

25.11.2025
Item no.53
Court No.3
ss
(Allowed)

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
CRIMINAL MISCELLANEOUS JURISDICTION

CRM (A) 817 of 2025

In Re:- An application for anticipatory bail under Section 482 of BNSS in connection with Matigara Police Station Case No.615 dated 19.09.2025 under Sections 316(2)/318(4)/351(2)/324(2)/329(3)/303(2)/61(2) of the Bhartiya Nyaya Sanhita, 2023 (corresponding to PTN No.WBDJOEP004699 of 2025) presently pending before the learned Additional Chief Judicial Magistrate at Siliguri.

In the matter of : **Bimal Chandra Roy @ Bimal Roy & anr.**
... Petitioners.

Mr. Sandipan Banerjee, Sr. Adv.
Mr. Karan Dudhwewala
Mr. Debanjan Das
Mr. Samrat Acharya

... for the petitioners

Mr. Aditi Shankar Chakraborty, (virtual mode)
Mr. Abhijit Sarkar
Mr. Dhiman Sil.

.....for the State.

Mr. Subham Ghosh
Mr. Mayank Roy

... for the *de facto* complainant

1. Learned Senior Advocate appearing on behalf of the petitioners submit that an agreement for sale of land measuring 12.65 acres (1265 decimal) within Mouja Rajpouri was executed between the complainant and the petitioners on 21st December, 2024 at a total consideration price of 33.78 crores. The *de facto* complainant is a developer who has entered into the agreement for sale for development of the land. The complainant paid

certain portion of agreed amount and three separate sale deeds have already been executed in relation to such agreement for sale. This is a clear case whereas a civil dispute has been given a criminal colour. There is no such *mens rea* so far as the offence of cheating under Section 420 of IPC is concerned. Furthermore, delivery of part payment of consideration amount by the complainant to the petitioners pursuant to an agreement for sale cannot be said to have been entrusted with the petitioners and in no stretch of imagination construe as misappropriation of the advance payment. The complainant after lodging the FIR has filed a civil suit before the learned Civil Judge (Senior Division) at Siliguri being Title Suit No.116 of 2025 seeking specific performance of agreement for sale dated 21st December, 2024. Upon hearing the parties, the learned civil court has passed an order of temporary injunction restraining the petitioners from alienating or selling the disputed property. On one hand, in the civil suit being Title Suit No.116 of 2025 the complainant seeks for specific performance of the agreement for sale and on the other hand, in the letter of complaint he alleges that he was made to execute the agreement for sale basing on false representation, which is contradictory to each other. Such self-contradictory claim proves beyond doubt that the instant case is nothing but an arm twisting tactics. Mere non-performance of an agreement for sale itself does not amount to cheating and breach of trust. In the instant case, a commercial transaction has taken place between the parties which the parties

consensually agreed for sale/transfer of certain property. The act of the petitioners, assuming but not admitting, at best constitute civil wrong and does not call for criminal action against them. The remedy lies in a civil suit. To buttress his contention, he relies on the following decisions of the Hon'ble Supreme Court:

- (i) ***Radheyshyam and others –versus- State of Rajasthan and Another***, reported in **2024 SCC OnLine SC 2311**;
- (ii) ***Arshad Neyaz Khan –versus- State of Jharkhand and another***, reported in **2025 SCC OnLine SC 2058**;
- (iii) ***Mala Choudhary and Another –versus- State of Telangana and Another***, reported in **2025 SCC OnLine SC 1474**.

Relying on an order of a *Division Bench* in *C.R.M. 1388 of 2018 (In Re: Sourindra Narayan Singh Deo)*, he submits that in similar circumstances the Hon'ble Court has extended the benefit of pre-arrest bail to the petitioners. In light of aforesaid submissions, he seeks for grant of anticipatory bail to the petitioners.

2. Learned Advocate for the State, opposing such prayer for anticipatory bail, submits that though the complainant has paid a considerable amount of money, the land-in-question has not been registered in his favour by the petitioners. The petitioners have not complied with the notice under Section 35(3) of BNSS. The investigation is under progress. He seeks for dismissal of the application for grant of anticipatory bail.

3. Learned Advocate for the *de facto* complainant, opposing prayer for anticipatory bail submits that the complainant has been duped by the petitioners who entered into agreement for sale with the complainant being aware of the fact that the land within Schedule 'B' to the agreement requires permission from the Backward Class Welfare Officer (BCWO) for transferring the same in favour of the complainant. As per the existing rules, a sale of tribal land is generally permitted by the authority concerned on being satisfied that the applicant is a destitute. The prayer of petitioners seeking such permission has been rejected. Thus, without there being any permission from the statutory authority concerned for transfer of tribal land the petitioner has executed such an agreement with the intention to deceive the complainant from the very inception and the complainant has been deluded to part with a considerable amount. He also indicates that the application under Section 438 Cr.P.C. has been affirmed by the son of the petitioners, hence such application is not maintainable in view of the fact that as per provisions of Section 438 Cr.P.C., the person, who has reason to believe that he may be arrested, may file application and none else. In support of his contention he relies on the decision of this Hon'ble Court passed ***In the matter of: Bonneswar Dutta and others***, reported in ***1998 SCC OnLine Cal 13***. He seeks for dismissal of the application for grant of anticipatory bail.

