IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1036 OF 2025

Viresh Gangaram Joshi, ... Applicant.
Indian Citizen, Aged Around 51 years,
Residing at T-3, 3304 33rd Floor,
Ramona, Runwal Anthurium,
L.B.S. Marg, Opp. Veena Nagar,
Mulund West, Mumbai- 400 080.
Phone No.+91 9137729928
Email ID: viresh.joshi@gmail.com

Vs.

1. The State of Maharashtra
at the instance of Senior Inspector of Police,
Economic Offence Wing, Unit- 7 (Shares)
having address at: 3rd Floor, New Administrative
Building, Commissioner's Office,
Dr.Dadabhai Naroji Road,
Mumbai, Maharashtra – 400001.
Phone No. 8689800015
Email-ID: srpiunit5.eowmum@mahapolice.gov.in

2. Soni Jitendra Parmar,
Indian Citizen, Aged around 51 years,
residing at D/1103, Lloyds Estate,
Near Vidyalankar Vidyalaya, Wadala,
Antop Hill, Mumbai- 100037.
Phone No. 9820969554. ... Respondents

WITH
INTERIM APPLICATION NO. 4102 OF 2025

Sandeep Baban Jadhav. ... Applicant.
In the matter between
Viresh Gangaram Joshi. ... Applicant.
V/s.
The State of Maharashtra` and another. ... Respondents.

WITH
INTERIM APPLICATION NO. 4642 OF 2025

Directorate of Enforcement. ... Applicant.
In the matter between
Viresh Gangaram Joshi. ... Applicant.
V/s.
The State of Maharashtra and another. ... Respondents.

Mr. S. Nagmuthu, Senior Advocate with Mr. Shreyas Kaushal, Mr. Y. Soma Srinath Reddy, Ms. Supriya Nair and Ms. Sakshi Kadam i/b. Jitesh Mundhwa for the Applicant.

Mr. S. V. Walve, APP for the Respondent-State.

Mr. Amit Munde, Retainer Counsel with Jai Vohra for the Enforcement Directorate (Intervener).
Mr. Sunny Udasi for the Applicant in IA No.4102/2025.

CORAM : RANJITSINHA RAJA BHONSALE , J.

RESERVED ON : 26th FEBRUARY 2026.

PRONOUNCED ON : 13th AUGUST 2026.

JUDGMENT :-

1) This Application is filed under section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “BNSS”) seeking quashing of the FIR bearing No.0369/2024 dated 23rd December 2024 registered with Sion Police Station (now transferred to the Economic Offences Wing, Mumbai) for the alleged offences under sections 406, 417, 420, 465, 467, 468, 477A read with section 34 and 120B of the Indian Penal Code, 1860 (for short “IPC”).

2) Heard Mr. Nagmuthu, learned Senior Advocate for the Applicant, Mr. Walve, learned APP for the Respondent-State, Mr. Amit Munde, learned counsel for the Enforcement Directorate (Intervener), and Mr. Sunny Udasi for the Applicant in Interim Application No.4102/2025.

3) Briefly stated, the case of the prosecution is as under:

3.1) The Respondent No.2, an investor is the original complainant who has filed the present FIR on the basis that, she has suffered financial loss due to the alleged fraudulent acts, conduct and schemes orchestrated by the Applicant while he was working as the Chief Dealer with Axis Asset Management Company Limited. It is the allegation of Respondent No.2 that, the Applicant has cheated 66 lakh investors and allegedly caused a loss of over Rs.2.52 lakh crore due to his acts and conduct.

3.2) That, the FIR has been filed under section 477A, 468, 467, 465, 420, 417, 406 read with sections 34 and 120B of the IPC. It is alleged that, the Applicant was the Chief Dealer of the Axis Mutual Fund. That, while in the said position as a Chief Dealer, the Applicant received non public information, which he shared with the co-accused and others. That, the Applicant along with other co-accused established companies i.e. Subtotal Marfatia Group, Subtotal Woodstock Group and Subtotal Kurani Group. That, the Applicant received non public information in respect of trades/ orders of the Axis Mutual Funds. That, the Applicant would pass on the non public information to persons known to him. That, the Applicant had a modus operandi which comprised of the co-accused through whom the Applicant operated.

3.3) That, Shri Sumit Desai, Pranav Vora, Brijesh Kurani, Vaibhav Pandya, and the Marfatia Group were acting in collusion with the Applicant. That the non public information as forwarded by the Applicant would be relayed and circulated in the market by Brijesh Kurani. That, the illegal activities were overseen by Brijesh Kurani. That, all the accused along with the Applicant acted with a common intention and in conspiracy. The Applicant due to the position he held i.e. Chief Dealer of Axis Mutual Funds, was aware of and had access to the non-public information. That, as the Applicant was aware that larger order of Axis Mutual fund would be placed, he would transmit the said non-public information to the co-accused, who would directly or indirectly place orders on the basis of the said non public information before the substantial trades/ large orders of Axis Mutual Fund. The Applicant used to divulge/ divert the non-public information in advance to the co-accused and others. That, after the substantial trades/ large orders of Axis Mutual Fund were placed in the market, the Applicant and the co-accused/ persons acting in concert would then sell the shares so brought. By this *modus operandi* and by acting in concert, huge amount of profit was made. That, this profit was made by practicing fraud, cheating and caused loss to Respondent No. 2 and other investors in the market. The Applicant and others involved obtained benefit in a wrongful manner.

3.4) That, the Applicant would forward the non public information received from Axis Mutual Fund by way of different mobile numbers and whatsapp calls to the other co-accused. That, during the Covid pandemic the Applicant used to work from home on a remote basis, had established an office for the said purpose, and used to do the dealing work from home. That, the Applicant was using the non public information for his own personal benefits. That, the Applicant after receipt of the knowledge of the big orders would forward the information to the others. That, due to the said acts, Respondent No.2 and other investors suffered losses.

