

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

CRIMINAL WRIT PETITION NO. 1817 OF 2026

Hiralal D. Rathod

...Petitioner

Versus

State Of Maharashtra And Anr.

...Respondents

Mr. Karan Singh Mertia, a/w Prajakta Tawde, for the Petitioner.

Mr. Tanveer Khan, APP for the State.

Mr. D. P. Mane, Kasturba Marg Police Station, present.

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CORAM: N. J. JAMADAR, J.

DATED: 17th APRIL, 2026

ORDER:-

1. The challenge in this petition is to an order dated 28th November, 2025, whereby the learned Magistrate has enlarged the Respondent No.2 – accused on bail.

2. The Respondent No.2 has been arraigned for the offences punishable under Sections 406, 409, and 420 read with Section 34 of the Indian Penal Code, 1860 (“the Penal Code”), for having defrauded the first informant and his wife, daughter, and son-in-law to the tune of Rs.2,97,54,700/- by inducing them to part with the said amount by making representations that the said amount would be invested and the first informant and his relatives would earn lucrative returns.

3. The Respondent No.2 preferred an application purportedly under Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023, ("BNSS. 2023"). The learned Magistrate was persuaded to enlarge the Respondent No.2 on bail, observing *inter alia* that the respondent No.2 was in custody for almost 20 months. Three witnesses have been examined. The prosecution proposed to examine four more witnesses. Since the respondent No.2 had suffered one-third of the maximum period of imprisonment specified under Sections 406 and 420 of the Penal Code, the respondent No.2 deserved to be enlarged on bail.

4. Mr. Mertia, the learned Counsel for the petitioner, submitted that the impugned order is patently illegal. The learned Magistrate could not have enlarged the respondent No.2 on bail as the respondent No.2 has been charged for an offence punishable under Section 409 of the Penal Code also; which entails punishment which may extent to imprisonment for life. Thus, the provisions under Section 479 of the BNSS, 2023, were not at all attracted.

5. I have perused the allegations in the FIR. *Prima facie*, it appears debatable whether an offence punishable under Section 409 of the Penal Code has been made out. It is trite, in the same set of facts, the offences punishable under Sections 420 and

409 of the Penal Code cannot co-exist. The ingredients of the offence of cheating and that of criminal breach of trust are materially distinct.

6. In any event, since the applicability of the provisions contained in Section 409 of the Penal Code is debatable, and the respondent No.2 was incarcerated as an under-trial prisoner for almost 20 months, and the prosecution has examined three witnesses, and proposed to examine four more witnesses, the exercise of discretion by the trial Court to enlarge the respondent No.2 cannot be faulted at.

7. Therefore, in exercise of its supervisory jurisdiction, this Court does not find any justifiable reason to curtail the personal liberty of respondent No.2 secured by an order of bail.

8. The petition, thus, stands dismissed.

[N. J. JAMADAR, J.]