

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. MP(M) Nos. 2226 of 2022 & 1118  
of 2023**

**Reserved on: 08.11.2023**

**Date of Decision: 01.12.2023.**

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1. **Cr.MP(M) No. 2226 of 2022**  
Geeta Kashyap ...Petitioner
- Versus
- State of Himachal Pradesh ...Respondent
2. **Cr.MP(M) No. 1118 of 2023**  
Riya Chauhan ...Petitioner
- Versus
- State of Himachal Pradesh ...Respondent
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*Coram*

*Hon'ble Mr. Justice Rakesh Kainthla, Judge.*

*Whether approved for reporting?<sup>1</sup> Yes.*

For the Petitioner : Mr. Vinod Chauhan, Advocate, in  
Cr.MP(M) No. 2226 of 2022 and  
Mr. Pawan Gautam, Advocate in  
Cr.MP(M) No. 1118 of 2023.

For the Respondent : Mr R.P. Singh, Deputy Advocate  
General with SI Dhanvir, Police  
Station Solan, District Solan, HP,  
in both the petitions.

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<sup>1</sup> Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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**Rakesh Kainthla, Judge**

These bail petitions have arisen out of the same FIR and therefore, they are taken up together for convenience.

2. The informant Anil Sharma filed an application before the learned Chief Judicial Magistrate, Solan asserting that accused no. 2 to 7 (including the present petitioners) claimed themselves to be the wholesale dealers of gold. Petitioner Geeta Devi alias Geeta Kashyap claimed herself to be an agent of accused No. 2 to 7, who was working with accused No. 4-M/s R.C. Jewellers. The informant was introduced to accused no. 1 Geeta Kashyap by one Harish. The informant developed good relations with Geeta Kashyap and he started treating her as his sister. Geeta used to borrow money from the informant on one pretext or another and return the same on the assured date. She told the informant that she had started investing money in gold and asked the informant to join her. The informant refused as he never wanted to enter into this business being speculative. The residential house and building of Geeta collapsed in a hill slide in June 2019. Geeta approached the informant and demanded money from him. The informant paid the rent of the flat hired

by Geeta. He also advanced ₹50.00 lacs by bank transfer and also provided some amount in cash by borrowing it from his relatives. The money was provided on the condition that it would be returned after a few months without any interest. The financial condition of Geeta improved and the informant demanded money from her; however, the money was not paid despite repeated requests. The informant and Geeta had a heated argument and she revealed that she had invested the entire money in gold by investing it with M/s R.C. Jewellers, owned by Ria Chauhan, one of the petitioners, and Meenakshi Mittal. The informant threatened to take legal action against Geeta, who asked him to visit Jirakpur and meet the partners of R.C. Jewellers. The informant went to Jirakpur on 30.10.2019 where he was introduced to Ria Chauhan and Meenakshi Mittal. Ria acknowledged that Geeta had invested ₹50.00 lacs in the business. Ria Chauhan and the other accused assured the informant that his money would be returned at the earliest. She even issued two cheques to clear her liability. However, the cheques were dishonoured. The accused lured the informant to open a gold shop at Jirakpur. It was decided that Geeta would sit in the shop with the informant. The accused assured to supply

the gold worth ₹50.00 lacs to the informant in his shop which was opened at Jirakpur. The informant invested ₹10.00 lacs while opening the shop, however, the gold was not sent as per the commitment. The shop was handed over to Geeta, who is running the same in the name of Ganpati Jewellers. She has not returned the money. The accused also owns money to various persons and they are entering into agreements with them. The complaint was sent to the Police. The police registered the FIR and found that Anil Sharma-informant had transferred money to Geeta for investing in the gold. This money was transferred to the account of R.C. Jewellers. The police searched for Ria Chauhan, Pawan Chauhan, Pooja Chauhan and Rohan Chauhan but could not find them.

3. The petitioners filed the bail petitions asserting that they were innocent and they were falsely implicated. They belong to respectable sections of the society. They would abide by all the terms and conditions, which may be imposed by the Court. Hence, the petition.

