

HIGH COURT OF TRIPURA
AGARTALA

AB No.62 of 2025

1.Mrs Rosamma Sabu

W/o- Sri Sabu Mathew, resident of Sreekanda- Mangalam, Kottayam District, Kerala, 686562, presently residing at Banikya Chowmuhan, Khayerpur, P.S- Bodhjungnagar, District- West Tripura.

2.Sri Sabu Mathew

S/o- Matheu Pulinkalayil, resident of Sreekanda- Mangalam, Kottayam District, Kerala, 686562, presently residing at Banikya Chowmuhan, Khayerpur, P.S- Bodhjungnagar, District- West Tripura.

....Petitioner(s)

Versus

The State of Tripura represented by Ld. P.P, High Court of Tripura, Agartala.

....Respondent(s)

For Petitioner(s)	:	Mr. Arindam Bhattacharjee, Advocate. Mr. B.K.Nath, Advocate.
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For Respondent(s)	:	Mr. R.Saha, Addl.PP.
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Date of hearing	:	12.01.2026
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Date of Pronouncement/ delivery of Judgment / Order	:	30.01.2026
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Whether fit for reporting	:	
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Yes	No
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HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT AND ORDER

Heard Ld. Counsel of both sides.

[2] This application for pre-arrest bail under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (earlier Section 438 Cr.P.C) is submitted by the petitioners (husband and wife) in connection with Bodhjungnagar

P.S. Case No.2023 BJN 034 registered under Sections 420, 468, 471 and 120(B) of the Indian Penal Code (for short, 'IPC').

[3] The FIR was lodged by the authorized signatory of an organization, namely, R1 International (India) Pvt. Ltd. on 28.03.2023, alleging, inter alia, that their company had entered into an agreement with another organization, namely, 'Rose Rubber', of which the present petitioners are the proprietor, for purchase of natural rubber for supply to its own customers. As per their agreement, from the side of R1 International (India), they made payment of a total sum of Rs.93,29,252/- against their invoices and same are reflected in the FIR in the following manner:

Invoice No. No. RR/22-23/18 paid Rs.34,16,236 (Net of TDS Rs.3619, Incidental chg. Rs.100) [Exhibit-X(a)]

Invoice No. No. RR/22-23/19 paid Rs.34,16,236 (Net of TDS Rs.3619, Incidental chg. Rs.100) [Exhibit- X (a)]

Invoice No. No. RR/22-23/20 paid Rs.24,96,780 (Net of TDS Rs.2645, Incidental chg. Rs.100) [Exhibit- X (b)]

[4] It is also alleged that the petitioners provided to R1 International (India) all the documents such as Invoice, Lorry Receipt issued by the transporter, namely Fortigo Transport Agency Pvt. Ltd., Weight slip etc. along with photographs of the vehicle loaded with those items to give the impression that the goods were dispatched by the petitioners. But, ultimately, it was detected by the informant that all those documents were manipulated and fake; created for the purpose of deceiving them and actually, no goods were supplied to them though the petitioners received the above said amount from R1 International (India) Pvt. Ltd. and even the accused persons have also raised a further bill of Rs.27,77,250/- on 09.01.2023. It is further alleged that even during the said process, said Fortigo Transport Agency was also delivering them the tracking report via WhatsApp on regular basis regarding the movement of those consignments. But ultimately, when the truck did not reach the destination i.e. TVS, Rudrapur within the normal time, the informant, then, inquired

with the transporter and on 14.01.2023, they detected some foul play going on in connivance between said Rose Rubber and Fortigo Transport Agency and ultimately, on 16.01.2023, the Fortigo Transport Agency admitted such manipulation and revealed that the materials/consignment were not at all moved and all the dispatched documents and photographs were fake. They also stated that the materials loaded on 09.01.2023 for Ralson India, Ludhiana was also unloaded, thereafter. On consultation with the petitioner Mr. Sabu Mathew, he also admitted said fact.

[5] According to the informant, after continuous follow-up, the 1st load of rubber to the consignee TVS, Rudrapur was dispatched on 21.01.2023 and was delivered at the destination on 28.01.2023. But, 2nd and 3rd loads addressed to TVS, Rudrapur and Ralson India, Ludhiana were never dispatched despite the fact that already payment had been received by the petitioners. Thereafter, representatives of R1 International (India) visited Agartala, on 31.01.2023, discussed the matter with the petitioners wherein they assured that the remaining pending loads of rubber would be dispatched on 06.02.2023 and 15.02.2023. Discussion was also minuted on paper. But, despite several persuasions, nothing was dispatched by the petitioners and therefore, the FIR was lodged.

