APHC010513592026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3521]**
(Special Original Jurisdiction)

TUESDAY, THE 6th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL PETITION NO: 8644/2026

Between:

1. M VIJAY MOHAN RAO, S/O M. NARAYAN RAO, AGED ABOUT 38 YEARS,OCC BUSINESS, R/O H.NO.5-3-160/4, NIZAMSAGAR ROAD,KAMAREDDY, KAMAREDDY DISTRICT, TELANGANA.
2. A KIRAN KUMAR, S/O A. KRISHNA MOHAN RAO, AGED ABOUT 44 YEARS, OCC PRIVATEEMPLOYEE, R/O PLOT NO.8, NOOTAN COLONY,BOWENPALLY, HYDERABAD, TELANGANA.
3. PRAVEEN, S/O A. KRISHNA MOHAN RAO, AGED ABOUT 45 YEARS, OCC PRIVATEEMPLOYEE, R/O H.NO.1-11/171,BOWENPALLY, HYDERABAD, TELANGANA.

...PETITIONER/ACCUSED(S)

AND

1. THE STATE OF ANDHRA PRADESH, Rep. by Public Prosecutor,High Court of Andhra Pradesh, Amaravati,Guntur District.

...RESPONDENT/COMPLAINANT

Counsel for the Petitioner/accused(S):

1. AISHWARYA NAGULA

Counsel for the Respondent/complainant:

1. PUBLIC PROSECUTOR

The Court made the following:
ORDER:

The Criminal Petition has been filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity 'the BNSS'), seeking to enlarge the petitioners/accused Nos.2 to 4 on bail in the event of their arrest in Crime No.104 of 2017 of Alipiri Police Station, Tirupati Urban District, registered against the petitioners/Accused Nos.2 to 4 herein for the offences punishable under Sections 420 and 506 read with 34 of the Indian Penal Code, 1860 (for brevity, 'the I.P.C.').

2. Ms. Aishwarya Nagula, the learned counsel for the petitioners, submits that there are no specific overt-acts attributable to the petitioners and that the petitioners are innocent of the alleged offences and they have been falsely implicated by the police. It is further submitted that the petitioners are the sole earning member of their respective families, and, therefore, if they are incarcerated, it would cause undue hardship to their dependants. They are law-abiding citizens. Hence, it is urged to grant pre-arrest bail to the petitioners.

3. *Per contra*, Mr.A.Sai Rohit, learned Assistant Public Prosecutor vehemently opposed the grant of pre-arrest bail to the petitioners, submitting that the investigation is still underway and several material witnesses remain to be examined. It is contended that if the petitioners are granted pre-arrest bail, there is a strong likelihood that they may abscond, thereby hampering the

ongoing investigation and evading the process of law. In view of the foregoing submissions, it is urged that the petition be dismissed.

4. Thoughtful consideration is bestowed on the arguments advanced by the learned counsel for the petitioners and the learned Assistant Public Prosecutor. I have perused the entire records.

5. In the light of the case of the prosecution and the contentions of the learned counsel for the petitioners and the learned Assistant Public Prosecutor, now the point for consideration is:

> *"Whether the Petitioners/Accused Nos.2 to 4 are entitled for grant of pre-arrest bail?"*

6. The de-facto complainant alleged that the petitioners have committed offences of criminal breach of trust and cheating. The Hon'ble Apex Court in **Delhi Race Club (1940) Ltd. v. State of U.P.,**[1] at paragraph Nos.44 & 49 held as under:

> *"44. At the most, the Court of the Additional Chief Judicial Magistrate could have issued process for the offence punishable under Section 420IPC i.e. cheating but in any circumstances no case of criminal breach of trust is made out. The reason being that indisputably there is no entrustment of any property in the case at hand. It is not even the case of the complainant that any property was lawfully entrusted to the appellants and that the same has been dishonestly misappropriated. The case of the complainant is plain and simple. He says that the price of the goods sold by him has not been paid. Once there is a sale, Section 406IPC goes out of picture. According to the complainant, the invoices raised by him were not cleared. No case worth the name of cheating is also made out.*
> *49. From the aforesaid, there is no manner of any doubt whatsoever that in case of sale of goods, the property passes to the purchaser from the seller when the goods are delivered. Once the property in the goods passes to the purchaser, it cannot be said that the purchaser was entrusted with the property of the seller. Without entrustment of property, there cannot be any criminal breach of trust. Thus, prosecution of cases on charge of criminal breach of trust, for failure to pay the consideration amount in case of sale of goods is flawed to the core. There can be civil remedy for the non-payment of the consideration amount, but no criminal case will be maintainable for it. [See : Lalit Chaturvedi v. State of U.P. [Lalit Chaturvedi v. State of U.P., (2024) 12 SCC 483 : 2024 SCC OnLine SC 171] and Mideast Integrated Steels Ltd. v. State of Jharkhand [Mideast Integrated Steels Ltd. v. State of Jharkhand, 2023 SCC OnLineJhar 301"*

