ORDER BELOW EXH. 28 IN RCC No. 958/2025
(Passed on 30th day of October 2025)

1] The accused are charged for the offences under section 406, 420 r/w 34 of India Penal Code. [For short "IPC"]. **Accused No. 3 Rajesh Shyam More** has preferred present application for discharge under section 239 of the Code of Criminal Procedure. [For short "Cr.P.C."].

BRIEF FACTS :-

2] The prosecution alleges that the accused, Manish Agrawal, utilized the bank account of the accused Sager Dashrath Aarde for financial transactions, and in furtherance thereof, dishonestly induced the informant by luring him with promises of higher returns and assigning purported tasks. In this manner, the accused persons including the accused No. 3 Rajesh Sham More collectively cheated the informant and misappropriated a total amount of ₹45,94,000/-. Consequently, the complainant has instituted the present proceedings.

3] By present application applicant/ accused No. 3 has submitted that, the charge-sheet does not disclose any *prima facie* material against the applicant/accused No.3. The applicant has been falsely implicated in the alleged offence without any cogent or direct evidence linking him to the crime. Even if the entire prosecution case is accepted at its face value, it fails to establish the essential ingredients required for framing of charge against the applicant. It is further submitted that, upon completion of investigation, the prosecution has filed the charge-sheet before this Court. However, a bare perusal of the charge-sheet, the statements recorded under

Section 161 of the Cr.P.C., and the accompanying documents reveals that there is no material disclosing any *prima facie* involvement of the applicant. The fundamental ingredients of Sections 420 (cheating), 406 (criminal breach of trust), and 34 (common intention) of the Indian Penal Code are not made out. The prosecution has failed to demonstrate any dishonest inducement, entrustment of property, or subsequent misappropriation attributable to the applicant.

4] It is futher submitted that, it is a matter of record that the FIR was initially registered against unknown persons, and it has never been the case of the prosecution that the applicant/accused No. 3 was personally known to the complainant. The WhatsApp number and Telegram accounts referred to in the investigation viz., 8740906576, @Gany486, @TRT5668, and @Carydittmar bear no connection with the present applicant. The said WhatsApp number has been found to be registered in the name of one *Phulan Bai*, a resident of Bundi District, Rajasthan. Likewise, none of the alleged fraudulent bank accounts belong to or are operated by the applicant/ accused No. 3

5] It is further submitted that, the allegations of the prosecution primarily revolve around one Manish Agarwal, who is stated to have used certain accounts belonging to co-accused persons. The applicant has not provided, operated, or allowed the use of any of his accounts for such alleged activities. There is neither direct nor circumstantial evidence showing that any fraudulent amount was received by or transferred to the applicant. Similarly, no offence under Sections 66C or 66D of the Information Technology Act, 2000, is made out, as there is no material to establish that the applicant fraudulently or dishonestly used any electronic signature, password, or unique identification of another person, nor any evidence of cheating by impersonation through computer resources.

6] It is further submitted that, the additional statements of the complainant and witness Rachna Pratik Shah, both recorded on 15.09.2025, merely mention the names of certain accused persons but do not contain any specific allegation against the applicant. Mere naming in statements, without substantive evidence, does not constitute a *prima facie* case. It is also submitted that, It is a well-settled principle of law that when the allegations in the FIR or charge-sheet, taken at their face value, do not disclose the commission of any offence, the accused is entitled to be discharged. Reliance is placed on the following judgments:

- *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604;
- *Madhavrao Jiwaji Rao Scindia v. Sambhajirao Angre*, (1998) 1 SCC 692;
- *V.Y. Jose v. State of Gujarat*, (2009) 3 SCC 78;
- *Pushpendra Kumar Sinha v. State of Jharkhand*, (2022); and
- *Karan Talwar v. State of Tamil Nadu*, (2024).

7] It is lastly submitted that, In view of the above facts and legal position, it is evident that no *prima facie* case is made out against the applicant/ accused No. 3 for the offences punishable under Sections 420, 406 r/w 34 of the IPC or under Sections 66C and 66D of the Information Technology Act, 2000. Continuation of criminal proceedings against the applicant would, therefore, amount to an abuse of process of law and cause undue hardship and harassment. Therefore, he seeks to be discharged from the case.

8] The Ld. Advocate for the accused has re-uttered the aforesaid contention and in addition to that, has submitted that, a perusal of the charge-sheet, statements recorded under Section 161 of Cr.P.C., and accompanying documents reveals that the essential elements of Sections 420, 406, and 34 of the IPC are not made out. There is no material showing any dishonest inducement, entrustment of property, or misappropriation by the applicant/accused No.3. It is further argued that, the prosecution's main allegations concern co-accused Manish Agarwal and others, and no role is attributed to the present applicant. There is no evidence that any fraudulent amount was received or transferred to applicant/ accused No.3. Similarly, no offence under Sections 66C or 66D of the Information Technology Act is made out, as there is no material showing misuse of electronic identity or impersonation by the applicant.The statements of the complainant and other witnesses do not contain any specific allegation against the applicant, and mere naming without substantiation does not create a *prima facie* case. The Ld. Advocate for accused has finally prayed for allowing the application and prayed for discharge the accused from present crime.

