IN THE HIGH COURT OF ORISSA AT CUTTACK
ABLAPL No.4385 of 2025

Jitendra Kumar Mishra & others …. **Petitioners**
Mr. A. Mishra, Advocate

-Versus-

State of Odisha …. **Opposite Party**
Mr. S. Panda, ASC
Mr. B. Nayak, Advocate (Informant)

CORAM:
MR. JUSTICE R.K. PATTANAIK

DATE OF HEARING :18.02.2026
DATE OF ORDER:23.02.2026

Order No.	
11.	**1**. Heard Mr. Mishra, learned counsel for the petitioners, Mr. Panda, learned ASC for the State and Mr. Nayak, learned counsel for the informant.

2. Instant petition under Section 481 BNSS is at the behest of the petitioners seeking grant of anticipatory bail in connection with Lalbag P.S. Case No.229 dated 17th November, 2024 corresponding to G.R. Case No.679 of 2024 pending in the court of learned S.D.J.M.(S), Cuttack on the grounds stated.

3. The informant lodged a complaint in 1.C.C. No.1148 of 2024 in the Court of learned S.D.J.M.(S), Cuttack alleging therein that the petitioners committed fraud and cheated him to the tune of Rs.2,04,32,000/- (rupees two crores four lakh thirty-two thousand) with details of the transaction having taken place between them being described therein. It has been alleged by the informant that the petitioners received an amount from him in connection with construction work towards improvement and widening of Balugaon-Mahipur Road showing a Government work order, but misappropriated the same and therefore, committed fraud, forgery and cheating. Upon receiving the complaint, the learned court below directed registration of a case. Accordingly, Lalbag P.S. Case No.229 dated 17th November, 2024 was registered under Sections 318, 336, 338, 296, 351 & 3(5) of BNS. In course of investigation, which is in progress, the petitioners have approached this Court seeking pre-arrest bail on the stated grounds.

4. Briefly stated, the case as unfolded in the FIR dated 17th November, 2024 is to the effect that the informant is in construction business and he is the Managing Director of M/s. Saubhagya Builders Pvt. Ltd., Cuttack and petitioner Nos.1 & 2 are also in the same business and are Proprietors of M/s. Raja Construction, Nayagarh, who introduced petitioner No.3 with him being the partner of M/s. Raghunath Construction, Nayagarh. According to the informant, the petitioners informed him that M/s. Raghunath Construction had been awarded the work in the widening and improvement of Balugaon-Mahipur Road and asked for help and to provide all of them the men, machines and materials and assured a share in the profit and by that means, received Rs.2,04,32,000/- and thereafter, did not respond, rather, on 31st July, 2024, he was threatened and terrorized and as a result, the complaint was filed. Such

complaint finally resulted in registration of Lalbag P.S. Case No.229 dated 17th November, 2024.

5. Perused the objection filed by the informant, affidavit of the petitioners and also reply to the same dated 17th December, 2025 by the informant.

6. According to the informant, the petitioners approached him in his office at Alisha Bazaar, Cuttack and gave impression that if he invested money for supplying labour and in the procurement of materials and further deposited the EMD and APS amount, all of them would share the profit as partners. It has been pleaded by the informant that petitioner No.3 showed him the letter of the Superintending Engineer (R&B Division), Nayagarh intimating M/s. Raghunath Construction, Nayagarh to deposit a bank guarantee towards security and insisted him to transfer money to their account, as a consequence whereof, an amount of Rs.73,41,000/- was transferred to the account of M/s. Raghunath Construction on different dates between 29th April, 2022 and 10th February, 2022 from his personal account and also the account of the Firm. Apart from the above, an amount of Rs.50,00,000/- was given in cash to opposite party No.3. The informant claims that he has given a sum of Rs.1,23,41,000/- to M/s. Raghunath Construction, Nayagarh. Furthermore, as per the understanding between them, the informant pleads that he transferred Rs.30,00,000/- to the account of petitioner No.1 and Rs.25,41,000/- to petitioner No.2 and an amount of Rs.25,00,000/- in cash to both of them, in total, Rs.80,91,000/- was paid by him and it was in connection with the execution of work, movement of machineries and towards day-to-day expenses and by such means, all the petitioners received an amount of Rs.2,04,32,000/-. In support of such payments at the instance of the informant, the statements showing such transfers by the informant to the accounts managed by the petitioners have been brought on record as Annexure-A/2. The allegation of the informant is that the amount received from him by the petitioners was not returned. The informant alleges that he requested the petitioners to enter into an agreement in writing with his Firm but all started ignoring and avoiding him and in the meantime, the execution of the work was commenced without paying any heed to the above request. Despite several attempts to get the money back as he had to pay interest over the money to the Bank, it was in vain, hence, has been cheated by the petitioners.

