



2026:AHC:64843

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL MISC. BAIL APPLICATION No. - 1381 of 2026

Vikash Kumar

.....Applicant(s)

Versus

State of U.P.

.....Opposite
Party(s)

Counsel for Applicant(s) : Pramod Kumar, U.C. Chaturvedi
Counsel for Opposite Party(s) : G.A.

Court No. - 67

HON'BLE ARUN KUMAR SINGH DESHWAL, J.

1. Heard Sri Pramod Kumar, learned counsel for the applicant, Sri Bhupendra Pal Singh, learned A.G.A. for the State and perused the record.
2. Instant bail application has been filed with a prayer to release the applicant on bail during the trial in Case Crime No. 130 of 2025, under Sections 316(2), 316(5), 318(4) BNS, Police Station- Purkaji, District Muzaffar Nagar.
3. Contention of learned counsel for the applicant is that the applicant has been falsely implicated in the present case though there is no material against him and entire allegations are vague and incorrect. Learned counsel for the applicant further submitted that even if it is accepted that the applicant did not deposit the money collected from members of self help group on behalf of first informant's company, even then despite giving his undertaking dated 28.01.2026 to deposit that amount, it is not necessary to return that amount. In support of his contention, learned counsel for the applicant, relied upon the judgement of the Apex Court in **Prantik Kumar vs. State of Jharkhan (SLP (Crl.) Diary No. 4297 of 2026**; wherein the Apex Court has observed that while granting bail/anticipatory bail, Court should not pass a conditional order of deposit of a particular amount and then exercise its jurisdiction.

4. Learned counsel for the applicant next submitted that in the present case, police invoked Section 318(4) BNS corresponding Section 420 IPC as well as Section 316(2) BNS corresponding Section 406 IPC, therefore, it is absolutely illegal and no offence can be said to be committed by the applicant in view of the judgment of the Apex Court in **Delhi Race Club (1940) Ltd. vs. State of U.P. (AIR 2024 Supreme Court 4531)**. Learned counsel for the applicant has also submitted that co-accused Rahul Kumar (collection agent) and Nakul Chauhan (not collecting agent) having similar role to that of the applicant have been released on bail by co-ordinate Bench of this Court in Criminal Misc. Bail Application No.44948 of 2025 and 215 of 2026, against whom there are liability of Rs.55,372/- and Rs.167,000/- respectively. Therefore, the applicant is also entitled to be released on bail on the ground of parity. It is lastly submitted that the applicant has no criminal history and he is languishing in jail since 12.11.2025. In case, he is granted bail, he will not misuse the liberty of bail and would cooperate in the trial proceedings.

5. On the other hand, learned A.G.A. for the State vehemently opposed the prayer for bail and submitted that the applicant after collecting money of Rs. 2,11,353 from 33 women, who were members of self help group sponsored by the first informant's company, instead of depositing the same in the company of first informant, misappropriated the same, therefore, the applicant has committed offence under Section 316(5) BNS which is punishable up to 10 years. He further submitted that in view of Section 221 Cr.P.C., if a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences. It is further submitted by learned AGA that illustrations (a) of Section 221 Cr.P.C. (Section 244 of BNSS) when A is an accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of

trust or cheating. Therefore, in case of doubt, it is legally permissible that accused may be charged with Sections 420 (Section 318(4) BNS) and 406 IPC (Section 316 (2) BNS). Therefore the judgement of the Apex Court in **Delhi Race Club (supra)** appears to be contrary to Section 221 Cr.P.C. (corresponding Section 244 BNS).

6. Learned AGA also relied upon the judgement of the Apex Court in the case of **Dr. Nallapareddy Sridhar Reddy vs State of Andhra Pradesh; (2020) 12 SCC 467**, wherein Apex Court observed that where ingredients are attracted, Sections 420 and 406 IPC can be invoked against the accused. Therefore, he is not entitled to be released on bail.

