

**ORDER-SHEET FOR MAGISTRATE'S RECORDS**  
**DISTRICT : SONITPUR.**  
**IN THE COURT OF SESSIONS JUDGE, SONITPUR AT TEZPUR**  
**Criminal (Bail) No. 08/2022**  
**Vs. State of Assam**

Sl. No. of Orders	Date	Order	Signature
	<u>11-01-22</u>	<p>This is an application u/s 438 Cr.P.C. filed by accused/petitioner Vijay Kumar Shah in connection with Tezpur P.S. Case No. 2636/2021 corresponding to G.R. Case No. 4234/2021 u/s 420/406 IPC.</p> <p>I have heard the learned lawyers appearing for both sides and also gone through the contents of the case diary.</p> <p>Learned counsel for the State Sri. Munin Ch. Baruah opposed the bail prayer contending inter alia that there are sufficient materials emerged in the case diary against accused/petitioner. So, accused/petitioner do not deserve the benefit of pre-arrest bail.</p> <p>Learned counsel Mr. Sudesh Singh has appearing on behalf for informant and submitted in the same vain with that of the learned PP stating that accused/petitioner cheated his client for which he do not deserve pre-arrest bail.</p> <p>On the other hand, learned counsel Imtiaz Ansari appearing for the accused/petitioner vehemently contended that given the nature of allegation in the FIR there is no ingredients of cheating or criminal breach of trust as alleged. It is a case of purely civil nature. The allegation arises out of breach of alleged contract for which the remedy if any lies in the Civil Court. To support his version learned counsel has relied on a decision of the Hon'ble Apex Court reported in 2016 CRL. L. J. 3156 S.C. (Dr. Rini Johar and Anr. Vs. State of MP and Ors.).</p> <p>Having heard the contention of learned lawyers appearing for both sides and on careful perusal of contents of the case</p>	

diary, it appears that the informant is a businessman by profession and he took vehicles from different sources under agreement on rental basis and thereafter, he again rented out the same to other party on rent. In the present case, the case diary reveals that the informant Rasidul Islam took one Hydraulic Excavator SY215C62D Serial No 21SE21E0116021 from one Sunil Das owner of the same on agreement and subsequently, rented out the same to accused person on good faith on payment of rental agreed upon between them but as it appears after taking the excavator and using the same by accused at Sijusah Arunachal Pradesh he did not pay the amount to the informant as agreed upon between them.

The case diary further reveals that the excavator and other machinery were found recovered by I.O. from the possession of accused at Arunachal Pradesh. Therefore, as alleged in the FIR the accused had the pre-determined fraudulent intention/ design to cheat the petitioner by not making payment for the vehicles and machineries taken by him from the informant on rental basis.

Therefore, even though, the act of informant and accused prima facie appears to be civil in nature but it has the colour of criminal intent to cheat the informant by accused.

As such, given the facts emerged in the case diary, this court do not consider it a fit case to extend the benefit of pre-arrest bail to accused/petitioner.

In the result, bail petition stands rejected.

Send back the case diary in seal cover.

Accordingly, Misc(Crl.) case disposed of.

  
Sessions Judge,  
Sonitpur, Tezpur.