. The Applicant has no connection or relation with the said cheques or with Sahara Exim Pvt. Ltd.

5.3) The allegation against Mehek Overseas Pvt. Ltd. is in respect of diverting the 70% pre-shipment finance availed for the export of several agricultural commodities, including turmeric fingers, Maize and other commodities. The Applicant is neither part of, nor is any role assigned to the Applicant in respect of the transactions of any of the agricultural products. There is no allegation in the chargesheet against the Applicant in respect of forged trust deeds, CHA certificates or any document alleged to have been authored, signed or used by the Applicant.

5.4) Even if the prosecution story is accepted in its entirety, it can clearly be understood that the Applicant helped his friend Mr. Sanjay Mehta in his transaction. On these facts, knowledge or dishonest/fraudulent intention

cannot be attributed to the Applicant. The Applicant handed over a cash amount to Mr. Sanjay Mehta in respect of transactions of clothing material supplied by Mr. Sanjay Mehta. The Applicant is ready to produce the cash receipt of Rs. 2,00,00,000/- as and when required.

5.5) At the initial stage when the FIR was filed, the Applicant was not named, but the name of the Applicant was added later on the pretext of monetary transactions of the Applicant and the money trail. The Applicant has had many genuine business transactions with the deceased Mr. Sanjay Mehta and there was no reason for the Applicant to apprehend any malicious intention on the part of Mr. Sanjay Mehta.

5.6) In any event there is no direct credit to the account of Sahara Exim Pvt. Ltd. from the complainant STC or from the bank accounts of Accused Nos. 2 to 4. The Applicant has been made accused on the basis of suspicion. That, the impugned Orders are clearly based on conjectures and surmises. There is no cogent material or evidence available to support the said Orders.

5.7) The only material against the Applicant in the chargesheet are the statements of Mr. Arvind Poddar, Mr. Luv Bharadwaj and Mr. Yogesh Jain, which were recorded on 17th July 2016. The Applicant's statement, which was recorded under Section 164 of CrPC, does not form part of the chargesheet. There is no additional material incriminating or otherwise which has been gathered by the Investigating Agency after 23rd November 2016 to justify

making the Applicant an accused. That, selective and one-sided appreciation of material is manifestly contrary to the settled principles governing the stage of discharge or framing of charge. Such conduct vitiates the impugned Orders and causes grave prejudice, which amounts to an abuse of the process of law.

5.8) The statements of Mr. Arvind Poddar, Mr. Luv Bharadwaj and Mr. Yogesh Jain, who were connected with M/s. Sahara Exim Pvt. Ltd., are not statements of neutral or independent witnesses. They are persons who are directly connected with the operation of the company to which the money has allegedly been transferred. That, as a rule of prudence, it would be unsafe to rely on the evidence of the uncorroborated testimony of the said persons. Though Mr. Arvind Poddar admits that he signed documents and cheques on instructions, yet he claims lack of knowledge about crucial credits, whereas Mr. Luv Bharadwaj and Mr. Yogesh Jain claim that the Applicant was handling the affairs but give no explanation as to why they permitted the same. The suspicion of the Investigating Officer, even if it is taken at the highest, does not amount to grave suspicion sufficient to proceed against the Applicant for serious offences of forgery, conspiracy and use of forged documents.

5.9) The Order of framing of charge is without application of mind and is a non-speaking Order. Sections 212 and 213 of CrPC have not been complied with.

5.10) The Applicant could not have been converted from witness to accused in the absence of any new, additional, credible and cogent evidence

which would indicate his involvement in the alleged offence. Reliance was placed in the case of *Raghuveer Sharan Vs. District Sahakari Krishi Gramin Vikas Bank And Anr.*, reported in *2024 IN SC 861*.

5.11) Reliance was placed in the case of *Kailash Shankar @ Rahul Vs. State of NCT Delhi and Anr.*, in Criminal Revision Petition No. 518 of 2025, to contend that a Court should not act as a mere post office. The Order should reflect an application of judicial mind, and mere endorsement of the chargesheet presented by the police as it is, without application of mind and recording the reasons in support, is not contemplated by law.

