

**IN THE COURT OF SPECIAL JUDGE (C.B.I.) FOR GREATER MUMBAI
ORDER BELOW EXHIBIT NO. 517.**

IN

CBI SPECIAL CASE NO. 37 OF 2018.
(CNR. NO. MHCC02-006249-2018)

K.V. Brahmaji Rao.
Presently R/at : A-2,
Land Mark Pride, Adjacent to A plus
convention Centre, Benz Circle, Bandar
Road, Vijayawada-520 010.

Permanent R/at : Journalist Colony,
Palakol, West Godavari District,
Andhra Pradesh.

...Applicant/Accused No.20.

V/s.

Central Bureau of Investigation,
(Bank Securities & Fraud Cell, Mumbai). ... Prosecution/respondent.

Appearance:-

Ld. Counsel Mr. Subhash Jha a/w Adv. Ms. Rajul Jain
a/w Adv. Mr. Chaitanya Malgaonkar for applicant/accused No.20.
Ld. P.P. Limosin for the prosecution/respondent.

**CORAM : H.H.THE SPECIAL JUDGE (C.B.I.)
SHRI A.V. GUJARATHI.
(Court Room No.50)**

DATED : 3rd September, 2025.

:-ORAL ORDER:-

1. Accused No.20 **K.V. Brahmaji Rao** has filed present application for discharge under section 239 of the Cr.P.C. from Special Case No. 37 of 2018, instituted against him for the alleged commission of offences punishable under Sections 120-B read with Sections 420, 409 of the IPC besides sections 7, 13(2) and read with 13(1)(c) and (d) of the Prevention of Corruption Act, 1988.

Facts of the prosecution case in nutshell are as under :-

2. On the basis of complaint from Punjab National Bank (PNB), crime was registered by the Central Bureau of Investigation (CBI) on January 31, 2018. The complaint initially targeted Nirav Modi, Neeshal Modi, Ami Nirav Modi, Mehul Chinubhai Choksi (partners of M/s Diamond R US, M/s Solar Exports, and M/s Stellar Diamonds), and PNB employees the Accused No.3 Gokulnath Shetty and the Accused No.4 Manoj Kharat. The FIR alleged that accused No.3 Gokulnath Shetty and accused No.4 Manoj Hanumant Kharat were posted in Forex Department at Mid Corporate Branch, Brady House, Mumbai branch of Punjab National Bank as Deputy Manager and Single Window Operator (SWO) respectively. They had fraudulently issued 08 LOUs on 09.02.2017, 10.02.2017 and 14.02.2017 in favour of Allahabad Bank, Hong Kong and Axis Bank, Hong Kong, without following prescribed procedure by obtaining required request applications, necessary documents, prior approval of the authorities thereto and further without making entries in the Bank system with intention to avoid detection of the aforesaid transactions. And thereby they transmitted Society for World Wide Interbank financial Telecommunication (SWIFT) instructions to the overseas branches of Indian Banks for raising buyers credit and funding the NOSTRO accounts of PNB. The aforesaid accused persons Gokulnath Shetty and Manoj Hanumant Kharat issued 08 LOUs during 09.02.2017 to 14.02.2017 on behalf of M/s. Diamond RUS, M/s. Stellar Diamond and M/s. Solar Exports amounting to USD 44225812.10, equivalent to Rs.280,70,12,293.98 which were not entered in the CBS System and the 03 accused firms had not provided any security and thereby the Bank had been cheated to the tune of Rs.280.70 crores.

3. Further investigation revealed a significantly larger fraud. PNB informed the CBI on February 13, 2018, that Gokulnath Shetty, in

conspiracy with others, had issued 150 fraudulent LOUs totaling approximately Rs.6498 crores, before his retirement in 2017, causing wrongful loss to PNB. Subsequently, a charge-sheet (Special Case No. 37/2018) was filed on 14th May, 2018, against 24 accused persons, including three accused firms. A supplementary charge-sheet (Special Case No. 49/2019) was filed on 20th December, 2019, covering 142 additional fraudulent LOUs from 2017. The investigation ultimately uncovered that between 2011 and 2017, 1214 LOUs amounting to approximately USD 3.73 billion (Rs. 23,780 Crores) were fraudulently issued by bank officials. These LOUs lacked sanctioned limits, 100% cash margins, and CBS System entries, with funds allegedly transferred to dummy companies controlled by Nirav Modi, such as M/s Pacific Diamond FZE.

4. Charge-sheet vide Special Case No. 37/2018 was filed by CBI before the Hon'ble Special Judge for CBI Cases, City Civil Sessions Court, Mumbai on 14.05.2018 against accused Nirav Modi and 24 others including 03 firms of accused Nirav Modi for commission of offences punishable U/s. 120-B IPC r/w. Sec. 420, 409 IPC & Sec. 13(2) r/w Sec. 13(1)(c) and (d) of Prevention of Corruption Act, 1988. Thereafter upon further investigation a Supplementary Charge-sheet dated 20.12.2019 vide Special Case No. 49/2019 has been filed against the accused persons namely, Nirav Deepak Modi, other private persons and accused public servants including the present accused/applicant, the then Executive Director of PNB for commission of cognizable offenses punishable U/s. 120-B IPC r/w. Sec. 420, 409, 201 IPC & Sec. 13 (2) r/w Sec. 13(1)(c) and (d) of Prevention of Corruption Act, 1988.

