GAHC010245792026

2026:GAU-AS:16555

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : AB/2799/2026

ANEEL GOENKA
SON OF LATE SHYAM SUNDAR GOENKA, R/O- HEM BARUA ROAD, FANCY BAZAR, P.S.- PAN BAZAR, DIST- KAMRUP M, GUWAHATI, ASSAM-781001

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR. A M BORA, MS. C CHOUDHURY,MR. V A CHOWDHURY

Advocate for the Respondent : PP, ASSAM, N.R. SHARMA (FOR INFORMANT),JYOTISH DAS (FOR INFORMANT),D DAS (FOR INFORMANT),MR. A K BHUYAN (FOR INFORMANT)

BEFORE
HONOURABLE MR. JUSTICE ANJAN MONI KALITA

ORDER

Date : ***10.11.2026***

Heard Mr. A. M. Bora, learned Senior Counsel assisted by Mr. V. A. Choudhury, learned counsel for the accused applicant. Also heard Ms. A. Begum, learned Addl. Public Prosecutor for the State of Assam and Mr. A. K. Bhuyan, learned Senior Counsel assisted by Mr. J. Das, learned counsel for the informant.

2. This is an application filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, praying for granting pre-arrest bail to the accused applicant, in connection with Bharalmukh Police Station Case No. 200/2026, registered under Sections 61(2)/318(4)/316(2)/351(2)/351(3) and 3(5) of the Bharatiya Nyaya Sanhita (BNS), 2023.

3. An FIR was lodged on 06.10.2026 by the informant, namely, Vikash Agarwal, before the Officer-in-Charge of Bharalmukh Police Station, to the effect that Aneel Goenka, who is the Director of Naveen Enterprises Ltd. and Composite Credits Pvt. Ltd., had approached him at his residence at Bhagwati Sadan, J.P. Agarwal Road, Bharalumukh, Guwahati, with an offer to invest money in certain projects proposed to be developed by him jointly with government agency, namely, Assam Government Marketing Corporation Ltd. (AGMC). It is alleged that three plots of land situated at Paschim Boragaon, Machkhowa and Betkuchi were to be developed by the accused applicant jointly with the aforesaid government agency. It was further represented that the said lands had already been secured and the accused applicant required funds to start the projects. Accordingly, the accused applicant offered to enter into joint development agreements with the informant, inviting him to invest money in the said projects. Since the accused applicant was known to the informant for several years and also shared a family relationship with him, the informant accepted the offer.

4. Accordingly, in the year 2021, pursuant to the terms and conditions mutually agreed upon, a joint development agreement was entered into amongst SM Engineers India Ltd., wherein the informant was a Director, with AGMC SSG Projects Pvt. Ltd., having its registered office at Hotel Kuber

International Building, H.B. Road, Guwahati, represented by the accused applicant. Subsequently, another joint development agreement was also entered into amongst SM Infrastructure Pvt. Ltd**,** wherein the informant is the Managing Director, Goenka Artfed GMV Projects Pvt. Ltd., represented by the accused applicant and Assam Apex Weavers and Artisans Cooperative Federation Ltd., having its registered cooperative society at Gopinath Bordoloi Road, Ambari, Guwahati, represented by its Managing Director, Mukul Chandra Deka. It is alleged that in terms of the aforesaid understanding, the informant paid a total amount of Rs.3,92,50,000/-(Rupees Three Crores Ninety Two Lakhs Fifty Thousand) between 30.11.2020 and 18.05.2023 into the personal bank account of the accused applicant, as well as into the accounts of the aforesaid two companies, namely, Naveen Enterprises Ltd. and Composite Credits Pvt. Ltd. It is further alleged that certain amounts were also paid to Aneel Goenka and Sons Hindu Undivided Family (HUF).