5.12) Further reliance was placed in the case of *Amit Luhach Vs. State of NCT Delhi and Ors.*, in CrI. Revision Petition No. 715 of 2026, to contend that a non-speaking order without reasons being assigned cannot be sustained and, due to the said non-application of mind, the matter was remanded back for framing of charge.

5.13) Reliance was placed in the case of *Vineet Chatwal Vs. State of Orrisa & Anr.*, in CrI. Appeal No. 4837 of 2025, to submit that when no incriminating material is found during the course of investigation or trial against the accused, trying the Applicant in a new case would amount to an abuse of the process of law.

6) Mr. Amit Munde, SPP appearing for the Respondent No. 2 submitted that:-

6.1) The role of the Applicant is clearly made out. The Applicant was

erstwhile Director of M/s. Sahara Exim Pvt. Ltd. On 31st August 2009, though the Applicant was not a Director of M/s. Sahara Exim Pvt. Ltd., he was controlling and managing the business affairs of the company. There is material on record which would indicate the same. In any event the same is a question to be decided at the trial. There are statements of witnesses which prima facie indicate the Applicants involvement.

6.2) Accused No. 2, in conspiracy and connivance with the Applicant, fraudulently transferred, through M/s. Durga Enterprises and M/s. HR and CA Traders, an amount of Rs. 2,00,00,000/- to M/s. Sahara Exim Pvt. Ltd. Both M/s. Durga Enterprises and M/s. HR and CA Traders are owned by Mr. Vivek Gupta (Accused No. 18). The Applicant had not supplied Soyabean Extractions for export. That, in pursuance of the criminal conspiracy with Accused No. 2, an amount of Rs. 2,00,00,000/- meant for export of toasted Soyabean Extractions was fraudulently diverted without making any export. The said amount of Rs. 2,00,00,000/- was layered through different bank accounts and diverted in conspiracy by Accused Nos. 2, 18 and the Applicant. The Accused No. 18 and the Applicant assisted the said fraudulent diversion and layering.

6.3) The Applicant being a conspirator has played a separate role in one integrated and united effort to achieve a common purpose. It is not necessary that each member of the conspiracy including the Applicant must know all the details about the conspiracy. Considering the facts of the present

matter, a case of strong suspicion is clearly made out.

6.4) That, at the initial stage of the trial, the truth, veracity and effect of the evidence collected cannot be meticulously judged. The defence of the accused cannot be tested at this stage. It is settled law that, the defence can be tested and considered in detail during the trial. At the present stage, the only requirement is that one has to see if there is sufficient ground to proceed to frame the charge. In the present case, there is strong suspicion for presuming that the accused committed the said offence.

6.5) Prima facie, there is sufficient evidence available on record. On record are the statements of Yogesh Jain, Luv Bharadwaj, and Arvind Poddar, who was the accountant of M/s. Sahara Exim Private Limited. The statements prima facie indicate that, though the company i.e. M/s. Sahara Exim Pvt. Ltd. was sold and the Applicant, (Original Accused No. 17) though was not a director of M/S. Sahara Exim Private Limited at the relevant time, he was managing the business affairs and bank transactions of the company till the year 2010.

6.6) The statement of Mr. Yogesh Jain specifically stated that Mr. Vipin Kumar Gupta was allowed to continue the business of the firm for the year 2009 to 2010. That, his signature on the Board Resolution dated 1st May 2009 and the internal signature card of HSBC Bank was forged.

6.7) The aforesaid statements clearly prima facie indicate the involvement of the Applicant in the offence. Without the Applicant's

involvement in the conspiracy, it would not be possible to transfer the amount of Rs. 2,00,00,000/- to the account of M/s. Sahara Exim Pvt. Ltd. Prima facie, the said amount has been misappropriated and used for purposes other than that for which the funds were availed from the complainant STC. That, the statements of the witnesses and the accounts clearly indicate the said fact.

