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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1036 OF 2026

Vinod Juthalal Visaria : Applicant
Versus.
State Of Maharashtra & Anr. : Respondents

Mr. Priyal G Sarda a/w Adv. Shubham Sane and Anup Lahoti i/by Jaipal Tare-Patil for the Applicant.

Mr. Sukanta Karmakar, APP for the Respondent/State.

Mr. Aditya Sharma for Respondent No.2.

PSI Kishor Desai, Dindoshi Police Station present.

CORAM : ASHWIN D. BHOBE, J.
DATE : 30th April, 2026.

P.C. :

1. When this matter was called out, Advocate Mr. Aditya Sharma appears and states that he has instructions to appear on behalf of the Informant, who was heard in Anticipatory Bail Application No. 329 of 2026 before the Court of Sessions at Dindoshi (Borivali Division), Goregaon, Mumbai. He submits that the Applicant has conveniently avoided joining the Informant as a party Respondent to this Application.

2. Faced with the said objection, Mr. Priyal Sarda learned Advocate for the Applicant, submits that the Informant remained to be joined due to an inadvertent mistake on his part. He seeks leave to add the Informant as party Respondent No. 2 in the present Application. Mr. Sukanta Karmakar, learned APP for the Respondent/State, submits that the presence of the Informant is required.

3. In view of the above, leave granted to add the Informant as party Respondent No.2 to the present Application. Mr. Priyal Sarda, learned Advocate for the Applicant, states that the amendment would be carried out forthwith. Permission granted.

4. Issue notice to the Respondents.

5. Mr. Sukanta Karmakar, learned APP appears and waives service of notice on behalf of the Respondent No.1/State.

6. Mr. Aditya Sharma, learned Advocate, appears and waives service of notice on behalf of the Respondent No.2.

7. Heard Mr. Priyal Sarda learned Advocate for the Applicant, Mr. Sukanta Karmakar learned APP for the Respondent/State and Mr. Aditya Sharma learned Advocate for the Respondent No.2.

8. By the present Application, the Applicant seeks pre-arrest bail on the apprehension of arrest in FIR No. 88 of 2026 registered

with the Dindoshi Police Station, Mumbai (FIR), for the offence punishable under Sections 316(2), 318(4) r/w 3(5) of the Bharatiya Nyaya Sanhita, 2024.

9. Respondent No. 2 lodged a complaint with Respondent No. 1, alleging that a transaction between Respondent No. 2 and the Applicant for the sale/purchase of a flat did not materialise. It is alleged that, although Respondent No. 2 paid part consideration to the Applicant, the Applicant neither cleared the loan amount payable to Aarka Fincap Limited Finance Institute in respect of the said flat nor executed the conveyance deed. Dissatisfied with the Applicant, Respondent No. 2 filed a complaint, which was registered as an FIR.

10. Mr. Priyal Sarda learned Advocate for the Applicant, submits that the transaction alleged by Respondent No.2 is not substantiated by any document. To clarify, he submits that no agreement was executed between the Applicant and Respondent No.2. He, however submits that upon payment of some amount, the Applicant has transferred possession of the said flat to Respondent No.2. He submits that there is no criminality involved in the offence and that Respondent No.2 has clothed a dispute that is essentially civil in nature with a criminal garb. He submits that the Applicant is ready and willing to cooperate with the Investigating Officer.

11. Mr. Sukanta Karmakar, learned APP for the Respondent/State, submits that upon receipt of the complaint, Respondent No.1 lodged the FIR. He, in all fairness, submits that the Applicant should be directed to cooperate with the investigation as and when required by the Investigating Officer.

12. Mr. Aditya Sharma, learned Advocate for the Respondent No.2, vehemently opposes the bail application. He submits that the Applicant has failed to perform the agreement between the Respondent No.2 and the Applicant. To clarify, he submits that the Applicant was required to execute a conveyance deed in respect of the unencumbered flat within a specified time. He submits that the Respondent No.2 has paid part of the consideration, which the Applicant has apparently utilised for his benefit without clearing the loan. He submits that the Applicant's custodial interrogation would be required to ascertain how the Applicant has spent the amount received from the Respondent No. 2. He, however, does not dispute that the said flat is in the possession of the Respondent No.2 and that it continues to be so as of the date.

13. Prima facie, the nature of the dispute at issue in the FIR is predominantly civil. Apparently, the agreement claimed to exist between the Applicant and Respondent No.2, as submitted by Mr Aditya Sharma, learned Advocate for Respondent No.2, is oral. On a query to Mr Aditya Sharma as to whether any civil proceedings have been filed in respect of the subject dispute, he replied in the negative.

14. Indisputably, the Respondent No.2 is put in possession of the said flat, which is the subject matter of controversy. Mr Priyal Sarda, learned Advocate for the Applicant, states that the market value of the said flat is much more than the amount paid by the Respondent No. 2, a fact that is not denied by Mr Aditya Sharma, learned Advocate for Respondent No. 2.

15. The Hon'ble Supreme Court in the case of *Rikhab Birani v. State of U.P.*[1], in paragraphs 12 to 20, has observed as follows :-

> *"12. Thereupon, the appellants, Rikhab Birani and Sadhna Birani, preferred a petition under Section 482 of the Cr.P.C. before the High Court,6 which was dismissed by the High Court, vide the impugned order dated 09.05.2024, notwithstanding the aforesaid facts, stating that at that stage, only a prima facie case was to be seen in the light of the law laid down by this Court.*
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> *13. We are constrained to pass this detailed speaking order, as it is noticed that, notwithstanding the law clearly laid down by this Court on the difference between a breach of contract and the criminal offence of cheating, we are continuously flooded with cases where the police register an FIR, conduct investigation and even file chargesheet(s) in undeserving cases.*
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> *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.*

1 2025 SCC OnLine SC 823

15. In Lalit Chaturvedi v. State of Uttar Pradesh7, this Court quoted an earlier decision in Mohammed Ibrahim v. State of Bihar8, 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 V.Y. Jose v. State of Gujarat9 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.P.C. Section 482 of the Cr.P.C. 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 the 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 v. State of Uttar Pradesh,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 v. State of Uttar Pradesh11, this Court referred to Sarabjit Kaur v. State of Punjab12 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 nature.13 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 v. K.M. Johny16, 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."*

16. Considering the nature of the allegations and the dispute, as apparent from the FIR and the fact that Respondent No. 2 continues to be in possession of the said flat, the custodial interrogation of the Applicant is not required. The Applicant is therefore entitled to pre-arrest bail.

17. In view of the above, this is a fit case for allowing the present Application on the following terms :-

(a) In the event of arrest of the Applicant inFIR bearing No.88 of 2026 registered with Dindoshi Police Station Mumbai, the Applicant shall be released on bail on furnishing a PR bond in the sum of Rs. 50,000/- (Rupees Fifty Thousand only) with one or two local sureties in the like amount.

(b) Applicant shall report to the Investigation Officer, of Dindoshi Police Station, Mumbai, as and when the presence of the Applicant is required by the Investigating Officer.

(c) Applicant shall not directly or indirectly make any inducement, threat or promise to any person/s acquainted with the facts of the case to dissuade such person/s from disclosing the facts to the Court or any police officer.

(d) Applicant shall not tamper with evidence in any manner.

(e) Applicant shall provide the Investigation Officer with his residential address along with proof, his contact number, email and must inform the Investigating Officer of any changes to this information from time to time.

(f) Applicant shall cooperate with the Investigating Officer in the process of investigation of the present Crime.

20. Anticipatory Bail Application No.1036 of 2026 is disposed of.

(ASHWIN D. BHOBE, J.)