

Nikita

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

BAIL APPLICATION NO.2793 OF 2025

Ajay Sanker M. K.

... Applicant

V/s.

The State of Maharashtra

... Respondent

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Mr. Pranit Kulkarni a/w Mr. Pavan Pandey a/w Ms. Sneha Mishra a/w Ms. Kajal Mishra a/w Mr. Devendra Agrawal a/w Mr. Rishabh Jain i/b Prem Kumar Pandey for the Applicant.

Mr. A. A. Palkar, APP for the State.

CORAM : ASHWIN D. BHOBE, J.

DATED : 17th JULY, 2025

P.C.:

1. Heard Mr. Pranit Kulkarni learned Advocate for the Applicant and Mr. A. A. Palkar, learned APP for the State.
2. Applicant, by the present application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, is seeking bail in connection with C. R. No.86 of 2021 registered with Lasalgaon Police Station, Nashik Rural punishable under Sections 406 and 420 of the Indian Penal Code, 1860.
3. Said crime came to be registered at the instance of Mr. Sagar Kailas Wagh (informant). As per the case of the prosecution, informant is in the business of trading of Onions. Informant came

in contact with the Applicant (Accused), through his friend from Kerala. Applicant entered into a transaction with the informant for purchase of 81 Metric Tons of Onion. Order to that effect was placed by the Applicant. Cheque of an amount of Rs.14,17,500/- as security towards the said transaction, was handed over to the informant. Informant dispatched the 81 Metric Tons of Onion in three containers. Applicant failed to make the payments, despite several assurances. Cheque issued by the Applicant was returned dishonored. Crime No.86 of 2021 was registered on 09.03.2021.

4. Applicant had gone absconding. Attempt made by the Applicant to secure pre-arrest bail in the said crime, failed. Applicant surrendered before the Court on 08.05.2025. Bail Application No.245 of 2025 filed by the Applicant was rejected by the Additional Sessions Judge, Niphad, vide order dated 23.06.2025.

5. Mr. Pranit Kulkarni learned Advocate for the Applicant submits that the subject matter of the crime is purely a civil dispute. He submits that the informant has given a criminal flavour to a transaction, which at the most may amount to breach of contract. He submits that the Applicant has cooperated with the investigation. He submits that the Applicant does not have any criminal antecedents.

6. Mr. Amit Palkar, learned APP for the State, submits that upon the registration of the crime, Applicant was absconding. Applicant was arrested only on 08.05.2025. He submits that the charge-sheet

was filed under Section 299 of the Cr. PC. He submits that the Investigation Officer is in the process of the filing supplementary charge-sheet.

7. I have perused the record with the able assistance of learned Advocates for the parties.

8. Records placed before me indicates the subject matter of the crime being a commercial transaction of purchase/ sale of Onions. Allegations in the crime suggest that the Applicant placed order for the goods, which goods were dispatched, despite receipt, the Applicant did not pay the amounts towards the said goods. Prima facie, the subject matter of the crime, would at the best be a civil dispute pertaining to breach of contract/ non-payment of money. Prima facie, ingredients of the offences charged in the crime are not made out.

9. In the case of Delhi Race Club (1940) Limited Vs. State of Uttar Pradesh and Anr.¹, the Hon'ble Supreme Court has observed that the distinction between the offence of criminal breach of trust and cheating is a fine one. Paragraph No. 43 of the said judgment reads as follows:

“43. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.”

¹ (2024) 10 SCC 690

10. The Hon'ble Supreme Court in the case of Rikhab Birani and Anr. Vs. State of Uttar Pradesh and Anr.² after taking note of case of breach of contract being converted into criminal offence and the Courts being continuously flooded with such cases, wherein the police registers an FIR, conduct investigation and even filed charge-sheet in undeserving cases has in paragraph Nos. 14 to 21 of the judgment made the following observations:

“14. During the last couple of months, a number of judgments/orders have been pronounced by this Court, especially in cases arising from the State of Uttar Pradesh, deprecating the stance of the police as well as the courts in failing to distinguish between a civil wrong in the form of a breach of contract, non-payment of money or disregard to and violation of contractual terms; and a criminal offence under Sections 420 and 406 of the IPC, the ingredients of which are quite different and requires mens rea at the time when the contract is entered into itself to not abide by the terms thereof.

