

Ashish

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

CRIMINAL REVISION APPLICATION NO. 319 OF 2025

Arif Ismail Memon	... Applicant
V/s.	
Central Bureau of Investigation	... Respondent

Mr. Akash Kavade i/b Ms. Aishwarya Sharma for the applicant.

Mr. Sagar Agarkar, APP for respondent-State.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 9, 2025

P.C.:

1. By way of the present Revision Application, the applicant challenges the order of the learned Special Court rejecting his application under Section 227 of the Code of Criminal Procedure. By the said order, the Special Court refused to discharge the applicant from the offences punishable under Sections 120-B, 420, 467, 468, 471 of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The prosecution is based on a written complaint lodged by Mr. A. W. Sathe, Deputy General Manager, Corporate Finance Branch, Central Bank of India, Mumbai, alleging that the accused persons, being directors and office bearers of M/s. Biotor Industries Limited (M/s. BIL) along with certain bank officials, caused wrongful loss of Rs. 50 crores to the Central Bank of India by entering into a

criminal conspiracy.

2. The case of the prosecution in brief is as follows.

3. During the period 2009 to 2010, all accused conspired at Mumbai and other places to cheat the Central Bank of India in connection with appraisal, recommendation, sanction and utilisation of supply bills and invoice discounting facility. The allegation is that the concerned bank officials abused their official position, failed to carry out proper appraisal, and recommended and sanctioned facilities beyond the credit policy of the bank.

4. M/s. Biotor Industries Ltd., a company engaged in the manufacture of castor oil and its derivatives, approached the Central Bank of India for sanction of Sales Bill Financing Facility of Rs. 50 crores. It represented that the said facility was intended for financing farmers supplying castor seeds (raw material) to the company. The company further represented that it would act as a Management and Collection Agent between the bank and the farmers, assisting the bank in identifying eligible farmers and disbursing loan proceeds to them.

5. Relying on the said representation, the bank sanctioned the facility of Rs. 50 crores. A Management Agency Agreement was executed, and the said advances were guaranteed by the directors/accused persons through their personal guarantees. Under the agreement, the bank agreed to finance the genuine requirements of farmers identified by M/s. Biotor Industries Ltd., with the object of enabling the company to disburse the loans to the farmers.

6. In terms of the agreement, the account of M/s. Biotor Industries Ltd. maintained with the Rajmahal Road Branch, Baroda, was credited after discounting of bills. The said funds were intended to be disbursed to 1,597 farmers whose names were submitted by M/s. Biotor Industries Ltd. The company was under obligation to collect the sale proceeds from the farmers and deposit the same with the bank towards repayment of the farmers' dues.

7. The disbursement was made to the company in its capacity as M & C Agent. The company, in turn, undertook to disburse the funds to the farmers through its ten authorised representatives described as Village Level Aggregators. At the request of M/s. Biotor Industries Ltd., funds were transferred to the accounts of the said representatives with Oriental Bank of Commerce, Ashram Road, Ahmedabad, on 29.09.2009, 02.10.2009 and 06.10.2009, for further disbursement to individual farmers.

8. However, the farmers never received the money. The investigation disclosed that the necessary forms and compliance were not carried out by the farmers. Instead, the employees of M/s. Biotor Industries Ltd. filled in the documents. On the strength of forged documents, the bank released the funds, but the money was routed back to M/s. Biotor Industries Ltd. The directors and company officials, in collusion with the bank officials, diverted the funds and thereby committed fraud and breach of trust, causing wrongful loss to the bank.

9. It is further alleged that false documents were submitted for opening bank accounts in the names of non-existent farmers. Invoices and receipts not supported by genuine trade transactions were also used. In this manner, the loan proceeds were diverted to M/s. Biotor Industries Ltd. and its directors. Out of the sanctioned Rs. 50 crores, an amount of Rs. 35 crores was allegedly transferred to the companies of the present applicant, namely K.G.N. Industries Ltd. and Sailani Agro-Tec Ltd., through circular transactions.

