MHRG140026962025

ORDER BELOW EXHIBIT 17

1. This is an application (Exh. 17) filed by Accused No. 1, Shri Sanjay Vithoba Sable, and Accused No. 2, Shri Allwin Wyvern Saldana, under Section 262 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), seeking discharge from the offences punishable under Sections 420, 465, 468, and 471 read with Section 34 of the Indian Penal Code, 1860 (IPC), arising out of the Final Report/Chargesheet filed by Nhava Sheva Police Station.

2. The brief facts, as averred by the Informant Smt. Manjushree Patwardhan, are that in September 2022, she executed a registered Leave and License Agreement in respect of Commercial Gala Nos. 5 and 4B in favour of Allsan Shipping and Logistic Pvt. Ltd., of which the accused are Directors. The agreement was for a period of three years with a security deposit of Rs. 6,00,000/-. After paying rent for the initial 2-3 months, the accused defaulted. The Informant later discovered that the galas were sealed by the Customs Department (DRI). Upon making inquiries through RTI, she found that the accused, with a common intention, had submitted a forged 'notarized' Leave and License Agreement to the Customs Department to obtain a bonded license. In the said notarized agreement, the Informant's signature and the rubber stamp of her firm were forged, the tenure was maliciously altered to five years, and the

deposit amount was inflated to Rs. 24,00,000/-. Consequently, an FIR came to be registered.

3. Learned Counsel for the accused, relying upon the Application (Exh. 17) and Written Arguments (Exh. 19), strenuously argued that the dispute is purely of a civil nature, revolving around the recovery of arrears of rent. It is contended that the galas were sealed by the Customs Authorities, preventing the accused from conducting business, which led to the default in rent. There was no dishonest intention at the inception, as possession was delivered based on the genuine registered agreement, not the alleged forged notarized document. Therefore, the essential ingredient of Section 420 IPC (inducement and delivery of property) is missing. The Learned Counsel placed heavy reliance on the judgment of the Hon'ble Supreme Court in '***Mariam Fasihuddin & Anr. Vs. State by Adugodi Police Station & Anr. [(2024) 1 S.C.R. 623]***', arguing that every unlawful act is not deceitful, and in the absence of intent to cause wrongful loss or gain, the charge of forgery cannot stand. Furthermore, it was argued that the FIR is an afterthought to bypass civil remedies, and the IPC offences are not maintainable as the IPC stands repealed by the Bharatiya Nyaya Sanhita, 2023.

4. The Learned APP filed a Say (Exh. 18) strongly opposing the application. It is submitted that the investigation reveals a clear fabrication of a notarized document materially different from the original registered agreement. The forged signature, fake rubber stamp of 'Unique Solution', and altered terms were deliberately manufactured to secure statutory bond/license facilities from the Customs Department. This constitutes a serious criminal offence against the State machinery and the Informant, which cannot be brushed aside as a mere

civil dispute. The APP also raised an oral objection that the application is delayed as the charge sheet was received by the accused on 12.12.2025, while the application was filed on 06.03.2026. The prosecution insists that a strong prima facie case exists requiring a full-fledged trial.

5. The statutory mandate under Section 262 of the BNSS, 2023 (analogous to Section 239 of the CrPC, 1973) is clear: a Magistrate shall discharge the accused only if, after considering the police report and the documents sent with it, he considers the charge against the accused to be 'groundless'. At this stage, the Court is not required to conduct a mini-trial or meticulously weigh the evidence to ascertain the likelihood of conviction. The test is merely to see whether a prima facie case exists or whether there is a strong suspicion that the accused has committed the offence.

6. I have carefully perused the FIR, the statements of witnesses, and the documentary evidence compiled in the charge sheet. It is an admitted position that a registered Leave and License Agreement was executed between the parties. However, the gravamen of the prosecution's case is not the mere non-payment of rent, but the independent, deliberate creation of a secondary 'notarized' agreement. The documentary evidence collected by the Investigating Officer from the Customs Department prima facie shows that a notarized agreement bearing the Informant's purported signature and the rubber stamp of her firm was submitted by the accused.

7. The defense argues that since possession of the property was handed over pursuant to the genuine registered agreement, Section 420 IPC is not attracted. While it may be arguable whether the forged document induced

the Informant to part with property, the provisions of Sections 465, 468, and 471 of the IPC are clearly and independently attracted. Section 468 IPC penalizes forgery committed for the purpose of cheating. Submitting a fabricated document to a statutory authority (Customs Department) to wrongfully obtain a bonded license prima facie constitutes an intent to deceive the authority and cause legal injury. The creation of the fake rubber stamp and the alteration of the lease tenure and deposit amount cannot, by any stretch of imagination, be termed a 'civil dispute'. It is a distinct criminal act of fabricating valuable security.

8. The Learned Counsel for the accused heavily relied on the ratio of the Hon'ble Supreme Court in ***'Mariam Fasihuddin' (Supra)***. However, the said ruling is distinguishable on facts. In the present case, the primary ingredient of 'dishonest intention' is prima facie visible from the overt act of altering the duration and deposit amount in the notarized document to suit the requirements of the Customs Department. The intent to unlawfully secure a government license using a forged instrument takes this matter beyond a simple landlord-tenant dispute.

9. As regards the contention that the IPC has been repealed by the Bharatiya Nyaya Sanhita, 2023, the same is legally misconceived. The alleged offences took place between 01.08.2022 and 30.06.2024, prior to the enforcement of the new criminal laws on 01.07.2024. By virtue of the saving clauses in the new enactments, the substantive offences committed prior to the repeal are to be dealt with under the provisions of the IPC.

10. Addressing the Learned APP's oral objection regarding limitation, it is well-settled law that an application for discharge can be moved and

considered at any time before the charge is formally framed. Therefore, the mere filing of the application on 06.03.2026, after receiving the charge sheet in December 2025, does not render it barred by limitation.

11. In view of the above marshalling of facts and law, the materials placed on record by the prosecution cannot be said to be 'groundless'. There are sufficient grounds for presuming that the accused have committed offences triable by this Court. The defenses raised regarding the absence of intent, or the inability to pay rent due to the DRI sealing, are pure questions of fact that must be tested during the trial through cross-examination and adducing of defense evidence. They cannot be prejudged at the stage of framing charges. Therefore, the application is devoid of merits and deserves to be rejected. In light of the above discussion, I pass the following order:

ORDER

1. The Application for Discharge (Exhibit 17) filed by Accused No. 1, Shri Sanjay Vithoba Sable, and Accused No. 2, Shri Allwin Wyvern Saldana, is hereby rejected.

2. The matter be listed for the framing of charge.

SANTOSH PUNDLIKRAO WANKHADE
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Date: 2026.04.24 15:32:03 +0530

Uran, S. P. Wankhade
Date – 24.04.2026 Judicial Magistrate F. C. Uran