IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41615 of 2025

Arising Out of PS. Case No.-174 Year-2024 Thana- BHAGWANGANJ District- Patna

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Nirmala Devi, aged about 48 years (Female) Wife of Yugeshwar Singh, Resident of Village- Kazichak, P.S.- Bhagwanganj, District- Patna

... ... Petitioner/s

Versus

1. The State of Bihar
2. Sunita Devi W/o-Mungeshwar Singh Vill- Kazichak PS- Bhagwanganj, Dist- Patna

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Anil Kumar Singh, Advocate
For the O.P. No. 2	:	Mr. Sheo Nandan Pandit, Advocate
For the State	:	Mr. Tarun Prasad Mandal, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL ORDER

3 15-10-2025

Heard Mr. Anil Kumar Singh, learned counsel appearing on behalf of the petitioner; Mr. Sheo Nandan Pandit, learned counsel for the opposite party no. 2 and Mr. Tarun Prasad Mandal, learned APP for the State.

2. The petitioner seeks pre-arrest bail in connection with Bhagwanganj P.S. Case No. 174 of 2024 registered for the offence punishable under Sections 126(2), 115(2), 316(2), 352, 351(2) and 3(5) of the BNS.

3. As per the allegation made in the FIR, petitioner, who was the C.M. of a private bank and *Jiwika* bank, had allegedly withdrawn a sum of Rs. 21,40,000/- from the *Jiwika* group account of the informant fraudulently.

4. Learned counsel appearing on behalf of the petitioner submitted that out of the entire amount, the informant has already received a sum of Rs. 6,52,925/- and remaining amount of Rs. 14,87,075/- is due. Learned counsel further submitted that the complicity of the other bank officials can also not be denied.

5. *Per contra*, learned counsel appearing on behalf of the opposite party no. 2 submitted that no doubt that there is complicity of the other bank officials but the petitioner cannot be absolved from returning the remaining amount *i.e.* Rs. 14,87,075/- back to the informant.

6. At this stage, both the parties jointly inform this Court that they are ready to enter into compromise to give rest to the litigation and they will try to settle the dispute amicably outside the Court by way of mediation.

7. 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."

8. 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***.

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 nos. 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 parties have willingly desired to appear before the learned District Court.

11. The learned District Court is directed to issue notice to the bank officials, who were on duty between the period 2019 to 2023, during which, the alleged offence was committed, on 27.11.2025 at 10:30 AM, so that they can also participate in the Mediation.

12. Learned District Court is directed to take necessary steps to issue notices to the respective parties and upon their appearance 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 between the parties amicably and, thereafter, submit his/her report before the concerned learned District Court, well within a period of six 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 informant or the other bank officials, who were on duty between the period, during which, the alleged offence was committed, don't appear before the learned District Court or on any date fixed by the learned Mediator, then in that case, learned District Court may take appropriate action against them in accordance with law.

17. 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.

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

(Purnendu Singh, J)

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