IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION APL NO.802 OF 2024

Narendra s/o Keshavrao Pimpale,
aged about 41 years, occupation:
business, r/o plot No.23/A,
North Ambazari Road, Near
Panchasheel Library,
Gandhinagar, Shankarnagar,
Nagpur-440 010. ….. **Applicant.**

:: **V E R S U S** ::

1. The State of Maharashtra,
through Police Station Officer,
Police Station Sadar, Nagpur.

2. Santosh s/o Baburao Gaikwad,
aged about 44 years, occupation:
Journalist, r/o RBI 21, Friends
Colony, Gittikhadan, Nagpur. ….. **Non-applicant**.

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Shri F.T.Mirza, Senior Counsel assisted by Shri Sameer Sonwane, Shri A.A.Thakur, Shri A.Z.Mirza, Mrs.Shiba Thakur, Advocates for the Applicant.
Shri A.M.Joshi, APP for Non-applicant No.1/State.

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CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 01/04/2026
PRONOUNCED ON : 10/04/2026

JUDGMENT

1. Heard. **Admit**. Heard finally by consent.

2. By this application, the applicant is seeking quashing of FIR in connection with Crime No.23/2022 registered with non-applicant No.1 police station for offences under Sections 420, 465, 466, 467, 468, and 471 read with 34 of the IPC and consequent proceeding arising out of the same bearing RCC No.2439/2022 pending before learned CJM, Nagpur.

3. The present applicant is accused No.30 in the said crime.

4. The crime is registered on the basis of a report lodged by non-applicant No.2 (the complainant) on 19.1.2022. Initially, the name of the present applicant was not mentioned in the FIR. Allegations in the FIR against co-accused Rahul Khanna and some other unknown persons are that said co-accused Rahul Khanna is indulged in preparing forged royalty and distributing it to various persons, who illegally involved in selling of sand and obtaining money from them.

On the basis of the said report, the police have registered the crime against other co-accused.

5. During investigation, the Investigating Officer has recorded memorandum statements of various accused persons and chain of various events is revealed. Thereafter, the Investigating Officer has collected Forensic Audit Report. During the investigation, he has seized 458 Electronic Transit Passes (ETPs) generated from “Narsingpur Sand Ghat” (Madhya Pradesh) used were used in sand excavation and transportation from various Ghats adjacent to the Nagpur city. The Investigating Officer has also seized vehicles and conducted house search panchanama and found documents relating to the sand business of “Devyani Enterprises” owned by wife of co-accused Amol Khobragade. Thereafter, he has collected letter from the District Mining Officer regarding fine imposed upon the present applicant and involvement of the present applicant was revealed.

As per allegations, the present applicant and other co-accused used to obtain forged ETPs from “Narsingpur Sand Ghats”, but the same were used to excavate the sand from Auctioned Sand Ghats as well as Un-auctioned Sand Ghat near Kanhan River situated adjacent to Nagpur city.

It was further revealed that ETPs of Madhya Pradesh were used to gain Additional Transportation Time which enabled them to extract transport sand multiple times on each ETP from Auctioned Sand Ghats as well as Un-audctioned Sand Ghats.

The Investigating Officer has arrested 22 accused and filed supplementary chargesheet against them.

On the basis of the said report, the police have filed supplementary chargesheet against the present applicant.

6. Being aggrieved with the same, the present applicant approached this court on the ground that in fact, it was the present applicant who is whistle blower informing the police

machinery about illegal and unauthorized excavation of the sand and, thereafter, the entire police machinery investigated the matter and involvement of other co-accused was revealed. Subsequently, on the basis of *omnibus* allegations, the investigation was carried out and chargesheet was filed against the present applicant.

7. Learned Senior Counsel for the applicant submitted that in fact, the present applicant is whistle blower on whose instance the entire investigation was carried out and co-accused were arrested.