SUBMISSIONS OF APPLICANT :

4) Mr. Nagmuthu, learned Senior Counsel for the Applicant submitted that:-

4.1) The complaint could not have been filed by the Complainant. That, the procedure under section 26 of the Securities Exchange Board of India Act, 1992 (for short "SEBI Act") ought to have been followed. The Securities Exchange Board of India (SEBI) and its authorized officers alone can prosecute such a complaint. That, the SEBI Act being a Special Act, it is mandatory that the procedure as prescribed in the SEBI Act is followed. That, it was not open for the Complainant to directly approach the Court and file a complaint. The Court ought not to have taken cognizance, except on a complaint by the Board.

4.2) An offence of “front running” is an offence under the SEBI Act and, therefore can be investigated only by and under the provisions of the SEBI Act. It is not that, the offences under the SEBI Act so also the general law i.e. BNS/ IPC have been alleged. The present complaint/FIR pertains only to the offences under the SEBI Act. None of the ingredients of the offences as alleged under the IPC are even available or alleged to invoke the Sections.

4.3) Respondent No.2 has filed an affidavit dated 3rd October 2025 whereby she has given her consent for quashing of the FIR on the ground that, the FIR has been filed on some misunderstanding.

4.4) It is only the SEBI who can prosecute such a case for an offence of front running. In the alternative, it was submitted that, the offences as alleged in the FIR are also not made out. That, offence under section 405 of IPC is not made out as there is no entrustment of the property or dominion over some property nor the property is dishonestly misappropriated or converted to own use in violation of law or legal contract etc. That, in an offence of front running, there is no entrustment of property or any dominion over the property which can be dishonestly misappropriated or converted for own use.

4.5) Even a case of cheating cannot be made out against the Applicant. That, in the offence of front running what was allegedly available with the

Applicant would be only the non public information. That, to make out an offence of cheating, it is necessary that a person is deceived and fraudulently or dishonestly induced to deliver any property. That, the offence of cheating envisages and contemplates at least two persons i.e. offender and the victim. In the present case, there is none.

4.6) An offence of front running or passing of non public information is an offence only under the SEBI Act and not under IPC/BNS. That, perusal of the affidavit in reply dated 8th December 2025 filed by the Assistant Police Inspector, Unit-6, Economic Offences Wing, Mumbai would clearly establish that, the case pertains only to and is related to the offence of front running, i.e. trades unauthorizedly executed based on non public information forwarded/ shared by the Applicant to the various entities. That, in an offence of front running, a case of cheating can never be made out. That, the offence of cheating can never be made out as in the present case, there is no "person" who has been deceived to deliver any 'property', or to retain a property. Nor is there an allegation that the Applicant has induced anyone to do or omit to do something. That, in the reply, the investigating authority is unable to and has not given the details of any deception.

4.7) To make out an offence under section 408, there has to be an entrustment of property. That, only when there is an entrustment of property, an offence of criminal breach can be made out. That, no property has been entrusted to the Applicant. That, the non public information cannot be equated to property.

4.8) Reliance was placed on the case of *Sunil Kumar v. State of Maharashtra 2009 SCC Online Bom 194*, to submit that, the non public information which is required to allege an offence of front running cannot be equated to property. If the offence of front running is alleged, it cannot amount to any offence under IPC. Front running is an offence under the SEBI Act for which the mode and the procedure for prosecution is provided in section 24 and 26 of the SEBI Act.

4.9) That, the provisions of sections 408, 409 and 420 of IPC cannot be invoked simultaneously. That, the ingredients of the said sections are different and distinct.

4.10) That, SEBI has already issued an interim order cum show cause notice to the Applicant and has taken certain actions in respect of the said offence under the SEBI Act. That, it is only SEBI who can decide the next course of action and as to whether a criminal complaint has to be filed. It is only SEBI who is competent and empowered to prosecute a person for an offence of front running under sections 24 and 26 of the SEBI Act. Thus, the present criminal prosecution is therefore untenable in law.

SUBMISSIONS OF ENFORCEMENT DIRECTORATE:

5) Learned Advocate Mr. Amit Mundhe appearing for the Enforcement

Directorate submitted that;-

5.1) The FIR has already been lodged and the investigation is completed. There is more than sufficient evidence available on record to make out the case as is alleged in the said FIR.

5.2) The victims of such crimes have available with them two remedies, (i) they can approach SEBI and (ii) they can approach the EOW. The Applicant has clearly committed the offences under the IPC for which the EOW is competent and eligible to investigate the same. The Applicant has shared non-public information to various entities. Statements under section 50 of the Prevention of Money Laundering Act, 2022 (for short "PML Act") of various persons have been recorded. There is more than *prima facie* evidence available against the Applicant. That, a serious offence is committed against the system as a whole. It is case of misuse of authority by an individual to make wrongful gains at the cost of innocent investors.

5.3) The Applicant as a Chief Dealer had in his possession and knowledge the non public information. That, such non public information can be related to and equated with property for the purpose to make out an offence of cheating or criminal breach of trust. That, the non public information has been entitled. That, by providing the non-public information and misusing it, the Applicant has wrongfully gained huge amount of monies. The offence under section 405 is clearly made out in as much as the Applicant shared non public information and made personal gains. That, even offence under section 408 would be made out as when the offence was committed the Applicant was employed as Chief Dealer with Axis Mutual Fund. That, the offence of cheating was made out as the Applicant dealt with public monies. That, the Affidavit in reply as filed on record has all the details of the fund movements and transfer of amounts by the Applicant to his relatives accounts. That, the total fraud is of Rs.93 crore out of which an amount of Rs.29 crore only has been secured.

