

GAHC010156672022



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

Case No. : Bail Appln./1941/2022

DIBON DEKA @ DIBAN DEKA
S/O SRI BHUBAN DEKA
R/O GIRIPATH,
HOUSE NO. 5, ZOO-NARENGI ROAD, P.O. BAMUNIMAIDAN, P.S.
GITANAGAR
DIST. KAMRUP (M), PIN-781021

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR D K MISHRA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 10.11.2022

Heard Mr. D.K. Mishra, learned senior counsel, assisted by Mr. B. Prasad, learned counsel for the petitioner. Also heard Mr. M. Phukan, the learned Public Prosecutor for the State.

2. The petitioner, who was arrested on 01.10.2020 in connection with CID PS Case No. 21/2020 under Sections 120B/119/120/166/201/204/212/406/409/420/ 461/506/34 IPC read with Section 66B of the Information Technology Act, 2000, read with Sections 25(1-B)(a)/25(1-B)(h) of the Arms Act, 1959 read with Section 98(a) of the Assam Police Act, 2007 read with Sections 7(a)(b)(c)/8/12/ 13(1)(a)/13(2) of the Prevention of Corruption Act, 1988, is seeking regular bail under Section 439 I.P.C.

3. In the said case, the I.O. had filed charge-sheet no. 7 dated 18.12.2020, whereby the petitioner was implicated of allegedly committing offences, punishable under Sections 120B/120/201/204/420/34 IPC. As many as 36 accused have been sent up for trial and 3 accused were shown as absconders in the charge-sheet. The said case is registered as Special Case No. 6/2021, and is being tried before the Court of learned Special Judge, Assam, Guwahati. Charges were explained to the accused and by order dated 13.05.2022, charges were framed against the petitioner under Sections 120B/201/204/420 IPC read with Section 8 of the Prevention of Corruption Act, 1988. However, 14 accused were discharged.

4. The learned senior counsel for the petitioner has extensively referred to the contents of the FIR in CID P.S. Case No. 21/2020, FIR in Crime Branch PS Case No. 13/2020, charge-sheet, statement of some of the witnesses examined by the I.O. under Section 161 Cr.P.C., evidence-in- chief and cross-examination of PW-1 recorded on 10.06.2022 and 27.07.2022 respectively, order dated 25.06.2021, passed by this Court in BA 2806/2020 and order dated 01.06.2022, passed by the learned trial Court in Special Case No. 06/2020,

whereby the prayer for bail was rejected. It was submitted that the materials available on record merely discloses that it was the timely information given by the petitioner that the question paper of written examination for Recruitment to the post of S.I. (UB) for Assam Police was leaked, that the said examination had been cancelled. Therefore, it was submitted that no candidate, who had adopted illegal means to obtain the leaked question paper succeeded in their evil design and take any advantage because in the eleventh hour, the examination was cancelled by the Chairman, State Level Police Recruitment Board (SLPRB for short). It was submitted that in this endeavour to expose question paper leak, perhaps the petitioner had earned the wrath of highly connected people and therefore, the petitioner was arrested on 01.10.2020, as an alleged co-conspirator and he is in custody for 770 days as on today, i.e. 09.11.2022. In support of his submissions, the learned senior counsel for the petitioner has placed reliance on the following cases, viz., (i) *Sanjay Chandra v. C.B.I., (2012) 1 SCC 40*, (para 21-24, 27, 39, 40-42, 46, 48), (ii) *P. Chidambaram v. C.B.I., MANU/SC/1456/2019*, (para 22-24), (iii) *Dataram Singh v. State of U.P. & Anr., (2018) 3 SCC 22*, (para 4- 6). Moreover, it has been submitted that one of the prime accused, namely, *Prasanta Kumar Dutta* against whom more severe charges was framed under Sections 120B/201/204/420 IPC read with Sections 25(1-B)(a)/25(1-B)(h) of the Arms Act, 1959 read with Section 8 of the Prevention of Corruption Act, 1988, compared to the charges framed against the petitioner, was ordered to be released on bail by this Court by order dated 27.09.2022 passed in BA 348/2022.

