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4. Against the above backdrop, on last date, the IO had taken time to produce documentary material related to the dairy business between the parties since the FIR is silent about the same. Today, learned APP has pointed out bank account statements which record payments made towards milk, butter and dairy products. One wonders as to why in the FIR, there was no mention of dairy business between the parties.

5. Learned APP for State submits that after last date, the accused/applicants joined investigation but remained evasive and did not produce documents related to sale of dry fruits and the rent agreement of the place where they allegedly started business. Learned APP also submits that the accused/applicants do not dispute having accepted the loan amount and having not paid back the same. As regards the contention of the accused/applicants recorded on last date, the learned APP assisted by learned counsel for complainants and the IO admits that a sum of Rs.2,66,00,000/- was paid by the accused/applicants to the complainants and now only Rs.1,31,00,000/- is outstanding. However, it is explained by learned APP that the amount of Rs.2,66,00,000/- paid by the accused/applicants does not pertain to the transactions involved in the present FIR.

6. To begin with, even if it was for transactions other than the loan and dry fruit transactions involved in the present case, for consideration of anticipatory bail on the allegations of cheating, one cannot ignore the

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amount paid (Rs.2,66,00,000/-) as against the amount allegedly outstanding (Rs.1,31,00,000/-). This would be relevant in deciding the *prima facie* existence of the offence of cheating.

7. Another aspect to be kept in mind while considering the *prima facie* case for cheating is complainants' own statement that initially part of loan amount was repaid. In other words, there is no allegation of existence of dishonest intention at the inception of the transactions. There has to be a difference between an ordinary business transaction which fails and an act of cheating. Merely with the use of words "inducement" or "misrepresentation" or "dishonest intention" in the complaint, the offence of cheating cannot be made out; it is the overall facts and circumstances that have to be analysed in order to ascertain *prima facie* commission of the offence.

8. As mentioned above, the accused/applicants admittedly joined investigation after last date as well. The argument of learned prosecutor that the accused/applicants were evasive in their interrogation cannot be a ground to deny them liberty. It is the investigatorial skills of the investigator which matter. If the interrogator is unable to elicit the requisite information in the course of interrogation, the accused joining investigation cannot be faulted with. No accused is under a duty not to be smart.

9. As mentioned above proceedings under Section 138 Negotiable Instruments Act are already pending against the accused/applicants.

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10. Considering the overall circumstances as described above, I find no reason to deprive the accused/applicants liberty. The applications are allowed and it is directed that in the event of their arrest, the accused/applicants shall be released on bail, subject to each of them furnishing a personal bond in the sum of Rs.50,000/- with one surety each in the like amount to the satisfaction of the IO/SHO concerned. It is also directed that the accused/applicants shall join investigation as and when directed by the IO in writing. Of course, nothing discussed above shall have bearing on final outcome of the trial.

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**GIRISH KATHPALIA
(JUDGE)**

FEBRUARY 04, 2026/ry