4. The police filed a status report outlining the facts mentioned above.

5. The informant Anil Sharma intervened and he filed an affidavit asserting that as per the police report, ₹27,55,000/- had been transferred; however, the informant had advanced ₹50.00 lacs. The police are not conducting the investigation properly. The accused are sharing the rent equally with the informant and they transferred an amount of ₹1,26,000/- in the bank account of the informant. The informant paid a total amount of ₹2,94,000/- as advance rent. The petitioner had received only an amount of ₹2,45,500/- from the accused. The accused are not disclosing the facts before the police. The accused are in regular touch with the petitioner. He even provided the photographs but no action was taken. Therefore, it was prayed that the bail petition be dismissed.

6. I have heard Mr. Vinod Chauhan, learned Counsel for the petitioner in Cr.MP No. 2226 of 2022, Mr Pawan Gautam, learned counsel for the petitioner in Cr.MP No. 1118 of 2023 Mr. R.P. Singh, learned Deputy Advocate General for the respondent-State and Mr. Rajiv Rai, learned counsel for the informant.

7. Mr. Vinod Chauhan, learned Counsel for the petitioner in Cr.MP No. 2226 of 2022 submitted that the petitioner was falsely implicated. No case has been made against the petitioner. Therefore, he prayed that the present petition be allowed and the petitioner be released on bail.

8. Mr. Pawan Gautam, learned counsel for the petitioner in Cr.MP No. 1118 of 2023 adopted the submissions and submitted that no case is made against the petitioner. The petitioner would abide by all the terms and conditions, which may be imposed by the Court. Therefore, he prayed that the present petition be allowed and the petitioner be released on bail.

9. Mr. R.P. Singh, learned Deputy Advocate General for the respondent-State submitted that the petitioners are not joining the investigation. The money is to be recovered from the petitioners. They are not depositing the money. They are not entitled to pre-arrest bail. Hence, he prayed that the present petitions be dismissed.

10. I have given considerable thought to the rival submissions at the bar and have gone through the record carefully.

11. The ingredients of Section 420 of IPC were explained by the Hon'ble Supreme Court in *M N G Bharateesh Reddy Versus Ramesh Ranganathan And Another AIR 2022 SC 5021*, as under: -

“14. The ingredients of the offence under Section 415 emerge from a textual reading. Firstly, to constitute cheating, a person must deceive another. Secondly, by doing so the former must induce the person so deceived to (i) deliver any property to any person; (ii) to consent that any person shall retain any property; or (iii) intentionally induce the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and such an act or omission must cause or be likely to cause damage or harm to that person in body, mind, reputation or property.

15. Section 420 deals with cheating and dishonestly inducing delivery of property. It reads as follows:

“420. Cheating and dishonestly inducing delivery of property – Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being capable of converting into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

16. In *Hridaya Ranjan Prasad Verma v. State of Bihar* [(2000) 4 SCC 168], a two-judge bench of this Court interpreted

sections 415 and 420 of IPC to hold that fraudulent or dishonest intention is a precondition to constitute the offence of cheating. The relevant extract from the judgment reads thus:

“14. On a reading of the section, it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place, he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless the fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intentions at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

12. In the present case, the petitioner specifically stated that Geeta Kashyap asked him to invest money in the gold but he



declined by saying that it was highly speculative. He asserted that he advanced a sum of ₹50.00 on different dates to Geeta Kashyap as her house had collapsed during the landslide. Geeta Kashyap instead of returning the money to him invested the same in the gold. It is not the case of the informant that Geeta had made any representation to him on which he paid the money to her. He himself stated that the house of Geeta had collapsed in a landslide and he provided the money as help. Therefore, prima facie, at this stage, no case of inducement or delivery of property based on inducement has been made out. The money was extended as a help and was not entrusted to Geeta, therefore, prima facie the offence punishable under Section 406 of IPC is also not made out against the petitioner.