5. The learned Public Prosecutor has vehemently opposed the prayer for bail and by extensively referring to the charge-sheet and the order dated 13.05.2022, passed by the learned Special Judge, Assam, Guwahati in

Special Case No. 6/2021, by which charges were framed against the petitioner, it was submitted that one of the prime accused, who was the Superintendent of Police, Karimganj had taken a sum of Rs.40.00 lakh to leak the question paper and he had opened the sealed packet containing question paper and photos of the question paper was taken and it was circulated to some persons named therein including the petitioner. With the help of the photos of the leaked question papers, coaching classes was organized by persons named therein, and to show it to be a bona fide coaching centre, even advertisements were published in newspaper. It was submitted that the petitioner along with others named in the charge-sheet and order dated 13.05.2022, framing charges against the accused persons, operated coaching centres, and mock test papers were prepared with some additional questions included in the model question papers to mask the leaked question paper and teachers were engaged/ hired to guide the coaching students, but those offering scam money were provided with the copies of the leaked question papers and were separately trained to give correct answers. It was submitted that several sim cards as well as mobile hand-sets were purchased and after leaking photos of question papers, the petitioner and others named therein were destroyed to erase the evidence. It was submitted that in the entire question paper leak process, the petitioner was one of the several prime accused. Thus, it was submitted that in such manner, the petitioner along with other co-conspirators had played with the career of about 69,000 candidates who were candidates for the exams, which had to be cancelled.

6. The learned P.P. had submitted that the petitioner had committed socio-economic offence, which must be treated as a class apart and therefore, the petitioner had forfeited his right to bail. It was submitted that

there was every likelihood that the petitioner would face a sentence of about 7 years and thus, by referring to the case of *Satender Kumar Antil v. C.B.I.*, AIR 2022 SC 3386, it was submitted that as the petitioner has not been in custody for at least half of the possible sentence, he is not entitled to bail. Moreover, it was submitted that the petitioner had confessed his crime before the I.O. To oppose the prayer for bail, the learned P.P. has referred to the following cases, viz., (1) (2012) 9 SCC 446 (*Ash Mohammad Vs. Shiv Raj Singh @ Lalla Babu & Anr.*) - Para 17 to 20 & 25, (2) (2012) 4 SCC 134 (*Dipak Subhashchandra Mehta Vs. CBI & Anr.*) - Para 31, (3) (2017) 13 SCC 751 (*The State of Bihar Vs. Amit Kumar @ Bacha Rai*) - Para 8, 12 & 13, (4) (2000) 5 SCC 88 (*State of Madhya Pradesh & Ors. Vs. Ram Singh*) - Para 8, 9, 10 & 11, (5) (2013) 4 SCC 642 (*Niranjan Hemachandra Sashittal & Anr. Vs. State of Maharashtra*) - Para 26, (6) (2001) 4 SCC 280 (*Prahlad Singh Bhati Vs. N.C.T., Delhi & Anr.*) - Para 8, (7) (2013) 7 SCC 466 (*Nimmagadda Prasad Vs. C.B.I.*)- Para 23, 24, 25, (8) (2013) 7 SCC 439 (*Y.S. Jagan Mohan Reddy Vs. C.B.I.*) - Para 34, 35, 36, (9) (2006) 8 SCC 693 (*State of Madhya Pradesh Vs. Shambhu Dayal Nagar*) - Para 32, (10) (2014) 8 SCC 682 (*Dr. Subramanian Swamy Vs. Director, C.B.I. & Anr.*) - Para 60, 70 to 75, (11) (2017) 5 SCC 406 (*Virupakshappa Gouda & Anr. Vs. The State of Karnataka & Anr.*) - Para 16, (12) (2011) 1 SCC 694 (*Siddharam Satlingappa Mhetre Vs. State of Maharashtra & Ors.*) - Para 84, (13) Order Dated 26.07.2022 in B.A. No. 1410/2022 (*Ranjit KumaR Borah Vs. State of Assam*), (14) AIR 2022 SC 3386 (*Satender Kumar Antil Vs. C.B.I.*)- Para-47, (15) (2022) 7 SCC 443 (*Mohd. Firoz Vs. State of Madhya Pradesh*) – Para 50, (16) (2007) 1 SCC 70 (*Rajesh Ranjan Yadav @ Pappu Yadav Vs. C.B.I. through its Director*) – Para 16, 24, 25, (17) (2004) 6 SCC 513 (*Surjit Singh Vs. Nahara Ram*) – Para 5, 6, and (18) 2014 (16) SCC 508 (*Neeru Yadav Vs. State of Uttar*

Pradesh) - Para-9, 16, 17, 18 and it is submitted that as the petitioner had committed socio-economic offence, he was not entitled to bail, despite his long custody of 770 days.