5. It is alleged that, despite receipt of the aforesaid amount, no progress was made in the proposed projects. As a result, the informant requested the accused applicant to refund the money. However, the same was not refunded. It is further alleged that, although the joint development agreements were executed by the informant on the assurance of the accused applicant that the requisite land had already been secured for the proposed projects, it was subsequently discovered that no such land had been secured at the time of execution of the agreements. It is alleged that, since the year 2022, the informant had been demanding the refund of the money from the accused-applicant. However, the accused applicant failed to refund the same. It is also alleged that, on 20.02.2024, the accused applicant executed a Memorandum of Understanding (MoU) with the informant, admitting his liability to the tune of Rs.5,30,00,000/-

(Rupees Five Crore Thirty Lakhs) towards the companies owned by the informant and undertaking to repay the said amount by 31.07.2024. However, despite execution of the aforesaid MoU, the accused applicant failed to make any payment. Consequently, the informant issued legal notices to the accused applicant demanding repayment of the outstanding amount. However, no payment was made by the accused applicant, who eventually stopped responding to the informant's telephone calls and allegedly started threatening him. In view of the aforesaid circumstances, the informant lodged the instant FIR.

6. On the basis of the aforesaid FIR, the police registered Bharalmukh Police Station Case No. 200/2026 under the aforementioned sections.

7. Learned Senior counsel appearing for the accused applicant submits that there is no element of cheating involved in the instant case, inasmuch as the informant had voluntarily invested the money of his own free will pursuant to the offer made by the accused-applicant. He submits that the informant had also entered into a tripartite party agreement in which the government agency was a party. Therefore, according to the learned Senior Counsel, there was neither any fraudulent inducement nor any deception on the part of the accused applicant. He further submits that the informant, being a businessman, had entered into the joint venture agreements, as well as other agreements, with the accused applicant and the concerned government agency, fully aware of the nature and intricacies of the projects involving government departments and agencies.

8. Learned Senior Counsel further submits that, although certain disputes

have arisen between the informant and the accused-applicant, the same are purely civil in nature, as the projects could not be completed within the stipulated time. Therefore, any grievance arising out of the financial transactions between the parties can appropriately be adjudicated by a competent civil court. Learned Senior Counsel further submits that the informant himself has admitted that an MoU was executed between the parties, whereby the accused applicant acknowledged the outstanding liability. According to the learned Senior Counsel, the execution of the said MoU demonstrates that the dispute essentially pertains to the non-payment of outstanding dues and does not, by itself, establish any dishonest intention or deception on the part of the accused applicant at the inception of the transactions.

9. Learned Senior Counsel for the accused applicant, submits that the accused applicant is suffering from prostate cancer and has been undergoing chemotherapy for the same. He submits that the accused applicant has undergone four cycles of chemotherapy so far, and further cycles are still due. He further submits that the accused applicant has already filed an additional affidavit, bringing on record the medical documents relating to his treatment in connection with the instant case. He submits that the accused applicant is a reputed businessman enjoying a good reputation in society and owns immovable properties within the city of Guwahati. Therefore, there is no likelihood of his flight risk in the instant case. He further submits that the accused applicant had appeared before the police and submitted his medical documents. He also submits that, although the accused applicant intended to record his statement before the police, the same was not recorded by the police. Accordingly, the learned Senior Counsel has prayed for anticipatory bail to the accused applicant.

10. The learned Senior Counsel, in support of his submissions that the dispute is purely civil in nature and does not involve any criminal element of cheating, has relied upon the decisions of the Hon'ble Supreme Court in ***Vesa Holdings Pvt. Ltd. & Anr. v. State of Kerala & Ors.,*** reported in ***(2015) SCC 293***, and ***G. Saminathan & Anr. v. State, represented by the Sub-Inspector of Police & Anr.***, reported in ***2026 SCC OnLine SC 1460.***

11. Ms. A. Begum, the learned Additional Public Prosecutor, on the other hand, has produced the Case Diary in the instant case and has submitted that there are materials indicating that agreements were entered into between the accused applicant and the informant. She submits that, although the accused applicant had promised to make payment to the informant, the amount has not yet been paid. Therefore, she opposes the prayer for grant of bail to the accused applicant.

