IN THE COURT OF
PRINCIPAL DISTRICT & SESSIONS JUDGE
AHMEDABAD (RURAL) @ AHMEDABAD.

GPID Criminal Case No. 13 of 2018

Mahendra Vasant Gade ….Accused/Applicant

VERSUS

State of Gujarat ….Complainant

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Appearance:
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Mr. K.K. Desai, Ld. Advocate for the Applicant/accused
Mr.P.M.Trivedi, Learned PP for Opponent/The State.
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ORDER BELOW DISCHARGE APPLICATION EXH.86

1. The applicant/accused has preferred this application **U/s 227 of Cr.P.C/ 250 of BNSS** seeking discharge in FIR CR No.04/2018 registered with CID Crime Ahmedabad Zone Police Station for the offences punishable U/s. 406, 409, 420, 120B of the Indian Penal Code, Sec. 3 of the GPID Act and Sec. 4,5,6 of The Prize Chits and Money Circulation Scheme (Banning) Act.

2. Ld. Advocate Mr.K.K. Desai on behalf of the applicant/accused submits that the applicant is innocent and not connected with the offence. Applicant is roped without proper evidence. Applicant was

merely employed as Manager and was not involved in decision making or day to day operations of the company. The applicant was drawing salary in capacity of Manager and was not Director of person incharge of affairs of the company. Prosecution has failed to shown any material evidence that would suggest that applicant was responsible for handling deposits/funds. Essential ingredients of Sec.406, 409 of IPC are not satisfied. Applicant is not public servant or Banker or Merchant or Agent, he is Manager in the company and nothing else. Ingredients of Sec.420 of IPC are also not satisfied as there is no evidence that applicant induced any person to part with their money or played any role in the alleged fraudulent activities. There is no evidence with regard to criminal conspiracy. Sec. 3 of GPID does not apply to applicant as he neither controlled the financial establishment nor was responsible for its management. There is no evidence that applicant was involved in mobilizing funds from public or benefiting from the alleged scheme. There is not a single evidence that states that applicant was involved in running the establishment in any possible manner. There is no evidence to suggest that applicant was involved in running or promoting any illegal schemes under PCMC Act. There is no evidence that applicant received any financial benefits from the alleged transaction. Prosecution failed to establish mens rea on the part of applicant. Applicant joined Samruddha Jeevan Foods India Ltd. as Manager in the company and was not Director of the company as alleged in the complaint. Applicant was salaried person of the company. There are no other allegations against the applicant/accused. Applicant cannot be held vicariously liable merely because he was an employee of the company. Applicant was not responsible for policy making, financial decision or any fraudulent activities related to company and there is no evidence in this regard. There is no material on record placed by the police authority which would justify framing of charge against the applicants/accused. It is accordingly urged to discharge the applicants/accused from the offence.

3. Ld. Public Prosecutor Mr. P.M. Trivedi submits that the applicant is charged for the offence U/s. 406, 409, 420, 120B of the Indian Penal Code, Sec. 3 of the GPID Act and Sec. 4,5,6 of The Prize Chits and Money Circulation Scheme (Banning) Act. He submits that accused persons in connivance with each other being officers, Directors of Samruddh Jivan Food India Ltd, Samruddh Prosperity Agro India Ltd and Samruddh Jivan Multi State Purpose Co.Op.So.Ltd and other affiliated companies through different schemes obtained money from complainant, witnesses, members, investors luring them under the pretext /promise of more interest on the invested amount and 1000 sq.

feet land on investment of Rs.10,000/- after 5 years or double the amount and thereby obtained money and the same was given in writing on bond paper and thereby obtained investment of Rs.15 lakhs of the complainant and his family as well as Rs.9,32,83,214/- from 7452 customers/investors through 70 agents. Also Rs.90 crores from 30,000 customers/investors and 400 agents. The said amount was not returned to them on the maturity date and thereby committed the present offence.

3.1 It is submitted that name of the applicant /accused is mentioned in the FIR. Applicant/accused joined Samruddh Jivan Multi State Purpose Co.Op.So.Ltd. in the year 2006 as Regional Manager. He used to visit their offices in different States and was giving knowledge about the software of their company and used to give information about rules to marketing agents. Applicant after consultation with CMD Mahesh Moteshwar and Director Prasad Parswar was solving the issues, if any, of Agents/Customers. Applicant with CMD Mahesh Moteshwar attended the seminars held in different States and used to explain agents how to increase business. Applicant was Director of Samruddh Jivan Multi State Multi Purpose Co.Op. So. Ltd.