5.4) The Enforcement Directorate has invoked the provisions of the PML Act and is investigating commission of offences for money laundering as defined in sections 3 and 4 of the PML Act. That, sections 417, 420, 467, 120B of IPC are mentioned in part-A of the Schedule appended to the PML Act and are all scheduled offences. That, the Directorate of Enforcement has recorded an Enforcement Case Information Report i.e. ECIR/HIU-I/01/2025 and that investigation has ensued. That the Applicant has violated the trust of the Axis Mutual Fund by sharing non public information with the third party individuals and entities for the personal gain and enrichment.

5.5) The Enforcement Directorate is an interested and necessary party which is entitled and required to be heard when the quashing petition is filed in a predicate case. Reliance was placed on the judgment of the Hon'ble Supreme Court (i) in the case of *Vijay Mandal Choudhary v. Union of India* reported in 2022 SCC Online SC 929, (ii) in the case of *Directorate of Enforcement v. India Bulls Housing Finance Limited, in Criminal Appeal No. 791/2024 (iii)* the Order of the Madras High Court in Writ Petition Nos.15465/2024 and 15473/2024 in the case of *Maneesh Parmar v. Directorate of Enforcement,* and (iv) the Judgment of Madras High Court in the case of Ashish Singh V*s. State in* Criminal Appeal No. 30982 of 2019.

5.6) There is more than *prima facie* evidence available in sharing of non public information. That, the Applicant has unjustly gained an amount of Rs.30 crore. That, Axis Mutual Fund as an employer can lodge a complaint against the Applicant as he is bound by the agreement of employment.

SUBMISSION ON BEHALF OF STATE :

6) Learned A.P.P. appearing for the Respondent-State submitted that;-

6.1) The allegations made in the complaint *prima facie* make out a case. That, the offences are serious and carried out pursuant to a well planned conspiracy. The Applicant has helped other co-accused and indulged in acts of cheating and breach of trust in as much as he forwarded non public information to third parties who traded on the basis of such non public information and made huge amounts of profit.

6.2) Perusal of the definitions of 'information' and 'property' as stated in the Blacks Law Dictionary, the term 'information' can be equated to 'property' and be treated or considered as property. That the Applicant as a Chief Dealer was occupying a fiduciary position of the trust.

6.3) That, the Axis AMC, by a letter dated 12th October 2025, had filed a complaint against the Applicant for the unlawful action and conduct. That, the said complaint has been merged with the present FIR dated 23rd December 2024. That, the said complaint clearly make out the offences.

6.4) The Applicant as per the terms of his appointment letter was bound to comply with all applicable laws, regulations, statutes and guidelines. The Applicant was bound by the corporate policies and the practices of the Company. The Applicant was obliged and duty bound to faithfully serve the Company and use the utmost endeavour to promote the interest of the Company. That, Applicant has acted contrary to the terms of the appointment by divulging non public information to the third parties.

6.5) The Applicant has violated the ethical code and ethical principles of confidentiality. The Applicant has engaged in unfair practices and made huge profits. Under the code of conduct and ethic policies of the Assets Management Company, the Applicant was duty bound to protect the propriety and non public information including sensitive information and data that is not in the public domain. That, Applicant was duty bound not to share the Company's trading activities and strategy.

REJOINDER

7) Mr. Nagmuthu, the learned Senior Counsel for the Applicant in the

rejoinder argument submitted that:-

7.1) A penal statute has to be strictly construed and there is no room for presuming or assuming a particular fact. The fact that the Applicant is a Chief Dealer and employee of the Axis Mutual Fund cannot be disputed nor can any fault be found with the duties and responsibilities of the Applicant while acting as a Chief Dealer.

7.2) In a case of front running, if the Applicant has divulged or disclosed any non public information, the matter would be investigated by SEBI. That, SEBI has already issued interim order cum show cause notice and the Applicant has replied to the same. That, SEBI has the expertise to investigate the violation under the SEBI Act. SEBI is the expert body and it is the SEBI who will eventually decide whether a case for initiating criminal prosecution is made out or not.

7.3) Offences under section 406, 408 and 420 of the IPC pertain to property. That, non public information cannot be equated to property. That, no offence of cheating is made out as there are no two persons as are required to constitute the offence of cheating. That, there was no statement or inducement nor is there any delivery of property. Simple divulsion of non public information cannot be deception.

ANALYSIS

8) I have perused the record. An interim order cum show cause notice

dated 28th February 2023 was issued by SEBI alleging that the Applicant and persons connected to the Applicant have traded in different securities ahead of the impending orders placed on behalf of a big client i.e. Axis Mutual Fund. Subsequently, after the orders were placed, the said connected third party entities to whom the non public information was forwarded by the Applicant squared off their trade positions. By implementing this modus operandi, the Applicant and other co-accused made huge wrongful gains. The said gains have been termed as (proceeds of crime) by the Enforcement Directorate. The connected entities, who executed the front running trades were arranged by Mr. Sumit Desai at the behest of the Applicant.

