IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41463 of 2025

Arising Out of PS. Case No.-283 Year-2024 Thana- DUMRA District- Sitamarhi

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Amit Kumar S/O Jitendra Singh, Resident of Village- Rampur Barahi, P.S.- Reega, District- Sitamarhi

... ... Petitioner/s

Versus

1. The State of Bihar
2. Dr. Shiv Shankar Mahto Male S/o- Late Bhikhari Mahto Resident of Village - Shankar Chawk, Police Station - Dumra, Distt. - Sitamarhi.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Ms.Madhubala Verma, Advocate
For the Opposite Party/s : Mr.Narsingh Tanti, APP

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL ORDER

3 15-10-2025 Heard Ms. Madhubala Verma, learned counsel appearing on behalf of the petitioner and Mr.Narsingh Tanti, learned APP for the State.

2. The petitioner seeks pre-arrest bail in connection with Dumra P.S. Case No. 283/24 registered for the offence(s) punishable under Sections 406, 420, 120(B) and 387 of the Indian Penal Code.

3. As per the allegation made in the FIR, one co-accused Manish Kumar had entered into an agreement with the

informant/opposite party no.2 in respect of sale of 9 decimals of land, situated at Shanti Nagar, Shankar Chowk, District, Sitamarhi. It is alleged that the petitioner conspired along with wife of co-accused/Manish Kumar and got a sum of rupees 11 lacs from the informant. Later on, it was found that the real owner of the land was one Rajendra Singh, who is not an accused.

4. Ms. Madhubala Verma, learned counsel appearing on behalf of the petitioner submitted that petitioner at the relevant time was a compounder, working with the informant/ Dr. Shiv Shankar Mahto, who had voluntarily entered into agreement with co-accused Manish Kumar and the petitioner has no role to play in the alleged commission of forgery with the informant. She informs that co-accused/Manish Kumar who has committed alleged forgery with the informant has been released on pre-arrest bail, after he has admitted that he will return back the entire amount in Nazarat of the concerned Civil Court, subject to outcome of the case. On these grounds, petitioner seeks to be released on pre-arrest bail.

5. Learned APP for the State vehemently opposed the prayer for grant of pre-arrest bail.

6. Heard the parties.

7. Law in respect of commission of offence under Sections 406 and 420 of Indian Penal Code has recently been crystallized in case of **Delhi Race Club (1940) Ltd. & Ors.Vs. State of Uttar Pradesh & Anr. (Criminal Appeal No. 3114 of 2024).** The Apex Court while considering the content of ingredients of Sections 406 and 420 of the Indian Penal Code in the aforesaid case after discussing the earlier law laid down in several cases, has observed in paragraphs nos. 35, 36 and 37, *inter alia* as follows:

> ***Difference between criminal breach of trust and cheating***
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> ***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 :*
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> *"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.*
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> *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."

8. In case of ***Arshad Neyaz Khan Vs. State Of Jharkhand & Another*** reported in ***SCC OnLine SC 2058,*** the

Apex Court has observed in para nos. 20 and 21 which are reproduced hereinafter:

> ***"20.** On perusal of the allegations contained in the complaint, in light of the ingredients of Section 406 IPC, read in the context of Section 405 IPC, do not find that any offence of criminal breach of trust has been made out. It is trite law that every act of breach of trust may not result in a penal offence unless there is evidence of a manipulating act of fraudulent misappropriation of property entrusted to him. In the case of criminal breach of trust, if a person comes into possession of the property and receives it legally, but illegally retains it or converts it to its own use against the terms of contract, then the question whether such retention is with dishonest intention or not and whether such retention involves criminal breach of trust or only a civil liability would depend upon the facts and circumstances of the case. In the present case, the complainant/respondent No. 2 has failed to establish the ingredients essential to constitute an offence under Section 406 IPC. The complainant/respondent No. 2 has failed to place any material on record to show us as to how he had entrusted property to the appellant. Furthermore, the complaint also omits to aver as to how the property, so entrusted to the appellant, was dishonestly misappropriated or converted for his own use, thereby committing a breach of trust.*
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> ***21.** Furthermore, it is pertinent to mention that if it is the case of the complainant/respondent No. 2 that the offence of criminal breach of trust as defined under Section 405 IPC, punishable under Section 406 IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined in Section 415, punishable under Section 420 IPC. This Court in Delhi Race Club (1940) Limited v. State of Uttar Pradesh, (2024) 10 SCC 690 observed that there is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriates the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver a property. In such a situation, both offences cannot co-exist simultaneously. Consequently, the complaint cannot contain both the offences that are independent and distinct. The said offences cannot co-exist simultaneously in the same set of facts as they are antithetical to each other."*

9. The Apex Court has concluded to hold that there is distinction between mere breach of contract and the offence of criminal breach of trust and cheating. In the present case, admittedly the petitioner at the relevant point of time when the offence was committed was a compounder of the informant. Allegation against him that he has conspired, leading to cheating from the informant a sum of rupees 11 lacs on account of sale of 9 decimals of a piece of land, belonging to one Rajendra Singh. The original land holder has not been made accused. Co-accused/ Manish Kumar has been granted pre-arrest bail subject to certain terms and conditions. Petitioner being conspirator in commission of alleged offence and his complicity in fraudulent misappropriation of a sum of rupees 11 lacs, leading to act of breach of trust can only be said to be civil wrong.

10. In such circumstances, this Court finds it proper to give interim protection to the petitioner for four months, so that parties may arrive at an amicably settlement. It is expected that all the accused persons including the informant will resolve their dispute amicably, respecting the order passed by the co-ordinate Bench of this Court in Cr. Misc. No. 15476 of 2025, so that they would be able to buy peace of mind, instead of facing criminal prosecution.

11. The petitioner is directed to appear before the learned District Court on 27.11.2025 sharp at 10:30 AM.

12. Learned District Court is directed to take necessary steps in the interest of the parties by referring the matter before the learned Mediator of the District Mediation Center after issuing notice to informant/opposite party no.2 and co-accused/Manish Kumar.

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 the aforesaid case.

14. In case the parties resolve their dispute amicably then in light of the law laid down by the Apex Court, the petitioner is required to be released on pre-arrest bail on such terms and conditions as the learned District Court deems it fit and proper.

15. In case of failure on the part of the petitioner to appear on 27.11.2025 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.

16. In case, the parties fail to reconcile, then in that case, parties may avail appropriate remedy. Then also, petitioner is directed to be released on pre-arrest bail on such terms and conditions as the learned District Court deems it fit and proper.

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

(Purnendu Singh, J)

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