6.8) The reliance was placed on the judgment of the Hon'ble Supreme Court in the case of *Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra And Ors.*, reported in (2021) 19 SCC 401, *R.P Kapur Vs. State of Punjab*, reported in AIR 1960 SC 866, *State of Haryana And Ors. Vs. Bhajan Lal And Ors.*, reported in 1992 SCC (Cri) 426, *State of Bihar and Anr. Vs. P.P Sharma IAS and Anr.*, reported in 1992 SCC (Cri) 192, and *Zandu Pharmaceutical Works and Ors. Vs. Mohd. Sharaful Haque And Anr.*, reported in 2005 SCC (Cri) 283.

7) Ms. Manisha Tidke, learned APP appearing for the Respondent-State adopted the arguments advanced by Mr. Amit Munde, SPP for Respondent No. 2.

8) Perused the entire record. The crux of the allegations against the Applicant is that, the Applicant was part of a criminal conspiracy along with Accused No. 2, Jatin J. Thakkar, the Director of Accused No. 1, and others, including Accused No. 18, wherein pre-shipment finance was fraudulently availed by Accused Nos. 1 and 2 from STC, Mumbai Branch, for agricultural

exports on the basis of forged, fabricated and false documents, such as confirmation contracts of the supplier, receipts of the Custom House Agent, quality and quantity certificates, etc. After the pre-shipment finance was availed and obtained, it was then diverted and misappropriated by a series of layering transactions by misusing the banking system i.e. to and through the bank accounts of entities controlled by other accused, including the Applicant, and thereby causing a loss of Rs. 83,84,36,045/- towards unshipped quantity and a loss of Rs. 31,23,27,371/- towards short shipments to STC, Mumbai Branch. Pertinent to note that, in the present case, the allegations are in respect of offences punishable under Section 120-B read with Sections 420, 467, 471 of the Indian Penal Code and Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act. These are in all 18 accused who have acted and are alleged to be a part of a larger complex conspiracy. The allegations are of serious and grave offences. The monies involved are public monies. As against the Applicant, the allegation is of aiding the fraudulent diversion and misappropriation of an amount of Rs. 2,00,00,000/- in well planned and well executed conspiracy with Accused No. 2 and 18.

9) On record are the statements of Yogesh Jain, Luv Bharadwaj, the directors and Arvind Poddar, who was the accountant of M/s. Sahara Exim Private Limited. Mr. Arvind Poddar, has specifically stated that the Applicant was managing the business of M/s. Sahara Exim Pvt. Ltd. and the bank transactions till January 2010. It was only on 1st May 2009 that the name of

the Applicant was deleted as the name of the Authorised Signatory and the names of Mr. Arvind Poddar and Mr. Yogesh Jain were added. The said witness has specifically stated that the banking transactions i.e. signing of cheques and RTGS were all at the instructions of the Applicant. Mr. Luv Bharadwaj has stated that the Applicant was managing the affairs and bank transactions of M/s Sahara Exim Pvt. Ltd. till 2010 despite the sale of the company to Mr. Luv Bharadwaj in March 2009.

10) The record prima facie indicates that, an amount of Rs.2,00,00,000/- was received in the account of M/s. Sahara Exim Private Limited through two entities i.e. M/s Durga Enterprises and M/s HR and CA Traders. It is not in dispute that, the Applicant earlier was a director of Sahara Exim Private Limited and was managing the business affairs of M/s. Sahara Exim Private Limited including the banking transactions/HSBC accounts. The main allegation against the Applicant is that, the Applicant in conspiracy and connivance with Accused No. 2, assisted and helped Accused No. 2 in transferring Rs.2,00,00,000/- to the account of M/s. Sahara Exim Private Limited through the accounts of HR and CA Traders and M/s Durga Enterprises i.e. by layering and routing the amounts through different entities with an aim and object to hide the money trail and with an object of diverting and misappropriating the loan money.

