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

SPECIAL COMPANY CASE NO. 5 OF 2022

State of Gujarat …..Complainant

VERSUS

Vikrant Jagdishchandra Kansara ….Applicant/Accused No.3

Sub: Application seeking discharge from the offence.
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Appearance:
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Mr.Rahil P. Jain Ld. Advocate for the Applicant/accused
Mr.P.M.Trivedi, Learned PP for Opponent-State.
****

ORDER BELOW DISCHARGE APPLICATION EXH.95

1. The applicant/accused has preferred this application U/s 227 of Cr.P.C. (u/s 250 of BNSS) seeking discharge in connection with offence registered vide FIR C.R. No. 11216008220235/2022 registered with Gandhinagar Sector 7 Police Station for the offence punishable u/s 34, 204, 406, 409, 420, 465, 468, 471, 477(A) of IPC, Sec. 447, 452 of Company Act and Sec. 13(1)(A), 13(2), 12 of Prevention of Corruption Act.

2. Ld. Advocate Mr. Mr.Rahil P. Jain on behalf of the applicant –

accused No.3 Vikrant Jagdishchandra Kansara submits that the accused is chargesheeted for the offences u/s 34, 204, 406, 409, 420, 465, 468, 471, 477(A) of IPC, Sec. 447, 452 of Company Act and Sec. 13(1)(A), 13(2), 12 of Prevention of Corruption Act. He submits that applicant is out sourced employee and not on payroll of the company. Applicant's duty is to prepare salary slip and submit it to Dy. Director and upload it. There is no iota of evidence in the chargesheet against the applicant which can link the applicant with the offence. The applicant had no power to indulge in any financial transaction in the company and has not taken any monetary benefit out of the alleged offence. Applicant worked as per the directives of his superior without any mens rea to commit crime. Out of the alleged 16 transactions, transaction no. 6 to 13 occurred during the period when applicant was on sanctioned leave for his marriage. There is no evidence in the entire chargesheet against the applicant except confessional statement. No recovery or discovery has been made from the applicant. Chargesheet fails to substantiate any deliberate or intentional involvement of the applicant in the alleged conspiracy. The applicant has been made scapegoat to save senior officers. Applicant was working as per the directions/orders of the seniors / Directors of the company including Ruchi Bhavsar - Executive Accountant and none of the sections of IPC, PC Act or of the Companies Act are attracted or made out against the applicant/accused. It is submitted that looking to the entire charge-sheet the applicant is not directly or indirectly or remotely involved in the offence. Reliance is placed on the following decisions of Hon'ble High Court and Hon'ble Supreme Court and urged to discharge the applicant/accused from the offence.

1. 2008(2) GLH 596 in the case of Yogesh @ Sachin Jagdish Joshi vs State of Maharashtra.
2. 1971(0)GLHEL SC 4620 in the case of Century Spinning and Manufacturing Co. Ltd vs State of Maharashtra.
3. AIR 2022 SC 4288 in the case of Kanchan Kumar vs State of Bihar.
4. 1977 (0) GLHEL SC 28136 in the case of State of Karnataka vs L. Muniswamy.
5. 2002 (0) GLHEL SC 8011 in the case of Dilawar Babu Kurane vs State of Maharashtra.
6. 2016 (0) AIJEL HC 237064 in the case of Savitaben Manilal Nayak vs State of Gujarat.
7. 1978 (0) GLHEL SC 33117 in the case of UOI vs Prafulla Kumar Samal.
8. 2013 (2) GLH 724 in the case of Navinchandra Vishnuprasad Shah vs State of Gujarat & Anr.
9. 1994 (0) GLHEL SC 20320 in the case of P.K. Narayanan vs State of Kerala.
10. 2013(0) GLHEL HC 229731 in the case of Mukundrai Chandubhai Amin vs State of Gujarat.
11. 2001 (0) GLHEL-HC 205006 in the case of Ibrahim vs State of Gujarat.
12. 2001 (0) GLHEL-HC 202002 in the case of CBI vs Amarjit Singh.