[1](2024) 10 SCC 690

7. The Hon'ble Apex Court in **Arshad Neyaz Khan v. State of Jharkhand**[2], at paragraph No.21 held as under:

> *"21. Furthermore, it is pertinent to mention that if it is the case of the complainant/respondent No. 2 that the offence of criminal breach of trust as defined under Section 405 IPC, punishable under Section 406 IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined in Section 415, punishable under Section 420 IPC. This Court in Delhi Race Club (1940) Limited v. State of Uttar Pradesh, (2024) 10 SCC 690 observed that there is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making 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 misappropriates the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver a property. In such a situation, both offences cannot co-exist simultaneously. Consequently, the complaint cannot contain both the offences that are independent and distinct. The said offences cannot co-exist simultaneously in the same set of facts as they are antithetical to each other."*

8. Section 406 of 'the I.P.C.' deals with criminal breach of trust, which presupposes lawful entrustment of property followed by dishonest misappropriation or conversion. Section 409 of 'the I.P.C.' addresses criminal breach of trust public servant, or by banker, or merchant or agent. In contrast, Section 420 of 'the I.P.C.' addresses cheating and dishonestly inducing delivery of property, which requires deception at the inception of the transaction. Thus, while Section 409 of 'the I.P.C.' arises from a breach of an existing fiduciary relationship by a public servant, Section 420 of 'the I.P.C.' is predicated upon fraudulent inducement at the very outset. The two offences, therefore, operate in distinct spheres.

9. As seen from the record, in the year 2017, based on the complaint lodged by the de-facto complainant, an FIR was registered under Crime No. 104 of 2017 of Alipiri Police Station, Tirupati Urban. Subsequently, a charge

[2]2025 SCC OnLine SC 2058

sheet was filed against accused No.1 for the alleged offences under Sections 120-B, 420, and 409 read with 34 of 'the I.P.C.', and by showing petitioners /accused Nos. 2 to 4 as absconding. The offences of defraud or cheating and misappropriation or breach of trust could not co-exist.

10. It is also relevant in the context to mention that the learned Co-ordinate Bench of this Court vide its Order dated 09.05.2025 in Criminal Petition Nos.5406 of 2025, wherein relief was granted to the petitioners herein directing the Investigation Officer to follow the procedure prescribed under Section 35(3) of 'the BNSS'.

11. Considering the facts and circumstances of the case, the nature and gravity of allegations levelled against the petitioners, as there are no specific overt acts attributable to the petitioners; this Court is inclined to enlarge the petitioners/accused Nos.2 to 4 on pre-arrest bail with some stringent conditions.

12. In the result, the Criminal Petition is allowed with the following stringent conditions:

> i. In the event of the arrest in the above crime, the petitioners/Accused Nos.2 to4 shall be enlarged on bail by executing a bond for a sum of Rs.25,000/-(Rupees Twenty-Five Thousand Only) each, with two sureties, each for the like sum to the satisfaction of the arresting police officials;

ii. The petitioners/accused Nos.2 to 4 shall make themselves available for investigation as and when required;

iii. The petitioners/accused Nos.2 to 4 shall not cause any threat, inducement or promise to the prosecution witnesses.

iv. The petitioners/accused Nos.2 to 4 shall appear before the Station House Officer concerned once in a week i.e. on every Saturday, between 10.00 a.m. and 5.00 p.m., till filing of the charge sheet.

v. The petitioners/accused Nos.2 to 4 shall not leave the limits of the State of Andhra Pradesh without the express permission from the Station House Officer concerned.

vi. The petitioners/accused Nos.2 to 4 shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court.

vii. The petitioners/accused Nos.2 to 4 shall surrender their passports, if any, to the Investigating Officer. If they claim that they do not have passport, they shall submit affidavits to that effect to the Investigating Officer.

DR. Y. LAKSHMANA RAO, J

Date: 06.10.2026
DRNR

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL PETITION NO: 8644 of 2026

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