12. Mr. A. K. Bhuyan, learned Senior Counsel appearing for the informant, on the other hand, opposes the prayer for bail, submitting that the deception and wrongful intention to deceive the informant are apparent from the facts and circumstances of the case. He submits that the accused applicant induced the informant to invest a substantial amount of money without disclosing that he did not have the requisite land to execute the proposed projects at the time when the joint development agreements were executed between the parties. He further submits that, although substantial amounts of money were received by the accused applicant, no amount was utilised for the development of the proposed projects and, instead, the money was diverted for his personal gain. He contends that the element of cheating was present from the very inception of the transactions, as the accused-applicant, with full knowledge of the true

facts and with the intention to deceive the informant, induced him to part with substantial amounts of money by making false representations.

13. Mr. Bhuyan, learned Senior Counsel for the informant, has further submitted that, from the materials available on record, it is apparent that the accused applicant had the *mens rea* to cheat the informant from the very inception of the transaction. Therefore, despite the fact that the land had not been properly acquired, the accused applicant induced the informant to invest a huge amount of money in the project. He submits that, although the amount invested by the informant ought to have been deposited in the joint venture account of the accused applicant with the Government agency, the same was instead received in the personal accounts of the accused applicant. He submits that the aforesaid conduct of the accused applicant clearly demonstrates that he intended to cheat the informant from the very inception of the project. He further submits that, although an MoU was executed between the accused applicant and the informant in the year 2024, the accused applicant failed to repay the amount to the informant. He further submits that the informant has filed an affidavit-in-opposition in the instant case and has brought on record the agreements, MoUs, Lease Deed and other relevant documents. In view of the aforesaid submissions, the learned Senior Counsel submits that the accused applicant should not be granted pre-arrest bail at this stage.

14. This Court has heard the submissions made by the learned counsel for the respective parties and has also carefully perused the materials placed before this Court.

15. It is seen that the informant has filed an additional affidavit in the instant

case, wherein the informant has brought on record the Agreements, MoUs, Lease Deed, General Power of Attorney, Special Power of Attorney, and certain other materials before this Court. This Court has considered the materials placed on record through the additional affidavit.

16. On perusal of the records, it is seen that an MOU dated 04.01.2019 was initially executed between Assam Government Marketing Corporation Ltd. (AGMC), represented by its Managing Director, namely, Anjan Kumar Sarma, and AGMC SSG Projects Pvt. Ltd., represented by its Director, Aneel Goenka, for setting up of a State of Art Project of Guwahati Haat for Handloom & Handicrafts, along with Multiple Skill Training Centres and a Food Haat. A consent letter dated 22.05.2018 issued by the AGMC for the joint implementation of the aforesaid project in a PPP model was also available on record. It is also seen that, in its 236th meeting of the Board of Directors held on 14.06.2018, discussed the matter regarding the joint venture with SSG Group, owned by the accused applicant on a 26%:74% equity share. The proposal was duly accepted by AGMC in the aforesaid meeting of the Board of Directors, and a resolution was also adopted by the Board of Directors approving the same. Subsequently, the Government of Assam, vide Letter No. HTS.433/2018/68 dated 29.11.2018, approved the proposal for setting up the aforesaid project. It is also seen from the records that AGMC SSG Projects Pvt. Ltd. was formally formed and registered, with Aneel Goenka, Anjan Kumar Sarma, and Loonkaran Bothra as its Directors. It is further seen from the records that AGMC demarcated a plot of land measuring 5 bighas, free from any encumbrances and covered by Dag No. 91, which was earmarked for the aforesaid project. The aforesaid MoU dated 04.01.2019 provides a detailed

schedule of the land concerned.