10. On the basis of these allegations, a Regular Case (RC) was registered. After investigation, a chargesheet was filed before the Special Court. The learned Special Court took cognizance and issued process against the accused. According to the applicant, however, a bare reading of the chargesheet would show that no specific role is attributed to him in the alleged offences.

11. It is also the case of the prosecution that M/s. Biotor Industries Ltd. had availed similar loan facilities from several other banks. Multiple FIRs have been registered by the investigating agency against the company and its directors for offences of similar nature.

12. The learned Advocate for the applicant submitted that the only material relied upon by the prosecution against the applicant is the statement of Mr. Amar Thakkar, Vice President, Finance and Accounts. In his statement, Mr. Thakkar stated that the applicant had supplied castor seeds to M/s. Biotor Industries Ltd. and that he was informed about the sanction of the credit facility. He further

stated that the statement of accounts shows that amounts were transferred to the entities of the applicant to the extent of Rs. 35 crores. However, the learned Advocate pointed out that in the very same statement, Mr. Thakkar categorically admitted that he was unable to distinguish between circular transactions and genuine transactions. It was, therefore, argued that when the witness himself is unsure whether the amount received by the applicant's entities was a part of circular transactions or genuine business dealings, the applicant is entitled to discharge.

13. He further submitted that the entities owned by the applicant had regular business transactions with M/s. Biotor Industries Ltd. and that in consideration of such genuine transactions, the applicant's entities received an amount of Rs. 35 crores. The applicant had produced material before the Special Court to show the genuineness of such transactions. However, the Special Court declined to consider those documents on the ground that, at the stage of considering an application under Section 227 of the Code of Criminal Procedure, the Court cannot look into the material produced by the accused. The learned Advocate argued that if such material is considered, it would clearly expose the falsity of the prosecution's case. He, therefore, submitted that the statement of Mr. Thakkar does not implicate the applicant in the alleged offences and that the prosecution has failed to establish a prima facie case against him as required under Section 227 of the Code. Hence, the Special Court ought to have allowed the application for discharge.

14. On the other hand, the learned APP opposed the application. He submitted that the applicant, Shri Arif Memon (A-16), along with co-accused Shri Rajesh Kapadia (A-3), Director of M/s. Biotor Industries Ltd., had visited the bank and persuaded its officers to sanction the proposal of “Farmer Finance/Agriculture Loan” in favour of M/s. Biotor Industries Ltd. He further submitted that when M/s. Biotor Industries Ltd. requested the bank to disburse funds from the M&C Account to the accounts of Village Level Aggregators (VLAs), Shri Arif Memon was kept informed of this development by the representatives of M/s. Biotor Industries Ltd. through email communication. The learned APP further submitted that cheques issued from the accounts of VLAs in the names of different farmers, which were to be credited to the farmers’ accounts, were in fact discounted by Shri Arif Memon through Shri Jigar Thakkar (A-20) for the benefit of M/s. Biotor Industries Ltd.

15. He also pointed out that the funds disbursed by the bank, which had been received back into the accounts of M/s. Biotor Industries Ltd., were later transferred to the companies of the applicant, namely M/s. KGN Industries Limited and Sailani Agro-Tech Industries Limited, in which Shri Arif Memon (A-16) was a Director.

16. At this stage, it is necessary to note the settled principles governing discharge under Section 227 of the Code. The law laid down by the Supreme Court in *Union of India v. Prafulla Kumar Samal* (1979) 3 SCC 4, *State of Bihar v. Ramesh Singh* (1977) 4 SCC 39, and *Sajjan Kumar v. CBI* (2010) 9 SCC 368, makes it clear that at the stage of discharge, the Court is required to consider

only the material produced by the prosecution. The Court has to see whether, on the basis of the record, there is ground to presume that the accused has committed an offence. If the material raises strong suspicion against the accused, discharge cannot be granted. However, if the material is wholly insufficient and does not disclose any ground to proceed, the accused is entitled to discharge.