9) Statements of various individuals have been recorded under section 50 of the PML Act. It is alleged that, the Applicant and other co-accused were involved in a systematic scheme to launder the illicit proceeds collected through multiple channels. Several individuals with this network opened bank accounts in the names of fictitious entities and large sums were credited to those accounts from various sources and shortly thereafter a significant portion of the amounts was transferred to the bank accounts of the family members of the Applicant. The Applicant was at all times aware of the coming of large volume of trades of the Axis Mutual Fund and with a fraudulent and dishonest intention misused his position as the Chief Dealer and the non public information received by sharing it with the co-accused/

individuals. That, front running trades were then executed through the trading accounts and positions were squared off after Axis Mutual Fund orders were placed. This led to wrongful profits to the Applicant and other accused persons and a corresponding wrongful loss for the retail investors of the Axis Mutual Fund including the complainant. The Applicant misused his position by disclosing non public information to unauthorized third parties, facilitating front running trades which were illegal trades executed in advance of the large volume trades by Axis Mutual Fund to gain unlawful profits for himself and his associates.

10) The allegations against the Applicant are in respect of serious and grave offence. Perusal of the FIR and the allegations made therein would clearly indicate that the allegations against the Applicant are serious in nature and that of a fraud played on the investors and also the securities market as a whole. To my mind, considering the allegations a strong *prima facie* case of "front running" is made out against the Applicant and the co-accused. The intentions of the Applicant are clear from the FIR. The allegations are serious and as a meticulously by a well thought of pre-plan and design to provide non public information to the co-accused, his acquaintances and known persons. The allegations are of the Applicant and all persons accused acting in concert, by a plan and in conspiracy to make wrongful and undue gains for themselves and at the cost of the investors and

the securities market.The securities market mechanism has been used for making personal and private gains.

REASONING

11) The record indicates that, in or around July 2019 the Applicant was appointed as Assistant Vice President/ Chief Trader in the Equity Department of the Axis Assets Management Company Limited (Axis AMC) and then promoted as Senior Vice President. The Applicant was the Fund Manager for arbitrage schemes and exchange traded fund schemes of the Axis Mutual Fund. The Applicant's duties comprised of implementing fund investment strategies, managing comprehensive dealing and trading activities for the equity schemes in and as a capacity of Chief Dealer. As a part of his job and responsibility, the Applicant was to execute instructions received from the designated fund managers whereby he would execute trades in accordance with the directives and communicate the same to the brokers empanelled by Axis AMC. On receipt of the non public information, the Applicant was to strategically time the decisions considering news flow, corporate events, broker channel checks and global market research.

12) SEBI has issued an interim order cum show cause notice dated 28th February 2023 against the Applicant under 11(1), 11(4), 11(4A), 11B(1), 11B(2), 11(5), and 27 of SEBI Act, read with SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005.

13) The main argument advanced by Mr. Nagmuthu the Learned Senior Counsel is that, the complaint as filed by Respondent No.2 in the present form is not maintainable or sustainable. It was argued that, a bare perusal of the FIR would indicate that, the acts complained of, are in respect of an act of misconduct of "front running" allegedly committed by the Applicant and other co-accused. The submission was that, as "front running" is an offence under SEBI Act the compliant or criminal prosecution could only have been launched/ initiated by SEBI in accordance with Section 26 of the SEBI Act i.e. on a complaint made by the Board.

14) A reference to the relevant provisions of the SEBI Act in that regard are therefore necessary :-

14.1) Section 24 of SEBI Act reads as under:-

> *"**24. Offences.***
> *(1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.*
> *(2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both."*

14.2) Section 24A of SEBI Act reads as under:-

> *"**24A. Composition of certain offences.**--Notwithstanding anything*

contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending."

14.3) Section 26 of SEBI Act reads as under:-

*"**26. Cognizance of offences by Courts.**--*
(1) No court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder, save on a complaint made by the Board".

15) Section 26 of the SEBI Act provides that no court shall take cognizance of offence punishable under Act or any rules or regulation made thereunder except on the complaint made by the Board. The expression Board is defined in section 2(1)(a) to mean the "Securities and Exchange Board of India" established under section 3 of the SEBI Act. The SEBI Act is a Special Act enacted to regulate the financial/ security markets and to protect the interest of the investors and the market. Being a Special Act the same would prevail over the general law. Under section 26 of the SEBI Act, it is expressly provided that, the complaint for an offence under the Act would be filed only by the Board. Perusal of the FIR and the allegations made therein *prima facie* show that the allegations pertain to an offence of front running. The complaint in its present form is that of an offence of front running.

16) During the course of the arguments, this court was informed that a

complaint dated 12th October 2025 has also been filed by Axis AMC, which complaint has been merged with the present FIR. I have noted that, the present FIR also refers to the interim order cum show cause notice dated 28th February 2023 passed under 11(1), 11(4), 11(4A), 11B(1), 11B(2), 11(5), and 27 of SEBI Act, read with SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005. It is a settled law that, an FIR cannot be an encyclopedia and it is not necessary that all details and finer nuances are known to a lay man who files a complaint. It is the subsequent enquiry and investigation which unfolds the entire facts. The basic requirement is that, the facts as alleged should *prima facie* make out an offence and a case in respect of the offence as alleged.

17) Front running is an offence under the SEBI Act. The concept/ default of front running is defined in Circular dated 25th May 2012 issued by SEBI, the relevant part of which reads as under :-

