

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

Criminal Application No. 1749 of 2024
With
Criminal Application No.1690 of 2024
With
Criminal Application No.1694 of 2024
With
Criminal Application No.1742 of 2024
With
Criminal Application No.1745 of 2024
With
Criminal Application No.1744 of 2024
With
Criminal Application No.1748 of 2024
With
Criminal Application No.1838 of 2024
With
Criminal Application No.1839 of 2024
With
Criminal Application No.1841 of 2024
With
Criminal Application No.1840 of 2024

Jagmohan Garg	...	Applicant
V/s.		
National Spot Exchange Ltd. & anr.	...	Respondents.

**Alongwith
Criminal Application No.501 of 2024**

Kamal Kant Dewan	...	Applicant
v/s.		
National Spot Exchange Ltd. & anr.	...	Respondents.

**Alongwith
Criminal Application No. 1743 of 2024**

With
Criminal Application No.1750 of 2024
With
Criminal Application No.1746 of 2024
With
Criminal Application No.1756 of 2024
With
Criminal Application No.1757 of 2024
With
Criminal Application No.1758 of 2024
With
Criminal Application No.1754 of 2024
With
Criminal Application No.1885 of 2024
With
Criminal Application No.1883 of 2024
With
Criminal Application No.1886 of 2024
With
Criminal Application No.1882 of 2024

Jai Shankar ShrivastavaApplicant
v/s.
National Spot Exchange Ltd. & anr.Respondents

Alongwith
Writ Petition No.2228 of 2025
And
Writ Petition No.2229 of 2025

Prashant BooruguPetitioner
v/s.
National Spot Exchange Ltd.Respondents

Alongwith
Writ Petition No. 6264 of 2024

Lotus Refineries Pvt. Ltd,

through Managing Director
v/s.

State of Maharashtra and arn.

....Petitioner

....Respondents

Mr. Rishi Bhuta a/w. Mr. Ashish Dubey a/w. Vaishnavi Javheri a/w. Ankita Bamboli a/w. Parth Govilkar a/w. Mr. Omer Farooq a/w. Sakshi Jha a/w. Bhavi Kapoor a/wo Prathamh Jain i/b. Dilip Shukla	Advocate for the Petitioner in WP No.6264/24.
Mr. Arvind Lakhawat a/w. Mr. Nimeet Sharma a/w. Vinit Vaidya a/w. Ms. Himani Narula i/b. MZM Legal LLP	Advocates for Respondent No.1 & 2 in APL 1749/24 group, for Respondent No.2 in WP No.6264/24 and Respondent No.1 in WP No. 2228/25, 2229/25.
Mr. Anuj Jhaveri, Ms. Aakanksha Nehra (through v.c.) a/w. Mihir Modi i/b. Mihir Modi	Advocates for the Petitioners in WP No.2228/25 and 2229/25.
Ms. G.S.Rao	APP for State
Mr. Vinay J. Bhanushali and Advocate Sanmit Vaze	Advocate for the Applicant in all applications.

CORAM : S.M. MODAK, J

DATE : 31st July 2025.

P.C. :

Heard learned Advocate Mr. Lakhawat. He read remaining judgments in case of:-

(i) *Sheetal Gupta wife of Surender Gupta v/s. National*

*Spot Exchange Limited & anr.*¹

(ii) *Ajay Kumar Radheshyam Goenka v/s. Tourism Finance Corporation of India Ltd.*²

(iii) *Rakesh Bhanot v/s. M/s. Gurdas Agro Pvt. Ltd.*³

2. On the basis of above judgments he made following submissions:

a. In case of *Sheetal*, all relevant paragraphs of P. Mohanraj were not pointed out. So also judgment in case of *Kunhayammed & ors. v/s. State of Kerala and anr.*⁴ (involving correlation in between Companies Act and Section 138 of the Negotiable Instrument Act) was not pointed out. Hence, he submitted the ratio in *Sheetal* is not a good law.

b. SLP preferred by his client in case of *Sheetal* was summarily dismissed. It cannot be said to be a *resjudicata* binding on his client because it was not dismissed on merits and it was not converted into a criminal appeal.

c. In case of *Ajay Goenka*, three Judges Bench of Hon'ble Supreme Court dealt with the provisions of Section 31 of Insolvency and Bankruptcy Code (for short 'I.B. Code') and observations about interpretation of other provisions of I.B.Code are relevant.

d. In respect of observations in *Rakesh Bhanu* he submitted that it is more relevant for following reasons:

1 Cr. Application No.1151/2022 Bombay High Court.

2 (2023) 10 Supreme Court Cases 545

3 Cr. Appeal No.1607/25 SC

4 (2000) 6 Supreme Court Cases 359

- (i) The issue about binding effect of moratorium under Section 96 of I.B. Code was involved and same is the issue in these petitions.
 - (ii) The judgment was delivered in various petitions filed from various High Courts and some of them are against the decisions of this Court.
- e. In *Ajay Goenkar's* case it was observed that proceeding under Section 138 is not a recovery proceeding but it is penal in nature.
3. For paucity of time, stand over to **21st August 2025** at 3.00 p.m.
4. Interim order granted earlier to continue till next date.

(S.M. MODAK, J.)