As far as the present applicant is concerned, except statement of co-accused, there is absolutely no material to connect the present applicant. The applicant is an Income Tax Payer since the year 2011. Apart from that, he has Proprietary firm namely “Shivay Buildcom” which had received Work Orders from “Lokesh Infra Projects Private Limited” on 27.10.2020 for amount of Rs.3,54,01,792/-. He has completed the said work and received payment of Rs.1,09,00,000/- from time to time and balance amount is still due from “Lokesh Infra Projects Private Limited.” The present applicant is also Partner in other firms in which he is having 33.33% shares. The receipts of various amounts by the present applicant or his firms are reflected in bank accounts. Therefore, allegation, that the present applicant has received huge cash amount, is also not sustainable. As the present applicant is supporter and party worker and working for Ex-Minister Shri Sunil Kedar, due to political rivalry, he is implicated in the alleged offence. The present applicant has no acquaintance with said co-accused Rahul Khanna and there is no single call between him and said co-accused Rahul Khanna. There are hardly 10 calls between Surendra Sawarkar, and the present applicant, who is also one of co-accused. As the present applicant is acquainted with Amit Rai and, therefore, there are calls between him and said Amit Rai. Except the acquaintance, he has no concern with said Amit

Rai. Therefore, the contention of the prosecution, that as the present applicant had received a call from co-accused Amit Rai, there was a connection between the present applicant and other co-accused, is not sustainable.

As far as statements of co-accused are concerned, the same are not admissible and, therefore, the same cannot be taken into consideration. Except a bald allegation, that involvement of the present applicant is in preparation of forged documents, there is absolutely no material to connect the present applicant with the alleged crime.

Statements of various witnesses recorded during the investigation also nowhere connect the present applicant either with the alleged crime or with the other co-accused.

In view of that, learned Senior Counsel for the applicant submitted that the present application deserves to be allowed.

8. In support of his contentions, learned Senior Counsel for the applicant placed reliance on the decision of the Hon'ble Apex Court in the case of **Venkatesh @ Chandra and anr ETC vs. State of Karnataka, reported in 2022 LiveLaw (SC) 387.**

9. Per contra, learned APP for the State has strongly opposed the said contentions and submitted that the present applicant has moved an application to Patansawangi Police Outpost. In view of the same, one Notice was given to him informing him that there are no Operational Sand Ghats within the jurisdiction of Saoner Police Station and he should approach the concerned Revenue Department and the Mining Department by making a complaint to the Saoner Tahsildar and the District Mining Officer. After registration of the FIR against co-accused Rahul Khanna, he was found to be involved in issuing forged ETPs.

After registration of the crime, the investigation started rotating and involvement of the present applicant was revealed, but only to distract attention of the investigating agency, he preferred an application. He preferred that application to restrain the similar illegal activities undertaken by his business rivalry. The Investigating Officer has obtained Forensic Audit Report and during the Forensic Audit, it revealed that the present applicant has received huge amounts of by various transactions. Crime No.23/2022 was registered by Sadar Police Station in pursuance to the report lodged by non-applicant No.2. As per said allegations, one Rahul Khanna and other unknown persons were made accused. Suspicion was raised against some unknown persons also in the said report.

During the investigation, the Investigating Officer has recorded various statements of witnesses including statement of one Aniruddha Mandal. On the basis of the said statement, involvement of the present applicant is revealed. The statement of this Aniruddha Mandal revealed manner in which ETPs are obtained from the Sand Ghats in Madhya Pradesh and misuse by the present applicant and other accused persons for excavating sand from Ghats in Maharashtra.

The investigating agency appointed a firm of Chartered Accountants namely KND Associates on 1.11.2022 for conducting Forensic Audit of the material collected by it during the course of the investigation. The said firm submitted its Forensic Audit Report dated 2.9.2023 to the investigating agency along with its covering letter dated 4.9.2023. The Forensic Audit Report runs into 525 pages. The Forensic Audit Report also discloses involvement of the present applicant in the alleged crime.

The CDRs of mobile calls between the present applicant and the other co-accused are also collected, which also show frequent calls between the present applicant and other co-accused Amit Rai.

Thus, the entire investigation papers discloses involvement of the present applicant in the alleged offence.

He submitted that in view of the above, the application deserves to be rejected.

10. Before entering into merits of the present case, it is necessary to see considerations for considering application under Section 482 of the CrPC.