> *"1. SEBI shall not settle the defaults listed below:*
>
> *i. Insider trading ie. violation of Regulation 3 and 4 of the SEBI (Prohibition of Insider Trading) Regulations, 1992;*
>
> *ii. Serious fraudulent and unfair trade practices which, in the opinion of the Board, cause substantial losses to investors and/or affects their rights, especially retail investors and small shareholders or have or may have market wide impact, except those defaults where the entity makes good the losses due to the investors;*
>
> *iii. Failure to make the open offer (except where the entity agrees to make the open offer or if in the opinion of the Board, the*

open offer is not beneficial to the shareholders and / or the case is referred for adjudication);

iv. Front-running, for the purpose of this circular, front running means usage of non public information to directly or indirectly, buy or sell securities or enter into options or futures contracts, in advance of a substantial order, on an impending transaction, in the same or related securities or futures or options contracts, in anticipation that when the information becomes public; the price of such securities or contracts may change;

v. Defaults relating to manipulation of net asset value or other mutual funds defaults where the actions of the asset management company (AMC)/mutual fund (MF)/sponsor, result in substantial losses to the unit holders, except cases where the entity has made good the losses of the unit holders to the satisfaction of the Board;

vi. Failure to redress investor grievances (except cases where the issue involved is only of delayed redressal);

vii. Failure to make such disclosures under the ICDR and Debt Securities Regulations, which in the opinion of the Board, materially affect the right of the investors;

viii. Non-compliance of summons issued by SEBI;

ix. Non compliance of an order passed by the Adjudicating Officer (AO), Designated Member (DM) or Whole Time Member (WTM);

x. Any other default by an applicant who continues to be non-compliant with any order passed by the (AO) or (DM) or (WTM).

Notwithstanding anything contained in this circular, based on the facts and circumstances of the case, the HPAC/Panel of WTMs may settle any of the defaults listed above."

18) The Hon'ble supreme Court in the case of *SEBI v. Kanhaiyalal*

Baldevbhai Patel, reported in *(2017) 15 SCC 1* has explained the term "front running" in para 21 as follows:-

> *"**21.** In actuality, front-running is more complicated than these definitions suggest. It comprises of at least three forms of conduct. They are: (1) trading by third parties who are tipped on an impending block trade ("tippee" trading); (2) transactions in which the owner or purchaser of the block trade himself engages in the offsetting futures or options transaction as a means of "hedging" against price fluctuations caused by the block transaction (self front-running); and (3) transactions where an intermediary with knowledge of an impending customer block order trades ahead of that order for the intermediary's own profit (trading ahead). In this batch of appeals we are concerned with the first and the last types of trade i.e. tippee trading and trading ahead. It is important to note that trading ahead has been explicitly recognised under Regulation 4(2)(q) of the 2003 FUTP."*

19) Regulation 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (FUTP Regulations) deals with prohibition of manipulative, fraudulent and unfair trade practices. Regulation 4(1) and (2)(q) read as follows ;

> *"**4.** Prohibition of manipulative, fraudulent and unfair trade practices*
> *(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a [manipulative,] fraudulent or an unfair trade practice in securities [markets].*
>
> *[Explanation.- For the removal of doubts, it is clarified that-*
>
> *(i) any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of*

securities of that company, or

(ii) transactions through mule accounts for indulging in manipulative, fraudulent and unfair trade practice shall be and shall always be deemed to have been included in sub-regulation (1).]

(2) Dealing in securities shall be deemed to be a [manipulative] fraudulent or an unfair trade practice if it involves [10][any of the following]:-–

…….

(q) [any order in securities placed by a person, while directly or indirectly in possession of information that is not publically available, regarding a substantial impending transaction in that securities, its underlying securities or its derivative;]

…...”

20) In order to consider the main argument advanced on behalf of the Applicant that, the offence of front running being an offence under the SEBI Act, it is only the Board who can initiate the criminal proceedings in accordance with SEBI Act, it would be necessary and useful to refer to certain judgments in that regard.

20.1) In *Union of India v. Ashok Kumar Sharma,* reported in *(2021) 12 SCC 674* the Hon’ble Supreme Court in para 170, in the context of Drugs and Cosmetics Act, has observed that:

*“**170.1**. In regard to cognizable offences under Chapter IV of the Act, in view of Section 32 of the Act and also the scheme of CrPC, the police officer cannot prosecute offenders in regard to such offences. Only the persons mentioned in Section 32 are entitled to do the same”.*
***170.2.** There is no bar to the police officer, however, to investigate and prosecute the person where he has committed an offence, as stated under Section 32(3) of the Act i.e. if he has committed any cognizable offence under any other law.*

> ***170.3.*** *Having regard to the scheme of CrPC and also the mandate of Section 32 of the Act and on a conspectus of powers which are available with the Drugs Inspector under the Act and also his duties, a police officer cannot register an FIR under Section 154CrPC, in regard to cognizable offences under Chapter IV of the Act and he cannot investigate such offences under the provisions of CrPC."*

20.2) In *Alka Shrivastava v. State of M.P.,* reported in MCRC No. 23883 of 2020 dated 22nd September 2020 the Madhya Pradesh High Court has observed that:

> *"**32**. We have seen that the provisions of IPC and PID Act are not attracted prima facie in this case, that there is an statutory bar against taking cognizance by Court for any such offence, which is in the domain of SEBI Act, 1992, which requires complaint to be filed by SEBI Board. This case is squarely relates to breach of provisions of SEBI Act, 1992 and SEBI Regulations, 2013 and only Special Court is empowered to take cognizance on the basis of complaint filed by SEBI Board. The police was not authorized to register an FIR in such case because there is a specific statutory bar in such matters.*
>
> ***33.*** *What the police could have done was that bring to the notice of SEBI Board the alleged violation being committed by the applicant Company. After providing vital information and inputs to the SEBI Court, the matter would have been looked into by SEBI Board only and appropriate complaint could have been filed by SEBI Board before the competent Special Court. However, instead of doing so, the police has embarked upon registration of FIR in such a case and by doing so, has travelled beyond the scope of its competence and jurisdiction".*

The Madhya Pradesh High Court proceeded to quash the FIR in the said case which was registered for offences under Section 406, 418, 419, 420, 109 and 120 IPC and S.6 of PID Act. The Hon'ble Supreme Court in the case of *State of Madhya Pradesh v. Alka Shrivastava* SLP(Crl) No.7737/2022 has confirmed the view taken by the Madhya Pradesh High Court.