5. Allegations against Accused/applicant are that, RBI had issued a Caution Advice on 10th August, 2016, alerting banks to a similar fraud involving fraudulent Letters of Comfort (LOCs) issued via SWIFT messages in another Public Sector Bank. This advice cautioned banks to

ensure staff compliance with SWIFT instructions and strengthen internal controls, including considering an interface between CBS and SWIFT, and defining large value transactions requiring third-level authorization. Despite receiving this caution notice, senior PNB officers, including the accused/applicant, allegedly failed to act upon its directions. The prosecution contented that the accused/applicant, as Executive Director, dealt with the RBI circulars, caution notices, and urgent questionnaires relating to SWIFT fraud and reconciliation, but failed to protect the Bank's interests by not taking timely corrective steps and follow-up action. He was responsible for supervising the Mumbai Zone and Mumbai City Circle, which included the Brady House Branch, and also had responsibilities for Fraud Risk Management, Treasury (NOSTRO reconciliation), and Audit and Inspection of branches. The prosecution argues that his failure, along-with the other senior officers and those at the branch level (supervisors, internal auditors, branch heads), to implement RBI directions should be considered.

6. Ld. Advocate for the applicant/accused vehemently submitted that the applicant/accused was working as a Executive Director of Punjab National Bank. He was involved in making policy decisions. There are more than 7,000 branches of Punjab National Bank and in one of the branch, situated at Brady House, Mumbai, the alleged crime has taken place. Allegations against present applicant/accused are that circulars and caution notices issued by the Reserve Bank of India were not complied with. Due to negligence of the applicant/accused the offence could not be prevented. The applicant/accused was negligent in not following system circulars. Ld.Advocate for applicant/accused further vehemently submitted that mere negligence does not constitute offence. There is no element of criminality and mensrea is also absent. The accused Gokulnath Shetty was responsible for entry in SWIFT/CBS. During the period 2011-2017,

Gokulnath Shetty issued 208 LOC's. The said scam came to the light only after his retirement. The applicant/accused was not involved in issuance of fraudulent LOC's. He had no knowledge of the said fact. There is no evidence of meeting of mind to attract Section 120-B of the IPC. During this period internal/external auditors reviewed all the transactions. The present applicant/accused has not played active role in commission of the crime. He is not the beneficiary. He has not received any monetary benefit/gift/other illegal gratification. It is not the case of the prosecution that present applicant/accused has gained something wrongfully. There is no material on record to frame charge against the applicant/accused. Even no grave suspicion is made out.

7. On the contrary, Ld. S.P.P. for the State vehemently submitted that the present applicant/accused had knowledge that the system, SWIFT /CBS was vulnerable, still, he failed to take appropriate steps and thereby, could not prevent possibility of the offence. Ld. S.P.P. fairly admitted that the present applicant/accused was not involved in issuance of fraudulent LOC's. He has not played positive role in the crime. Due to his illegal omission to take appropriate steps to strengthen the system, he facilitate commission of the crime. From time to time, the RBI issued circulars and caution notices to Punjab National Bank, but the applicant/accused failed to take appropriate steps to strengthen the system i.e. SWIFT/CBS. He submitted that omission amounts to an act. He submitted that as per the provisions of section 32 of the IPC words referring to acts include illegal omissions. The applicant/accused was legally bound to take appropriate steps to strengthen the system but he illegally omitted to do so. Therefore, he is liable for prosecution.

8. Upon hearing, Ld. Advocate for the accused and Ld. P.P. for the CBI, the following points arise for consideration. The said points and my

findings thereon are as under :-

Sr. No.	POINTS	FINDINGS
1.	Whether the accused/applicant proves sufficient grounds for his discharge under Section 227 of the Cr.P.C. for the offences punishable under Sections 120B read with Section 420, 409 of IPC besides sections 7, 13(2) and sections 13(1)(c) and (d) of the Prevention of Corruption Act, 1988.?	In the affirmative
2.	What Order?	The accused / applicant is discharged.
9.	Ld. Advocate for the applicant/accused placed his reliance on the following decisions :	
1.	Union of India Vs. Prafulla Kumar Samal and another, (1979) 3 SCC 4.	
2.	Dilawar Balu Kurane Vs. State of Maharashtra, (2002) 2 SCC 135.	
3.	Yogesh Alias Sachin Jagdish Joshi Vs. State of Maharashtra, (2008) 10 SCC 394.	
4.	CBI Vs. K. Narayana Rao, (2012) 9 SCC 512.	
5.	Suresh Budharmal Kalani alias Pappu Kalani Vs. State of Maharashtra, (1998) 5 SCC 337.	
6.	Pepsi Foods Ltd. Vs. Special Judicial Magistrate, (1998) Supp (2) SCC 749.	
7.	State of U.P Vs. Dr. Sanjay Singh, 1994 Supp (2) SCC 707.	
8.	Sunil Bharti Mittal Vs. CBI, (2015) 4 SCC 609.	
9.	G.N.Verma Vs. State of Jharkhand (2014) 4 SCC 282.	
10.	Sharon Michael Vs. State of Tamil Nadu, (2009) 3 SCC 375.	
11.	R. Kalyani Vs. Janak C. Mehta, (2009)1 SCC 516.	