7. Upon considering the submissions of learned counsel for the parties, the legal question arises whether invoking Section 420 IPC (corresponding Section 318(4) BNS) and 406 IPC (Corresponding Section 316(2) BNS) simultaneously make the FIR or the proceeding erroneous in view of the judgment of the Apex Court in **Delhi Race Club (supra)**.

8. The Apex Court, in the case of **Delhi Race Club (supra)**, while dealing with the proceeding of complaint case, observed that for the case of cheating (Section 420 IPC (corresponding Section 318(4) BNS) dishonest intention of an accused starts with the very inception of transaction. While in case of breach of trust, a person who comes into possession of movable property lawfully but subsequently retain it or convert for its own use against the term of contract with dishonest intention. The Court further observed that before summoning a person in complaint case, the court is required to apply his mind whether ingredients of criminal breach of trust or cheating is made out. In case, transaction is purely civil in nature and there is no ingredients of cheating or breach of trust then the proceeding of complaint case deserves to be quashed. However, the Apex Court also observed that there is fine distinction between the mere breach of contract and offence of criminal breach of trust and cheating, therefore, where there is only breach of contract and proceeding for criminal breach of trust or cheating should not be allowed to continue. At the end of concluding part, the Apex Court also observed that in **Delhi Race Club (supra)**, there is fine distinction between the

offence of cheating and criminal breach of trust but both the offences are independent and distinct, therefore, both the offences cannot co-exist simultaneously in the same set of facts but Apex Court has not observed that even if the section for criminal breach of trust and cheating have been simultaneously invoked then proceeding would be erroneous.

9. Perusal of the judgement of **Delhi Race Club (supra)**, it is clear that Section 221 Cr.P.C. (corresponding Section 244 BNSS) has not been placed before the Hon'ble Apex Court by any of the parties which permits the invocation of two sections simultaneously, where there is doubtful what offence has been committed. Section 221 of Cr.P.C. (corresponding Section 244 BNSS) is quoted as under;

"Section 221. Where it is doubtful what offence has been committed - (1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating

(b) In the case mentioned, A is only charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be), though he was not charged with such offence.

(c) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false."

10. From perusal of Section 221 Cr.P.C. (244 BNSS) and its illustration (a), it is clear, if single act or series of acts of such nature that it is doubtful which of several offences the facts may attract, then the accused may be charged having committed of

all or any of such offences including Sections 420 IPC (318(4) BNS) and 406 IPC (316(2) BNS). Therefore, there is no bar for charging an accused under Section 420 IPC (318(4) BNS) and 406 IPC (316(2) BNS) where the fact creates doubt which offence is actually committed.

11. Therefore, in view of the above analysis, submission of counsel for the applicant in the present case that the proceeding is erroneous for the reason that the offence of cheating and criminal breach of trust simultaneously invoked, is absolutely misconceived.

12. Therefore, after considering the submissions of learned counsel for the parties and taking into account the fact that initially applicant himself proposed to deposit the amount collected from poor women (members of self help group) on behalf of first informant's company. Today he refused to comply his undertaking dated 28.01.2026. Even otherwise, the poor women themselves recorded their statements that it is applicant who collected the money from them on behalf of the first informant's company but he did not deposit the same in the company, therefore, this Court is not inclined to release the applicant on bail. So far as parity with co-accused Nakul Chauhan (not collection agent) and Rahul Kumar (collection agent), who have been released on bail by co-ordinate Bench of this Court is concerned, from perusal of statement of victim girls Rubi, Laxmi, Sahnaz, Samarjahan, Munifa, Nusarat, Rubi, Neelam, Anita, Sudesh, Sahnuma, Sufia, Sabia, Rukhsar Bobby and Munni, it is clear that specific allegation has been made against the present applicant but no such allegation has been made against co-accused Rahul Kumar (collection agent) and Nakul Chauhan (not collection agent). Therefore, the applicant is not entitled to claim parity with co-accused Rahul Kumar and Nakul Chauhan. Therefore, this Court is not inclined to accept the contention of learned counsel for the applicant.

13. Accordingly, the present bail application is **rejected**.

March 28, 2026
A.Kr.

(Arun Kumar Singh Deshwal,J.)