[6] Learned counsel, Mr. A. Bhattacharjee appearing for the applicants/petitioners submits that after the FIR was lodged there was a verbal agreement between the parties that the outstanding amount of Rs.46,36,165/- (Rupees forty six lakh thirty six thousand one hundred and sixty five) would be paid in 9 (nine) installments. Accordingly, the petitioners also paid a total of Rs.2,00,000/- [Rupees two lakh] in 3(three) installments. Even earlier thereto, out of three consignments to be delivered to the informant company, one consignment was already delivered and therefore, there was no mens rea of cheating on the part of the petitioners to deceive the informant-company on any occasion and thus, the criminal proceeding does not lie against them.

[7] Learned counsel, Mr. Bhattacharjee also submits that the FIR itself will manifest that it was a contract between the parties centering round which the dispute has arisen and due to financial crisis, the petitioners could not refund the entire amount though they issued two

undated cheques of Rs.34,16,235/- (Rupees thirty four lakh sixteen thousand two hundred and thirty five) only and Rs.24,96,780/- (Rupees twenty four lakh ninety six thousand seven hundred and eighty) only to the informant-company which was also communicated to them vide communication dated 10.02.2023 [Annexure-7 to the bail application].

[8] Therefore, according to Mr. Bhattacharjee, learned counsel, even by encashing those cheques, they can realize their outstanding amount. Learned counsel also in this regard relies on a decision of Hon'ble Supreme Court in the case of **Rikab Birani & Anr. vs. State of Uttar Pradesh & Anr., SLP (Crl.) No.8592 of 2024**, decided on 16.04.2025 wherein the Hon'ble Supreme Court made the reference to another decision of the Supreme Court in the case of **Kunti & Anr. vs. State of UP & Anr., (2023) 6 SCC 109**, wherein, it was observed that a breach of contract does not give rise to criminal prosecution for cheating, unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely the allegation of failure to keep a promise will not be enough to initiate criminal proceedings.

[9] Learned counsel, Mr. Bhattacharjee also submits that on three occasions the I.O. issued notice under Section 41(A) of Cr.PC to both the accused-petitioners but during the period of issuance of first notice, the petitioner, Sabu Mathew was ill and was hospitalized for which the petitioners could not appear before him and accordingly, they informed the matter to I.O. On second occasion, when the notice was issued again by the I.O., at that time both the petitioners were at their hometown in Kerala. Therefore, they could not appear and when third notice was issued to them immediately thereafter, they filed the instant application for pre-arrest bail apprehending that for the purpose of causing their arrest, such notices were issued to them.

[10] Learned counsel, Mr. Bhattacharjee, also submits that it is true that once all the three consignments were loaded in the vehicle through the transporter for the purpose of giving delivery to the victim consignee, but meanwhile, due to sudden fluctuation of the rate towards higher side of the rubber in the market, it was not possible for the accused-petitioners to maintain the contractual rate and therefore, with an

intention to return those items to the original suppliers from whom they had procured such items, they unloaded the same from the vehicle. However, learned counsel also fairly submits that in this regard explaining such situation, no further communication was made by the accused-petitioners to the informant-company.

[11] Learned counsel, Mr. Bhattacharjee further contends that the on-going transaction between the parties though may be of smaller amount itself indicates that the accused-petitioners had/have no criminal mens rea since inception to cheat the informant-company, and therefore, no purpose will be served by taking them into custody by the I.O.

[12] Finally, learned counsel Mr. Bhattacharjee submits that both the petitioners are married couple having three school-going minor children and therefore, their detention will create serious inconvenience and harassment to those children.

[13] Learned Addl. P.P., Mr. Rajib Saha, however, seriously opposes the prayer for bail of the accused-petitioners and submits that 5 times notices were issued to the petitioners, but none of them appeared to explain the situation and such conduct of the petitioners itself indicates that there was criminal intention of the petitioners of cheating. Further, learned Addl. P.P. submits that the vehicle registration numbers as reflected in the Consignment Note (CN), issued by the transporter, do not match with the vehicle registration numbers as reflected in the photographs which were sent by the present petitioners to the informant.

[14] Learned Addl. P.P. further submits that after registration of the FIR, more than two and half years have elapsed but a very paltry sum of amount has been returned by the accused-petitioners to the informant-company and moreover, due to their non-cooperation, the investigation is also not progressing further.