4. In reply to the contention raised by the learned Advocate for the State as well as *de facto* complainant, at the outset, learned Senior Advocate appearing on behalf of the petitioners submit that as per the decision of *Bonneswar Dutta (supra)* the instant application is very much maintainable. Further, the rejection of permission by BCWO for transfer of tribal land does not find place in the FIR. Moreover, the petitioners all along tried to comply the notice under Section 35(3) of BNSS but the investigating agency has not co-operated. In support of the same, a letter has also been issued to the Inspector-in-Charge of the Matigara Police Station dated 25th September, 2025.
5. Perused the case diary and the materials on record.
6. At the very beginning, let me examine whether the instant application for anticipatory bail can be entertained in its present form or not.
7. It has been strenuously argued on behalf of the *de facto* complainant relying on *Bonneswar Dutta (supra)* that the instant application for anticipatory bail is not maintainable since it has not been filed by the petitioners themselves. In *Bonneswar Dutta (supra)*, this Court has observed as follows:

“23. After hearing Mr. Balai Chandra Roy, Mr. Milan Kumar Mukherjee and Mr. Kazi Safiullah, learned Public Prosecutor and other learned Advocates and after considering the various case laws and the provisions of Article 20(3) of the Constitution of India and the provisions of the Oaths Act and the Criminal Procedure Code we are clearly of the view that there is no bar for the applicants to affirm an affidavit for filing an application under Section 438 of the Code of Criminal Procedure and that mere affirmation of an affidavit in support of the application does not amount to any testimonial compulsion and that the same also does not come within the purview of the provisions of Section 4(2) of the Oaths Act which is only confined to criminal proceedings; or in other words in course of trial and not in course of the investigation. In that view of the matter the tadbirkar or an agent cannot affirm an affidavit in an application for Anticipatory Bail and in each and every

case the applicant has to affirm it either before the Oath Commissioner of this Court or before any Magistrate who is competent to administer an oath and in case of genuine difficulty the same could be affirmed by an agent duly authorised by the applicant in accordance with law as provided in the Civil Procedure Code. We also hold that this Court and no other Court in this State can entertain an application for Anticipatory Bail if it is affirmed by a mere tadbirkar and no such application can be entertained unless it is supported by an affidavit by the applicant or by his duly authorised agent in accordance with law and not by the tadbirkar or a middleman. Since this practice, which in our view, is contrary to law is continuing for a long time, we do not propose to reject such applications which are in the list and pending before this Court and that those cases can be taken up only after a supporting affidavit is affirmed by the applicant or by the persons who are duly authorised by the applicant in accordance with law two weeks from today.”

8. In light of the aforesaid proposition since the application is supported by an affidavit affirmed by the son of the petitioners who states to have been duly authorised, hence the application is entertainable. Therefore, the argument of non-maintainability of application does not stand to reason.
9. Now reverting to the fact of the case, admittedly, an agreement for sale was executed between the complainant and the petitioners on certain terms and conditions for sale of land within Mouja Rajpouri, Police Station Matigara. There cannot be any quarrel that three deeds of sale in respect of certain portion of land have already been executed in favour of the complainant pursuant to the agreement for sale as part performance. Undisputedly, the complainant has filed a civil suit for specific performance of contract before the learned Civil Judge (Senior Division) at Siliguri being Title Suit No.116 of 2025 wherein an order of temporary injunction has been passed against the petitioners restraining them from alienating or selling the disputed land. The said civil suit is still pending. Thus, the disputes pertaining to the present case arise out of contractual

obligation. The proposition of law as pressed into service by learned Senior Advocate appearing on behalf of the petitioners relying on the decisions of *Radheyshyam (supra)*, *Arshad Neyaz Khan (supra)* and *Mala Choudhary (supra)* are substantial.

10. With regard to the allegation of non-cooperation of the petitioners in the investigation and the counter allegation, it will be appropriate to direct the petitioners to cooperate with the investigating officer.
11. In view of the above, I am inclined to grant the prayer of the petitioners for anticipatory bail.
12. Accordingly, in the event of arrest the petitioners namely **Bimal Chandra Roy @ Bimal Roy** and **Dayanti Roy** shall be released on bail upon furnishing a bond of Rs.10,000/- each with two sureties of like amount each, to the satisfaction of the arresting officer and subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973 corresponding to Section 482(2) of BNSS and the petitioner no.1 shall meet the Investigating Officer once in a fortnight, until further order. The petitioners shall attend the court on the date fixed for appearance. The petitioners shall cooperate with the Investigating Officer.
13. In default the jurisdictional Court shall pass appropriate order to secure the presence of the petitioners in Court including cancelling the anticipatory bail granted without further reference to this Court.
14. This application for anticipatory bail is allowed.

15. ***CRM (A) 817 of 2025*** is, thus, disposed of.

(Bivas Pattanayak, J.)