13. The informant claimed that the accused are not returning his money. In the affidavit filed by him, he has outlined the various amounts paid to him and has claimed that he had not received the whole of the amount. Sh. R.P. Singh, learned Deputy Advocate General for the respondent-State also contended that recovery of the money has not been effected from the petitioners and the petitioners are not entitled to the concession of bail. This shows that the whole emphasis of the

informant and the State is to recover money during the bail proceedings. It was laid down by the Hon'ble Supreme Court in *Ramesh Kumar vs. State NCT of Delhi (2023) 7 SCC 461* that the bail proceedings cannot be turned into recovery proceedings. It was observed:-

23. In *Dilip Singh v. State of M.P. [Dilip Singh v. State of M.P., (2021) 2 SCC 779: (2021) 2 SCC (Cri) 106]*, this Court sounded a note of caution in the following words : (SCC p. 780, paras 3-4)

“3. By imposing the condition of deposit of Rs 41 lakhs, the High Court has, in an application for pre-arrest bail under Section 438 of the Criminal Procedure Code, virtually issued directions in the nature of recovery in a civil suit.

4. It is well settled by a plethora of decisions of this Court that criminal proceedings are not for the realisation of disputed dues. It is open to a court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. The factors to be taken into consideration, while considering an application for bail are the nature of the accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; the reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character, behaviour and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of the public or the State and similar other considerations.

A criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial.”

24. Yet again in *Bimla Tiwari v. State of Bihar* [*Bimla Tiwari v. State of Bihar*, (2023) 11 SCC 607: 2023 SCC OnLine SC 51], this is what the Court said : (SCC paras 9-11)

“9. We have indicated on more than one occasion that the process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings but what has been noticed in the present case carries the peculiarities of its own.

10. We would reiterate that the process of criminal law cannot be utilised for arm-twisting and money recovery, particularly while opposing the prayer for bail. The question as to whether pre-arrest bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined and the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations. Putting it in other words, in a given case, the concession of pre-arrest bail or regular bail could be declined even if the accused has made payment of the money involved or offers to make any payment; conversely, in a given case, the concession of pre-arrest bail or regular bail could be granted irrespective of any payment or any offer of payment.

11. We would further emphasise that, ordinarily, there is no justification in adopting such a course that for the purpose of being given the concession of pre-arrest bail, the person apprehending arrest ought to make payment. Recovery of money is essentially within the realm of civil proceedings.”

25. Law regarding the exercise of discretion while granting a prayer for bail under Section 438CrPC having

been authoritatively laid down by this Court, we cannot but disapprove the imposition of a condition of the nature under challenge. Assuming that there is substance in the allegation of the complainants that the appellant (either in connivance with the builder or even in the absence of any such connivance) has cheated the complainants, the investigation is yet to result in a charge sheet being filed under Section 173(2)CrPC, not to speak of the alleged offence being proved before the competent trial court in accordance with the settled procedures and the applicable laws. Sub-section (2) of Section 438CrPC does empower the High Court or the Court of Session to impose such conditions while making a direction under sub-section (1) as it may think fit in the light of the facts of the particular case and such direction may include the conditions as in clauses (i) to (iv) thereof. However, a reading of the precedents laid down by this Court referred to above makes the position of law clear that the conditions to be imposed must not be onerous or unreasonable or excessive. In the context of the grant of bail, all such conditions that would facilitate the appearance of the accused before the investigating officer/court, unhindered completion of investigation/trial and safety of the community assume relevance. However, the inclusion of a condition for payment of money by the applicant for bail tends to create an impression that bail could be secured by depositing money alleged to have been cheated. That is really not the purpose and intent of the provisions for the grant of bail.

14. Therefore, the bail proceedings cannot be used to recover the amount advanced by the informant to Geeta.

15. The petitioner stated that the documents were forged; however, the detail of the documents forged and the person by whom they were forged has not been given.

16. It appears from the status report that the informant had invested the money in gold through Geeta but he has projected a different version that he had advanced the money as a help to Geeta. If the money was advanced as a help and is not being returned, it will give rise to civil liability and not criminal liability.

17. It has not been stated that the petitioners had misused the terms of the bail granted to them on 4.10.2022 and 10.5.2023, therefore, the present bail applications are allowed and the orders dated 4.10.2022 and 10.5.2023 are made absolute till the disposal of the case. The petitioners will continue to abide by all the terms and conditions imposed by the Court.

18. The observation made herein before shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

**(Rakesh Kainthla)**  
**Judge**

1<sup>st</sup> December, 2023 (Chander)