11) As regards the transfer of monies, the argument advanced on

behalf of the Applicant was that, even if the prosecution story is accepted in its entirety, it can be clearly assumed and as contended that the Applicant helped his friend, Mr. Sanjay Mehta, in a transaction and that the Applicant had handed over the cash amount to Sanjay Mehta in respect of the transaction of clothing materials supplied by Mr. Sanjay Mehta. The other contention of the Applicant is that his statement was recorded as a witness under Section 164 of the Cr.P.C., after which the Applicant has been made an Accused in the criminal prosecution. The Applicant has relied on various authorities to contend that once the statement was recorded and when the name of the Applicant did not appear in the FIR, the Applicant ought not to be made an Accused.

12) In the present case, while considering the question as to whether the Applicant is entitled to be discharged from the criminal prosecution, it would be necessary to consider and keep in mind the fact that by this alleged part of the conspiracy and modus operandi the complainant has been defrauded of a large sum to the tune of Rs. 5,00,00,000/- out of which Rs. 2,00,00,000/- has been diverted and misappropriated through and with the assistance of the Applicant. The banking system has been misused and exploited. The record indicates that, there are various entities involved in the conspiracy who have played their individual parts in the larger conspiracy.

13) The Applicant, by this Application, seeks to challenge the order

rejecting his discharge application and the order framing charge. It is settled law that, at the time of considering the discharge application, the Court is required to consider on a prima facie basis as to whether there is any material available to proceed against the concerned Accused or whether the charges are groundless. If the Court concludes that, there is no prima facie material available or that the charges are groundless, the Accused person ought to be discharged. On the other hand, in cases where the Court prima facie concludes that, there is even a grave or strong suspicion as against the Accused, it is required that the charges be framed and the trial be proceeded with.

14) Perusal of the record indicates that, there are statements given by the directors and accountant of M/S Sahara Exim Private Limited that, the transactions and business activities were carried out under the instructions of the Applicant and were controlled by the Applicant. It prima facie appears that, the Applicant was the authorised signatory for M/s. Sahara Exim Private Limited even after he had resigned/sold the company. During the argument, the main contention of the Advocate appearing for the Applicant was that the amount of Rs.2,00,00,000/- was given to one Mr. Sanjay Mehta in cash towards the supply of clothing material. In my considered view, this is a defence taken up by the Applicant can only be considered and is required to be tested only during and at the stage of trial. One must also keep in mind that, the charge is that of conspiracy. The basic charge and prosecution story is

that the Accused, in a conspiracy and acting in concert, with the other accused assisted Accused No.2 in diverting a part of the 70% pre-shipment finance availed from State Trading Corporation (STC) Mumbai Branch, a government company. The monies were diverted and misappropriated without carrying out the exports through layered transactions by using the banking system i.e. accounts of various persons including the Applicant. The charges are complex and serious. It is alleged that Accused No. 2, after availing the pre-shipment finance, did not export the goods or made short shipments and diverted/misappropriated the monies with help and assistance of the co-accused including the Applicant. It prima facie appears that monies meant for export have been prima facie diverted by layering them through various bank accounts. The conspiracy is clearly made out and it cannot be said that, there is no material or evidence on record so as to term the charges and/or the prosecution as groundless.

15) Perusal of the chargesheet prima facie indicates the involvement of the Applicant in the entire alleged fraudulent scheme. Though, the Applicant had not supplied any soyabean extraction for exports, the Applicant received the amount of Rs. 2 Crores which raise a strong suspicion. The funds have allegedly been diverted and misused. There are also statements on record, which prima facie indicates that, the Applicant was in control and management of M/S Sahara Exim Pvt. Ltd. including its Banks accounts till January 2010 even after it was sold.

16) The Hon'ble Supreme court in the case of *Union of India v. Prafulla Kumar Samal and Anr.*, reported in (1979) 3 SCC 4 while laying down the principles for considering the application seeking discharge in paragraph 10 observed as follows:-

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

16.1) The said principles have been reiterated by the Hon'ble Supreme Court in the case of *Sajjan Kumar Vs. CBI* reported in (2010) 9 SCC 368.

17) The Hon'ble Supreme Court in the case of *State of Bihar v. Ramesh Singh*, reported in (1977) 4 SCC 39, while discussing the scope of Section 227 of the CrPC observed that :-

“4.....Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial....”

