

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.1582 of 2024**

Arising Out of PS. Case No.-9 Year-2020 Thana- JAMALPUR District- Munger

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1. Shailesh Kumar @ Shailesh Jha @ Shailesh Kumar Jha Son Of Suresh Mohan Jha
  2. Rina Jha Wife Of Shailesh Kumar @ Shailesh Jha  
Both are Resident Of Village - Faridpur, P.O. And P.S. - Jamalpur, District - Munger, Pin - 811214

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Shitanshu Shekhar Singh Son Of Late Satrughan Prasad Singh Resident Of Village - Bindwara, P.S. - Kashim Bazar, District - Munger, 811201

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr.Rakesh Kumar, Advocate  
For the Opposite Party/s : Mr.Uma Shankar Prasad Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH**  
**ORAL ORDER**

2      31-01-2024                      Heard Mr. Rakesh Kumar, learned counsel appearing on behalf of the petitioners and Mr. Uma Shankar Prasad Singh, learned APP for the State.

2. Petitioners seek pre-arrest bail in connection with Jamalpur P.S.Case No.09 of 2020, registered for the offences punishable under Sections 323, 406, 420, 504 and 506 of the Indian Penal Code.

3. Allegation is that in course of the business transaction, the petitioners had misappropriated a sum of Rs.02 lac of the informant, who is the business partner of the petitioners.



4. Learned counsel appearing on behalf of the petitioners has admitted that in course of the business transaction to carry on the business of embroidery, the informant had credited a sum of Rs.02 lac, the petitioners out of the said amount due to loss in business could not return as per the contract.

5. Learned counsel for the petitioners for the petitioners has relied upon the law laid down by the Apex Court in the case of **Sarabjit Kaur Vs. The State of Punjab & Anr.** passed in **Cr. Appeal No.581 of 2023**. The Apex Court in paragraph no.13 has observed as follows, which is re-produced hereinafter :

*“13. 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 on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that the respondent no.2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by the respondent no.2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal*



*and put pressure on the appellant for return of the amount allegedly paid. The criminal courts are not meant to be used for settling scores or pressurize parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which FIR was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the Court.”*

6. On these grounds, the learned counsel for the petitioners has submitted that the petitioners having clean antecedent are fit to be released on provisional pre-arrest bail, however, he admits that the petitioners intend to return back the money to the informant for an amicable settlement of the dispute.

7. Learned APP for the State vehemently opposed the prayer for grant of pre-arrest bail to the petitioners.

8. Having considered the rival submissions made on behalf of the parties, as well as the fact that the informant had entered into an agreement to purchase a machine for running embroidery from his home by entering into a joint venture so they can earn money by selling the cloths. The petitioners have relied on the judgment of the Apex Court passed in **Criminal Appeal No.581 of 2023 (Sarabjit Kaur Vs. The State of Punjab & Anr.)**, wherein it has been observed that a joint



venture was set up with an idea to distribute the benefit in equal ratio. The Apex Court has further observed that the complaint or FIR for the said purpose is with an idea to convert the civil dispute into criminal and put pressure on the appellant. The petitioners have been able to make *prima facie* a case to be released on pre-arrest bail.

9. The petitioners are directed to be released on pre-arrest bail, in the event of their arrest or surrender before the learned court below within a period of four weeks from today, on furnishing bail bond of Rs.10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned ACJM II, Munger in connection with Jamalpur P.S.Case No.09 of 2020, subject to conditions as laid down under Section 438(2) of the Cr.P.C.

10. The court below is directed to verify the criminal antecedent of the petitioner and if it is found that the petitioner is involved in some other cases as what has been stated in paragraph No.3 of the bail application, this order will automatically lose its force.

(Purnendu Singh, J)

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