[15] Learned Addl. P.P. also contends that if at all, according to the accused petitioners, the case is of civil nature, they could very well appear before the I.O. to cooperate with the investigation. Therefore, from

the above conduct of the accused-petitioners, it is easily discernible that they have had their intention of cheating since very inception.

[16] Learned Addl. P.P. referring to the C.D. submits that after the registration of the FIR, only Rs.3,00,000/- (Rupees three lakh) only was paid in 5 (five) installments, whereas as per their verbal settlement, it was agreed that by 9 (nine) installments they would refund the whole amount and now, only 4 (four) installments are remaining further for them to cover up the whole dues and their conduct indicates that they are not at all willing to make the payment.

[17] Learned Addl. P.P. also submits that two security cheques were issued by the accused-petitioners to the informant-company but sufficient fund was not there in the account of the accused-petitioners to honour the cheques.

[18] This Court has considered the submissions of both sides and has also gone through the relevant materials placed in the Case Diary.

[19] According to this Court, prima facie, this case cannot be treated as a case of simple breach of contract falling within the ambit of Civil Court's jurisdiction. The reason behind such observation is that if for any bona fide reason the petitioner(s) had failed to deliver the items to the R1 International (India), certainly, immediately after failing to do so, they would inform the matter to the informant side, but they did not do so. Rather, without dispatch of any items, they raised their bills, seeking payment and also issued tax invoices. They also communicated the receipt of Weighbridge, consignment note and photographs of vehicle along with loaded rubber sheets therein. Even through WhartsApp, the tracking report was also being sent by Fortigo Transport Agency Pvt. Ltd. to show that the vehicle has crossed Kumarghat, Pecharthal, Karimganj etc. Prima facie, it appears that all these things were sent to the informant company to give a false show that they had discharged their obligation of dispatching those rubber. Such conduct, prima facie, manifests the existence of criminal mens rea of cheating since inception when they omitted to dispatch and deliver those items to R1 International (India). Despite receiving huge

amount of money of Rs. 93,29,252/-, they did not even return the same or any considerable part thereof, rather, grabbed the same.

[20] The CD also shows that at least 5 times notices were issued under Section 41(A) of Cr.P.C to the petitioners to appear before the Investigating Officer, but, only once they gave reply to the I.O that the mother of Rosamma Sabu was ill and therefore, they sought 30 days' time to appear and after giving such reply, they never appeared before the I.O. Thus, it appears that they are also not cooperating with the I.O. The explanation, as offered by the Ld. Counsel Mr. Bhattacharjee regarding the appearance of these accused persons before the I.O., is not supported by any material and is not convincing. Though, after the happening of such incidents, they agreed with the R1 International to dispatch goods by 15.02.2023, but, again they failed to comply their own assurance and they only delivered one load of such rubber to TVS, Rudrapur on 28.01.2023. Even after delivery of said consignment, when Rs.47,36,165/- was due from the petitioners to said R1 International Pvt. Ltd, it was also agreed by the petitioners that the balance amount would be cleared up in 9 installments, but, it appears that during the period from 04.09.2023 till 06.01.2026, they only refunded Rs.3,00,000/- in 5 installments.

[21] Though Ld. Counsel Mr. Bhattacharjee, submitted that two cheques of Rs.34,16,235/- and Rs. 24,96,780/- were already lying with the R1 International issued by the petitioners from which the informant can get their money back by encashing those cheques, but Ld. Addl. PP submitted that no amount was found lying in the bank account of the petitioners. On asking by the Court, no satisfactory reply could also be given from the side of the petitioner as to whether sufficient funds are available in the said bank account or not. Therefore, as already discussed above, there are prima facie materials to infer the existence of criminal mens rea of cheating and fraudulent activities on the part of the petitioners since the inception. Thus the submissions made on their behalf, do not impress much to grant pre-arrest bail in their favour.

[22] The very purpose of granting of pre-arrest bail is to save innocent persons from undue harassment towards them by falsely

implicating them in criminal proceedings. For the reasons discussed above, the case of the petitioners does not fall within said category.

[23] Considering all these aspects, the prayer for pre-arrest bail of both the petitioners is rejected.

Interim protection granted earlier to the applicants stands cancelled.

The matter is accordingly disposed of.

[24] Return the CD to Ld. Addl. PP with copy of this order.

JUDGE



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