15. In Lalit Chaturvedi and Others v. State of Uttar Pradesh and Another;⁷ this Court quoted an earlier decision in Mohammed Ibrahim and Others v. State of Bihar and Another,⁸ wherein, referring to Section 420 of the IPC, it was observed that the offence under the said Section requires the following ingredients to be satisfied:

“18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of “cheating” are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived;

and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.”

16. Reference was also made to the decision in VY. Jose and Another

v. *State of Gujarat and Another*⁹ and it was observed:

“7. Similar elucidation by this Court in ‘V.Y. Jose v. State of Gujarat’, explicitly states that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of ‘cheating’, as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under Section 482 of the Cr.PC. Section 482 of the Cr.PC. saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been made out in them complaint. This Court in V.Y. Jose (supra) placed reliance on several earlier decisions in ‘Hira Lal Hari Lal Bhagwati v. CBI’, ‘Indian Oil Corporation v. NEPC India Ltd.’, ‘Vir Prakash Sharma v. Anil Kumar Agarwal’ and ‘All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain’.”

17. This Court, in *Delhi Race Club (1940) Limited and Others v. State of Uttar Pradesh and Another*,¹⁰ highlighted the fine distinction between the offences of criminal breach of trust and cheating, observing that the two are antithetical in nature and cannot coexist simultaneously. Police officers and courts must carefully apply their minds to determine whether the allegations genuinely constitute the specific offence alleged.

18. In *Kunti and Another v. State of Uttar Pradesh and Another*,¹¹ this Court referred to *Sarabjit Kaur v. State of Punjab and Another*¹² wherein it was observed that a breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep a promise will not be enough to initiate criminal proceedings. Thus, the dishonest intention on the part of the party who is alleged to have committed the offence of cheating should be established at the time of entering into the transaction with the complainant, otherwise the offence of cheating is not established or made out.

19. It is the duty and obligation of the court to exercise a great deal of caution in issuing process, particularly when the matter is essentially of civil nature¹³ The prevalent impression that civil remedies, being time-consuming, do not adequately protect the interests of creditors or

lenders should be discouraged and rejected as criminal procedure cannot be used to apply pressure.¹⁴ Failure to do so results in the breakdown of the rule of law and amounts to misuse and abuse of the legal process.

*20. In yet another case, again arising from criminal proceedings initiated in the State of Uttar Pradesh,¹⁵ this Court was constrained to note recurring cases being encountered wherein parties repeatedly attempted to invoke the jurisdiction of criminal courts by filing vexatious complaints, camouflaging allegations that are ex facie outrageous or are pure civil claims. These attempts must not be entertained and should be dismissed at the threshold. Reference was made to a judgment of this Court in *Thermax Limited and Others v. K.M. Johny and Others*,¹⁶ which held that courts should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegation may constitute both civil and criminal wrongs. Further, there has to be a conscious application of mind on these aspects by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Though the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set criminal proceedings into motion. The Magistrate should carefully scrutinize the evidence on record and may even put questions to the complainant/investigating officer etc. to elicit answers to find out the truth about the allegations. The summoning order has to be passed when the complaint or chargesheet discloses an offence and when there is material that supports and constitutes essential ingredients of the offence. The summoning order should not be passed lightly or as a matter of course*

*21. Lastly, we would refer to another detailed judgment of this Court in *Sharif Ahmed v. State of Uttar Pradesh*, which draws out the ingredients required to establish an offence under Sections 406, 415, 420, 503 and 506 of the IPC in the following terms:*

"36. An offence under Section 406 of the IPC requires entrustment, which carries the implication that a person handing over any property or on whose behalf the property is handed over, continues to be the owner of the said property. Further, the person handing over the property must have confidence in the person taking the property to create a fiduciary relationship between them. A normal transaction of sale or exchange of money/consideration does not amount to entrustment. Clearly, the charge/offence of Section 406 IPC is not even remotely made out.