12. Hira Lal Hari Lal Bhagwati Vs. CBI, New Delhi, (2003) 5 SCC 257.
 13. Naman Gyanchand Pipara Vs. State of Gujarat, (2023) SCC Online Guj 3182.
 14. Thermax Limited Vs. K.M. Johny, (2011) 13 SCC 412.
 15. Jacob Mathew Vs. State of Punjab, (2005) 6 SCC 1.
 16. Union of India Vs. Major J.S.Khanna,(1972) 3 SCC 873.
 17. Anil Kumar Bose Vs. State of Bihar, (1974) 4 SCC 616.
 18. Rishipal Singh Vs. State of U.P, (2014) 7 SCC 215.
 19. S.Ram Yadav Vs. CBI, 2013 (137) DRJ 131.
 20. National Heart Institute Vs. Kamlesh Sharma, (2024) SCC Online Del 4590.
 21. Simanchalo Patro Vs. State of Odisha, (2023) SCC Online Ori 2131.
 22. Musthaffa Vs. State of Kerala, (2021) SCC Online Ker 16487.
 23. State of Karnataka Vs. L. Muniswamy, (1977) 2 SCC 699.
 24. Zakia Ahsan Jafri Vs. State of Gujarat, (2023) 13 SCC 54.
 25. Century Spinning & Mfg. Co. Ltd. Vs. State of Maharashtra, (1972) 3 SCC 282.
 26. Sudhir Kumar Vs. CBI, (2023) SCC Online Del 878.
 27. Dinesh Kumar Mathur Vs. State of M.P, (2025) SCC Online SC 21.
 28. State of M.P Vs. Sheetla Sahai, (2009) 8 SCC 617.
10. On the contrary, Ld. S.P.P for the State placed his reliance on the following decisions :
1. Bhalchandra Vs. State of Maharashtra (1968) SCC Online SC 11.
 2. Sudhir Shantilal Mehta Vs. CBI, (2009) 8 SCC 1.
 3. P.B. Desai Vs. State of Maharashtra,(2013) 15 SCC 481.
 4. Sushil Ansal Vs. State of Delhi through CBI,(2008) SCC Online Del 1380.

5. State of Tamil Nadu Vs. R. Soundirarasu and others,
(2023) 6 SCC 768.
6. CBI,ACB, Vishakhapattanam Vs. Eluri Srinivasa
Chakravarthi and others, (2025) SCC Online SC 1215.

11. Before considering the merits of the case, it would be useful to refer Section 239 of the Code of Criminal Procedure, 1973, which provides that if, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

12. Further, it may be stated that if, two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the Trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words “not sufficient ground for proceeding against the accused” clearly show that the Judge is not a mere Post Office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts. At the stage of Section 239, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex-facie disclose that there are suspicious circumstances

against the accused so as to frame a charge against him.

13. The scope of Section 227 (which is akin to Section 239 Cr.PC. pertaining to warrant cases) of the Code was considered by the Honble Supreme Court in the case of **State of Bihar Vs. Ramesh Singh (1977) 4 SCC 39**, wherein this Court observed as follows:-

“Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.”

14. The Honble Supreme Court has thus held that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Trial Judge in order to frame a charge against the accused.

In **Union of India vs. Prafulla Kumar Samal, (1979) 3 SCC 4**, their Lordships of the Supreme Court after adverting to the conditions

enumerated in Section 227 of the Code (which is akin to Section 239 Cr.PC. pertaining to warrant cases) and other decisions of this Court, enunciated the following principles:-

“(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

15. In view of the decisions referred to by the Apex Court, it could

be said that the Court can marshal the evidence found on the record and in the documents placed before it, as it would do upon the conclusion of the evidence adduced by the prosecution after the charge is framed. It is obvious that, since the Court is at that stage of deciding whether or not there exists sufficient grounds for framing the charge, and its enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At this stage, the Court may sift the evidence for that limited purpose, but it is not required to marshal the evidence with a view to separating the grain from the chaff. The only consideration at this stage is whether there exists sufficient ground to frame the charge. For this limited purpose, the Court must weigh the material on record and the documents relied upon by the prosecution. The Charge may although be directed to be framed when there exists a strong suspicion, but it is also trite that the Court must come to a prima facie finding that there exist some materials therefor. Suspicion alone, without anything more, cannot form the basis therefor or held to be sufficient for framing charge.

16. Taking note of the exposition of law on the subject laid down by the courts, it is settled that the Judge while considering the question of framing charge under Section 227 Cr.P.C. in sessions cases (which is akin to Section 239 Cr.P.C. pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima-facie case against the accused has been made out; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge

application, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshaling the evidence on record.

17. The above principles enunciated have to be applied to the present case in order to find out whether or not the discharge petition filed under Section 239 of the Code deserves to be allowed or not.