11. The law relating to quashing of FIRs has been explained by the Hon'ble Apex Court in the case of **State of Haryana and ors vs. Bhajan Lal and ors, reported in 1992 Supplementary (1) SCC 335** wherein principles have been laid down which are required to be considered while considering applications for quashing of the FIRs, which read as under:

"(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investi- gation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a

Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the

> accused and with a view to spite him due to private and personal grudge.”

12. The law relating to quashing of the FIR was explained by the Hon’ble Apex Court in the case of **B.N.John vs. State of UP, reported in MANU/SC/00/2025**, as under:

> “As far as quashing of criminal cases is concerned, it is now more or less well settled as regards to the principles to be applied by the court. In this regard, one may refer to the decision of this Court in **State of Haryana Vs. Ch. Bhajan Lal and Ors., 1992 Supp. (1) SCC 335** wherein this Court has summarized some of the principles under which FIR/complaints/criminal cases could be quashed in the following words:
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> > “102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under

Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials,

if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and

inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

13. A perusal of the entire investigation papers, in the light of allegations levelled against the present applicant, shows that there is no dispute that the present applicant has made an application to the Patansawangi Police Station complaining unauthorized and illegal excavation of the sand. Thereafter, the Patansawangi Police Station issued a letter to the present applicant to approach the Revenue Department and the Mining Department by making a complaint to the Saoner Tahsildar and the District Mining Officer, Nagpur. In the meantime, Crime No.23/2022 was registered pursuant to the report lodged on 19.1.2022 by non-applicant No.2 alleging commission of the offence by one Rahul Khanna and other unknown persons.

14. A perusal of the FIR would reveal that non-applicant No.2 has specifically alleged that while he was commuting on walkers street, near Japanese Garden, Sadar (which falls jurisdiction of Sadar Police Station, Nagpur) on 19.1.2022, at 3:46 pm, he received a telephonic call by one Rahul Khanna

regarding sand transport. Non-applicant No.2 has narrated about fraud committed by said Rahul Khanna and obtaining money from him by promising him of providing the sand and also sent a receipt bearing No.5213211400 showing royalty payment and ETPs mentioning transport vehicle No.MH-40-Y/6550 owned by friends of non-applicant No.2 without even the vehicle being present physically at “Dharampur Mine” in Madhya Pradesh. The registration of the said FIR sets wheels of investigation rotating. During the investigation, the Investigating Officer has recorded various statements of witnesses. During the investigation, involvement of one Amit Rai was revealed. Truck bearing No.MH-40-BL/7873 was seized on the basis of an information given by said Amit Rai. During the investigation, the Investigating Officer has recorded statement of Aniruddha Mandal. On recording his statement, it revealed to the investigating agency the manner in which ETPs are obtained from Sand Ghats in Madhya

Pradesh, which are misused by accused persons by excavating sand from Ghats in Maharashtra and the said was used for excavation as well as transporting the said sand illegally and unauthorizedly. It was revealed during the investigation that the present applicant is not only actively involved in excavation and transportation of the sand illegally but also he was found to be one of conspirators.

15. Admittedly, direct evidence would not be available to show involvement of the present applicant as conspirator, but circumstances on record, including statement of Aniruddha Mandal and the Forensic Audit Report, disclosed involvement of co-accused in the alleged crime as conspirator. During the investigation, the Forensic Auditing was done and during the Forensic Audit, it revealed that the present applicant has received huge amount from the co-accused during this transaction. During the Forensic Audit, it was revealed that Amol Khobragade was Ghat Partner. The present applicant is also Ghat Partner and other are family