7. Perused the scanned copy of the voluminous case diary, which had been sent by the learned Special Judge, Assam, Guwahati in four voluminous bundles. As per the charge-sheet, the accusation against the petitioner is as under:-

“He got a set of leaked question papers from his close associate Saroj Sarma. He prepared model question papers by including the actual questions from the leaked question paper. He cleverly added some additional questions in the model question paper to avoid drawing of undue attention and to conceal his criminal activity. The model question papers were handed over by him to Pranab Bora and Pranjal Sarma who are partners of Thank You Lodge. With these, model question papers, mock test was held in Thank You Lodge on 19th Sept, 2020. He has induced several candidates by promising them job of SI (UB) of Police in exchange of huge amount money. He was in constant touch with the other conspirators of this crime. Arrested accused Sanjib Kumar Sarma had approached Dibon Deka for providing job of SI (UB) to few candidates and Dibon Deka had linked Sanjib Kumar Sarma with Saroj Sarma for the purpose of providing job illegally. Dibon Deka also disposed his mobile phone with malafide intention to destroy evidence. The evidence gathered during the course of investigation shall establish the complicity of the accused in the crime.”

8. From the statement of the witnesses examined by the I.O., it

appears as follows:-

- a. From the statement of one witness (name withheld as trial is pending) examined by the I.O. on 21.09.2020, it appears that one candidate had received the leaked question paper, and at the request of the petitioner, the said witnesses had obtained copy of leaked question paper through his whatsapp on 20.09.2020 from the particular candidate (name withheld as trial is pending), which he had accessed at 11.40 am, and shared it with the petitioner, who then informed the Chairman, SLPRB through one person (name withheld as trial is pending) and in a short time, the written examination was cancelled.
- b. Similarly, the person through whom the leaked question paper was sent to the Chairman, SLPRB by the petitioner was examined by the I.O. on 21.09.2020. He had also given a statement similar to the one narrated above. It was stated that on 20.09.2020 at about 11.39 am, he had received the leaked question paper through whatsapp, which was scheduled on 20.09.2020 at 12.00 noon. After he had asked the petitioner about the identity of the person who had provided him with the leaked question paper, the matter was informed to the Chairman, SLPRB.
- c. The I.O. had examined a witness on 03.12.2020, who was the Managing Director of an IT Company (name withheld as trial is pending), who had conducted the particular examination. He had stated that on 20.09.2020, while he was monitoring the examination process, he received a call at 11.30 am from the witness who is referred in sub-para (b) above, informing him that question paper was

leaked, and he got the information that it was received from the petitioner. The leaked question paper was verified by the Chairman, SLPRB, who asked him to come to his residence with another person named therein. At the residence of the Chairman, a meeting was arranged with the petitioner, himself, person whose statement is referred in sub-para (b) above along with another person named therein and in the said meeting it was decided to file a case against question paper leak. In the meanwhile, the written examination was cancelled due to question paper leak.

d. The Chairman of SLPRB also stated in similar lines in his statement before the I.O.

9. It is seen that in the FIR lodged by the Chairman, SLPRB before the Director General of Police on 20.09.2020, registered as CID PS Case No. 21/2020, it was disclosed that the informant had received leaked question paper from the witness whose statement is referred in sub-para (b) of para-8 above. It is also noted from the evidence-in-chief and cross examination of PW-1, which was recorded on 10.06.2022 and 27.07.2022 respectively that he had not accused the petitioner as a conspirator to the crime, but he had projected the petitioner to be the one who had been instrumental in informing the Chairman, SLPRB about the question paper leak. Thus, it appears that on receipt of the information about question paper leak from the petitioner on 20.09.2020 between 11.30 am and 11.40 am, the written examination scheduled on 20.09.2020 at 12.00 noon was cancelled, within a very short time.

10. The records disclose that names of about 183 witnesses have been cited by the prosecution in the case diary and as per order dated

22.08.2022, the case was fixed on 05.09.2022 for cross-examination of P.W.2. Therefore, even if day to day trial is held in this case, it does not appear that there would be an early disposal of trial of the case.