17. It is equally well settled that the defence material produced by the accused cannot ordinarily be considered at this stage, except in very rare cases where the material is unimpeachable and of sterling quality (*State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568). The test is not whether the prosecution has proved its case beyond reasonable doubt, but whether there is sufficient ground to proceed with the trial.

18. Applying the above principles to the present case, it is seen that the prosecution has placed on record the statement of Mr. Amar Thakkar, Vice President, Finance and Accounts, which reflects that the applicant's entities received funds to the tune of Rs. 35 crores from the transactions undertaken by M/s. Biotor Industries Ltd. It is true that Mr. Thakkar has also admitted that he cannot clearly distinguish between circular transactions and genuine transactions. However, the fact remains that the money trail leads to the entities of the applicant and this circumstance cannot be ignored at the stage of framing of charge.

19. This Court is unable to accept the submission of the applicant that the only circumstance against him is the statement

of Mr. Amar Thakkar showing transfer of Rs. 35 crores to his entities. At the stage of discharge, the Court is not expected to evaluate the sufficiency of evidence as would be done after trial. The test under Section 227 of the Code is whether the material, if taken at its face value, gives rise to a strong suspicion that the accused has committed the offence.

20. The prosecution case does not rest merely on the fact of transfer of funds. The record shows that the applicant had visited the bank along with co-accused and persuaded sanction of the credit facility. The prosecution has also alleged that he was kept informed about the disbursement process through emails and that cheques meant for farmers were in fact discounted through him for the benefit of M/s. Biotor Industries Ltd. The subsequent transfer of a substantial portion of the loan proceeds into the applicant's own companies further strengthens this suspicion.

21. At this stage, the Court cannot accept the defence that the transactions were purely commercial in nature. Whether the amounts received were against genuine supplies or were a part of circular transactions is a matter to be established by evidence during trial. The fact that Rs. 35 crores found their way into the applicant's entities, coupled with the surrounding circumstances, is sufficient to prima facie connect the applicant with the conspiracy.

22. Therefore, it cannot be said that there is no material to proceed against the applicant. On the contrary, the material available creates a strong suspicion which requires a full trial. Discharge on such grounds would not be permissible in law.

23. The submission of the learned Advocate for the applicant that his entities had genuine business dealings with M/s. Biotor Industries Ltd. and that the funds received were against lawful transactions, raises a defence which can be considered only at the stage of trial. At the stage of discharge, this Court cannot go into the correctness of such a defence, particularly when the Special Court was justified in holding that documents produced by the accused cannot be looked into under Section 227 of the Code.

24. The prosecution has also brought on record material to show that the applicant, along with co-accused Shri Rajesh Kapadia, had visited the bank and persuaded officials to sanction the loan facility. It is further alleged that the applicant was kept informed through emails about the manner of disbursement of funds. The cheques issued in the names of farmers from the VLA accounts were allegedly routed and discounted for the benefit of the company through the applicant and his associates. These circumstances, when read together, give rise to a strong suspicion that the applicant was involved in the larger conspiracy to divert bank funds.

25. At the stage of discharge, the Court is not expected to weigh the evidence as if conducting a trial. The Court has to see whether the material, if accepted as true on its face, discloses the commission of an offence. The material placed by the prosecution, particularly the money trail leading to the applicant's companies, the allegation of his presence in persuading the bank to sanction the loan, and his being kept in the loop of the disbursement process, is sufficient to create a strong suspicion of his

involvement.

26. Once such suspicion exists, the law requires that the accused face trial. Whether the transactions were genuinely commercial or merely a device to launder funds is a matter that can be tested by evidence during trial. The discharge at this stage would amount to stifling the prosecution before it gets an opportunity to prove its case.

27. In view of the above discussion, this Court finds that the Special Court rightly rejected the application under Section 227 of the Code. The order does not suffer from any legal infirmity.

(AMIT BORKAR, J.)