18. The CBI's case against applicant/accused in a nutshell, focuses primarily on alleged administrative inaction and failure to implement crucial directives from the Reserve Bank of India (RBI). The prosecution has alleged that he was aware of RBI directives issued under its circular dated August 3, 2016, advising banks to comprehensively audit SWIFT infrastructure for cyber security controls, rectify vulnerabilities, and ensure strict vigilance on SWIFT transactions. The accused/applicant and the Accused No.19 the then MD and CEO saw this circular, with their initials identified on its first page by witnesses (PW-50 and PW-51). An RBI officer (PW-55) stated that these directions should have been implemented, particularly the daily reconciliation of SWIFT messages with CBS System/Treasury. It is further allegation of the Prosecution that the RBI also had issued a Caution Advice on August 10, 2016, alerting banks to a similar fraud involving fraudulent Letters of Comfort (LOCs) issued via SWIFT messages in another Public Sector Bank. This advice cautioned banks to ensure staff compliance with SWIFT instructions and strengthen internal controls, including considering an interface between CBS and SWIFT, and defining large value transactions requiring third-level authorization. Despite receiving this caution notice, senior PNB officials allegedly failed to act upon its directions.

19. The prosecution asserts that the accused/applicant, as

Executive Director, dealt with the RBI circulars, caution notices, and urgent questionnaires relating to SWIFT fraud and reconciliation, but failed to protect the bank's interests by not taking timely corrective steps and follow-up action. However, the accused / applicant was not responsible for supervising the Brady House Branch, nor did he hold direct responsibilities for Fraud Risk Management, Treasury (including NOSTRO reconciliation), and Audit and Inspection of branches. These functions are the responsibility of branch-level officers (supervisors, internal and external auditors, branch heads), who are required to take timely corrective steps and follow-up actions as per their role and hierarchy in banking administration. Admittedly the accused / applicant is appointed as an Executive Director, on January 22, 2014, the role of accused / applicant was focused on policy framing and implementation. The Prosecution also stated that this is his role as a Board level appointee. He was not required to personally visit branches or to be aware of or supervise their day-to-day operations or quarterly/annual functioning. The bank's structure places several layers of hierarchy between an Executive Director and individual branches, meaning information would only be brought to his attention if specifically required by committees he headed. Executive Directors are concerned with policy matters, not daily operations, or banking transactions.

20. Admittedly the accused / applicant upon receiving the RBI circular dated August 3, 2016, a special meeting was promptly convened on August 9, 2016 with top officials from various divisions (ITD, IBD, Treasury) to discuss and implement the recommendations without loss of time. A key measure discussed was the integration of SWIFT with the CBS System to mitigate risks from manual intervention. However, implementation of this measure fell within the domain of the Information Technology Division, which was headed by a different Executive Director

and did not come under the purview of accused / applicant. The Prosecution evidence further establishes that the IT Department, unilaterally, decided that SWIFT–CBS integration would be carried out during an upgrade of the ‘Finacle’ software to Version 10X. This decision was subsequently approved by the MD & CEO on 23 August, 2016. As a result, the delay in implementation was entirely beyond the jurisdiction and responsibilities of accused / applicant, and the matter was never brought to his notice. Also, with regards to the RBI caution notice dated 10 August, 2016, the head office issued letters to branches dealing with foreign exchange and sought report. Therefore, it cannot be said that the said caution notice was not acted upon or ignored. Thus, accused / applicant discharged his duties properly and he had not in any way helped or conspired with other accused persons to cause wrongful loss to the bank as alleged by the prosecution.

21. Furthermore, RBI communication dated October 27, 2016, and November 11, 2016, were issued after the IBD was reassigned to another Executive Director, Accused No. 21 Sanjiv Sharan, and any non-compliance, false reporting or non-implementation cannot be attributed to the accused/applicant. The accused/applicant had no role or involvement in the reply to an urgent questionnaire from RBI dated October 27, 2016, regarding SWIFT and LOU reconciliation. This, misleading reply was sent by the Accused No. 22 Nehal Ahad, who was then the PNB General Manager. This reply falsely stated that all outward SWIFT messages were sent only after CBS entry, no financial SWIFT messages could be sent without CBS entry, and reconciliation was being done by AD branches. The RBI officer (PW-55) confirmed that transactions were directly put through SWIFT without CBS entry and lacked control mechanisms. Crucially, there is no evidence whatsoever to suggest any role of accused/applicant in this reply.

22. The Prosecution Witnesses (PW-1, PW-2, PW-4, PW-5, PW-6) pointed to branch officials Accused No. 3 Gokulnath Shetty and No. 4 Manoj Kharat as the real perpetrators. Further, the concurrent Auditors at AD branches, including Brady House, did not report any adverse findings during the relevant period. The fraud resulted from entries not being made in the CBS despite policy requirements, failure of audit mechanisms, lack of information at circle or zonal levels, and incorrect compliance reports from the branch/circle. Given the internal hierarchy of the Bank, senior officials like accused/applicant operating from Delhi as policy makers, would not have knowledge of such localized fraud unless escalated upward through supervisory channels. Therefore, considering the localized nature of the offense and modus operandi, no criminality can be attributed to accused / applicant as Executive Director.

23. The allegations pertain exclusively to the actions of branch officials. As per the administrative structure of the Bank, zonal/circle officers are directly responsible for branch-level supervision. Thus, there is nothing on record to suggest that the accused/applicant acted without public interest or that he manifestly failed to observe any safeguards which he was duty bound to adopt. On the contrary, the material demonstrates that the fraud was localized, one branch out of a total of 7000 branches. The accused/applicant had played no role in commission of the crime in any manner whatsoever. The internal and external auditors were in fact responsible for mandatory reporting of deviations in bypassing the Core Banking Solution (CBS) System and directly transmitting SWIFT instructions to overseas branches of Indian Banks to raise buyer's credit, resulting in a wrongful loss to PNB.