3.2 The accused persons in connivance with each other opened various branches of different subsidiary companies under Samruddhi Jivan Group of Companies and by luring the customers/investors of high returns on the invested amount and 1000 sq. feet land on investment of Rs.10,000/- after 5 years or double the amount obtained huge amount from the complainant and witnesses and did not return the same on maturity. The applicant/accused person was fully aware of the fraud scheme. It is submitted that there is prima-face evidence against the present applicant/accused and his involvement and connivance with other accused persons in commission of the offence. There are sufficient evidence to proceed for trail against the present applicants/accused. He has placed reliance on the affidavit of I.O. (Exh.90), chargesheet & case papers and has urged the court to reject the discharge application.

4. Heard Ld. Advocate K.K. Desai for the applicant/accused and Ld. PP on behalf of prosecution. The Court has gone through the discharge application, affidavit of I.O., Chargesheet and case papers. It would be relevant to quote **Sec.239 of Cri.P.C** for the ready reference.

> **"239. *When accused shall be Discharged.***
>
> *1. If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing.*

5. It would also relevant to consider the principles laid down by the Hon'ble Apex Court in the matter titled as **Union of India Vs. Prafulla Kumar Samal & Ors 1979 (3) SCC 4** wherein, the Hon'ble Apex Court had elaborately discussed the scope of Section 227 Cr.PC in para 7 and have summed up the principles while considering discharge application in para 10 as under:

> *"7. Section 227 of the Code runs thus:*
>
> *"If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing." The words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."*
>
> *"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."

6. The applicant is chargesheeted for the offence U/s. 406, 409, 420, 120B of the Indian Penal Code, Sec. 3 of the GPID Act and Sec. 4,5,6 of The Prize Chits and Money Circulation Scheme (Banning) Act.. As per the prosecution case, accused persons in connivance/conspiracy with each other being officers, Directors of Samruddh Jivan Food India Ltd, Samruddh Prosperity Agro India Ltd and Samruddh Jivan Multi State Purpose Co.Op.So.Ltd and other affiliated companies through different schemes obtained money from complainant, witnesses, members, investors luring them under the pretext /promise of more interest on the invested amount and 1000 sq. feet land on investment of Rs.10,000/- after 5 years or double the amount and thereby obtained money and the same was given in writing on bond paper and thereby obtained investment of Rs.15 lakhs of the complainant and his family

as well as Rs.9,32,83,214/- from 7452 customers/investors through 70 agents. Also Rs.90 crores from 30,000 customers/investors and 400 agents. The said amount was not returned to them on the maturity date and thereby committed the present offence. Name of the applicant /accused is mentioned in the FIR as Director of Samruddh Jivan Group. As per the prosecution applicant/accused joined Samruddh Jivan Multi State Purpose Co.Op.So.Ltd. in the year 2006 as Regional Manager. Statement of victims and witnesses like, 1. Avinash Arjun Patil, Ramaben 2. Ashokbhai Parmar 3. Sonbhnaben Sureshbhai Oza, 4. Devyaniben Vikramsinh Bariya, 5. Rajesbhai Kanjibhai Vaghela 6. Jayshreeben w/o Jaypalsinh Kahar 9. Rajendrakumar Prabhubhai Prajapati and others witnesses obtained during investigation would prima-facie reveal involvement of the applicant/accused as Director in the Company, which is involved in the alleged offence. It appears from the statements of the victims/ witnesses that applicant/accused used to attend the seminars held in different States and used to explain agents/victims about the scheme of the company, its progress and also distributing price to the agents doing good performance and also encouraging agents for bringing more business. During the course of investigation statements of victims and other witnesses were recorded which would prima-facie reveal the evidence sufficient for trial against the present applicant/accused. It is settled position of law that, while considering the discharge application the Court has not to conduct mini trial and enter into arena of appreciation of evidence, but has only to satisfy that whether the material collected by the prosecution is sufficient to put accused on trial. As per the chargesheet applicants with other co-accused persons are charge sheeted for the offences U/s. 406, 409, 420, 120B of the Indian Penal Code, Sec. 3 of the GPID Act and Sec. 4,5,6 of The Prize Chits and Money Circulation Scheme (Banning) Act. It would be relevant to quote Section 2(c), 2(d) and 3 of GPID Act for the ready reference.