20.3) In *Jitendra Kumar Keshwani v. State of U.P.*, Application Under Section 482 No. 27298 of 2019 dated 24th September 2024 the Allahabad High Court, in a petition seeking quashing of case for offence u/s 420,409 IPC, has observed that:

> *"**16**…At the most, from the allegations as made in the FIR, there can be offence under Section 15-F of the SEBI Act…*
> ***17**. For the aforesaid offences under Section 15F of the SEBI Act, Section 26 of the SEBI Act prohibits registration of the FIR for which only complaint can be filed under Section 26 of this Act, by the Board.*
> *….. ….. ….. ….. …..*
> ***19.** The SEBI Act is an Special Act, which shall prevail over the general act, such as IPC or CrPC. It is settled position of law that once a special Act holds the field, the provisions of general law would not apply and only the prosecution can be lodged in accordance with the provisions of such special law and the provisions of Section 26 of the SEBI Act, specifically".*

The Allahabad High Court proceeded to quash the criminal proceedings against the accused in that case.

20.4) The Gujarat High Court in its judgment *dated 23rd August 2024* passed in Special Criminal Appeal No.1639/2021 in the case of *Sudhirkumar Chandulal Thakkar v. State of Gujarat, in SP. Cr. Application No. 1634 of 2022* proceeded to quash FIR for offences under Section 406, 420 IPC and S.23 Securities Contract Act, with the following observations:-

> *"**10.** Regarding the provisions under the Securities Contract (Regulation) Act, upon considering Section 26 of the Act, it is clear that the lower court ought not to have taken cognizance of the offences based on a police report.*

> ***11.*** *In view of the above, a plain reading of S.26 of the Act suggests that no court can take cognizance of any offense punishable under the Act except on a complaint made by the Central Govt....”*

20.5) The Calcutta High Court in the case of *Kanwar Deep Singh v. State of West Bengal,* reported in *2002 SCC OnLine Cal 602,* proceeded to quash FIR for offences under Section 420, 406, 468, 471, 421, 120B IPC, with the following observation:

> *“**37**. Section 41 of the Penal Code, defines special law as a law applicable to a particular subject. It is already indicated above that the allegations in the FIR make out violations of the provisions of the Companies Act and hence, in view of the provisions of section 624 of Companies Act initiation of the investigating proceedings amounts to circumvention of the expressed bar in the Companies Act....It is rightly argued that the doctrine of circumvention applies in a case of this nature. This old doctrine based on the idea that what is not permitted to be done cannot be done in an indirect way. Any attempt to circumvent a law by an indirect process will yield to an impression that it is not violated or contravened directly. The acts of commission of offences under the Companies Act cannot be investigated into by merely changing the lexical character and describing the same as offences under section 417 of 420 Penal Code...”*

21) Considering the provisions of the SEBI Act, I find that an express legal bar is engrafted in the SEBI Act. To institute or continue the present proceedings, which are contrary to the provisions of the SEBI Act and, more particularly, the express prohibition contained in Section 26 of the SEBI Act, would be incorrect.

22) Section 26 of the SEBI Act is clear and unambiguous. The SEBI Act is a Special Act, enacted with the object to provide for the establishment of a

Board to protect the interest of the investors in the securities market, to promote the development of and to regulate the securities market. SEBI is an expert body, established with the prime objective of protecting the investors and overseeing an orderly development of the securities market within the regulatory framework as provided under the SEBI Act. To initiate proceedings in contradiction of the Act, would amount to circumvention of the Special Act and its provisions. The same cannot be permitted.

23) The Securities and Exchange Board of India may pursue two streams of enforcement actions, i.e., administrative/civil action or criminal action. The administrative/civil actions *inter alia* may include the issuing of directions under sections 11, 11B adjudicating proceedings under the Chapter VI-A of the Securities and Exchange Board of India Act, 1992. Criminal action, on the other hand, involves initiating criminal proceedings against violators by filing a complaint before the criminal courts. SEBI also has the power to pass consent orders in respect of administrative and civil actions or in respect of proposed criminal prosecutions which have not been instituted. Section 24A of the SEBI Act Envisages and recognize the procedure to compound the offences. Under the SEBI Act, the consent process, is not undertaken in serious offences which have an impact on the securities market and securities market mechanism. The Securities and Exchange Board of India by its Circular dated 25th May 2012, amended the Circular dated 20th April 2007

and issued certain new guidelines in relation to the consent orders and also provided a list of offences, which the Securities and Exchange Board of India shall not settled. The relevant provisions reads as under:

> *"ii. Serious fraudulent and unfair trade practices which, in the opinion of the Board, cause substantial losses to investors and/or affects their rights, especially retail investors and small shareholders or have or may have market wide impact, except those defaults where the entity makes good the losses due to the investors; "*

24) In addition to the regulatory and adjudicatory proceedings under the Chapter VI-A of the Securities and Exchange Board of India Act, 1992, SEBI can initiate criminal action under the SEBI Act for actions/acts which are termed as offences under the SEBI Act or the rules or regulation made thereunder. Section 24 clearly provides that without prejudice to any award of penalty by the adjudicating officer under the Act, if any person contravenes the provisions of the Act or Rules or Regulations, he may be punished with a term of imprisonment which may extend to ten years or with fine which may extend to 25 crore or with both.

25) SEBI's action i.e both the adjudicatory or civil action and/or the criminal prosecution strives to protect the market integrity, protect market abuse, and protect the interest of the investors. There is no doubt that market abuse, undermines investors' confidence, market integrity and impairs

economic growth of the nation. Market abuse also includes manipulation of the system for personal gains.