24. Overall, by no stretch of imagination can it be said that the accused/applicant, while discharging his role as an Executive director, either derived any pecuniary benefit as it is even not the case of the

prosecution itself or acted in disregard of safeguards protecting public interest. The record only demonstrates that he discharged his role in the ordinary course of decision-making, without any element of personal gain or dishonest intent. The aforesaid policy decision to delay implementation of RBI directives was approved by the MD & CEO on August 23, 2016. Moreover, accused / applicant had no role in directing the transmission of SWIFT instructions to overseas branches of Indian banks to raise buyer's credit, which ultimately led to wrongful losses to PNB. Thus, no inference of fraudulent intent on his part can therefore be drawn. In the absence of any such dishonest intent, which is the essence of offence under Section 13(1)(d) of the PC Act, and without such mens rea, mere procedural lapses or errors cannot sustain a criminal prosecution. In the case of accused/applicant, there are no procedural lapses as well. Therefore, due to lack of evidence establishing corrupt intent, the accused/applicant is entitled for his discharge from the prosecution.

25. In this background the prosecution has sought to invoke Section 13(1)(d) of the PC Act, which, prior to its amendment, provided as under:

"Section 13(1)(d) - A public servant is said to commit the offence of criminal misconduct if he-

- (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
- (ii) by abuse of position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
- (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest."

However, with the enactment of the Prevention of Corruption (Amendment) Act, 2018, clause (iii) has been repealed. The offence, as it now stands, requires that the public servant intentionally enrich himself

illicitly during the period of office. In the instant case, even under the unamended provision, none of the clauses are attracted in the absence of any allegation of corrupt means, abuse of position, or enrichment of any party with the Accused / applicant's involvement. Accordingly, in view of the foregoing discussion, it is evident that the ingredients of Section 13(1) (d) of the PC Act are not prima facie attracted in the facts of the present case.

26. At this stage it would be relevant to place reliance on the decision of the Hon'ble Apex Court in the decision in the case of **C.K. Jaffer Sharief v. State (CBI) (2013) 1 SCC 205**, wherein it is clarified that dishonest intention or mens rea is the sine qua non of an offence under Section 13(1)(d) of the PC Act, and mere procedural irregularities or lapses in judgment, in absence of corrupt intent, do not constitute criminal misconduct. It was observed that not only is the act of the accused supposed to be barred by law, but he must also hold mala fide to attract the charge. It was held as under:

"17. It has already been noticed that the appellant besides working as the Minister of Railways was the head of the two public sector undertakings in question at the relevant time. It also appears from the materials on record that the four persons while in London had assisted the appellant in performing certain tasks connected with the discharge of duties as a Minister. It is difficult to visualise as to how in the light of the above facts, demonstrated by the materials revealed in the course of investigation, the appellant can be construed to have adopted corrupt or illegal means or to have abused his position as a public servant to obtain any valuable thing or pecuniary advantage either for himself or for any of the aforesaid four persons. If the statements of the witnesses examined under Section 161 Cr.P.C. show that the aforesaid four persons had performed certain tasks to assist the Minister in the discharge of his public duties, however

insignificant such tasks may have been, no question of obtaining any pecuniary advantage by any corrupt or illegal means or by abuse of the position of the appellant as a public servant can arise. As a Minister it was for the appellant to decide on the number and identity of the officials and supporting staff who should accompany him to London if it was anticipated that he would be required to perform his official duties while in London. If in the process, the rules, or norms applicable were violated or the decision taken shows an extravagant display of redundancy it is the conduct and action of the appellant which may have been improper or contrary to departmental norms. But to say that the same was actuated by a dishonest intention to obtain an undue pecuniary advantage will not be correct. That dishonest intention is the gist of the offence under Section 13(1)(d) is implicit in the words used i.e., corrupt, or illegal means and abuse of position as a public servant. A similar view has also been expressed by this Court in *M. Narayanan Nambiar v. State of Kerala* [AIR 1963 SC 1116: (1963) 2 Cri LJ 186: 1963 Supp (2) SCR 724] while considering the provisions of Section 5 of the 1947 Act."

27. Next reference has to be made to the decision of the Hon'ble Apex Court in **Mahmood Asad Madani v. CBI : 2019 SCC OnLine Del 11809**, where in it had quashed the FIR and all related proceedings against the accused therein on the ground that the prosecution had failed to demonstrate any criminal conspiracy or dishonest intention on the part of the accused. Despite allegations of excess claims under the Companion Free Scheme, it was held that this resulted from inadvertence and not from any fraudulent intent. The Court reiterated the principle, drawing from the various decisions of the Hon'ble Apex Court, that dishonest intent is the essence of offence under Section 13(1)(d) of the PC Act and without such mens rea, mere procedural lapses or errors cannot sustain criminal prosecution. Therefore, due to lack of evidence establishing corrupt intent,

the proceedings were quashed. It was noted as under:

“In case of **C.K. Jaffer Sharief v. State (CBI), (2013) 1 SCC 205** whereby held that "dishonest intention is the gist of the offence under section 13(1)(d) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public servant. To make a person criminally accountable it must be proved that an act, which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two components of every crime, a physical element, and a mental element, usually called actus reus and mens rea, respectively.”