members of the present applicant and co-accused Amol Khobragade. Amit Rai was shown to be Ghat owner. It was further revealed that Amol Khobragade is shown to be proprietor of “GSK Traders”; wife of said Amol Khobragade is shown to be proprietor of “Devyani Enterprises; the present applicant is shown to be proprietor of “Shivay Buildcom,” “Ekdant Buildcom”, and “M/s.Kedar Transport.” The daughter of the present applicant is shown to be proprietor of “Sanjivani Infra” and “Pimpale Tuition Classes.” Keshav Pimpale who is father of the present applicant is shown to be proprietor of “M/s.KNP Construction”. Sushila Pimpale who is mother of the present applicant is shown to be proprietor of “Sushila Agro Farm.” Amit Rai is shown to be proprietor of Ghat owner, and Sharad Rai is shown to be proprietor of “K.T.Traders.” It was revealed that ETP for Sand Mine is pass to every truck carrying the sand which is valid for specific period i.e. 12 Hrs or 24 Hrs based on distance to be covered. It is mandatory to mention source of sand extraction to sand delivery destination on ETP generated. ETC Number is allotted to every such ETP which is unique. ETPs include (i) unique ETP Number; (ii) source of sand in extraction to sand delivery destination; (iii) vehicle number carrying sand; (iv) buyer name; (v) driver details; (vi) limit of quantity truck-wise that can be transported quantity of sand being transported, and (vii) the owner of the truck, MRD Registration Number etc.. The required mineral quantity is booked in advance by paying royalty and other charges. Out of this quantity, specified mineral is transported against ETPs. The vehicle should be used to transport the mineral quantity as per its loading capacity and it should not be overloaded.

16. During the Forensic Audit, after preliminary study, it was revealed to the Auditors that during the period of 2019-2020 Financial Year to Financial Year 2022-2023, total 46153.72 brass quantity sand amounting to

Rs.13,87,27,595/- was supplied. It was supplied through 16 trucks across the Maharashtra State and Madhya Pradesh.

It was supplied to 58 different concerned parties. It was further revealed that ETPs for total 37,308.84 brass quantity of sand supplied through 16 trucks amounting to Rs.11.19 Crores (assuming Rs.3000/- per brass quantity, was not generated out of 46,153.72 brass quantity sand supplied amounting to Rs.13.87 Crores).

The said Audit Report mentions details of vehicle number and the quantity of sand.

17. On evaluation of the bank statements of the present applicant and his relatives, it reveals that sand supplied as per confiscated data is Rs.13.87 crores. The sand supplied identified in the Audit, on the basis of the receipts from sand buyers in the bank statements of all the accused and relatives, is Rs.36.17 Crores. Thus, there was a difference of Rs.22.3 Crores.

It further revealed that huge cash deposits of Rs.2.26 Crores is identified in Amit Rai's bank account during this period and out of which major portion of cash is utilized to to pay the Collector, Nagpur (Mining). Total receipts in the bank statements of the accused and the relatives during Financial Year 2019-2020 to Financial Year 2022-2023 were majorly utilized towards property purchase, asset purchase, jewellery purchase, personal expenditure, vendor payments, and cash withdrawals. A huge transaction trail amounting to Rs.9.24 Crores is identified between Amit Rai and other accused and relatives between January 2021 to April 2021.

A consolidated fund flow for Financial Year 2019-2022 of Amol Khobragade, the present applicant, Savita Khobragade, Sharad Rai, Amit Rai, Lekhraj Rai, Shrutika, Keshav, and Sushil Pimpale is also shown in the said Forensic Audit Report. A huge amount of transaction between January 2021 to April 2021 flowing from Amit and Rai's IDBI Bank Account to the Collector, Nagpur (Mining), when further verified, found a trail of money transfers between the present applicant and relatives, which is also shown in the said Forensic Audit Report.

18. On comparison of forged ETPs with vehicles' GPS Data, it revealed that by using 458 forged ETPs of "Narsingpur Ghats" (Madhya Pradesh) qualifying to 4968 brass quantity of sand is identified, which the present applicant and the other co-accused excavated and stolen stand from 8 Auctioned Ghats and 16 other illegal places adjacent to the Kanhan River, due to which loss of revenue was of Rs.1.49 Crores. Based on analysis of the confiscated data provided to the Forensic Auditors by the Crime Branch Detection Centre, Nagpur, they came across list of around 58 parties who have brought sand amounting to Rs.13,86,27,595/- between December 2018 to June 2022. It was further revealed that on analysis of ETPs data provided, ETPs of total 37,308.84 brass quantity out of 46,153.72 brass

quantity was not generated. The conclusion of the Forensic Audit is as follows:

"10. CONCLUSION

On analysis of the Data provided for Forensic Audit, we conclude that,

1. Total Sand supplied to different concerns & individuals by Devyani Enterprises (as identified from confiscated data) through their 16 trucks is 46,153.72 Brass Qty. amounting to approx. Rs. 13.87 crores. Out of which ETPs generated for sand supplied from Maharashtra and MP ghats is only for 8,844.88 Brass Qty. Therefore we conclude that ETPs for total 37,308.84 Brass Qty sand amounting to approx. Rs. 11.21 crores, is supplied without generating ETPs Refer Annexure II & II ABC.