17. Another MoU dated 04.02.2018 was executed between SSG Group, represented by Aneel Goenka and AGMC, wherein AGMC agreed to facilitate all the necessary permissions, consents, approvals, etc., for the aforesaid project. It is further seen that a Joint Development Agreement was executed in the year 2021 between the SM Engineers India Pvt. Ltd., represented by the informant and AGMC SSG Projects Pvt. Ltd. in respect of the aforesaid project, wherein SM Engineers India Pvt. Ltd. agreed to develop the project. It is also seen that a General Power of Attorney was executed in favour of SM Engineers India Pvt. Ltd. A Lease Deed was also executed on 31.03.2021 between Assam Apex Weavers & Artisans Cooperative Federation Ltd. (ARTFED) and Goenka Artfed GMV Projects Pvt. Ltd., represented by the accused applicant, wherein a joint venture, namely, Goenka Artfed, was incorporated with shareholdings of 26% and 74%, respectively with ARTFED. The aforesaid Lease Deed was executed for the purpose of setting up a model village project consisting of a Handloom Park, Guwahati Haat, other handloom activities and a housing project, along with all associated infrastructure and facilities, including a commercial school, club, entertainment facilities and other activities. The Assam Apex Weavers & Artisans Cooperative Federation Ltd. and Goenka Artfed GMV Projects Pvt. Ltd. (joint venture) have been granted a General Power of Attorney and a Special Power of Attorney under two separate agreements dated 31.03.2021 for the development of the aforesaid project.

18. It is also seen that a Deed of Personal Guarantee was executed by the accused applicant in favour of SM Infrastructure Pvt. Ltd. (Developer), represented by the informant, and Asom SSG Handloom Pvt. Ltd. (Company), a joint venture company. It is also seen that an MoU dated 20.02.2024 was

executed between SM Group Companies of SM Infrastructure Pvt. Ltd. (Developer) and SM Engineers India Ltd., represented by Vikash Agarwal, and Aneel Goenka, the accused applicant respectively, representing SSG Group, and the Managing Director/Director of Enterprises; Goenka Artfed GMV Projects Pvt. Ltd.; Asom SSG Handloom Pvt. Ltd. and AGMC SSG Projects Pvt. Ltd., wherein the parties agreed to cancel and terminate the Joint Development Agreement entered into amongst them for the development of three different lands. However, it was specifically stated that the JDAs would remain suspended for the time being and would be terminated only upon fulfillment of the conditions contained in the MoU.

19. It may be relevant to reproduce hereinbelow some of the important terms and conditions of the said MOU.

> "*... 2. That Naveen Enterprises shall return to the Developer the amount already paid by the Developer amounting to Rs. 5.30 crore (Rupees Five Crore and Thirty Lac) only (refundable amount) within 31.07.2024. Interest @ 9% p.a., annually compoundable shall be levied on any arrear amount after that date which shall be guaranteed with handing over of the 6th floor premises of hotel Kuber Building to the Developer.*
>
> *3. That if the refundable amount is not paid in full as aforesaid, the Developer shall have the right to recover the unpaid amount with interest @ 9% p.a., from the Security (mentioned in this MOU) in any manner including but not limited to by forfeiting, utilizing, disposing, selling, mortgaging, transferring, leasing, letting on rent and/or dealing in any other manner with the Security. Naveen Enterprises shall give Irrevocable Power of Attorney in favour of the Developer authorizing it to do so. The existing mortgage of the sald Property with Kotak Mahindra Bank shall be released by Naveen Enterprises and any residual amount remaining after paying the refundable amount and interest thereon*

shall be for Naveen Enterprises.

4. That till the refundable amount is paid in full, the Developer shall have the right to enforce the JDAs and may choose to develop the Project or seek other remedies as may be available to the Developer.

5. That on complete payment of the refundable amount, the JDAs shall be deemed to have been cancelled, terminated and annulled and the parties hereto shall take necessary steps in this regard.