28. For the aforesaid reasons, and in view of the discussion and legal position mentioned hereinabove, I am of the view that in the present case that no conspiracy is established against the accused/applicant as no criminality or mens rea could be attributed to him. Applying the aforesaid test laid down by the Hon'ble Apex Court in C.K. Jaffer Sharief case (cited supra) to the present case, the admitted record depicts that the accused/applicant had discharged the functions assigned to him and he had no remote concern with the criminal acts committed by the bank officials Accused No. 3 Gokulnath Shetty and Accused No. 4 Manoj Kharat at the Brady House branch of PNB, where the fraud stood committed. Further, it is also relevant that the accused / applicant neither initiated nor instructed the processing or transmission of SWIFT instructions to overseas branches of Indian Banks for raising buyer's credit, resulting in a wrongful loss to PNB, nor did he benefit from it in any manner.

29. The alleged fraud occurred at the Branch levels and neither the circle/regional office noticed, nor the internal and external auditors reported it to the PNB top management at any point of time. Further, no material has been produced to show that the accused/applicant either overruled internal guidelines or pressurized any subordinate to deviate

from the procedure. None of the statement recorded of the several witnesses from the PNB top management indicate that any existing rule or directive of the bank was violated by the accused/applicant while fraud was being committed by Accused No.3 Gokulnath Sheety and No. 4 Manoj Kharat. These statements also do not attribute any violation qua the accused/applicant except only for his noting the circular of RBI regarding the integration of SWIFT with the CBS System to mitigate risks from manual message creation and its delayed implementation.

30. The accused/applicant's role as Executive Director, as emerging from the record, was focused on policy framing and implementation. He was not responsible for personally visiting or supervising individual branches, nor was he expected to oversee their day-to-day operations or periodic functioning. Due to the hierarchical structure of the bank, there were multiple layers between him and the branches. As a result, he would only be informed about branch-specific matters if required by the committees he led. His role focused on policy-level responsibilities, not operational or transactional oversight. Further, upon receiving the RBI circular dated August 3, 2016, a special meeting was promptly convened on August 9, 2016, with senior officials from ITD, IBD, and Treasury divisions to discuss and implement the recommendations without loss of time. A key measure discussed was the integration of SWIFT with the CBS System to mitigate risks from manual intervention. The responsibility for implementing the SWIFT–CBS integration lay with the Information Technology Division, which was overseen by a different Executive Director and not accused / applicant. The IT Department unilaterally decided to implement the integration during the upgrade to Finacle Version 10X, a decision that was formally approved by the MD & CEO on August 23, 2016. Consequently, any delay in implementation was outside accused / applicant's scope of responsibility and was not brought

to his attention. Additionally, in response to the RBI caution notice dated August 10, 2016, the bank's head office issued directives to all branches dealing with foreign exchange and requested a report. Therefore, it cannot be concluded that the caution notice was ignored or left unaddressed. Further, the RBI communications dated October 27 and November 11, 2016, were issued after the International Banking Division (IBD) had been reassigned to another Executive Director, Accused No. 21, Sanjiv Sharan. Therefore, any non-compliance, false reporting, or failure to implement the directives in those communications cannot be attributed to accused / applicant as the division no longer fell under his purview at that time. Thus, there is no material to suggest that accused / applicant acted beyond his institutional mandate, exercised undue influence, or otherwise exceeded the scope of his official duties. It was not within the accused / applicant's ambit to ensure speedy implementation of RBI directives, and he discharged his duties properly. Therefore, he cannot be held accountable for the charges of omission.

31. Ld. S.P.P. for the State argued that in the case of **Shudhir Shantilal Mehta Vs. CBI, (2009) 8 SCC, page No.1**, it is held that directions issued by the Reserve Bank of India are binding on the Banks and its officers. There is no doubt about this legal proposition, but whether the present applicant/accused is liable for criminal prosecution is the question before this Court. The material on record shows that the proposal of delayed implementation of RBI directive as regards to the integration of SWIFT with the CBS system, was taken by the IT department and approved by the MD/CEO of PNB. It is pertinent to note that the Reserve Bank of India has filed criminal compliant No. 16711/2018 before the Metropolitan Magistrate Court, Patilaal House, New Delhi. Admittedly, the present applicant/accused has not been named

as an accused in the said proceeding, whereas other senior officials, Ms. Usha Ananthsubramaniam (Accused No. 19), Mr. Sanjeev Sharan (Accused No. 21) and Mr. Nehal Ahad (Accused No.22), have been named as accused in the said proceedings.

32. The chargesheet lacks any evidence or allegation to show the accused / applicant's intention or agreement to commit the crime, which is necessary for criminal conspiracy. The CBI failed to satisfy the ingredients of Section 120A IPC. Further, there is no allegation on record of any dishonest intention, participation in conspiracy, or of the accused / applicant having derived any pecuniary benefit or quid pro quo. In the absence of specific incriminating material, the role of accused / applicant cannot be construed as constituting criminal misconduct. At worst, the allegations, if assumed to be correct, may indicate a lapse or dereliction of duty, which by itself does not attract criminal liability under Section 13(1) (d) of the PC Act. (C.K. Jaffer Sharief v. State (CBI) (supra)]. The legal threshold under Section 13(1)(d) of the PC Act is not met merely because there was financial loss; it must be shown that the loss was caused by corrupt or dishonest conduct. In the absence of such a link, and without any evidence of mens rea, the invocation of criminal law is wholly unwarranted.