2. On evaluation of the Bank Statements of Accused and their relatives, we understood that send actually supplied is more than the sand identified as supplied from data confiscated of Devyani Enterprises, refer below the summary of the same:

a. During the period FY 2019-20 to FY 2022-23. Refer Annexure II C, III & III A.

Particulars	Amount
Sand claimed to be Supplied as per Confiscated Data(Refer Annx II C)	13.87 crores

Sand actually Supplied (identified on the basis of receipts from Sand Buyers in the Bank Statements of all the accused & relatives)	36.17 crores
Difference Data not found/confiscated/ available with the 10-Also ETPs for Brass Qty sand supplied against this amount may not have been generated.	**22.3 crores**

b. Further, huge Cash Deposits of Rs. 2.26 crores identified in Amit Lekhraj Rai Bank Accounts during period FY 2020-21 to FY 2021-22 out of which major portion of cash is utilised to pay to Collector Mining Nagpur. Refer Annexure III & III A.

c. Total Receipts in the Bank Statements of Accused and their relatives during the period FY 2019-20 to FY 2022-23 were majorly utilised towards Property Purchase, Asset Purchase (e.g., Car), Jewellery Purchase, Personal Expenditures, Vendor Payments, Cash Withdrawals etc., (Refer detailed fund flow on page no. 13 to understand further alongwith Annexure III & III B).

3. Properties of Total Amounting to Rs.3,52,50,000/- were purchased by Narendra Pimple, Keshav Pimple, Shrutika Pimple and Savita Khorgade either as a co-owner or as a sole owner during the period FY 2019-20 to FY 2022-23 from their Bank Accounts. Refer Annexure IV.

4. Find below, Income which is not reported in the Income Tax Return during the period FY 2019-20 to FY 2022-23 (as available) as compared to receipts in the

Bank Statements of respective accused or their relatives, as provided to us:

Name	Total Income Reported in ITR from FY 2019 to FY 2022	Total Receipts in Bank Accounts from FY 2019 to FY 2022	Under Reported Income in Income Tax Return	Receipts exclusively from Sand Buyers out of Total Receipts FY 2019 to FY 2022
Amol Khorgade	30,18,800	98,69,215	68,50,415	79,11,167
Savita Khorgade (Devyani Ent)	13,26,26,572	15,86,54,568	2,60,27,996	15,28,64,122
Narendra Pimple	1,95,44,670	5,31,90,189	3,,36,45,519	3,55,42,015
Keshav Pimple (FY 2019 to FY 2021)	40,22,740	1,04,47,824	64,25,084	24,09,557
Shrutika Pimple	53,97,574	1,14,25,620	60,28,046	84,12,690
Amit Lekraj Rai (FY 2019 to FY 2021	1,86,27,593	13,10,34,202	11,24,06,609	9,01,86,859

Please note above comparison is based on availability of ITRs, if no Income Tax return is either filed or available or provided, then above receipts figures of the Bank Statements excludes those respective years of receipts in the Bank Accounts whose ITR is not available (as comparison can only be done for equal data). Further, Refer Page No.38, 39, 40 of this report.

> 5. On comparison of E'TPs with Vehicle GPS data and sand data provided to us by respective Investigation Officer, we conclude that by using 458 forged ETPs of Narsingpur MP Ghat quantifying to 4968 Brass Qty of Sand, accused have excavated and stolen sand from 08 auctioned ghats and 16 other illegal places adjacent to Karhan river.
>
> This in turn has lead to Loss of Revenue of approx. Rs.1.49 crores (assuming Rs.3,000/- per brass) to the Government. Refer Page no. 548-555."

