

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14731 of 2025

Arising Out of PS. Case No.-339 Year-2021 Thana- MADHUBANI COMPLAINT CASE
District- Madhubani

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Deepak Das S/o Ram Singh Das R/o Village- Barhi, P.S - Kewati, District - Darbhanga, at Present C/o Raj Kumar Yadav, Ward No.4, Naya Toal, Sundarpur, Bela, P.S + District - Darbhanga

... .. Petitioner/s

Versus

1. The State of Bihar
2. Prakash Kumar Singh S/o Shri Vijay Bahadur Singh R/o vill - Batlohiya, Mauza Shripur Hati, P.S.- Pandaul, Distt.- Madhubani.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Ashok Kumar, Advocate
For the O.P.No.2 :
For the Opposite Party/s : Ms.Rita Verma, APP

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

5 15-09-2025 Heard learned counsel appearing on behalf of the petitioner and the learned APP for the State.

2. Petitioner seeks pre-arrest bail in connection with Complaint Case No.339 of 2021, registered for the offences punishable under Section 420 of the Indian Penal Code .

3. As per the allegation made in the complaint petition, the petitioner cheated the complainant by defrauding Rs.18 lac showing a fake agreement of land.

4. Learned counsel appearing on behalf of the petitioner referring to the fact that notices having been issued and the Vakalatnama has been filed on behalf of O.P.No.2, no



one has appeared today.

5. It is submitted on behalf of the petitioner that the petitioner is ready to return back the admitted and agreed amount, which he has received through bank transactions, if sometime is granted. He further asserts that instead of getting the agreement to sale the land cancelled by the competent civil court, O.P. No.2 has given criminal nature to the civil dispute, which is unwarranted, due to which, the petitioner is facing unnecessary prosecution in spite of the fact that he is ready to settle the dispute amicably.

6. Learned APP for the State has vehemently opposed the prayer for grant of pre-arrest bail to the petitioner, however, considering the fact that the petitioner is ready to return back the admitted amount, which he has received through bank transactions, if the O.P.No.2 co-operates in the said negotiation.

7. Considering the nature of allegation, I find that the matter can be resolved outside the Court amicably by way of mediation.

8. Law in this regard is well settled by the Apex Court in the case of *Paramjeet Batra v. State of Uttarakhand* reported in *(2013) 11 SCC 673*, in which, the Apex Court in paragraph no. 12 has held as follows:



"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."

9. The Apex Court while considering the content of ingredients of Sections 406 and 420 of the Indian Penal Code in the case of ***Delhi Race Club (1940) Ltd. & Ors. vs. State of Uttar Pradesh & Anr. in Criminal Appeal No. 3114 of 2024***, after discussing the earlier law laid down in several cases, has observed in paragraphs no. 35, 36 and 37 *inter alia* as follows:

Difference between criminal breach of trust and cheating

35. This Court in its decision in *S.W. Palanitkar v. State of Bihar* S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241 expounded the difference in the ingredients required for constituting of an offence of criminal breach of trust (Section 406 IPC) vis-à-vis the offence of cheating (Section 420). The relevant observations read as under :

“9. The ingredients in order to constitute a criminal breach of trust are : (i) entrusting a person with property or with any dominion over property; (ii) that person entrusted : (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any



other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

10. The ingredients of an offence of cheating are : (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii) (b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.”

36. What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients:

In order to constitute a criminal breach of trust (Section 406 IPC)

(1) There must be entrustment with person for property or dominion over the property, and

(2) The person entrusted:

(a) Dishonestly misappropriated or converted property to his own use, or

(b) Dishonestly used or disposed of the property or wilfully suffers any other person so to do in violation of:

(i) Any direction of law prescribing the method in which the trust is discharged; or

(ii) Legal contract touching the discharge of trust (see : S.W. Palanitkar [S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241.

Similarly, in respect of an offence under Section 420IPC, the essential ingredients are:

(1) Deception of any person, either by making a false or misleading representation or by other action or by omission;

(2) Fraudulently or dishonestly inducing any person to deliver any property, or

(3) The 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 (see : Harmanpreet Singh Ahluwalia v. State of Punjab



[Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712.

37. Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception."

10. The Apex Court has reiterated the aforesaid proposition in recent judgment of ***S.N.Vijayalakshmi & Ors. vrs. The State of Karnataka and Anr.*** reported in ***(2025) SCC Online SC 1575.***

11. The petitioner is directed to appear before the learned District Court on 16.10.2025 at 10.30 am.

12. Learned District Court is directed to take necessary action to refer the matter before the learned Mediator of the District Mediation Center.

13. Learned Mediator of the District Mediation Center concerned shall make his/her best efforts to settle the dispute amicably and thereafter submit his/her report before the concerned learned District Court, well within a period of four months, till then, no coercive action shall be taken against the petitioner in connection with Complaint Case No.339 of 2021.

14. In case of failure on the part of the petitioner to appear on 16.10.2025 at 10.30 am. before the learned District Court or any date fixed by the learned Mediator, the interim protection granted to the petitioner shall automatically lose its



force or in case the parties fail to arrive at any amicable settlement; in that case, the learned district court may take appropriate action in accordance with law.

15. Accordingly, the present bail application stands disposed of.

(Purnendu Singh, J)

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