7. According to the affidavit filed by the petitioners, they have no liability at all to return the amount to the informant, who is rather to pay them an amount of Rs.4,00,83,986/- in view of the claim based on Annexures-4, 5 & 6. It has been pleaded further that the complaint is purely related to a commercial dispute, but the case has been registered by giving it a criminal colour, which has been deprecated by the Apex Court time and again and more recently in **Sharif Ahmed and another Vrs. State of Uttar Pradesh and another 2024 SCC OnLine 726**.

8. As per the petitioners, no cause of action has taken place within the jurisdiction of the learned court below but the informant filed the complaint at Cuttack with the allegation that he had approached the IIC, Nayagarh P.S. for action, but registration of it by an order under Section 156(3) Cr.P.C. should not have been directed. The petitioners contend that both parties had attempted for a settlement and refer to Annexure-2 and Annexure-3 series, but the informant, even though, received all the vouchers and bills under signature on 24th November 2023, for reasons best known to him, he lodged the complaint, which is clearly an attempt to extract money from them. It is alleged that the informant never had any business with petitioner Nos.2 & 3. It is also pleaded that mediation was attempted, but it has failed. In course of such mediation, the informant is alleged to have admitted that he has no business link with M/s. Raghunath Construction, Nayagarh, as further claimed by the petitioners. According to the affidavit, late father of petitioner No.3 was the Proprietor of M/s. Raghunath Construction, whereas, the informant never met petitioner No.3 or had any business connection with him either. At the end, the petitioners pleaded that petitioner No.1 and the informant tried to run a crusher unit at Mangarajpur in the district of Nayagarh and in that, huge loss was incurred, so also for the road work from Raj-Sunakhala to Chandpur and in that, the latter completely sidetracked and did not take the burden, rather, put the entire loss on petitioner No.1, who sent an e-mail on 25th August, 2023 to the informant annexing all the credit and debit details, claiming an expenditure of Rs.90,45,897/-, who, however, remained silent as to the part of his liability. A copy of the e-mail dated 25th August, 2025 with all credit-debit balance sheet is at Annexure-4 series, referring to which, the above plea has been advanced. The petitioners, as a counter, allege that the informant is liable to pay an amount of Rs.1,04,83,986/-, which he is well aware of and in support of the same, the statement of calculations at Annexure-6 is referred to. It is also claimed that petitioner No.1, who was sick during the month of April, 2023 and had to undergo treatment, during such absence for a period more than six months, the informant taking advantage of the situation of his prior business connection, manipulated the records being hand in glove with the staff working under him and created self-serving documents by accessing the official e-mail and other confidential documents, which he could learn during September, 2023 and immediately reported the matter to the local police, requesting them for settlement of the dispute. Finally, the claim is that petitioner No.1 is having ailments and is under treatment and referred to the medical papers at Annexure-7 series.

9. The claim of the petitioners has been refuted with a detailed reply by the informant. The liability against the informant is denied and all such facts pleaded in the affidavit by the petitioners with the claim that the allegations therein against him are utterly false.

10. Mr. Mishra, learned counsel for the petitioners reiterates that the materials on record clearly suggest that it is a commercial dispute between the parties. It is also submitted that mediation was suggested by the Court, but it was unsuccessful. The further submission is that all such attempts were made for resolution of the dispute, but it has also failed. In support of the attempt to go for a settlement, Mr. Mishra, learned counsel for the petitioners refers to Annexures-2 & 3 series. The contention is that the informant deliberately filed the complaint at Cuttack instead of approaching the local police at Nayagarh. Since it is related to a commercial transaction, according to Mr. Mishra, learned counsel for the petitioners, the complaint ought not to have been entertained. The further submission is that the petitioners are entitled to pre-arrest bail in view of the decision of the Apex Court in **Sharif Ahmed** (supra). The contention is that a commercial or civil dispute should not have been given a colour of criminality by filing the complaint and leading to registration of a case at Cuttack and therefore, pending investigation, the petitioners should be granted protection against arrest.

11. On the contrary, Mr. Nayak, learned counsel for the informant vehemently objects to the grant of anticipatory bail to the petitioners considering their conduct and mischief and for having not refunded the money, they have received from him. Referring to Annexure-3 series, it is further submitted by Mr. Nayak, learned counsel for the informant that the same does not relate to the contract in connection with which the complaint is filed against the petitioners and therefore, a deliberate attempt has been made to mislead the Court. With all details of the transactions and referring to the same, Mr. Nayak, learned counsel would submit that the petitioners are guilty of misappropriation of huge amount having received it from the informant and the same was not refunded despite repeated requests made, rather, threat was administered not to demand such refund.

12. Mr. Panda, learned ASC appearing for the State produces the case diary and all other relevant documents and submits that there is an allegation of fraud and cheating from the side of the informant and the investigation is underway. Referring to the instruction received from the Lalbag P.S., Mr. Panda learned ASC submits that the informant is alleged to have been cheated by the petitioners for a sum of Rs.2,04,32,000/- and a substantial part of the payments received is proved on record. The contention is that the petitioners are not entitled to anticipatory bail, as has been demanded by them.