9] The learned APP Shri S.Rathod for the State has filed reply to the application and has strongly opposed present application by submitted that, present application is not tenable. It is further submitted that, I.O. has collected the documents and verified from concerned persons and after completion of investigation I.O. has filed charge sheet. It is further submitted that, the present accused was also involved in the present crime though there is no transaction from or in his account. It is further submitted that, proving the allegation is a matter of evidence and evidence is yet to be commence. It is further submitted that, the statement and documents on record transpires that, prima-facie case is made out against the applicant/ accused, hence prayed for rejection of the application.

10] It would not be out of place to mention that an accused can be discharged under Section 239 of the Code of Criminal Procedure, 1973, if the charges against him appear to be groundless. The term *"groundless"* signifies that the materials placed before the Court do not disclose, or are insufficient to disclose, a *prima facie* case against the accused—i.e., there exists no ground for presuming that the accused has committed any offence. At this stage, the Court is required to consider the materials placed on record by the Investigating Officer at their face value. In view of the settled legal principles, it is therefore necessary to examine whether, in the present case, the accused deserves to be discharged or not.

11] Keeping in view the aforesaid legal position, I shall now proceed to apply the principles enunciated above in order to determine whether there exists sufficient material to proceed against the accused. On careful perusal of the record, it transpires that the crime was initially registered against unknown persons who were allegedly operating certain WhatsApp and Telegram accounts, namely 8740906576, @Gany486, @TRT5668, and @Carydittmar, and were involved in acts constituting offences punishable under Sections 406, 420 read with Section 34 of the Indian Penal Code. During the course of investigation, it was revealed that a substantial amount of money was credited to the bank account of Accused No. 2. The investigation further indicates that Accused Nos. 1 to 3, sharing a common intention, had knowingly and voluntarily provided the bank account details of Accused No. 2 to the absconding Accused No. 4 for receiving the cheated amount. Upon completion of investigation, the charge-sheet was accordingly filed against Accused Nos. 1 to 4.

12] The applicant/Accused No. 3, however, has contended that the entire charge-sheet does not reflect his involvement in the commission of the alleged crime. It is his specific case that no part of the fraudulent amount was ever received in his bank account, nor did he at any point contact or induce the informant to transfer any money. He therefore submits that the continuation of proceedings against him would be wholly unwarranted.

13] However, upon a prima facie evaluation of the material collected during investigation, it emerges that Accused Nos. 1 to 3 had, with a shared understanding and mutual intention, facilitated the use of the bank account of Accused No. 2 by Accused No. 4 for the purpose of receiving the fraudulent proceeds, in lieu of some monetary commission.

14] At this juncture, it is essential to consider the legal scope and sanctity of **Section 34 of the Indian Penal Code**, which embodies the principle of joint liability in the commission of a criminal act. Section 34 provides that – **"When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."**

15] The essence of Section 34 lies in the existence of a pre-arranged plan and the participation of the accused in furtherance of that common intention. It does not require proof of an overt act by each accused, rather, the participation and mental unity of purpose among the accused are sufficient to attract joint liability. Even if the applicant/Accused No. 3 has not personally received the fraudulent amount, his association, knowledge, and facilitation of the transaction, if proved, would constitute sufficient material to infer common intention and render him equally liable for the criminal act.

16] Thus, at this preliminary stage, it is not material whether the applicant directly received the proceeds of the crime or not, what is of significance is the existence of concerted action and shared intention in the commission of the offence. The doctrine of common intention under Section 34 IPC, being a rule of evidence, operates to fix joint responsibility on all those who act together in pursuance of a pre-arranged plan.

17] In view of the foregoing discussion, the investigative material, at least prima facie, suggests that Accused Nos. 1 to 3 acted in concert with Accused No. 4 to facilitate the fraudulent transaction. Hence, the element of common intention under Section 34 IPC is, at this stage, sufficient to justify the continuation of proceedings and to call upon the accused to face trial.

18] In view of the foregoing, the materials on record, statements of the witnesses clearly disclose a *prima facie* case for proceeding against the applicant/ accused No.3 for the offences under Sections 406 & 420 r/w 34 of the Indian Penal Code. With due respect, the citation relied upon by the Ld. Advocate for Accused No. 3 is distinguishable on facts and is not applicable to the present case.

19] After taking into consideration the material placed on record, I am of the view that the said material is sufficient, at this stage, to frame charges and proceed against the accused. Therefore, it is needless to state that, based on the foregoing discussion and the observations in the cited authority, I find no merit in the present application. Accordingly, I proceed to pass the following order

Order

Application is rejected.

AL
AMOODI
ABDUL
KHAYYUM

Digitally signed by AL AMOODI ABDUL KHAYYUM
Date: 2025.10.31 12:16:15 +0530

30.10.2025
Pimpri

(AL Amoodi A.K)
Judicial Magistrate, F. C., Pimpri.