6. That till the refundable amount is paid in full, Naveen Enterprises shall not in any circumstances enter into any kind of agreement and/or understanding with any other party in relation to the Project Land.

7. That this Memorandum of Understanding shall be legally enforceable and the Developer shall have the right to Specific performance of the same by Naveen Enterprises.

8. That Naveen Enterprises shall provide to the Developer, the refundable amount by selling the 6th floor (admeasuring 6,600 sq. ft. carpet area aprox.) of the multistoried building bearing H/No. 60, Hotel Kuber International, situated at H.B. Road, Guwahati, Kamrup, Assam-781001 ("Property"). Naveen Enterprises shall provide the ("Property") as aforesaid as a security (Security) for payment of the refundable amount. The existing mortgage of the said Property with Kotak Mahindra Bank shall be released

i) That no maintenance charges shall be payable in respect to the Security for a period which shall end at the end of 10 (ten) years from the date of transfer to any third party.

ii) That proper and adequate electric power and water connection shall be made available to the Security and consumption thereof shall be chargeable as per the service providers bill.

iii) That proper and adequate lift access shall be provided for the Security.

9. All disputes and differences between the parties hereto arising out of or relating to this Deed including the interpretation, scope or effect of any of the terms and conditions herein contained or in any way touching or concerning these presents shall be referred to a sole Arbitrator to be appointed by the Promoter and the same shall be deemed to be a reference within the meaning of the Arbitration and Conciliation Act, 1996 or any other statutory reenactment or modification thereto for the time being in force. The venue of arbitration shall be at Guwahati, Assam…"

20. From the aforesaid materials and facts, it is clear that the informant had willingly entered into the agreements executed amongst the informant, the accused applicant and the Government agency. However, for reasons best known, the project could not proceed further, and the amount paid by the informant to the accused applicant remained stuck, a part of which was allegedly repaid by the accused applicant, despite the execution of the aforesaid MoU between the informant and the accused applicant. It is clearly a case of non-compliance with the terms of the agreement by the accused applicant, despite his promise to fulfill the same.

21. Now coming to the offences as alleged against the accused applicant, i.e., of Cheating and Criminal Breach of Trust as well as offence of Criminal Intimidation under BNS are concerned, upon analysis of various cases settled by the Hon'ble Apex Court as well as the statutory provisions of the BNS, it is discernible that though there are instances of non-fulfillment of promises, the same cannot *prima facie* be termed as willful intention on the part of the accused applicant for non-payment. It is seen that the disputes as alleged in the instant case are primarily of civil nature, wherein allegation of breach of several

agreements by the accused applicant is leveled. However, the same cannot be treated *prima facie* as Cheating or Criminal Breach of Trust on the basis of the materials available before this Court. In this connection, the decision in the case of ***Jay Shri & Anr. Vs. State of Rajasthan***, reported in ***2024 (13) SCC 614*** can be referred to, wherein the Hon'ble Supreme Court has held that mere breach of trust does not amount to an offence under Section 420 or Section 406 of the IPC, unless fraudulent or dishonest intention is shown right at the beginning of the transaction. The Hon'ble Supreme Court has further opined that caution should be adopted while trying to convert a pure civil dispute in a criminal case. Any effort to settle the civil disputes and claims which do not involve any criminal offence by applying pressure through criminal prosecution should be deprecated and discouraged. The same principle has been laid down by the Hon'ble Supreme Court in catena of cases time to time and the same need not be repeated herein again. The Hon'ble Supreme Court, in the case of ***Satish Chandra Ratanlal Shah Vs. State of Gujarat***, reported in ***2019 (9) SCC 148***, has held that the distinction between a mere breach of contract and cheating would depend upon the fraudulent inducement and *mens rea*. The Hon'ble Supreme Court has held that mere inability of the person to return an amount received cannot give rise to a criminal prosecution or cheating, unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this *mens rea*, which is the crux of the offence.

