IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO. 62 OF 2026
Atul S/o. Manoharrao Yamsanwar Vs. State of Maharashtra

WITH
CRIMINAL APPLICATION (ABA) NO. 67 OF 2026
Subhash S/o Chainkaran Surana Vs. The State of Maharashtra

AND
CRIMINAL APPLICATION (ABA) NO. 68 OF 2026
Ankush S/o. Sunil Patil Vs. The State of Maharashtra

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

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Shri G. S. Gour, Advocate for applicant (ABA No. 62/26).
Shri Shyam S. Dewani a/w. Shri M. R. Joharapurkar, Advocate for applicant (ABA No. 67/26).
Shri Abhay Sambre, Advocate for applicant (ABA No. 68/26).
Ms D. V. Sapkal, APP for non-applicant/State.
Shri Harish Dangre a/w. Shri K. S. Agrawal, Advocate for assist to prosecution.

CORAM :- M. W. CHANDWANI, J.

DATED :- 20.02.2026

Heard.

2. All the three applications are arising out of the same crime i.e Crime No. 11/2026 registered with Police Station Sitabuldi, Nagpur for the offence punishable under Sections 406, 420 and 34 of the Indian Penal Code (IPC) and therefore, they are being disposed of by this common order.

3. The First Information Report (FIR) reveals that the applicants were the Directors of the Urban Township Private Ltd. (for short, "the Company"). Since, they were in need of financial assistance therefore, on financial assistance provided by Mr. Deepak Gadge, a share holder agreement dated 25.11.2016 came to be executed between Mr. Gadge and the applicants, whereby 60% of the share holding of the Company was purchased by Mr. Gadge and the applicants- Atul Yamsanwar, Ankush Patil and Subhash Surana were holding 13%, 14% and 13% shares respectively.

4. The FIR also depicts that the Company owned and possessed a piece of land bearing Khasra No. 2-3/1 and 2-3/4, City Survey No.1, Sheet No. 463/13, Corporation House No. 1749, Mouza Chikhali (Deosthan) at Nagpur (for short, "the said land"). When Mr. Gadge asked about the projects of the Company and about financial matters of the Company from time to time, none of the applicants responded to him. Suddenly, on 31.03.2018, Mr. Gadge came to know that he has been shown as a share holder of 30% shares of the Company and the applicants- Atul Yamsanwar, Ankush Patil and Subhash Surana were shown as share holders of 23% 24%, and 23% respectively in the audit report. Thereafter, the applicants, behind the back of Mr. Gadge, passed a resolution to sell the said land of the Company to one Himanshu Yogendra Jain of M/s. Mahadeo Infra Project, Nagpur for a consideration of Rs.10,60,00,000/-

without giving any amount from the sale consideration to Mr. Gadge. Therefore, the applicants not only cheated Mr. Gadge but also misappropriated the amount which is to be paid to him. Therefore, on the complaint of power-of-attorney holder of Mr. Gadge, the aforesaid offence came to be registered against the applicants.

5. It is contended on behalf of the applicants that the offences under Sections 420 and 406 of the IPC cannot go together. The offences alleged are punishable with imprisonment of upto seven years. There is a delay of four years in lodging the FIR. The FIR is lodged by the power-of-attorney holder which is not permissible. The Company has not been made an accused in the case. The nature of dispute is civil and is already pending before the National Company Law Tribunal. The property in question was purchased in 2013 i.e. much prior to induction of Mr. Gadge as a Director of the Company. Without preliminary enquiry, as complemented in case of ***Lalita Kumari Vs. Govt. of Uttar Pradesh and others [(2014) 2 SCC 1],*** directly an offence is registered in case of a commercial dispute. The applicants are ready to co-operate in the investigation and therefore, their anticipatory applications be allowed.

6. *Per contra*, learned APP assisted by learned counsel for the complainant vehemently submitted that before lodging the FIR, a preliminary enquiry was conducted and after finding substance in the complaint,

the said offences came to be registered against the applicants. The ingredients of cheating were there since inception. There are various incidents of cheating and criminal breach of trust independently and therefore, both the offences can go together, if they are stemming from different incidents. A civil dispute and a criminal offence can go together if the facts constitute an offence of cheating. Inspite of Mr. Gadge having 60% share holding in the Company, the applicants fraudulently showed the share holding of Mr. Gadge only to the extent of 30% in the documents submitted to the Registrar of Companies (ROC). A resolution has to be passed by all the Directors of the Company in wake of the agreement but, the applicants fraudulently, behind the back of Mr. Gadge, passed a resolution to sell the property of the Company. The land was sold by the applicants to their own associate free it from the clutches of the Company. However, full consideration has not been paid by the purchaser of the said land. On the date of inducting Mr. Gadge as a Director, the land in question was the property of the Company. On account of holding 60% of the share capital of the Company, the consent of Mr. Gadge to sell the land was necessary. The Company is a shadow Company and for tracing the money trail, custodial interrogation of the applicants is necessary. The investigation is at a preliminary stage and if the applicants are released, the crime will not be cracked. Hence, they sought rejection of the applications.

7. Perusal of the case-diary reveals that initially, the applicants were the Directors of the Company which owned and possessed the said land. Perusal of the share holder agreement reveals that Mr. Gadge who purchased the shares of the Company to the extent of 60% was inducted as a Director of the Company and the shares of the applicants in the Company were reduced in the following manner- Atul Yamsanwar from 33% to 13%, Subhash Surana from 33% to 13% and Ankush Patil from 34% to 14%. Thus, Mr. Gadge became the major shareholder of the Company. However, the applicants, who were initially the Directors of the Company reported the share holding pattern to the ROC wherein, Mr. Gadge was shown as having only 30% share of the Company, despite of the fact that by the share holder agreement, Mr. Gadge had purchased shares to the extent of 60% with the consent of the applicants. However, the applicants for reasons best known to them, showed Mr. Gadge as the owner of 30% of the shares of the Company. Not only this, they inducted some other persons as Additional Directors of the Company behind the back of Mr. Gadge. They even sold the said land of the Company by a sale-deed dated 20.04.2022 for a consideration of Rs.10,60,00,000/- behind the back of Mr. Gadge without his consent.

