

**HIGH COURT OF TRIPURA
AGARTALA
A.B.No.65 of 2025**

1. Sri Jhutan Saha,
son of Late Birendra Saha
of Ramkrishna para, East Pratapgarh,
P.S. East Agartala, District-West Tripura

2. Sri Nandan Ghosh,
son of Ranjit Ghosh
of Rikshaw Tilla, Subhash Nagar,
P.S. East Agartala, District-West Tripura

----- Accused Petitioners(s)

Versus

The State of Tripura,

-----Respondent(s)

For Applicant(s)	: Mr. Samrat Ghosh, Adv.
For Respondent(s)	: Mr. Raju Datta, P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

04/09/2025

This pre-arrest bail application is filed by the two petitioner accused namely Sri Jhutan Saha and Sri Nandan Ghosh for granting them pre-arrest bail in connection with East Agartala P.S. Case No.75/25 under Section 406/420/506/34 of IPC.

[02] Heard Learned counsel, Mr. S. Ghosh appearing on behalf of the petitioner accused and also heard Learned P.P., Mr. R. Datta appearing on behalf of the State-respondent. As ordered, Learned P.P. has produced the CD.

[03] At the time of hearing, Learned counsel for the petitioner accused drawn the attention of this Court that this present case is not maintainable against the present petitioner accused persons because the dispute completely relates to civil nature and admittedly, there was an agreement in between the informant of this case and two other persons i.e. one Bidhan

Sarkar and Jhutan Saha who is one of the petitioner herein for selling of land measuring .050 acres i.e. 2 gandas 2 karas for an amount of Rs.7,00,000/- and in the agreement it was stipulated that within eleven months the agreement would be settled and those persons namely Jhutan Saha and Bidhan Sarkar would execute the deed. But surprisingly, within the stipulated period, the informant could not pay the amount. However, Rs.80,000/- was returned back to the informant of this case but the rest amount could not be returned back because the said money was utilized for the purpose of development and there was no malafide intention on behalf of the present petitioner accused persons but the police is harassing the present petitioners and as such, they have prayed for issuing notice to the accused persons under Section 41(a) of Cr.P.C. and for granting the concession of pre arrest bail.

[04] On the other hand, Learned P.P. strongly opposed the submission made by Learned counsel for the accused petitioner and submitted that there is clear evidence of commission of offence punishable under Section 420 of IPC against the present petitioners and Learned Sessions Judge rightly considering the materials on record rejected the bail application and as such, there is no scope at this stage to consider the bail application filed by the present petitioner accused persons and urged for dismissal of the same.

[05] The prosecution case in short is that the informant of this case laid one complaint to the Court of Learned CJM, Agartala alleging inter alia that he entered into an agreement on

September, 2019 to purchase a piece of land from one Jhutan Saha and Bidhan Sarkar for a consideration price of Rs.7,00,000/- and accordingly advance payment of Rs.80,000/- was paid and it was agreed that the informant will pay the rest amount of consideration price within eleven months from the date of signing the agreement and thereafter, those persons will execute the deed. On 01.09.2020, another additional payment of Rs.50,000/- was paid to Jhutan Saha which was acknowledged by him. After that on 07.02.2021, another amount of Rs.2,00,000/- was given to one Nandan Ghosh i.e. one of the petitioner herein i.e. the brother in law of Jhutan Saha. Said Rs.2,00,000/- was paid to Sri Nandan Ghosh by the informant as Bidhan Saha and Jhutan Sarkar orally requested the informant to pay the said money to him and the same was acknowledged by said Nandan Ghosh and in total the informant paid Rs.3,30,000/-. But despite the passage of time, registration process was delayed due to different plea taken by the accused petitioner No.1 and Bidhan Sarkar and as such, the informant demanded for returning back the amount. But they failed to fulfill the request. Thereafter, he approached to nearby club when Bidhan Sarkar returned back Rs.80,000/- on 01.09.2023 and submitted that the remaining amount was since taken by Sri Jhutan Saha. But Jhutan Saha denied to receive the amount of Rs.2,50,000/- and also he denied about taking of any money by Sri Nandan Ghosh amounting to Rs.2,00,000/-. He submitted a complaint to East Agartala P.S. but no case was registered and after that he made a request to SP but no action was taken and after that he has filed complaint to the Court of

Learned CJM which was sent to O/C of the concerned P.S. for investigation and accordingly, the present case was registered.

[06] At the time of hearing, Learned counsel for the petitioner accused relied upon one citation of Hon'ble Supreme Court of India in **V.Y. Jose and Another versus State of Gujarat and Another reported in (2009) 3 SCC 78** wherein in para Nos.12, 13 and 14 Hon'ble Apex Court observed as under :

"12. Ordinarily, we would not have referred to the correspondences passed between the parties but, indisputably, the said correspondences have been referred to in the complaint petition itself. Even before us, a contention had been raised by Mr. Jain that the appellants' letter dated 7.4.1998 was not replied to.

13. Section 415 of the Indian Penal Code defines cheating as under :

"Section 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'."

14. An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied :

"i) deception of a person either by making a false or misleading representation or by other action or omission;

(ii) fraudulently or dishonestly inducing any person to deliver any property; or

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit."