33. Admittedly, the circle/zonal/treasury officials, (Deputy General Manager, Chief General Manager and General Manager) who serve as the statutory supervisory link between the branches and the head office, have not been made accused in the proceedings. If misconduct is to be attributed, it should first be examined at the supervisory level (zonal/circle) before escalating accountability to senior management, especially in the case of a localized fraud committed by branch-level officers. But there is no satisfactory explanation from the prosecution in this regard.

34. The Hon'ble Apex Court in **State of M.P. V. Sheetla Sahai (2009) 8 SCC 617**, held that although the decision was taken collectively by several authorities, only a few have been arrayed as accused persons for prosecution, while others similarly placed have been left out. It was noted that such selective arraignment undermines the fairness of the prosecution. It was held as under:

“34. We would proceed on the basis that two divergent opinions on the construction of the contract in the light of the stand taken by World Bank as also the earlier decision taken by the State were possible. That, however, would not mean that a fresh decision could not have been taken keeping in view the exigencies of the situation. A decision to that effect was not taken only by one officer or one authority. Each one of the authorities was ad idem in their view in the decision-making process. Even the Financial Adviser who was an independent person and who had nothing to do with the implementation of the Project made recommendations in favour of the contractors stating that if not in law but in equity they were entitled to the additional amount. From the materials available on record, it is crystal clear that the decision taken was a collective one. The decision was required to be taken in the exigency of the situation. It may be an error of judgment but then no material has been brought on record to show that they did so for causing any wrongful gain to themselves or to a third party or for causing wrongful loss to the State.

“49. It is also interesting to notice that the prosecution had proceeded against the officials in a pick-and-choose manner. We may notice the following statements made in the counter-affidavit which had not been denied or disputed to show that not only those accused who were in office for a very short time but also those who had retired long back before the file was moved for the purpose of obtaining clearance for payment of

additional amount from the Government viz. M.N. Nadkarni who worked as Chief Engineer till 24-3-1987 and S.W. Mohogaonkar, Superintending Engineer who worked till 19-6-1989 have been made accused but, on the other hand, those who were one way or the other connected with the decision viz. Shri J.R. Malhotra and R.D. Nanthoria have not been proceeded at all. We fail to understand on what basis such a discrimination was made.”

35. It is also interesting to note that the prosecution had proceeded against the officials in a pick-and-choose manner. It appears and indeed has not been denied or disputed that accused / applicant, who was in office for only a very short time after the RBI circular dated 3 August 2016, has nevertheless been proceeded against. Thus, in the present case, the principle of parity assumes significance. The material shows that the prosecution has chosen to implicate only a few, while leaving out others who stood on an identical footing in the decision-making process. As observed by the Hon'ble Apex Court in **Soma Chakravarty v. State of CBI : (2007) 5 SCC 403**, once a person who is similarly situated and has not been proceeded against, the Court must examine whether the accused before it is identically placed, and whether such selective arraignment can be sustained. Applying this principle, the accused / applicant, cannot be singled out along with few others and burdened with criminal liability.

36. The CBI is attempting to attribute criminality based on vicarious liability, which is impermissible under law unless explicitly stated by statute. Directors cannot be held liable merely by holding office. The Hon'ble Apex court in **Sunil Bharti Mittal v. CBI: (2015) 4 SCC 609**, held that criminal liability is personal in nature and cannot be imposed merely because a person holds a high office in a company or institution. There must be material to show that such person had an active role along with

mens rea.

37. Criminal liability is a legal concept that holds individuals responsible for their actions or omissions if they are found to have committed a criminal act. Criminal liability differs from civil liability, which is based on the breach of a contract or tort. To be considered criminally liable, an individual must have acted with intention or negligently and thus there must be both an actus reus and mens rea.

38. The legal maxim “actus non facit reum, nisi mens sit rea” is a corner stone of penal liability, emphasizing that guilt cannot be established solely based on an action, it must be accompanied by a guilty state of mind, known as “mens rea.” Actus reus is a fundamental concept in criminal liability, often referred to as the “guilty act.” This Latin term encapsulates the external or objective component of a criminal offense. Essentially, it pertains to the actions or omissions that constitute the physical aspects of a crime, as defined by statute. In contrast, mens rea another cornerstone principle in criminal liability translates to the “guilty mind.” This Latin expression signifies the mental element of an individual’s intent to engage in criminal conduct. The mental state is a crucial component when assessing criminal behavior. Therefore, mens rea serves as the driving force behind the commission of a crime. It reflects an individual’s cognitive state and their awareness of the wrongful nature of their actions.

39. Ld. SPP for the state also placed his reliance in the case of Hon’ble Supreme Court in **P. B. Desai Vs. State of Maharashtra, (2013) Supreme Court Cases 481**, wherein it is held that there may be various circumstances where “act” would include “omission to act” as well. This is so recongnized even in sections 32, 33 and 36 of IPC. In the said judgment it is also held that criminal liability for an omission is also well accepted

where the actor has a legal duty and the capacity to act.

40. Ld. SPP also relied on the decision in **Bhalchandra Vs. State of Maharashtra (1968) SCC online SC page no. 11**, it is held that “criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual imparticular, which having regard to all the circumstances, out of which the charge has been arised, it was the imparative duty of the accused person to have adopted.....”