18) The Hon'ble Supreme Court in the case of *Ghulam Hassan Beigh v. Mohd. Maqbool Magrey*, reported in (2022) 12 SCC 657 in para 23 and 26 has observed as under :-

“23. In Sajjan Kumar v. CBI [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , this Court had an occasion to consider the scope of Sections 227 and 228CrPC. The principles which emerged therefrom have been taken note of in para 21 as under :

(SCC pp. 376-77)

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence

as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

26. *In State of Karnataka v. M.R. Hiremath [State of Karnataka v. M.R. Hiremath, (2019) 7 SCC 515 : (2019) 3 SCC (Cri) 109 : (2019) 2 SCC (L&S) 380] , this Court held as under : (SCC p. 526, para 25)*

“25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N. v. N. Suresh Rajan [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] , advertent to the earlier decisions on the subject, this Court held : (SCC pp. 721-22, para 29)

‘29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on

the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.’ ”

19) The Hon’ble Supreme Court in the case of *State of T.N. v. R. Soundirarasu*, reported in (2023) 6 SCC 768 in para 60,61,67,69,72,73,78.79 has observed that:-

“60. In the context of trial of a warrant case, instituted on a police report, the provisions for discharge are to be governed as per the terms of Section 239 which provide that a direction for discharge can be made only for reasons to be recorded by the court where it considers the charge against the accused to be groundless. It would, therefore, follow that as per the provisions under Section 239 what needs to be considered is whether there is a ground for presuming that the offence has been committed and not that a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offences alleged would justify the framing of charge against the accused in respect of that offence, and it is only in a case where the Magistrate considers the charge to be groundless, he is to discharge the accused after recording his reasons for doing so.

61. Section 239 envisages a careful and objective consideration of the question whether the charge against the accused is groundless or whether there is ground for presuming that he has committed an offence. What Section 239 prescribes is not, therefore, an empty or routine formality. It is a valuable provision to the advantage of the accused, and its breach is not permissible under the law. But if the Judge, upon considering the record, including the examination, if any, and the hearing, is of the opinion that there is “ground for presuming” that the accused has committed the offence triable under the chapter, he is required by Section 240 to frame in writing a charge against the accused. The order for the framing of the

charge is also not an empty or routine formality. It is of a far-reaching nature, and it amounts to a decision that the accused is not entitled to discharge under Section 239, that there is, on the other hand, ground for presuming that he has committed an offence triable under Chapter XIX and that he should be called upon to plead guilty to it and be convicted and sentenced on that plea, or face the trial. (See : V.C. Shukla v. State [V.C. Shukla v. State, 1980 Supp SCC 92 : 1980 SCC (Cri) 695]).

67. Thus the word “groundless”, as interpreted by this Court, means that there is no ground for presuming that the accused has committed an offence.

69. The suspicion referred to by this Court must be founded upon the materials placed before the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged. Therefore, the words “a very strong suspicion” used by this Court must not be a strong suspicion of a vacillating mind of a Judge. That suspicion must be founded upon the materials placed before the Magistrate which leads him to form a presumptive opinion about the existence of the factual ingredients constituting the offence alleged.

72. The real test for determining whether the charge should be considered groundless under Section 239CrPC is that whether the materials are such that even if unrebutted make out no case whatsoever, the accused should be discharged under Section 239CrPC. The trial court will have to consider, whether the materials relied upon by the prosecution against the applicant herein for the purpose of framing of the charge, if unrebutted, make out any case at all.