8. Perusal of the conditions mentioned in the share holder agreement shows that no share shall be issued to anyone without prior written consent/approval

of all the Directors including Mr. Gadge as well as the fact that if a shareholder does not exercise his pre-emptive right to acquire shares offered by the Company, then the other shareholders in the same class shall be entitled to subscribe to such new shares. It was further specifically agreed that any change in the Management of the Company regarding sale, transfer of the property/assets owned by the Company shall require affirmative concurrent votes of the applicants and Mr. Gadge. Inspite of that, it *prima facie* appears that in order to defraud Mr. Gadge, the applicants not only added some additional Directors behind his back but also sold the sole asset of the Company and did not share any amount of sale consideration with him.

9. The fact that despite of selling 60% share of the Company to Mr. Gadge, the applicants showed his share capital in the Company as 30% in the documents submitted to the ROC, which itself goes to show that it was the intention of the applicants to cheat him since inception. Inspite of the specific condition that the sale of assets shall be with the consent of all the four Directors, the applicants sold the asset i.e. the land of the Company behind the back of Mr. Gadge. There is *prima facie* involvement of the present applicants in the crime. Further the entire sale consideration is not credited in the account of the Company, investigation is necessary in order to trace the money trail. Detailed investigation with regard to the Resolution passed by the applicants to

defraud Mr. Gadge is required and various documents are also required to be seized from the applicants to crack the offence. The investigation is at a preliminary stage. That apart, considering the manner in which the alleged offence is committed, effective interrogation of the applicants is necessary for advancement of the investigation, which can be possible by custodial interrogation of the applicants.

10. Reliance is placed by the learned counsel for the applicants on the decision of the Supreme Court in the case of ***Lalita Kumari*** (supra), wherein it has been observed that in case of a commercial dispute, it is desirable to have a preliminary enquiry before registration of an offence. Perusal of the case diary reveals that initially, a complaint was filed with Police Station Sitabuldi, Nagpur. The Deputy Commissioner of Police (DCP) ordered for conducting a preliminary enquiry and accordingly, a preliminary enquiry was conducted through Assistant Police Inspector who in his report, opined that an offence appears to have been committed by the applicants. In furtherance of that, the DCP directed that the FIR be registered. Thus, in the present case, before registration of FIR, a preliminary enquiry was conducted. Therefore, there is no substance in the argument of the learned counsel for the applicants that no preliminary enquiry was conducted before registration of the offence.

11. It is vehemently submitted by the learned counsel for the applicants that the FIR has been registered through the power-of-attorney holder and therefore, the FIR is not maintainable. To buttress their submission, they seek to rely upon the decision of this Court in ***Writ Petition No. 845/2025 (Chirag S/o. Bharat Sheth Vs. State of Maharashtra, decided on 18.12.2025),*** wherein the Division Bench of this Court, relying on the decision in case of ***Nirav Danishkumar Shah Vs. State of Maharashtra [2018 SCC Online Bom 244]*** has quashed the FIR registered for the offence punishable under Sections 51 and 63 of the Copyright Act, 1957. The case before the Division Bench of this Court in case of ***Nirav Shah (supra)*** was in respect of prosecution under the provisions of the Copyright Act, 1957 where a professional was hired to lodge the complaint and therefore, in that scenario, it has been held that the complaint lodged by a power-of-attorney, who is a professional, cannot be maintained. Whereas, the facts of the present case are different. Here, the victim has given the power-of-attorney to his employee to lodge the FIR. Even otherwise, it hardly matters who has lodged the FIR. If the Police receives any information of a cognizable offence, then the offence is required to be registered as held in the case of ***Lalita Kumari*** (supra).

12. No doubt, it has been held by the Supreme Court in the case of ***Arshad Neyaz Khan Vs. State of Jharkhand and others [2025 SCC Online 2058]*** that an

act which constitute cheating may not constitute criminal breach of trust and both the offences cannot co-exist. However, in the present case, the allegations are in respect of various malpractices. The investigation is at a preliminary stage and therefore, it will be premature to make any comment at this stage. At least the offence under Section 420 of the IPC is palpable from the case-diary.

13. Considering the material against the present applicants and the nature of the allegations against them, as well as the fact that the investigation is at preliminary stage; investigation of various aspects of the crime is required to be conducted. All the documents which are required to be seized are with the applicants. Therefore, I find support in the argument of the learned APP for the State as well as the learned counsel assisting the prosecution that custodial interrogation of the applicants is necessary at this stage.

14. Sofaras, the submission of the learned counsel for the applicants that the Directors are vicariously liable for the acts of the Company and the Company has not been made an accused and therefore, the FIR is not maintainable is concerned, here the allegations are levelled not against the Company but against the Directors of the Company, regarding cheating and defrauding not only Mr. Gadge but also Urban Township Private Ltd as a Company. Thus, here the case

is other way round. Therefore, this objection raised by the applicants is without any substance.

15. To sum up, no case is made out for grant of extra-ordinary relief of anticipatory bail to the applicants. Hence, the applications are rejected.

(M. W. CHANDWANI, J.)

RR Jaiswal