

06.11.2024  
130  
Ct. no. 28  
S.das

CRM (DB) 798 of 2024

In Re : An application for cancellation for bail under Section 439(2) of the Code of Criminal Procedure.

In Re : Sudip Mondal ..... petitioner

Mr. Niladri Sekhar Ghosh  
Ms. Sompurna Chatterjee  
Mr. Sourav Mondal  
Mr. Rony Mondal

..... for the petitioner.

Mr. Saibal Bapuli, Id. APP  
Mr. Bidyut Kumar Roy

...for the State.

Mr. Anirban Mitra  
Mr. Amit Halder

...for the respondent no.2.

1. Petitioner contends the impugned order granting pre-arrest bail was procured through fraud. He submits opposite party no.2 had preferred an earlier application for anticipatory bail. In the said application, opposite party no. 2 entered into an understanding with the petitioner to repay the misappropriated sum. An agreement was executed by and between them and the application was withdrawn. Subsequently, he filed another application and obtained anticipatory bail without honouring the terms of the said agreement.
2. Learned advocate for opposite party no.2 submits the dispute is civil in nature and he has co-operated with

investigation. A substantial sum of the amount due has already been repaid.

3. Learned lawyer for the State produces the case diary.

4. We have considered the rival submissions at the Bar.

It is settled law a direction for refund of money payable to the defacto complainant cannot be imposed as a condition of anticipatory bail.

5. Be that as it may, breach of contractual obligation per se does not constitute the offence of cheating.

Admittedly, a substantial portion of the outstanding dues have been repaid.

6. Under such circumstances, we do not find any reason to cancel the order granting anticipatory bail.

7. Thus, the application being CRM(DB) 798 of 2024 is disposed of.

**(Gaurang Kanth, J.)**

**(Joymalya Bagchi, J.)**