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

He also referred another citation of the Hon'ble Supreme Court of India in **Uma Shankar Gopalika versus State of Bihar and Another** reported in **2004 SCC 375** wherein in para No.6 Hon'ble Supreme Court observed as under :

"6" Now the question to be examined by us is as to whether on the facts disclosed in the petition of complaint any criminal offence whatsoever is made out much less offences under

Sections 420/120-B IPC. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs.4,20,000/-, they would pay a sum of Rs.2,60,000 to the complainant out of that but the same has never been paid. Apart from that there is no other allegation in the petition of complaint. It was pointed out on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the Consumer Forum in relation to the claim of Rs.4,20,000. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC."

Referring the same, Learned counsel submitted that since the alleged allegation of the informant discloses dispute of civil nature and as such, this present case is not maintainable and he urged for granting pre-arrest bail to the present petitioner accused persons.

[07] To counter the submission, Learned P.P. submitted that if prima facie it appears that the allegation of the informant discloses dispute of civil nature still in this case there is material against the petitioner accused Nandan Ghosh who took the money with acknowledgment by putting his signature on reversed side of the alleged agreement and this money was received by him at the request of another petitioner Jhutan Saha. So, prima facie they cannot escape from the liability of commission of offence punishable under Section 420 of IPC.

[08] I have perused the Court complaint which was later on treated as FIR and also the statements of witnesses so far recorded by IO in course of investigation under Section 161 of Cr.P.C. Admittedly, there is no dispute on record regarding execution of agreement on 20.09.2019 amongst the rival parties. From the record it appears that the informant paid Rs.3,30,000/-

to the accused persons of the case out of which Rs.2,00,000/- was received by Nandan Ghosh and by this time, one of the party to the agreement Bidhan Sarkar refunded back Rs.80,000/- to the informant of this case. Learned Sessions Judge at the time of disposal of the pre-arrest bail application came to the observation that by refunding the money the petitioner had admitted the allegation of the informant and there were materials against accused Nandan Ghosh in the CD.

[09] At the time of hearing of argument, Learned counsel for the petitioner accused made one alternative arguments that even no notice was issued by the IO under Section 41-A of Cr.P.C. in view of the judgment of the Hon'ble Supreme Court of India in **Arnesh Kumar versus State of Bihar.**

[10] However, after hearing both the parties the following facts come before this Court :

(1) That there was agreement in respect of transfer of land measuring 2 gandas 2 karas for an amount of Rs.7,00,000/- under Mouja-Pratapgarh. (2) That the informant paid Rs.80,000/- to the second parties namely Jhutan Saha and Bidhan Sarkar on 20.09.1999. (3) That the informant as alleged by him failed to approach to the Civil Court when the second parties of the agreement failed to fulfill the terms of agreement or the contract. (4) The informant during subsistence of the agreement more paid Rs.50,000/- to Jhutan Saha (5) Due to intervention of the local club, one of the party of the agreement namely Bidhan Sarkar refunded back Rs.80,000/- to the informant of this case (6) the informant thereafter paid more Rs.2,00,000/- to one Nandan

Ghosh i.e. one of the petitioner of this case on 07.02.2021 at the request of Jhutan Saha and Bidhan Sarkar. He also put his signature on the reversed side of the agreement.

[11] In course of hearing of argument, Learned counsel for the accused petitioner admitted that they took the money but as there was violation of terms and condition by the informant, so they are not ready to refund back the money through this criminal proceeding. I have also perused the CD. From the CD it appears that the IO of this case in pursuance of the judgment of **Arnesh Kumar** has not issued any notice to the petitioner namely Jhutan Saha.

[12] So, after hearing both the sides also it appears that the informant could not take proper recourse of law in due course of time. But at the same time, the accused persons also did not show any proper gesture to refund back the money. The accused Nandan Ghosh who is not party to the agreement also at the same time defrauded the present informant of this case and as such, in the considered opinion of this Court this is not a fit case to grant concession of pre-arrest bail to the petitioner accused petitioner, Nandan Ghosh and accordingly, his pre-arrest bail application stands rejected and dismissed.

[13] In respect of accused Jhutan Saha who was a party to the agreement it appears that no notice was served upon him by the IO in pursuance of the direction passed by Hon'ble Supreme Court of India in Arnesh Kumar versus State of Bihar and as such, the IO before taking any action against him shall serve notice under Section 41-A of Cr.P.C. and thereafter shall proceed in

accordance with law. The subject matter of the citations as referred by Learned counsel for the petitioner accused are distinguishable in facts and as such, the same principle in toto cannot be applied in this case. However, it is also made clear that the informant shall have the liberty to take proper recourse of law, if he is so advised against the parties to the agreement.

With this observation, the present pre-arrest bail application stands disposed of. Supply a copy of this order to Learned counsel of the petitioner accused persons.

Return back the CD to the I/O through Learned P.P. along with a copy of this order.

Send down the record of Learned Trial Court along with a copy of this order.

With this observation, the present application stands disposed of.

JUDGE

MOUMITA
A DATTA

Digitally signed by
MOUMITA DATTA
Date: 2025.09.05
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Sabyasachi B