26) In my opinion, prima facie the complaint relates to an offence of front running. In view of the allegations, the possibility of the acts of the Applicant and other co-accused adversely affecting the right of a small investor and having an adverse market impact cannot be ruled out. SEBI has already issued an interim order cum show cause notice dated 28th February 2023. The acts of the Applicant including the accused if proved are actual public wrongs or offences committed against society. The offences are directly against the interest of the society and public at large. The offence of front running, if prima facie made out clearly has an element of criminality, illegal personal gain at the cost of the public and an act done pursuant to a well planned design/ conspiracy to defeat the system and securities mechanism and is in complete disregard to the law.

27) An offence of front running if made out is a part of criminal conspiracy executed with precision, planning and design with only one objective i.e., the personal profit and personal illegal enrichment at the cost of the investor In an offence of front running, the intention is to make use of non public information which is not known or not available in the market and position yourself in a manner or execute transactions based on the said non public information to make wrongful gains by a dishonest and mala fide use

of the information. In my considered view, the offence of front running is against the securities market mechanism and the system as a whole including the investors, the market and the society.

28) I have also noted that, Mr. Arjun D. Padwale (Assistant Police Inspector, Unit-6, Economic Offences Wing, Mumbai) has filed an Affidavit dated 8th December 2025, paragraphs 8, 10 and 11 of which read as under:-

> *"**8.** I say that, the present case pertains to Front-Running trades executed based on unauthorizedly provided Unpublished Price Sensitive Information (UPSI) by the applicant (OA) to various entities who was the Chief Dealer in Axis Mutual Fund at the relevant time. He was aware of the upcoming large-volume trades of the said fund and with fraudulent and dishonest intentions misused this information by sharing it with other co-accused individuals. Front Running Trades were then executed through the trading accounts and positions were squared off after the Axis Mutual Fund orders were placed. This led to gain wrongful profits for the accused persons and corresponding wrongful losses to the retail investors of Axis Mutual Fund. As the core issue in this case revolves around Front Running Trades. The SEBI has defined Front Running in its circular vide No. CIR/EFD/1/2012, dated 25/05/2012, as follows:*
> *"Front-running, for the purpose of this circular, front running means usage of non-public information to directly or indirectly, buy or sell securities or enter into options or futures contracts, in advance of a substantial order, on an impending transaction, in the same or related securities or futures or options contracts, in anticipation that when the information becomes public; the price of such securities or contracts may change"*
>
> ….. ….. ….. ….. …..
>
> ***10.** I say that, during the course of the investigation, summons was issued to the National Stock Exchange of India Limited (NSE). Trade data related to the suspected PAN card holders, as listed in Table No.01 whose trading accounts were allegedly used for executing*

front-running transactions, was obtained from both NSE. This trade data was analyzed in comparison with 34 transactions of Axis Mutual Fund identified by Deloitte during its spike trade analysis. The analysis revealed that the suspected PAN holders executed trades immediately prior to the corresponding orders placed by Axis Mutual Fund. On the buy side, the trading pattern followed the sequence: Buy- Buy-Sell, indicating that the suspects first executed a buy order in their own trading accounts, followed by a significant buy order placed by Axis Mutual Fund, and subsequently squared off their positions at a profit after the price appreciated. On the sell side, a reverse pattern was observed: Sell - Sell - Buy, wherein the suspects initially took a sell position, which was followed by a large sell order from Axis Mutual Fund. Thereafter, the suspects covered their short positions by buying the stock at a lower price, thereby realizing gains.

11. *I say that, during the course of investigation, statement of authorized person of Axis Asset Management Company (Axis AMC) Mr.Darshan Kapadia, Compliance Officer, was recorded on 14/05/2025. In addition, detailed documents were sought from Axis AMC in connection with the investigation."*

29) Fraud under the FUTP Regulations has been defined under Regulation 2(c) of the Regulations. The definition of fraud under the Regulation is wide. In my opinion, the offence of front running is covered by fraud and/or unfair trade practices. Front running is a extremely serious and a grave offence which is against the securities market and the investors at large. It adversely affects the market integrity and investor confidence. Front running, if proved, is clearly an act of market abuse and adversely impacts the market integrity.

30) Considering the provisions of section 26 of the SEBI Act and the

afore-noted pronouncements, it is clear that there is statutory bar against taking cognizance by the Court for the acts which are offences under the SEBI Act. In a case which relates to the breach of the provisions of the SEBI Act and which is an offence under the SEBI Act, the Court can take cognizance only if the complaint is filed by the Board. Even assuming that an ordinary citizen, who feels that an offence is committed against him or his financial interest, approaches police station for filing an FIR, it is incumbent on the police authorities in such cases to forward the said complainant/complaint to SEBI. It is then open and upto SEBI to take appropriate action in accordance with law. As noted hereinabove, perusal of the complaint and/or FIR in the present form indicates that, the offence as alleged is only that of front running. The SEBI Act being a Special Act shall prevail over the IPC (now BNS). The provisions of Special Law will take precedence. Once a Special Law is enacted or is in existence, the provisions of the general law that anybody can set criminal law in motion cannot be applied and will have to give way.

31) The statutory provisions of the Special Act i.e. the SEBI Act cannot be rendered redundant nor can they be circumvented in any manner. In view thereof, I am of the opinion that the FIR as filed by Respondent No. 2 in its current form would not be maintainable only in view of section 26 of the SEBI Act and the correct course of action ought to have been of filing a complaint

with the SEBI. It was then upto SEBI to take appropriate steps/ legal action in accordance with law under Sections 24 and 26 of the SEBI Act or rules or regulations.

