

CRIMINAL CASE NO.: 2239 OF 2025.

ORDER BELOW EXH.: 32:-

- 1.This application is at the instance of complainant invoking provisions of newly incorporated section 143(A) (2) of Negotiable Instruments Act, 1881 [Herein after referred to as '**NI Act, 1881**'].
- 2.In her application, complainant has inter alia state that, cheque of Rs.10,00,000=00 towards her legal debt issued by accused is dishonoured by banker for want of sufficient funds.
- 3.The other side is duly served through his legal counsel and has filed his reply at **Exh.: 34**. In his reply he has inter alia stated that present application is premature and legally not tenable in the eyes of law. He has further stated that he has filed petition/application for quashing present application before Hon'ble High Court being **Misc. Criminal Appl. No.: 21002 of 2025** wherein notice is issued to complainant - present applicant - and she has also filed her appearance through legal counsel and has further contended that grant of interim compensation is discretionary power hence same is not required to be exercised mechanically and accused is remaining present during trial.

4. I have heard Ld. Counsels for the parties and gone through record. It is settled position of law that complaint under section 138 of NI Act, 1881 is not maintainable until and unless statutory demand notice is issued and served upon issuer of cheque; as such in the case on hand it is seen that such notice dated: 18.06.2025 [**Mark-3/7**] is issued and on service of such notice, present accused has responded to said notice on 24.06.2025 [**Mark-3/10**] wherein he has inter alia contended and admitted fact that he has in fact issued cheque [**Exh.: 10**] in question however same has been issued 05 blank signed cheques under duress by him at the instance of one Shri Vijaybhai Patel; and according to him in fact complainant owes him 4,50,000=00 however in order to avoid repayment of that amount; cheque in question is obtained under duress. Moreover in his reply he has also admitted that out of the 05 cheques allegedly obtained from him under duress 01 cheque bearing number 184107 dated: 14.04.2025 in the amount of Rs. 3,00,000=00 is already cleared by his banker.

5. On going through record it is seen that, reply sent by accused to suitably replied by complainant on

___.07.2025 [**Mark-3/11**] and necessary clarification is not only given but facts narrated by him is denied.

6. In view of above fact as emerging on record, out of 05 cheques drawn on his banker 01 cheque is already cleared and for remaining 04 cheques 04 different complaints are filed and are pending in this court. On going through record it is evident that, both the parties have entered into agreement on 07.03.2025 [**Mark-3/1**] and same is duly Notarized before Notary Public at Vyara and same is not only signed by parties to complaint but also by their witnesses; wherein cheques numbers as well as amount together with date of cheque is mentioned. There is no doubt about fact that, 05 cheques are issued he has admitted fact that he has received in all Rs.42,00,000=00 in piece meal from complainant. As such whether cheque in question is obtained under duress or not is question of evidence and same is required to be tested during cross examination. At this stage prima facie it appears from documents at **Exh.: 15 to 19** as well as **Mark-3/19 to 3/20** that complainant had sufficient means to part with amount in question; more so when he claims that 05 cheques were issued by him under duress; however after dishonour of some of the

cheques; as afterthought action he has instructed his banker to stop payment of rest of the cheques therefore, this fact is also required to be tested during course of recording of evidence by parties. The defense which has been placed on record by the accused in his reply does not inspire any confidence; more so when he has failed to lodge any complaint with police in respect of so called incidence of kidnapping as well as obtaining cheque under duress as well as obtaining his signature on 07.03.2025 before Notary Public.

7.As per provisions governing dishonour of cheque as contained in NI Act, 1881, there is presumption as to issuance of cheque towards legal debt; in the case on hand accused has himself admitted fact that cheque is issued by him and he has admitted in writing about receiving Rs. 42,00,000=00 in piece meal and prima facie complainant has shown documentary evidence as to availability of funds with her therefore there is prima facie case as well as presumption in favour of complainant that cheque in question is towards legal debt.

8.The amended provisions as contained in NI Act, 1881 in the light of settled principles of law as laid down by Hon'ble High Courts as well as Hon'ble

Supreme Court, said provision is directive in nature and not mandatory; as such looking to the overall conduct of accused in his reply - Mark-3/10 - vis-à-vis his admission as to acceptance of having received Rs.42,00,000=00 from complainant and issuance of cheque in question; I feel this is fit case for granting relief in favour of the complainant; more so when no assurance for conducting trial as early as possible, is coming forth from accused. Moreover, act of filing quashing petition by accused also appears to be well planned strategy to avoid conducting trial and payment to amount received from complainant. Considering fact that, matter was fixed for hearing on 17.02.2026 in order to be fair to parties; this court kept this matter after hearing both sides kept this mater on 18.02.2026 for order only to give one more opportunity to accused for obtaining stay, if any, in his petition; however today counsels for the parties have stated at bar that matter is simply adjourned to 17.03.2026 by Hon'ble High Court on 17.02.2026. Record indicates that almost all occasions complainant as well as his legal counsel were available; but either accused and/or his legal counsel would remain absent and/or not turn up in time; therefore considering fact that no assurance is given for conducting trial as

early as possible and/or on day to day basis,
following order is passed:-

-::: O R D E R :::

**Application is allowed. Accused is hereby directed
and ordered to deposit 20% of cheque amount i.e.
Rs.2,00,000=00 [Rupees Two Lakhs only] in this
court within 15 days.**

**PRONOUNCED IN OPEN COURT ON THIS 18TH OF FEBRUARY, 2026 AT
TAPI @ VYARA**

ADDL. CHIEF JUDICIAL MAGISTRATE,
TAPI @ VYARA [GJ-00459]