37. The chargesheet states that the offence under Section 420 is not made out. The offence of cheating under Section 415 of the IPC requires dishonest inducement, delivering of a property as a result of the inducement, and damage or harm to

the person so induced. The offence of cheating is established when the dishonest intention exists at the time when the contract or agreement is entered, for the essential ingredient of the offence of cheating consists of fraudulent or dishonest inducement of a person by deceiving him to deliver any property, to do or omit to do anything which he would not do or omit if he had not been deceived. As per the investigating officer, no fraudulent and dishonest inducement is made out or established at the time when the agreement was entered.

38. An offence of criminal intimidation arises when the accused intendeds to cause alarm to the victim, though it does not matter whether the victim is alarmed or not. The intention of the accused to cause alarm must be established by bringing evidence on record. The word 'intimidate' means to make timid or fearful, especially compel or deter by or as if by threats. The threat communicated or uttered by the person named in the chargesheet as an accused, should be uttered and communicated by the said person to threaten the victim for the purpose of influencing her mind. The word 'threat' refers to the intent to inflict punishment, loss or pain on the other. Injury involves doing an illegal act.

39. This Court in Manik Taneja v. State of Karnataka, had referred to Section 506 which prescribes punishment for the offence of 'criminal intimidation as defined in Section 503 of the IPC, to observe that the offence under Section 503 requires that there must be an act of threatening another person with causing an injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested. This threat must be with the intent to cause alarm to the person threatened or to do any act which he is not legally bound to do, or omit to do an act which he is entitled to do. Mere expression of any words without any intent to cause alarm would not be sufficient to bring home an offence under Section 506 of the IPC. The material and evidence must be placed on record to show that the threat was made with an intent to cause alarm to the complainant, or to cause them to do, or omit to do an act. Considering the statutory mandate, offence under Section 506 is not shown even if we accept the allegation as correct."

11. Applicant is in custody since 8.05.2025. It is not the case of the prosecution that custody of the Applicant is required for investigation. In such circumstances, continuation of the Applicant in jail during the pendency of the trial is not warranted. Applicant is entitled for bail.

12. Mr. Palkar submits that upon the registration of the FIR, the Applicant was absconding. He therefore submits that conditions be imposed on the Applicant to ensure his presence for trial. Mr. Pranit Kulkarni learned Advocate for the Applicant on instructions from the Applicant states that the Applicant shall surrender Applicant's passport to the Investigation Officer, Lasalgaon Police Station, Nashik Rural immediately upon his release and at any rate within three days from his release. Statement accepted.

13. The present Bail Application is allowed, on the following conditions:

- a) Applicant is directed to be released on bail in connection with C. R. No.86 of 2021 registered with Lasalgaon Police Station, Nashik Rural on his furnishing PR bond in the sum of Rs.25,000/- with one or two sureties in the like amount to the satisfaction of Additional Chief Judicial Magistrate, Niphad.
- b) Applicant shall report to the Investigation Officer, Lasalgaon Police Station Nashik Rural on the first Saturday of every month from 10.00 am to 12.00 pm till the framing of charge.
- c) Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of the case so as to dissuade him from disclosing the facts to the Court or any police officer and shall not tamper with evidence.
- d) Applicant upon his release, within 3 days shall furnish

to the Investigation Officer, Lasalgaon Police Station Nashik Rural his residential address with proof and the contact number and to keep the Investigation Officer intimated about the change in the same from time to time.

e) Applicant shall surrender his passport to the Investigation Officer, Lasalgaon Police Station, Nashik Rural within three days from his release.

14. The Bail Application No.2793 of 2025 is allowed in the above said terms.

(ASHWIN D. BHOBE. J.)

Note:-This order is modified as per speaking to the minutes of order dated 18th July, 2025.