11. The learned P.P. has not disputed that it was not the petitioner who had disclosed about question paper leak. It is not disputed that the Chairman, SLPRB did not act on information about question paper leak on information shared by the petitioner. Therefore, assuming that the accusation against the petitioner is true that he made money by preparing mock test paper and running a coaching centre, and enticing candidates to take tuition from his coaching centre. However, before the illegally gotten leaked question paper could be put to use, the examination had been cancelled. Under such circumstances, the Court is unable to accept that the petitioner had committed a socio-economic offence of such magnitude that he has to be kept incarcerated in jail even after 770 days of judicial custody.

12. There is no quarrel with the legal proposition that can be culled out from as many as 18 (eighteen) cases cited by the learned P.P. However, before the social crime was actually committed, by allowing tainted candidates who had obtained leaked question paper to sit in the examination and to have illegal advantage over others, the petitioner had reported paper leak to the Chairman, SLPRB, who had cancelled the examination. In none of the eighteen cases cited by the learned P.P., contains similar factual scenario. Therefore, as facts in this case has no similarity in the cases cited by the learned P.P., no point would be served by burdening this order with discussions on the 18 (eighteen) cases cited by the learned P.P.

13. The learned P.P. has not been able to show that the petitioner

had committed corrupt practice of bribing the Superintendent of Police, Karimganj to get copy of leaked question paper, or that there were materials to show that from the alleged money of Rs.40.00 lakh, allegedly received by the said Superintendent of Police, he had shared any ill gotten proceeds of crime with the petitioner. Thus, there is no clarity as to what sort of corruption did the petitioner indulge in, save and except, the allegation of preparing mock test papers, taking money allegedly from some candidates who had been provided with leaked question paper and yet, the petitioner blew the whistle before the examination was held, which led to cancellation of examination.

14. It may be mentioned that it was submitted by the learned senior counsel for the petitioner that out of 42 (forty two) accused persons, 37 (thirty seven) accused have already been released on bail.

15. Therefore, despite vehement objection by the learned P.P., the Court is constrained to hold that this is a fit case to release the petitioner on bail. Accordingly, the Court is inclined to direct that the petitioner, namely, Dibon Deka @ Diban Deka, be released on bail in connection with Special Case No. 6/2021, corresponding to CID PS Case No. 21/2020, where charge has been framed against the petitioner under Sections 120B/201/204/420 IPC read with Section 8 of the Prevention of Corruption Act, 1988. The bail is granted on the following conditions:-

- a. The petitioner shall be released on bail on furnishing bail bond of Rs.2,00,000/- (Rupees two lakh) with one surety of like amount to the satisfaction of the learned Special Judge, Assam, Guwahati. The bailor would have to offer his/ her immovable property as surety for grant of bail.

b. Along with the bail bond, the petitioner shall have to submit an undertaking that he would appear before the learned trial Court on each date fixed for trial and in the event for some compelling reason, he cannot appear physically, the petitioner shall ensure that he is represented by his learned counsel, duly instructed to continue with the trial, and that he would not dispute his own identity or the identity of the witnesses who are examined or cross-examined in his absence.

In order to enable the petitioner to submit such an undertaking, it is provided that in the event the family members or the learned counsel for the petitioner approaches the Jailor where the petitioner is presently, lodged, the Jailor shall obtain the signature of the petitioner on such writing so as to enable the same to be filed before the learned trial Court along with the bail bond.

c. That along with the bail bond, the petitioner shall also surrender his passport before the learned trial Court, who shall keep the same in safe custody. The said learned Court shall have the power to pass appropriate orders from time to time in connection with such passport.

d. The petitioner shall make himself available to the police or any other investigating agency or Court in the present case as and when required.

e. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to Court or to any police officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witness.

f. The petitioner shall not obstruct the smooth progress of the investigation/trial.

g. The petitioner shall not misuse his liberty in any manner.

16. It is provided that in the event any of the conditions on which bail has been granted is violated, it would be open to the I.O. to move the learned trial Court for cancellation of bail.

17. The scanned copy of the case diary be returned to the Court of the learned Special Judge, Assam, Guwahati.

18. This application is disposed of.

19. Before parting with the records, it is clarified that the observations made in this order shall not cause prejudice to the petitioner or the prosecution in course of the trial, which shall be decide in its own merit, without being influenced by this order.

JUDGE

Comparing Assistant