



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

CRIMINAL REVISION APPLICATION NO. 51 OF 2026

Shri Ravi s/o. Jaswant Mulchandani,
Aged about 32 years, Occupation: Business,
R/o. Killa Ward, Quari Road, Ballarpur,
Tq. Ballarpur, District Chandrapur
(Presently at Central Jail, Nagpur.)

... **APPLICANT**

...VERSUS...

State of Maharashtra,
Through Police Station Officer,
Police Station, Bajaj Nagar, Nagpur.

...**NON-APPLICANT**

Mr. A. M. Chandekar, Advocate for Applicant.
Mr. A. M. Joshi, A.P.P. for Non-applicant/State.

CORAM: MRS. VRUSHALI V. JOSHI, J.
JUDGMENT RESERVED ON: 18.04.2026
JUDGMENT PRONOUNCED ON: 22.04.2026

JUDGMENT:

1. **Rule.** Rule is made returnable forthwith. Heard finally by consent of learned Counsel appearing for the parties.
2. Being aggrieved by the order dated 10.02.2026 passed by the Hon'ble Additional Sessions Judge, (Special MPID Court), Nagpur in Criminal Bail Application No.331/2026 in connection with Crime No.360/2025 registered at Police Station, Bajaj Nagar, Nagpur rejecting the default bail application filed under Section 187(3) of the Bharatiya Nagrik Suraksha Sanhita, 2023 (B.N.S.S.), the applicant has filed this

application. The applicant was implicated in the alleged Crime No.360/2025 for the offences punishable under Sections 316(2), 316(5), 318(4), 336(3), 340(2), 3(5) of the Bharatiya Nyaya Sanhita, 2023 (B.N.S.) read with Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (M.P.I.D. Act). The crime was registered against this applicant along with other co-accused. An offence under Section 316(5) of the Bharatiya Nyaya Sanhita, 2023, which is punishable with life imprisonment, has been registered. Accordingly, the statutory period for filing the charge-sheet is 90 days. On the 62nd day, the applicant filed an application for default bail; however, the same was rejected by the learned Trial Court on the ground that, since the offence under Section 316(5) of the BNS is punishable with life imprisonment, the permissible period of detention for investigation is 90 days. Therefore, the applicant is not entitled to default bail at that stage.

3. The Learned Counsel for the applicant submitted that, on a plain reading of the First Information Report, the offences punishable under Sections 315 and 316(5) of the Bharatiya Nyaya Sanhita, 2023, are not attracted against the present applicant. The role attributed to the applicant is merely that his office was allegedly used to transaction of money from investors to other co-accused, and on that basis, his name has been implicated, and the crime is registered. It is contended that the

essential ingredients of the offence punishable under Section 316(5) are not made out against the applicant. Consequently, the extended period of 90 days for filing the charge-sheet would not apply to the present case.

4. The applicant has relied upon the judgments of this Court as well as the Hon'ble Apex Court in support of the contention that, at the stage of considering an application for default bail, the Magistrate is required to examine the role attributed to the applicant and determine whether the offences punishable under the said provisions are *prima facie* attracted against the accused.

5. The learned A.P.P. opposed the application submitting that the role attributed to the applicant is that of an agent. It is contended that, as per the agreement, the applicant was working with the other co-accused, and his name has also been mentioned in the statements, wherein it is stated that he was introduced by the co-accused as a person associated with them. In view of the aforesaid, it is submitted that the applicant acted as an agent of the co-accused, and therefore, the offence under Section 316(5) of the Bharatiya Nyaya Sanhita, 2023, is attracted. It is further contended that the learned Trial Court has rightly rejected the application for default bail.