13. Gone through the case diary and connected materials. As it appears, in course of investigation, seizures have been made by the I.O. in connection with the payments made and received between the parties through bank transactions.

14. The complaint was filed by the informant in 2024 and thereafter, Lalbag P.S. Case No.229 dated 17th November, 2024 was registered. The Court finds several transactions having taken place between the parties. The payments and receipts of the amount are sought to be proved through the statements of the Bank. The petitioners alleged the liability against the informant. In fact, petitioner No.1, who is said to have had dealings with the informant in running a stone crusher, referred to the expenses detail of the year 2022 as at Annexure-4 series of the affidavit and claims that there is such a liability against him and it stands at Rs.1,04,83,986/-. On the other side, the informant alleges that the payments were received, but without any agreement in writing and the project work was commenced despite protest by him. In absence of any such agreement in writing between the parties, the informant demanded the money back, but the construction of the road work is alleged to have continued by the petitioners. The Court finds the business details between the parties and the record suggests that a work order was issued to M/s. Raghunath Construction, Nayagarh. In respect of the above contract, a copy of the Performance Bank Guarantee dated 24th November, 2022 has been seized by the police. On perusal of the case diary and connected record, the Court finds that the same was demanded from M/s. Raghunath Construction for the work 'Improvement and Widening of Balugaon-Mahipur Road in the district of Nayagarh' towards security deposit for the fulfillment of the contract in the terms and conditions thereof for a sum of Rs.3,76,75,800/-. As per the said Performance Bank Guarantee, the Union Bank of India furnished the undertaking to pay the beneficiary of the said amount against any loss or damage caused or suffered by reason of breach of contract. So, it is made to reveal that a work order was in place for the said contract and the Performance Bank Guarantee was furnished. The record reveals several transactions to have been taken place with payments exchanged between the parties for the construction of the road work and such other business activities engaged between them.

15. As against the aforesaid background, without attributing anything on merits of the case, since the investigation is in progress, the Court is to consider, whether, the petitioners are entitled to pre-arrest bail in terms of Section 481 BNSS. The crux of the dispute is transactions based and in relation to the project work and other activities between the parties. Mr. Mishra, learned counsel for the petitioners submits that the dispute is commercial and manifestly proved from the record and therefore, in view of the decision of the Apex Court in **Sharif Ahmed** (supra), the accused persons ought to be granted anticipatory bail. Mr. Nayak, learned counsel for the informant strongly pleads that gross mischief has been committed and hence, the petitioners are not entitled to any such relief. Mr. Panda, learned ASC for the State supports the contention advanced from the side of the informant.

16. In the above decision, it was held and concluded that a Magistrate should be cautious in examining a complaint and to consider whether the facts disclosed therein amount to a civil or criminal wrong. It has been further observed therein that any such attempt in initiating vexatious criminal proceedings should be thwarted early as a summoning order or even a direction to register an FIR has grave consequences for setting the criminal action in to motion as held in **Dipak Gaba & others Vrs. State of U.P. & another (2023) 3 SCC 423** and at the end, in one the appeals filed, directed release of the accused persons on anticipatory bail in a case registered under Sections 420 and 120-B IPC.

17. Considering the submissions of the learned counsel for the respective parties and the decision in **Sharif Ahmed** (supra) and regard being had to the transactions between the parties, who are running the business activities and the dispute inter se related to the construction of road and rival claims of liabilities to be discharged with, which is denied by both the sides and the fact that the entire exercise is document oriented, this Court is of the humble view that the petitioners, who had business dealings with the informant in different capacities and on couple of occasions even without any contract in writing and that they are on interim protection and nothing on record to suggest that such liberty was ever misutilized by them, they should be granted pre-arrest bail with suitable conditions imposed. In other words, in view of the nature of the dispute between the parties and the fact that the allegation of the informant is under scrutiny and the investigation is in progress to examine the same, the petitioners having business dealings with him, should be protected by an order of pre-arrest bail.

18. Accordingly, it is ordered.

19. In the result, the ABLAPL stands disposed of. Consequently, it is directed that the petitioners in the event of their arrest in connection with Lalbag P.S. Case No.229 dated 17th November, 2024 corresponding to G.R. Case No.679 of 2024 pending in the court of learned S.D.J.M.(S), Cuttack shall be released on bail by the Arresting Officer on furnishing a bail bond of Rs.50,000/- (rupees fifty thousand) each with one solvent surety for the like amount each with a condition that that they shall cooperate the I.O. in the investigation without default, till it is completed.

20. Issue urgent certified copy of this order as per rules.

(R.K. Pattanaik)
Judge

M.K.Rout