> **Section 2:** *Definitions. - In this Act, unless the context otherwise requires,-*
> *(a) "Competent Authority" means the Competent Authority appointed under section 5;*
> *(b) "Designated Court" means the Designated Court constituted under section 9;*
> ***(c) "deposit"** includes and shall be deemed always to have been included any receipt of money or acceptance of any valuable commodity by any Financial Establishment to be returned after a specified period or otherwise, either in cash or in kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include-*
> *(i) amounts raised by way of share capital or by way of debenture, bond or any other instrument covered under the guidelines given and regulations made by the Securities and Exchange Board of India, established under the Securities and Exchange Board of India Act, 1992 (15 of 1992);*
> *(ii) amounts contributed as capital by partners of a firm;*
> *(iii) amounts received from a Scheduled Bank or a Co-operative Bank or any other banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);*
> *(iv) any amount received from -*
> *(a) the Industrial Development Bank of India,*
> *(b) the Gujarat State Financial Corporation,*
> *(c) any financial institution specified in or under section 4A of the Companies Act, 1956 (1 of 1956),*
> *(d) any other institution as the State Government may by an order specify;*
> *(v) amounts received in the ordinary course of business by way of-*

(a) security deposit,
(b) dealership deposit,
(c) earnest money, or
(d) advance against order for goods or service;
(vi) any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in the State; and
(vii) any amount received by way of subscriptions in respect of a Chit.
Explanation. - For the purpose of this clause -
(i) Chit shall have the same meaning as assigned the it in clause (b) of section 2 of the Chit Funds Act, 1982 (40 of 1982);
(ii) Any credit given by a seller to a buyer on the sale of any property whether movable or immovable shall not deemed to be a deposit;

*"**3. Fraudulent defaults by Financial Establishment.-** Any Financial Establishment, which fraudulently defaults any repayment of deposit on maturity alongwith any benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently fails to render service as assured against the deposit, every person including the promoter, partner, director, manager or any other person or an employee responsible for the management or conducting of the business or affairs of such Financial Establishment shall, on conviction, be punished with imprisonment for a term which may extend to six years and with fine which may extend to ten lakhs of rupees and such Financial Establishment also shall be liable for a fine which may extend to ten lakhs of rupees:*

Provided that in the absence of special and adequate reasons recorded in the judgment of the court, the imprisonment shall not be less than three years and the fine shall not be less than one lakh of rupees and in case of imposition of fine on Financial Establishment, it shall not be less than five lakhs of rupees.

Explanation – For the purpose of this section, a Financial Establishment, which commits default in repayment of such deposit with such benefits in the form of interest, bonus, profit or in any other form as promised or fails to render any specified service promised against such deposit, or fails to render any specific service agreed against the deposit with an intention of causing wrongful gain to one person or wrongful loss to another person or commits such defaults due to its inability arising out of impracticable or commercially not viable promises made while accepting such deposit or arising out of deployment of money or assets acquired out of the deposits in such a manner as it involves inherent risk in recovering the same when needed shall be deemed to have committed a default or failed to render the specific service, fraudulently"

7. Considering the provision of Section 2(c) and Sec. 3 of the Act coupled with the statement of witnesses in the case papers, this Court is of the opinion that there is evidence for which the accused can be put for trial. At this stage of discharge application the evidentiary value or veracity of the statements of the witnesses are not required to be evaluated which would otherwise be done at the stage of trial.

8. The Hon'ble Apex Court in its decision in the case of State of **Rajasthan vs Ashok Kumar Kashyap reported in 2021 SCC online SC 314** has held that:

> *As rightly observed and held by the learned Special Judge at the stage of framing of the charge, it has to be seen whether or not a prima facie case is made out and the defence of the accused is not to be considered. As observed hereinabove, the High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible.*

8.1 The Court has also taken into consideration decision of the Hon'ble Apex Court in the case of **The State of Maharashtra v/s 63 Moons Technologies Ltd., 2022 (9) SCC 457** which was pertaining to MPID Act.

9. In view of facts and circumstances noted hereinabove this Court is of the opinion that this is not a fit case where the applicant-accused can

get discharge from the offences leveled against him as there is prima facie case against the applicant-accused, hence, following final order is passed in the interest of justice:-

-:F I N A L O R D E R :-

1. Present Application below **Exh.86** for discharge is hereby **rejected**.

Date: 27/11/2025

(Kamal M. Sojitra)
Principal District & Sessions Judge,
& Designated Spl. Judge (GPID),
Ahmedabad (Rural)
UIC No.GJ01494