3. Ld Public Prosecutor Mr. P.M. Trivedi has opposed the discharge application. He submits that the applicant is charged for the offence u/s 34, 204, 406, 409, 420, 465, 468, 471, 477(A) of IPC, Sec. 447, 452 of Company Act and Sec. 13(1)(A), 13(2), 12 of Prevention of

Corruption Act. The accused persons hatched conspiracy amongst them and has cheated the GIL Company to the tune of Rs.40,27,65,186/- by preparing false RTGS Sheets, Vouchers and Cheques and transferred /deposited the amount from GIL to various Bank Accounts of the accomplice unauthorized Vendors and further transferred in other Bank Accounts or withdrawn the cash. Applicant was working as Executive (Finance) in GIL company. Applicant has to work with main accused Ruchi Bhavsar to verify the vouchers received in the Account Department and prepare sheets for issuance of Cheques / RTGS transfer of the approved vouchers received in their Accounts department of the GIL Company, to maintain Bank Book and do all the work related to accounts as per the instruction of his Senior Ruchi Bhavsar. For getting monetary benefit as part of pre planned conspiracy with main accused Ruchi Bhavsar and other employees helped the main accused in preparing false cheques / RTGS sheets for depositing the embezzled amount in the Bank account of unauthorized vendors and used it as genuine one and obtained illegal monetary benefit in form of cash from main accused Ruchi Bhavsar and also deposit/transfer in his Bank account. There are prima-facie evidence/material about involvement of the applicant/accused in the offence and so chargesheet has been filed. The material available on record against the applicant prima-facie makes out a case to put the applicant accused for trial. He has placed reliance on the affidavit of I.O. (Exh.100), chargesheet & case papers and has urged the court to reject the discharge application.

4. Heard Ld. Advocate for the applicant/accused and Ld.P.P on behalf of the prosecution. The Court has gone through the discharge application, chargesheet & case papers and affidavit of the I.O. To decide the discharge application it would be relevant to refer the provision and case law which are pertinent to decide discharge application. It would be relevant to quote Section 227 of Cr.PC for the ready reference.

> *"227. Discharge. 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."*

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:*
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> *"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/accused is charged for the offence u/s 34, 204, 406, 409, 420, 465, 468, 471, 477(A) of IPC, Sec. 447, 452 of Company Act and Sec. 13(1)(A), 13(2), 12 of Prevention of Corruption Act. As per the prosecution, the accused persons hatched conspiracy amongst them and have cheated the GIL Company to the tune of Rs.40,27,65,186/- by preparing false RTGS Sheets, Vouchers and Cheques and transferred /deposited the amount from GIL to various Bank Accounts of the accomplice unauthorized Vendors and further transferred the said amount in other Bank Accounts or withdrew the amount in cash. Applicant was working as Executive (Finance) in GIL company and main accused Ruchi Bhavsar was Executive (Accounts). It was duty of the applicant to work with main accused Ruchi Bhavsar to verify the vouchers received in the Account Department and prepare sheets for issuance of Cheques / RTGS transfer of the approved vouchers received in their Accounts department of the GIL Company, to maintain Bank Book and do all the work related to accounts. It reveals from the investigation that an amount of Rs.40,27,65,186/- was transferred /deposited from GIL to various Bank Accounts of the unauthorized Vendors through cheques /RTGS without preparing vouchers or false vouchers. As per the I.O. one of the accused persons have unauthorizedly signed vouchers/cheques. As per the

investigation, as part of conspiracy, applicant abetted the main accused and other co-accused in preparing false cheques/RTGS sheet for depositing the amount misappropriated in the name of unauthorized vendors and used it as genuine one. Investigation reveals that applicant has obtained illegal financial benefit in cash as well as in his Bank Account from main accused Ruchi Bhavsar. Applicant and other prime accused persons were working in the same office and applicant's duty was to verify the vouchers received for payment and as per the material available on record prima-facie the act of the applicant of not properly verifying the vouchers / preparing false cheques / RTGS sheet cannot be said to be negligence but involvement with co-accused in the offence as part of the conspiracy. There are statements of witnesses and material on record about involvement of the applicant/accused in the offence. Looking to the role of the applicant/accused in the charge-sheet and the evidence collected by investigating agency during the course of investigation prima-facie makes out a case to put the applicant accused for trial.

7. 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 Exh.95 for discharge filed by accused Vikrant Jagdishchandra Kansara is **rejected**.
2. Matter is posted for framing of charge

Pronounced and signed in the open today on this **19th day of April, 2025.**

(Kamal M. Sojitra)
Principal District & Sessions Judge,
& Designated Special Judge (Companies Act)
Ahmedabad (Rural)
UIC No.GJ01494