



ORDER ON DISCHARGE APPLICATION

(EXH.33)

IN

C.R. NO.440/2023 OF P. S. DHANTOLI

(U/SEC. 420, 406, 419, 467, 468, 471, 171, and 120-B of the
Indian Penal Code)

1. Accused Alpesh Suresh Bhai Patel has filed this discharge application for discharging him in connection with C.R. No.440/2023, registered with Dhantoli Police Station for offences punishable U/sec.420, 406, 419, 467, 468, 471, 171, and 120-B of the Indian Penal Code,1860.
2. Learned Advocate for the Accused submitted that Alpesh Patel has been arrayed as co-Accused and co-conspirator in the present crime of cheating. It is submitted that the charge sheet has been file by Dhantoli police station in the present crime, which was registered on the basis of incidents which took place between 7th December 2022 to 3rd February 2023. It is the case of the prosecution that the Informant was fraudulently lured by return of 15 to 20% on the amount



invested in Extreme Networks India Private Limited. Accordingly, the Informant invested Rs. 5,39,50,000/- out of which 20 lakhs came to be refunded to the Informant. It is further stated that, after the cheques which were issued for security purposes have been misused by the Accused, the Informant lodged the offence against the Accused. It is further submitted that the allegations levelled against the Accused No. 4 are that on 18th January 2023 the Informant alongwith Satish and Accused Dinesh Mishra visited the office of Rahul Gaikwad, where the Accused No. 4 Alpesh Patel was also present and on Rahul's instructions the Informant had transferred Rs. 25,00,000/- in the account of Durga traders, which belongs to Accused No. 17. Therefore, the Accused Alpesh Patel was arrayed as Accused. It is also submitted then after perusal of the entire charge sheet, absolutely no role has been attributed to the present Accused, so far as the present offences are concerned. It is further submitted that during the course of Investigation, no incriminating evidence came to be collected against the present Accused. Therefore Accused No. 4 is entitled to be discharge from the aforesaid



offences. It is further submitted then the Accused used to work as a broker in Hawala trading on commission basis the Accused was not knowing Informant and never induced him to invest amount in any company. The Accused No. 4 visited the office of Rahul Gaikwad on 18th January 2023 for work relating to Hawala transaction, where Ankur Agarwal along with three people came to his office. Rahul Gaikwad informed him that informant needs Rs. 25,00,000/- in cash, thereafter, Rahul Gaikwad made request to the present Accused to arrange money through Hawala. Accordingly, he made phone call to one Hawala trader, who told him to send money in the account of Durga traders, of which Accused No.17 Dinesh Joshi is proprietor. Thereafter, after detecting the amount of commission, the Hawala traders have send Rs. 24,77,300/- and the amount has been handed over to Rahul Gaikwad in presence of the Informant. It is lastly submitted that, the entire charge-sheet does not disclose any Prima facie offence of cheating committed by the present Accused. Therefore, the Accused deserves to be discharged. Hence the present application.



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3. The learned APP filed her say below Exhibit 96. She has strongly objected to the present application on the ground that the offences for which present Accused is arrayed are serious in nature. The amount in question is amounting to Rs. 5,39,50,000/-. The name of the Alpesh Patel is mentioned in the FIR, specifically at Page No. 4. The name of Alpesh Patel is submitted by the Informant. During the course of Investigation, it has revealed that the Accused had plan conspiracy to cheat the Informant and accordingly they have miss-appropriated huge amount. The Investigation is still in progress as regards the Accused who are absconding. It is further submitted then on 18th January 2023, the Accused was present along with the other Accused, on whose instructions Rs. 25 lakhs came to be transferred to Durga trader's account. It is lastly submitted that taking into a consideration the entire evidence, there is strong evidence collected against the present Accused, which prima facie establishes the offences alleged. Therefore, the present application deserves to be rejected.
4. I have heard learned APP and Counsel for Accused No.4.



Perusal of the entire Charge Sheet would reveal that the Accused has been booked for the present offences upon the statement of the Informant, made in his First Information Report. The only role attributed to the present Accused is, in his presence in the meeting on 18th January 2023. It is seen that in the said meeting he facilitated the Informant by providing account number in which Informant transferred Rs. 25 lakh. It is seen that the applicant has not disputed his presence in the meeting which was held on 18th January 2023. It is also admitted by the Accused applicant that he provided the account number for transfer of funds, as per the instructions of Rahul Gaikwad. Upon careful of charge sheet would reveal that, at page No. 196 of the charge sheet, the statement of Durga traders is annexed by the prosecution. On 18th January 2023, 5 transactions of Rs. 5,00,000/- each appears to be credited in the account of Durga traders. The amount is seen to be immediately debited from that account and credited towards Gulf forex and Travels. It is further seen that the account number of Durga traders was submitted by the Informant to the police, after which the investigation



revealed that Accused No.17 proprietor of Durga traders, Dinesh Joshi had received the amount in his bank account. At this juncture, there are 9 absconding Accused. The present Accused cannot simply shuck his shoulders and could submit that the other persons made him to do it. It is not in dispute that he was present when the transaction took place, it was taken place in his presence. More so he is named Accused and after investigation his role came to the forefront. The Accused has not presented any document to demonstrate that he was merely an employee and had no relation with other accused to cheat the Informant. Apart from bare words, there is nothing to showcase that Accused was employed there who worked as per the instructions of his bosses. In the present offence the prosecution has alleged criminal conspiracy by all the Accused. The offence of criminal conspiracy requires meeting of minds. The Hawala transactions are by itself are illegal in India under laws like the Foreign Exchange Management Act (FEMA) 1999 and the Prevention of Money Laundering Act (PMLA) 2002. Be it as it may, the charge-sheet has highlighted specific role to the



present Accused. There is enough material presented by the prosecution which requires sending the accused to face trial. At this juncture, taking into account voluminous documents and the statement of the Informant, Prima facie showcases the Involvement of the present Accused. There is sufficient material to support the offences alleged against the present Accused. Considering the complexity of the offence, trial is must. Hence, I proceed to pass the following order: -

-: ORDER :-

Application is rejected.

Place : Nagpur.
Date : 08/12/2025

(Kaustubh Nagesh Marathe)
Judicial Magistrate, F.C. Nagpur.
Court No.1