41. In the present case, I have already observed that the applicant/accused was not directly working at the branch where the fraud was committed by employees of the bank. The applicant/accused was working in supervisory capacity. More than 7000 branches were under his control. Under these circumstances, it is humanly impossible to keep eye on the transactions taking place in each and every branch. Admittedly, there is no material on record to show that fraudulent activities of the co-accused, particularly, bank employees were brought to the notice of the present applicant/accused. Admittedly, the present applicant/ accused has not obtained any illegal consideration/gratification out of the said fraudulent transactions. Therefore, in the absence of mensrea, it cannot be said that criminal liability can be fastened on the present applicant/accused.

42. Coming to the charge under Section 120B of the IPC which has been read with Section 120-B read with Section 420, 409 of the IPC in the chargesheet. It is well settled that conspiracy cannot be presumed on the basis of vague or unsubstantiated allegations. For an offence of criminal conspiracy to stand, the prosecution must demonstrate a prior meeting of minds and a concerted design to commit the unlawful act. Mere knowledge, association, or presence, without clear evidence of

agreement or participation in furtherance of such agreement, would not suffice to attract the ingredients of Section 120B of the IPC.

43. In this connection reliance could be placed on the decision of the Hon'ble Apex Court in **CBI v. K. Narayana Rao : (2012) 9 SCC 512**, wherein it was held that for criminal conspiracy, there must be cogent evidence of a prior meeting of minds and a concerted action to commit an unlawful act. Mere negligence or failure to exercise proper care while discharging official duties does not amount to criminal conspiracy or corruption unless accompanied by mens rea or evidence of dishonest intention. The Hon'ble Apex Court quashed the proceedings against the appellant, holding that the material on record did not disclose the essential ingredients of conspiracy or corruption. In the absence of any meeting of minds or concerted action with the main accused, the essential ingredients of conspiracy are not satisfied against the accused / applicant in the present case.

44. The Ld. Advocate for the accused relied upon the decision of the Hon'ble Supreme Court in the case of **Zakia Ahsan Jafri Vs. State of Gujarat & Anr., 2022 SCC OnLine SC 773** to buttress his submission that criminal conspiracy is not proved. This judgment emphasizes that conspiracy cannot be readily inferred merely from inaction or failure of state administration. It states that linking failures is not enough for suspicion of criminal conspiracy; clear evidence of "meeting of minds" is required. Misgovernance or a brief breakdown of law and order does not equate to a criminal conspiracy at the highest level without clear evidence of concerted effort and a "meeting of minds".

45. Once it is held that the allegation of criminal conspiracy under Section 120B of the IPC is not made out, the foundation for invoking the connected offences under Sections 120-B read with Section

420, 409 of the IPC also plummets. In the absence of any meeting of minds or concerted action attributable to the petitioner, the said provisions cannot independently be attracted against him, as no material has been placed on record to show his involvement in any act of cheating 120-B read with Section 420, 409 of the IPC.

46. For the said reasons, the chargesheet fails to disclose the role played by the accused / applicant, which would constitute the offences under Sections 120-B read with Section 420, 409 of the IPC. Merely being an Executive Director of PNB and the fact that the implementation of RBI directives was delayed pursuant to a unilateral decision of the IT Department and duly approved by the MD & CEO, sans any other allegation, does not constitute an offence of conspiracy and cheating. Therefore, this Court is of the view that no *prima facie* case is made out against the Accused / applicant under any of the provisions invoked in the chargesheet. The allegations are vague and unsupported by material evidence. Permitting the proceedings to continue against the accused / applicant, would serve no useful purpose and would subject him to unwarranted harassment, contrary to the constitutional guarantee of fair procedure.

47. Mere fact that, offence is a serious economic offence and huge amount of thousands of crores of rupees is involved in the offence is no ground to drag everyone into the prosecution, even not remotely connected with the crime. Considering all these facts emerging from the record, no *prima-facie* case is made out against present accused/applicant. Therefore he is entitled to be discharged. Hence, I proceed to pass following order.

ORDER

1. Application is allowed
2. Accused No.20 K.V. Brahmaji Rao is discharged from the

offences punishable under Sections 120-B read with Section 420, 409 of IPC besides sections 7, 13(2) and read with 13(1) (c) and (d) of the Prevention of Corruption Act, 1988, in Special Case No. 37 of 2018.

3. Application at Exh.517 in Special Case No. 37 of 2018 is disposed of accordingly.



Dated : 03.09.2025.

Directly Typed on computer : 03.09.2025.

Checked on : 08.09.2025.

Signed by PO. on : 08.09.2025.

(A.V. Gujarathi)
Special Judge (CBI),
City Civil And Sessions Court,
Gr. Mumbai.

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER” Note – Subject to correction, the order is re-uploaded as per the order passed below Exhibit-582.	
Re-UPLOAD DATE AND TIME On 09.09.2025 at about 5.03 p.m.	Name of the Stenographer Mrs. S.R. Mejari
Name of the Judge (with Court Room No.)	H.H.J. SHRI. A.V. Gujarathi. (Court Room No.50)
Date of Pronouncement of Judgment/Order	03.09.2025
Judgment/Order signed by P.O. on	08.09.2025
Judgment/Order re-uploaded on	09.09.2025