32) I have noted that, the acts complained of by the Complainant *prima facie* relate to an offence of front running. Whether any other offence under the general laws i.e. IPC/BNS is made out would have to be independently considered.

33) I find that, though the FIR is registered under sections 477-A, 408, 468, 465, 420, 417, 406 and 34 and 120B of the IPC, the Investigating Agency in its Affidavit dated 8th December 2025, in paragraph 31 has stated that only offences under Section 408, 420, 120B and 34 of the Indian Penal code are made out. As regards the contention of the Applicant that, no offences under sections 408, 420, 120B and 34 of the IPC are made out or the contention that "information" cannot be equated with "property" to make out the offences under sections 408 or 420 of the IPC/BNS, this Court is not considering the said arguments at this stage, more particularly as the question of maintainability has been raised in view of the provisions of section 26 of the SEBI Act. The FIR primarily deals only with the offence of front running. To a common man, the same offence of front running may be equatable to the offence of cheating or the concept of feeling cheated. Investigation has revealed that, the offence under sections 420, 408, 120B and 34 of IPC are

made out. The said aspect i.e. if any offence is made out under the general laws i.e. IPC/ BNS should also be considered by SEBI and upon a complaint being filed by SEBI, by the investigating agencies, in accordance with law.

34) I have noted that, the complaint refers to the interim order cum show cause notice dated 28th February 2023 issued by SEBI. Though the investigation has revealed that, the offences have been made out under sections 408, 420, 120B and 34 of the IPC, perusal of the entire FIR and the allegations made therein, at present, clearly refer to an offence of front running. The offence of front running is an offence exclusively under the Special Act i.e. the SEBI Act and the rules and regulations made thereunder. It is the offence pertaining to the conduct of a person in relation to the securities market.

35) The Axis Mutual Fund i.e. employer of the Applicant has also made a complaint dated 12th October 2025 in respect of the unlawful actions of the Applicant. This Court has been informed by the learned APP appearing for the State that, the Investigating Agencies have merged the said complaint with the present FIR dated 23rd December 2024. The Axis Mutual Fund was the employer of the Applicant. Considering the peculiar facts of the present case, the possibility of an independent offence being made out by the employer in respect of the acts/ misconduct of the Applicant in course of his employment cannot be ruled out at the present stage. In view thereof, Axis

Mutual fund is at liberty to take appropriate action in accordance with law, as advised, in respect of their grievances as an employer or othewise. It is clarified that, this Court has not considered the contentions or allegations made by Axis Mutual Fund in it's complaint. It is further clarified that, none of the observations made by this Court shall be construed to be an adjudication or even a *prima facie* observation in respect of the complaint as filed by Axis Mutual Fund. All contentions of the Axis Mutual Fund are expressly kept open.

36) In the present case, the alleged offence has been investigated and statements have been recorded by the Investigating Agencies including the Enforcement Directorate. It is the say of the Investigating Agencies that, offences under Section 408, 420, 120B and 34 have been made out, and that there is enough *prima facie* evidence and material on record to make out the offences. But when one considers the provisions of the SEBI Act, particularly Sections 24, 24A and 26 of the SEBI Act, it cannot be in doubt that the complaint, if any, in respect of the offence under the SEBI Act can only be filed by the Board. As regards the complaint of Axis Mutual Fund, it is open for them to also approach the Board if advised for an offence under the SEBI Act or file an independent complaint/FIR in accordance with law, for an independent offence, if any made out under the general law.

CONCLUSION

37) Considering the aforesaid discussions, I am of the view that the correct procedure for filing the complaint in respect of an offence under the Special Act i.e. the SEBI Act is that, the complaint is filed by the Board in accordance with section 26 with the concerned Court. It is the SEBI who has to take steps to initiate the proceedings. The SEBI being authorized under the SEBI Act, is entrusted with the responsibility of regulating the market and safeguarding the investors and the security market would have the expertise to analyze the allegations for offences under the SEBI Act.

38) In view of the aforesaid discussion I am incline to quash the FIR bearing No. 0369 of 2024 dated 23rd December 2024, registered with Sion Police Station. Considering the seriousness of the allegations, gravity of the offence and if *prima facie* offence is made out, the adverse financial impact it would have not only on security markets but the entire financial system, this Court trust that the SEBI will take prompt, swift and effective steps and action in furtherance of the object of the SEBI Act, i.e. to protect the interest of the investors and integrity of the security of the market.

39) In view of the afore-stated discussion and the law as discussed, the following Order is passed:-

(i) The Criminal Application is allowed in terms of prayer (a). It will be open for the Securities Exchange Board of India, to independently consider whether the allegations made against the Applicant in respect of the alleged acts/misconduct of the Applicant or as made in the interim order cum show cause notice dated 28th February 2023 make out any criminal offence under the SEBI Act.

(ii) Necessary steps be taken in accordance with law as expeditiously as possible and in any event within a period of 12 weeks from the receipt of the order.

(iii) Axis Mutual Fund is at liberty to file its independent complaint before the SEBI or appropriate forum as may be advised in accordance with law. None of the observations in the present order shall be construed as an observation on the merits in respect of the complaint dated 12th October 2025 filed by the Axis Mutual Fund.

(iv) If Axis Mutual Fund also files a complaint with SEBI, then in that event SEBI to consider the same and take an appropriate decision in accordance with law, as expeditiously possible and, in any event within a period of twelve weeks from the receipt of the complaint.

(v) The Registry is directed to send a copy of this Order to the Securities Exchange Board of India.

(vi) In view of the disposal of Criminal Application No.1036/2025, Interim Application No.4102 of 2025 and Interim Application No. 4642 of 2025 will not survive and are accordingly disposed of.

(RANJITSINHA RAJA BHONSALE, J.)