6. Heard the learned Counsel for the applicant and the learned A.P.P. for the State.

7. While considering the application for default bail, reliance has been placed by the applicant on the judgment of the Hon'ble Apex Court in *Raghunath Anant Govilkar v. State of Maharashtra* [2008 DGLS (SC) 185], wherein the Hon'ble Apex Court has distinguished the offence punishable under Sections 406 and 409 of the I.P.C. This Court in the case of *Alnesh Akil Somji Vs. The State of Maharashtra* [2022 SCC Online Bom 11566] has observed in Para-No.13 as under :

“13. There is no manner of doubt that the investigation is within the province and domain of the investigating agency. However, that does not mean that the court, in almost all cases, would be bound by the invocation of a particular section against the accused by the prosecuting agency. This is because the label of the section or the provision invoked would not be decisive. To hold otherwise, would amount to placing the said right at the mercy of the investigating agency and would indirectly result in the magistrate abdicating the duty to enforce the right wherever necessary. Thus the court would be required to look into the generality of the allegations made and the material collected. In a given case where ex facie the provision is not attracted the court may not be bound by the same. Although there is no requirement for the investigating officer to obtain permission from the magistrate for such addition, as held by the Calcutta High Court in Sayantan Chatterjee (supra), the Magistrate is not precluded from looking into the facts and the material collected, whether the offence is ex facie made out or not. The matter depends on the facts and circumstances of each case. For instance, where the investigating officer invokes section 326 of IPC, however the medical report does not ex facie show that the victim has suffered a 'grievous injury', within the meaning of Section 320 of IPC. OR a case where section 409 of IPC is invoked

and admittedly the accused does not fall under any of the seven categories mentioned in the said section namely the accused is neither a public servant a banker etc. I would hasten to add that where however the facts and the material collected prima facie indicate the ingredients of a particular offence the court obviously cannot examine or appreciate the same at that stage in order to arrive at a different conclusion.”

8. In view of the above-mentioned observations, upon perusal of the charge-sheet, the present case essentially turns on the question of the applicability of Section 409 of the Indian Penal Code. If the said provision is applicable, the statutory period for filing the charge-sheet would be 90 days. However, if it is not applicable, the investigation would be deemed to be incomplete within the prescribed statutory period, thereby entitling the applicant to be released on default bail.

9. The role attributed to the applicant is that his office was allegedly used by the other co-accused, and that investors handed over amounts to the co-accused at the said office. However, such use of the premises does not, by itself, establish that the applicant acted as an agent. Merely because, in the agreement, the co-accused introduced the applicant as a person looking after documents and related work, there is nothing on record to show that any property was entrusted to him. There is no material or statement to indicate that the applicant was acting in the capacity of an agent. It is further noted that the other co-accused have already been granted anticipatory bail, and as submitted by the

learned counsel for the applicant, some have not yet been arrested. As the applicant is arrested and the offence under Section 316(5) of the B.N.S. is registered along with other co-accused, the observations made by the Trial Court that the applicant is not entitled to default bail needs interference. The Magistrate is not precluded from examining the facts and the material collected to determine whether the offence is *ex facie* made out. The Court is required to consider the facts, circumstances, and material on record and satisfy itself whether the provisions invoked by the Investigating Officer are supported by the material and whether the alleged offence is made out. Upon consideration of the charge-sheet, it is evident that, from the statements and the agreement referring to the applicant's role, it does not come under the necessary ingredients of the offence under Section 316(5) of the BNS, there is no substantive material to attract the offence punishable under said Section. Hence, the applicant is entitled to default bail under Section 187(3) of the B.N.S. 2023. Hence, I pass the following order:

- i] The Criminal Revision Application is allowed.
- ii] The impugned order dated 10.02.2026 passed by the Additional Sessions Judge, (Special MPID Court), Nagpur in Criminal Bail Application No.331/2026, is hereby quashed and set aside.

- iii) The applicant be released on bail in connection with Crime No.360/2025 registered with Police Station Bajajnagar, District Nagpur for the offences punishable under Sections 316(2), 316(5), 318(4), 336(3), 340(2), 3(5) of the Bharatiya Nyaya Sanhita, 2023 read with Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, on his furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with one solvent surety in the like amount.
- iv] The applicant shall not in any way tamper with the prosecution evidence.
- v] The applicant shall cooperate with the investigation officer.

Rule is made absolute in the aforesaid terms.

(MRS. VRUSHALI V. JOSHI, J.)