APHC010546542026

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

TUESDAY, THE 27th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL PETITION NO: 9139/2026

Between:

1. GUTHULA MADHUSUDHANARAO, S/O GUTHULA KRISHNA, AGED ABOUT 48 YEARS,R/O DOOR NO. 2-17-14, KRISHNA MANDEER STREET,36TH WARD, BHIMAVARAM, SIVARAOPETA,WEST GODAVARI DISTRICT, ANDHRA PRADESH - 534202.

...PETITIONER/ACCUSED

AND

1. THE STATE OF ANDHRA PRADESH, REP. BY ITS PUBLIC PROSECUTOR,HIGH COURT OF ANDHRA PRADESH AT AMARAVATI,GUNTUR DISTRICT-522238
2. THE ADDITIONAL DIRECTOR GENERAL OF POLICE, ,CRIME INVESTIGATION DEPARTMENT CID,ANDHRA PRADESH, MANGALAGIRI-522503.

...RESPONDENT/COMPLAINANT(S):

Counsel for the Petitioner/accused:

1. JAMI MADHAVI

Counsel for the Respondent/complainant(S):

1. PUBLIC PROSECUTOR

The Court made the following:

ORDER:

The Criminal Petition has been filed under Sections 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity 'the BNSS'), by the Petitioner/Accused No.3 for granting of pre-arrest bail in connection with Crime No.28 of 2022 of CID Police Station, Mangalagiri, Guntur District, registered for the alleged offences punishable under Sections 420, 403, 409 read with 120-B of the Indian Penal Code, 1860 (for brevity, 'the I.P.C.,') and Section 13(2) of the Prevention of Corruption Act, 1988 (for brevity, 'the Act').

2. Ms. Jami Madhavi, the learned counsel for the Petitioner, submits that the Petitioner is innocent of the alleged offences and has been falsely implicated in the case. He is a law-abiding citizen and is the sole earning member of his family. The Petitioner is ready and willing to cooperate with the investigation and undertakes to appear before the Investigating Officer as and when required and to strictly adhere to any conditions that may be imposed by this Court. Hence, it is urged to allow the Criminal Petition.

3. *Per contra*, Mr. A. Sai Rohith, the learned Assistant Public Prosecutor, vehemently opposed the grant of pre-arrest bail to the Petitioner, submitting that the investigation is still underway and several material witnesses remain to be examined. It is contended that, if the Petitioner is granted pre-arrest bail at this stage, there is a likelihood of his interfering with the investigation, influencing the witnesses, or tampering with the prosecution evidence. Hence, it is urged to dismiss the Criminal Petition.

4. Heard the learned counsel for the Petitioner, the learned Assistant Public Prosecutor. Perused the record.

5. As seen from the record, this Court, in Crl.P. Nos. 381, 386, 747 and 888 of 2026, passed a common order directing the Investigating Officer to comply with Section 35(3) of 'the BNSS'/Section 41-A of 'the Cr.P.C.' against the accused. In similar facts and circumstances of the case, the Petitioner filed Crl.P.No. 6359 of 2026, in which this Court directed the Petitioner to approach the learned Sessions Judge in the first instance. The Petitioner approached the learned Sessions Judge, dismissed the pre-arrest bail petition in Crl.P. No. 693 of 2026 vide order dated 23.09.2026, The C.I.D. had registered a case against the Petitioner and other accused for the alleged offences punishable under Sections 420, 403 and 409 read with Section 120-B of 'the I.P.C.' and Section 13(2) of 'the Act'. The Petitioner is not a public servant; he is a borrower and has a fixed abode.

6. The de-facto complainant alleged that the Petitioner has 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*

[1](2024) 10 SCC 690

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"

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. 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 406 of 'the I.P.C.,' arises from a breach of an existing fiduciary relationship, Section

[2]2025 SCC OnLine SC 2058

420 of 'the I.P.C.,' is predicated upon fraudulent inducement at the very outset. The two offences, therefore, operate in distinct spheres.

9. The Hon'ble Apex Court in **N. Raghavender v. State of Andhra Pradesh**[3], it was observed that prosecution had failed to prove charges under Section 409, 420, and 477A of 'the I.P.C., and Section 13(2) read with Section 13(1)(d) of the P.C Act.,' on the ground that no financial loss was caused to the bank, or to any customer; no conspiracy was established; the bank official committed gross misconduct by misusing his position, by acting himself in dereliction of his duties, but there was no criminal misconduct fall under the ambit of Section 409, 420 and 477A of 'the I.P.C.

10. The Hon'ble Apex Court in K. **Bharathi Devi v. State of Telangana**[4], at paragraph No.34, it is held as under:

> *"34. .It has been held that there are certain offences which overwhelmingly and predominantly bear civil flavor having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or a family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, the High Court would be justified in quashing the criminal proceedings, even if the offences have not been made compoundable."."*

11. Having considered the entire facts and circumstances of the case, and the nature and gravity of the allegations levelled against the Petitioner/Accused No.3, this Court is inclined to enlarge the Petitioner/Accused No.3 on pre-arrest bail, subject to the following stringent conditions.

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[3] Crl.A.No.5 of 2010 dated 13.12.2021
[4] (2024) 10 SCC 384

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

i. In the event of the arrest of the Petitioner, the Petitioner/Accused No.3 shall be enlarged on bail by executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with two sureties for the like sum to the satisfaction of the arresting police officials;

ii. The Petitioner/Accused No.3 shall make himself available for investigation as and when required;

iii. The Petitioner/Accused No.3 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.

iv. The Petitioner/Accused No.3 shall not leave the limits of the State of Andhra Pradesh without the express permission from the Station House Officer concerned.

v. The Petitioner/Accused No.3 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.

vi. The Petitioner/Accused No.3 shall surrender his passport, if any, to the Investigating Officer. If he claims that he does not have passport, he shall submit an affidavit to that effect to the Investigating Officer.

DR. Y. LAKSHMANA RAO, J

Date: 27.10.2026
SSA/EV

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

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