

GAHC040014832024

2024:GAU-AP:1004



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : BA/111/2024

Hitesh Pao
Son of Shri Dharma Kanta Pao, VTC Kemi, PO Leku Sub, Dhemaji District, Assam
787060

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Tabit Tapak, T Tabing, Aso Dalbong

Advocate for the Respondent : P P of AP,

BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 13-11-2024

Heard Mr. T. Tapak, learned counsel for the petitioner. I have also heard Mr. T. Ete, learned Additional PP for the State of AP.

2. This is an application filed under Section 439 of the Criminal Procedure Code, 1973 (Section 483 of the BNSS, 2023) praying for grant of bail to the accused, Shri. Dheeraj Pao, who has been arrested in connection with Chimpu

PS case no. 09/2024 under section 420 IPC.

3. The case of the petitioner is that one Shri. Jumda Padu lodged a written FIR before the OC, PS, Chimpu against the accused, Shri. Dheeraj Pao, for fraud and cheating alleging that the accused introducing himself as Director of M/S Rhodus Estates Private Limited had approached him for financial assistance to carry out installation of Airtel Tower works in the State of AP. Thereupon, he had provided finance for the said work according to the terms and conditions of the Memorandum of Understanding executed by them on 27.10.2022. Accordingly, he arranged funds amounting to Rs. 92 Lakhs only and deposited it into the account of the accused. However, the accused has failed to fulfill his commitment and has not refunded the amount given to him. It is further alleged that the accused is evading communication and has shown no intention to return the amount, indicating a clear intention to commit fraud. It is also alleged that now it has come to the light that the accused is not the Director of M/S Rhodus Estates Private Limited. Basing on the above FIR, the police has registered the above Chimpu PS case no. 09/2024 against the accused under Section 420 IPC.

4. It is submitted that after registration of the case, the police has issued summons against the accused under section 41 (A) of Cr.PC requiring his appearance on 12.02.2024 and 01.05.2024. However, the accused failed to appear before the IO of the case and as a result, the accused, Shri. Dheeraj Pao, was arrested on the ground for not cooperating with the investigation process. The further case of the petitioner is that from the mere perusal of the FIR, the allegation against the accused is of civil nature, where the informant has extended finance amounting to Rs. 92 Lakhs for executing work as Sub-

Contractor for Installation of Airtel Tower as per the MOU signed between them.

5. It is further submitted that, during the pendency of the investigation, the accused has already refunded sum of Rs. 48 Lakhs by depositing in his account and some Rs. 35 Lakhs were also repaid to the informant, however, the informant has disputed the said amounts. According to the learned counsel for the petitioner, the accused now has to refund only about Rs. 9 Lakhs to the informant, which according to the petitioner he can refund the same, if the accused is released on bail. The further contention of the petitioner is that since the police has thoroughly investigated the case and his statement has also been recorded, no further custodial interrogation of the accused is required and hence, prays for his release on bail.

6. In support of his submission, the learned counsel for the petitioner has relied upon the decision of ***Dalip Kaur and Ors Vs. Jagnar Singh and Anr*** reported in ***(2009) SCC 5368***. The relevant paragraph is reproduced herein below:

"10. Sections 405 and 415 of the Indian Penal Code defining 'criminal breach of trust' and 'cheating' respectively read as under:

"405 - Criminal breach of trust.-Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

"415. Cheating—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause

damage or harm to that person in body, mind, reputation or property, is said to 'cheat'."

An offence of cheating would be constituted when the accused has fraudulent or dishonest intention at the time of making promise or representation. A pure and simple breach of contract does not constitute an offence of cheating.

12. *The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Indian Penal Code. {See Ajay Mitra v. State of M.P.1 [(2003) 3 SCC 11]"*

7. Mr. T. Ete, learned Additional PP while referring to the CD as well as the Status Report of the case submits that from the very inception, the surrounding circumstances and the conduct of the accused, it is clear that the accused had an intention to cheat the informant. It is also clear from the fact that during interrogation, he introduced himself as Director of M/S Rhodus Estates Private Limited, when he was not, and he got a sum of Rs. 92 Lakhs deposited in his account for carrying out work as Sub Contractor for "Installation of Airtel Tower". And after receipt of money, the accused failed to refund the same amount till date. It is further submitted that the investigation of the case is still at the nascent stage and the involvement of other individuals also needs to be ascertained in this case for proper investigation. The learned Additional PP further submits that as per record, the accused is also involved in various multiple cases of the similar nature viz; (i) Ita PS Case No. 89/24, under Section 120B/420/34 IPC (ii) Deomali PS Case no. 05/24, under Section 406/420 IPC (iii) CR Case No. 24/2024, under section 138/142 NI Act, and since the case is

still under active investigation, he opposed to the grant of bail to the accused at this stage.

8. Heard the submissions advanced by both the learned counsel for the parties.

9. Upon hearing the parties and on perusal of the records, it appears that the informant and the accused, Shri. Dheeraj Pao, and another had entered into an agreement by executing Memorandum of Understanding dated 27.10.2022. Pursuant to the said Memorandum of Understanding, the informant had invested 50 Lakhs and one M/S Neri Engineering has invested Rs. 42 Lakhs by depositing the amount in the account of the accused. However, due to the dispute which arose between the parties, the informant demanded back the amount from the accused, which the accused failed to refund it on time and on his failure to refund the said amount on time, the informant has lodged the present FIR resulting in the registration of the case and subsequent arrest of the accused.

10. Admittedly, the accused has already repaid a sum of Rs. 48 Lakhs by depositing it in the account of the informant. The accused while admitting that Rs. 9 Lakhs is yet to be refunded to the informant, he also contended that he is ready to refund the same which is possible, if he is released on bail.

11. Considering the nature of the agreement entered into between the parties and the subsequent repayment of some amount made by the accused to the informant, it appears that the case is of civil nature except for the allegation that the accused introduced himself as the Director of M/S Rhodus Estates Private Limited, which is still under investigation.

12. In view of the facts and circumstances as stated above and considering the case in its entirety, I am of the view that the bail prayer for release of the accused, Shri. Dheeraj Pao, can be considered with certain conditions.

13. Accordingly, this bail application is allowed.

14. The accused is directed to be released on bail on execution of bail bond of Rs. 50,000/- (Rupees Fifty Thousand) with two sureties of like amount to the satisfaction of the learned Judicial Magistrate First Class, Yupia with the following conditions;

- (i) That the accused shall cooperate and appear before the IO of the case as and when called for;
- (ii) That the accused shall not directly or indirectly make any inducement, threat or promises to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to any Police Officer;
- (iii) That the accused shall not leave the jurisdiction of the Judicial Magistrate First Class, Yupia without previous permission of the said Court.

15. With the above, this bail application is allowed and disposed of.

JUDGE

Comparing Assistant