



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.724/2025

(Kishor S/o Prabhakar Amrutkar Vs. The State of Maharashtra, through Police Station Officer, Nandanvan Police Station, Nagpur, Distt. Nagpur)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.A. Naik, Senior Advocate with Mr. S.K. Bhandarkar, Advocate for the applicant.

Mr. V.A. Thakare, A.P.P for non-applicant/State.

CORAM: MRS.VRUSHALI V. JOSHI, J.

DATED: 26.9.2025.

The applicant is arrested in Crime No.470/2024 for the offence punishable under Sections 318(4), 316(5) and 3(5) of the Bhartiya Nyaya Sanhita, 2023 and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

2. The First Informant, Sou. Komal Nitesh Tekade, the relative of accused-applicant, who runs Prabhav General Stores, was collecting a private fund (B.C.). She and other people had invested money in the form of fixed deposits and recurring deposits in the said fund (B.C.) started by the accused.

3. First informant and her husband used to deposit the same in the fund of the applicant since January 2022. The applicant was paying 10% per annum interest on it. Apart from the informant around 334 others have invested an amount of Rs.1,85,72,400/- as accused had promised them to repay the amount with interest at the rate of 10% per annum, however, the applicant failed to repay the amount deposited by the informant. Therefore, the complaint is lodged and the crime is registered.

4. Learned Senior Advocate for the applicant has stated that the offence under Section 318 of B.N.S. i.e. cheating is initially registered for which, punishment is up to 7 years. On 27.11.2024 the offence under Section 316(5) of B.N.S. criminal breach of trust is registered which is punishable up to 10 years or life imprisonment. The offence under Section 3 of the M.P.I.D. Act is also registered against the applicant which is punishable up to six years.

5. Before registration of offence under Section 316 of the B.N.S. the offence for cheating and M.P.I.D. Act which are punishable for less than 7 years are registered for which the notice under Section 35(3) of the B.N.S.S. was not issued and the applicant was arrested.

6. As per the judgment in case of *Satender Kumar Antil V/s. Central Bureau of Investigation and another* reported in **(2022) 10 SCC 51** notice under Section 35(3) of B.N.S.S. is mandatory to be issued. Said mandatory provisions are not complied with. Hence, the applicant is entitled to be released on bail.

7. The learned Senior Advocate has argued that this is a case of money-lending. There is distinction between 'entrustment' and 'investment'. The essential ingredient to attract the offence under Section 316 of B.N.S. is 'entrustment'. In this case, there is no entrustment. The number of persons have deposited the amount and the applicant had given assurance of interest on it. Therefore, the money was not in custody of the applicant, he was only using it. Cheating and breach of trust cannot go hand in hand. The applicant has relied on the judgment of this Court in support of his argument in case of *Delhi Race Club (1940) Limited and others V/s. State of Uttar Pradesh and another* reported in **(2024) 10 SCC 690** wherein in paragraph No.43 following observations are made:-

“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.

8. The offence under Section 316(5) of the B.N.S. is registered after two years of the arrest of applicant. The charge sheet is bulky. There are total 306 witnesses. It will take time to commence the trial. The applicant has relied on the judgment of this Court in case of *Jalaluddin Khan V/s. Union of India* reported in **2024 SCC OnLine SC 1945** wherein it is observed that bail is the rule and jail is an exception. Hence, prayed to release the applicant on bail.

9. The learned A.P.P. opposed the application stating that the applicant is running the grocery shop. He has no authority to collect the amount and give interest on it. If it is considered that he was doing money-lending business, however, he was not having any licence. The witnesses have stated that the applicant has given the security cheques to the witnesses. The learned A.P.P. has submitted that the notice under Section 35(3) of B.N.S.S. was issued to the wife of the applicant. The mandatory provision is followed. Considering the number of persons duped by this applicant, prayed to reject the application.

10. Heard both sides and perused the record.

11. Initially the offence under Section 318(4) of B.N.S. was registered. Thereafter Section 3 of M.P.I.D. is also registered.

12. On perusal of the allegations made against this applicant and if we consider the offence under Sections 316 and 318 of the B.N.S. it is clear that cheating and misappropriation are totally different. Entrustment is the essential ingredient of misappropriation. The intention to cheat people from inception is the essential ingredient of cheating. The *Hon'ble Apex Court in Delhi Race Club (1940) Limited and others (supra)* has observed that both the offences cannot co-exist simultaneously.

13. Initially the offence under Section 316(5) of B.N.S. was not registered. The offence which was registered is of cheating i.e. Section 318 of B.N.S. and Section 3 of the M.P.I.D. Act for which the punishment is less than 7 years. Therefore, the notice under Section 35(3) of the B.N.S.S. is necessary. Said mandatory provision is not followed by the police machinery.

14. Learned A.P.P. has pointed out that the notice was issued to the wife of the applicant. The applicant is the accused and his wife is also accused. Without issuing notice to the applicant, the arrest of the applicant is made which is illegal as per the observations made by the Hon'ble Apex Court in case of *Satender Kumar Antil (supra)*. Therefore, for non-compliance of the mandatory provision the applicant is required to be released on bail.

15. Accordingly, I pass the following order:

- i) Criminal application is allowed and disposed of.
- ii) Applicant-Kishor S/o Prabhakar Amrutkar be released on bail in Crime No.470/2024 for the offence punishable under Sections 318(4), 316(5) and 3(5) of the Bhartiya Nyaya Sanhita, 2023 and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, on his furnishing PR. Bond in

the sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) with one surety in the like amount.

- iii) The applicant shall not in any way tamper with the prosecution evidence.
- iv) The applicant shall not pressurize or threaten the prosecution witnesses.
- v) The applicant shall co-operate the learned trial Judge in the conduct of the trial.
- vi) The applicant shall attend the trial regularly and shall not remain absent for trial without seeking permission from the trial Court.

(MRS.VRUSHALI V.JOSHI, J.)