22. This Court has also considered the case of ***Vesa Holdings P. Ltd.*** (supra), wherein the Hon'ble Supreme Court has similarly held that the settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the

intention to cheat has developed later on, the same cannot amount to cheating. In other words for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation.

23. In similar terms, the Hon'ble Supreme Court, in the case of ***G. Saminathan*** (supra), has held that, in cases involving cheating, the intention of the accused at the time of inducement is required to be examined. Such intention may be judged by subsequent conduct; however, subsequent conduct is not the sole test. Mere breach of trust cannot give rise to criminal prosecution for cheating unless a fraudulent or dishonest intention is shown to have existed from the very beginning of the transaction. That is the point of time at which the offence is said to have been committed. Thus, it is the intention which is the gist of the offence.

24. Taking into account the facts of the instant case, it can clearly be seen that the informant, being an established businessman, had entered into various agreements, MOUs, etc., with the Government agency as well as the accused applicant. It is seen that the accused applicant had, in fact, initially executed an MOU with the Government agency on 04.01.2019, and several other agreements were entered into thereafter.

25. From the materials available on record, it is seen that the project could not proceed further due to reasons best known to the parties thereto. However, it cannot be said that there was no valid agreement in existence at the very inception of the transaction, as is evident from the MoU dated 04.01.2019. A mere failure of the project cannot give rise to any criminal offence, if the facts and circumstances do not disclose the commission of such an offence. In the instant case, lately, an MoU was executed between the informant and the

accused applicant on 20.02.2024, wherein both parties had, in fact, agreed to the terms and conditions mentioned therein. From a bare perusal of the MoU, it is seen that the parties had agreed that any dispute that may arise out of the MoU, the same could be resolved by referring the matter to a sole arbitrator. It is also seen that the MoU was made legally enforceable and the Developer, i.e., the informant, had the right to seek specific performance by Naveen Enterprises, represented by the accused applicant.

26. Taking into consideration the aforesaid discussions on the materials available on record, as well as the law settled by the Hon'ble Supreme Court, this Court is of the considered opinion that the dishonest intention and *mens rea, prima facie,* cannot be attributed to the accused applicant on the basis of the materials placed before this Court.

27. To sustain a charge under Sections 318 and 316 of the Bharatiya Nyaya Sanhita, 2023, there must be substantive material indicating a fraudulent or dishonest intention at the very inception of the contract or transaction. A mere allegation of such intention would not hold any legal force. Mere failure to discharge a contractual obligation, i.e., failure to make payment within the stipulated time, would not, by itself, constitute the offence of cheating. The Court has to find reliable material to establish such an offence. Similarly, a mere breach of promise, agreement or contract does not *ipso facto* constitute the offence of criminal breach of trust under Section 316 of the BNS, without there being a clear case of entrustment in its true sense.

28. Taking into account the aforesaid principles and also taking into consideration the health condition of the accused applicant, who is undergoing chemotherapy, this Court is of the considered opinion that the accused applicant is entitled to the relief of pre-arrest bail in the instant case. Accordingly, it is

directed that, in the event of his arrest in connection with Bharalmukh Police Station Case No. 200/2026, the accused applicant shall be released on pre-arrest bail by the arresting authority upon furnishing a bail bond of Rs.2,00,000/-(Rupees Two Lakhs only), with two sureties of like amount, to the satisfaction of the arresting authority, subject to the following conditions:

(i) that the accused applicant shall appear before the I.O. of the case within a period of 10 days from the date of passing of this order;

(ii) that the accused applicant shall fully cooperate with the investigation and make himself available as and when called for by the I.O.;

(iii) that the accused applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade such person from disclosing such facts before the Investigating Officer; and

(iv) that the accused applicant shall not hamper or tamper with the investigation in any manner whatsoever.

29. With the aforesaid directions, the instant anticipatory bail application stands disposed of, as allowed.

JUDGE

Pura Yabii, Private Secretary

Comparing Assistant