73. The provisions of discharge under Section 239CrPC fell for consideration of this Court in K. Ramakrishna v. State of Bihar [K. Ramakrishna v. State of Bihar, (2000) 8 SCC 547 : 2001 SCC (Cri) 27] , and it was held that the questions regarding the sufficiency or reliability of the evidence to proceed further are not required to be considered by the trial court under Section 239 and the High Court under Section 482. It was observed as follows : (SCC p. 549, para 4)

“4. The trial court under Section 239 and the High Court under Section 482 of the Code of Criminal Procedure is not called upon to embark upon an inquiry as to whether evidence in question is reliable or not or evidence relied upon is sufficient to proceed further or not. However, if upon the admitted facts and the documents relied upon by the complainant or the prosecution and without weighing or sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped or quashed. As observed by this Court in Rajesh Bajaj v. State (NCT of Delhi) [Rajesh Bajaj v. State (NCT of Delhi), (1999) 3 SCC 259 : 1999 SCC (Cri) 401] the High Court or the Magistrate are also not supposed to adopt a strict hypertechnical approach to sieve the complaint through a colander of finest gauzes for testing the ingredients of offence with which the accused is charged. Such an endeavour may be justified during trial but not during the initial stage.”

78. *In Munna Devi v. State of Rajasthan [Munna Devi v. State of Rajasthan, (2001) 9 SCC 631 : 2002 SCC (Cri) 775] , this Court held as under : (SCC p. 632, para 3)*

“3. ... The revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged.”

79. *Thus, the revisional power cannot be exercised in a casual or mechanical manner. It can only be exercised to correct manifest error of law or procedure which would occasion injustice, if it is not corrected. The revisional power cannot be equated with the appellate power. A Revisional Court cannot undertake meticulous examination of the material on record as it is undertaken by the trial court or the appellate court. This power can only be exercised if there is any legal bar to the continuance of the proceedings or if*

the facts as stated in the charge-sheet are taken to be true on their face value and accepted in their entirety do not constitute the offence for which the accused has been charged. It is conferred to check grave error of law or procedure.”

20) The Hon'ble Supreme Court has held that, at the initial stage if there is strong and grave suspicion, based on which the Court comes to a conclusion, that a prima facie case is made out against the accused, then it will not be open for the Court to say that there is no sufficient ground for proceeding against the accused. In considering a discharge application what is required to be seen is a prima facie case to proceed with trial and not whether ultimately the trial would end in a conviction or an acquittal. In a case where the suspicion is raised, it is required that the same is sufficiently explained. While considering an application for discharge the Court is required to proceed on the assumption that the material available on record is true and consider the said material at its face value, to ascertain whether a prima facie case is made out and the ingredients to make out the offence are available. What is required to be seen is only whether a prima facie case is made out.

21) At the time of considering the application for discharge the court has to consider the facts as alleged at their face value and a presumptive opinion has to be formed as to the existence of the facts and the ingredients as required of the offences. The Court is not expected to conduct a probative evaluation of the material nor a mini trial. While considering a discharge

application, what is basically required to be seen is whether there is material available to proceed in the matter and frame the charge. The question whether the trial will end in a conviction or not is not to be considered. There is no appreciation of evidence as in and at the time of a trial.

22) At the stage of framing charge and/or considering a discharge application, the Court is not required to undertake meticulous evaluation of evidence. It is settled law that even grave suspicion is sufficient to frame a charge. As discussed above, the record and the charge-sheet prima facie indicate that there is material available on the record to frame the charge. The contention of the Applicant that, the amount of Rs. 2,00,00,000/- was received and was given to Mr. Sanjay Mehta in cash for a transaction of cloth is itself suspicious and in any event a defence of the Applicant which is required to be tried and tested at the trial and not at the stage of considering a discharge application.

23) Perusal of the record would prima facie indicate that, the Applicant was aware of and had knowledge of the modus operandi and transactions carried out by Accused No. 2. Considering the fact of the present case and the law as laid down by the Hon'ble Supreme Court as noted herein, this Court is of the opinion that, both the impugned Orders are proper and in accordance with the law. I am of the opinion that the Applicant has not made out any case, which calls for any interference by this court.

24) Needless to mention that, this Court has not expressed any opinion on the merits of the case. The observation made in this Judgment are only on a prima facie basis and with regard only to the extent of considering the application seeking discharge. The trial Court shall proceed with the matter in accordance with law and without being influenced by the observation made herein and take a decision on the merits of the matter independently.

25) The Application is accordingly dismissed.

(RANJITSINHA RAJA BHONSALE, J.)

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