

GAHC010177372025



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

Case No. : AB/1929/2025

SHRI. KETAN KUMAR PATEL AND ORS
S/O- KIRIT KUMAR PATEL,
R/O- 1/6, ROWLAND ROAD, 2ND FLOOR, L.R. SARANI, KOLKATA, WEST
BENGAL-700020.

2: SMTI. NEERA BHATNAGAR
W/O- SAMEER BHATNAGAR.
R/O- K-94
HAUZ KHAS ENCLAVE
HAUZ KHAZ
SOUTH DELHI
NEW DELHI-110016.

3: SMTI. KUSUMBEN K. PATEL
D/O- PUNJA BHAI.
R/O- 1/6
ROWLAND ROAD
2ND FLOOR
L.R. SARANI
KOLKATA
WEST BENGAL-700020.

4: SMTI. ANURADHA PATEL.
D/O- H.C. PATEL.
R/O- 1/6
ROWLAND ROAD
2ND FLOOR
L.R. SARANI
KOLKATA
WEST BENGAL-700020.

5: SHRI. KIRIT KUMAR PATERL.
S/O- MANIBHAI PATEL.
R/O- 1/6

ROWLAND ROAD
2ND FLOOR
L.R. SARANI
KOLKATA
WEST BENGAL-700020

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM.

Advocate for the Petitioner : MR. P BORA, MR M SAHEWALLA, MS K
BHATTACHARYYA, MR H K SARMA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE PRANJAL DAS

ORDER

11.08.2025

- 1.** Heard Mr. P. Bora, learned counsel assisted by Mr. H.K. Sarma, learned counsel for the petitioners. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State.
- 2.** This application under Section 482 of BNSS, 2023 has been filed by the petitioners, namely, **1. Sri Ketan Kumar Patel, 2. Smt. Neera Bhatnagar, 3. Smt. Kusumben K. Patel, 4. Smt. Anuradha Patel and 5. Sri Kirit Kumar Patel** seeking pre-arrest

bail in connection with **Jakhalabandha P.S Case No. 98/2024** registered **under Sections 120(B)/403/406/420/34 of IPC,1860.**

3. Perused the FIR available at page no.17 and 18 lodged by Raju Rai, proprietor of one Tirupati Engineering Works situated at Jakhalabandha.

4. The allegations in brief are that the proprietor of the informant firm had taken executing work orders for installing and repairing of tea factory machineries from the accused persons and that accused no.1 had personally visited and requested repair plant and machinery of Sycotta Tea Estate, which was stated to be under their control through their company Jalinga Tea Company Private Ltd. and he also promised to clear the bills. The details of the bills have been enumerated.

5. The grievance of the informant is that after he completed the work and paid the bills, they failed to honor their obligation by making the payments. Considering their actions as act of cheating and fraud, he filed the instant ejahar, which led to the registration of this case.

6. Mr. P. Bora, learned senior counsel assisted by Mr. H.K. Sarma, learned counsel for the petitioners has taken the Court through letter written to the Manager of Jalinga Tea Company Private Ltd. by the firm of which the informant is the proprietor and the reply of the Jalinga Tea Company Private Ltd. to Tirupati Engineering Works vide letter dated 22.04.2024.

7. In the said letter, it has been narrated that they were assigned the running of Sycotta Tea Estate by Assam Tea Corporation Ltd. but later, they give some order for repairing factory machinery.

8. It is contended in the letter that lease of the Sycotta Tea Estate have not been transferred to the Jalinga Tea Company Private Ltd.

9. From these materials, it appears that the Jalinga Tea Company Private Ltd. represented by the present petitioners have given some machineries for repair to the firm aggrieved by the non-payment of the bills. It is submitted that it is primarily a civil dispute and the allegations of cheating and defrauding are completely misplaced.

10. On the other hand, learned Additional Public Prosecutor submits that the amount in question to the tune more than Rs.31 Lakhs is a considerable amount and having got their machinery repair by the informant side, the act of the accused petitioners on behalf of their tea estate in not making the payments may amount to criminal liability.

11. The learned counsel for the petitioners seeks interim protection.

12. On the other hand, learned Additional Public Prosecutor for the State has opposed the grant of bail to the petitioners at this stage on the ground that all are FIR named accused persons and has prayed for calling of the case diary.

13. Let the case diary be called for.

14. For the purpose of adjudicating the prayer for interim, I have given my consideration to the matter by way of perusing the relevant materials and considering the submissions.

15. An interesting aspect to note is that, the date of ejahar is 03.10.2024 itself. Though considerable time has elapsed since the registration of the ejahar but as it is submitted by the learned counsel for the petitioners at this stage that notice under Section 35(3) of BNSS, 2023 for appearance have been received only in the first week of August.

16. It is well settled that mere presence of a civil dispute would not automatically mean that there is no criminal liability; however, the Hon'ble Apex Court in series of decisions has discouraged criminalizing what are essentially civil dispute.

17. With regard to the aspect of cheating and breach of contract also, the position of law crystallized is no longer *res integra*. A breach of contract or inability to fulfill terms of the contract, written or verbal, can give rise to criminal liability by way of cheating, only if the said intention to cheat or defraud is present right from the inception.

18. In my considered view, the said aspect has to be deciphered from the materials and might or might not be a triable issue, depending on the facts and circumstances of the case.

19. Upon giving my consideration to the matter at hand, I am of the view that at this stage, the possibility of the dispute being

primarily a civil cannot be ruled out altogether.

20. Further, there is considerable time elapse from the date of the ejahar. Therefore, allowing the petitioners to record their statements before the I.O with some interim protection might actually facilitate the investigation.

21. Therefore, in the interim, in the event of their arrest in connection with this case, the petitioners namely, **1. Sri Ketan Kumar Patel, 2. Smt. Neera Bhatnagar, 3. Smt. Kusumben K. Patel, 4. Smt. Anuradha Patel and 5. Sri Kirit Kumar Patel** shall be allowed to go on **bail of Rs.25,000/- (Rupees Twenty Five Thousand)** only **each** with one surety **each** of the like amount subject to the satisfaction of the arresting authority with following conditions:

I) That the petitioners shall co-operate in the investigation and appear before the I.O for recording their statement;

II) That the petitioners shall not hamper or tamper with the evidence.

III) That the petitioners shall not directly or indirectly make any inducement, threat or promise to any person who may be acquainted with the facts of the case so as to dissuade such person from disclosing such facts of the case before the Investigating Officer;

22. Violation of the bail conditions might entail cancellation of the interim bail.

23. List on 03.09.2025.

JUDGE

Comparing Assistant