19. Thus, the conclusion of the Forensic Audit shows that total 37,308.84 brass quantity sand amounting to Rs.11.21 Crores is supplied without generating ETPs. On evaluation of the bank statements of the present and his relatives, it further shows that sand actually supplied is more than the sand identified as supplied from the data confiscated of "Devyani Enterprises" owned by Savita, who is wife of the present applicant. It further shows that properties total amounting to Rs.3,52,50,000/- were purchased by the present applicant and his relatives either as co-owner or as sole owner during the period Financial Years 2019-2020 to 2022-2023. The income is not mentioned in the Income Tax

Returns during Financial Years 2019-2020 to 2022-2023 as compared to receipts in the bank statements of the respective accused or their relatives. The chart shows that the present applicant has shown his total income for the Financial Year 2019-2022 is Rs.1,95,44,670/-. The total receipts in bank statement accounts for the said years is Rs.5,31,90,189/-. Thus, under reported income in the Income Tax Returns by the present applicant is Rs.3,36,45,519/-. The receipts exclusively from sand buyers out of total receipts for the Financial Years 2019-2022 by the present applicant is Rs.3,55,42,050/-. Similarly, the father of the present applicant has shown his income in the Income Tax Return for the above said period as Rs.40,22,740/-. His total receipts of the bank accounts for the said period is Rs.1,04,47,824/-, under reported income is Rs.64,25,084/- and receipts exclusively from sand buyers out of total receipts for the said years are as Rs.24,09,557/-. The daughter of the present applicant has shown her income as Rs.53,97,574/- in the

Income Tax Returns for the above said period. The bank receipts in the bank accounts are as Rs.1,14,25,620/-, under reported income is as Rs.60,28,046/- and receipts exclusively from sand buyers out of total receipts for the above said period is as Rs.84,12,690/-.

20. Thus, on comparison of ETPs with vehicles' GPS Data and Sand Data provided to the Forensic Audit, it revealed that by using 458 forged ETPs of "Narsingpur Sand Ghats" (Madhya Pradesh) quantifying to 4968 brass quantity of sand, the accused have excavated and stolen sand from 8 Auctioned Ghats and 16 other illegal places adjacent to the Kanhan River and loss caused to the Government is Rs.1.49 Crores.

21. Thus, involvement of the present applicant, on the basis of Forensic Audit, is revealed during the investigation.

22. The present applicant is charged for offences under Sections 420, 465, 466, 467, 468, and 471 read with 34 of the IPC.

23. As far as offence under Section 420 of the IPC is concerned, ingredients of offence of cheating described under Section 415 of the IPC are that, whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

24. To hold a person guilty of “cheating” as defined under Section 415 of the IPC, it is necessary to show that he had

“fraudulent” or “dishonest” intention at the time of making a promise with an intention to retain the property.

25. In other words, Section 415 of the IPC which defines “cheating”, requires; (1) deception of any person; (2)(a) fraudulently or dishonestly inducing that person- (i) to deliver any property to any person; or (ii) to consent that any person shall retain any property; or (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body mind, reputation or property.

26. In the light of the above definition, especially in the backdrop of the Forensic Audit Report, the “dishonest intention” of the present applicant reveals. The allegations against the present applicant and the other co-accused, that they have prepared forged ETPs, also reveals from the

Forensic Audit Report as the said Forensic Audit Report discloses that 458 forged ETPs were used.

27. Thus, the offence under Section 467 is also made out against the present applicant.

28. What role exactly is played by the present applicant, is a matter of evidence.

29. Considering the Forensic Audit Report, statement of Aniruddha Mandal and various documents seized during the investigation, on the basis of the statement of the co-accused, which is recorded in view of Section 27 of the Indian Evidence Act, and various facts are discovered at the instance of the co-accused, involvement of the present applicant reveals in the alleged incident.

30. By applying parameters laid down by the Hon'ble Apex Court in the case of **State of Haryana and ors vs. Bhajan Lal and ors** *supra,* the material collected during the investigation is sufficient to frame the charge against the present

applicant, at this stage. A prima facie case is made out against the present applicant and, therefore, the application being devoid of merits is liable to be rejected and the same is **rejected**.

Application stands **disposed of**.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!