

GAHC010015962024



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

Case No. : Bail Appln./233/2024

RAKESH DAS
R/O SOLMARA, P. S. BELSOR,
DISTRICT NALBARI, ASSAM,

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE LEARNED PP, ASSAM

Advocate for the Petitioner : MR. S M MOLLAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

17.02.2024.

Heard Mr. S.M. Mollah, learned counsel for the accused and Mr. R.J. Baruah, learned Addl. P.P. for the State respondent.

2. This application, under Section 439 of the Code of Criminal Procedure, is preferred by accused, namely, **Rakesh Das**, who has been languishing in jail hazoot since 30.11.2023, in connection with **Dibrugarh P.S. Case No. 936/2016**, registered under Sections 7/13(1)(a)(b)(d)(2) of the P.C. Act read with section 120[B]/420 of the IPC and added section 463/468/471/477(A)/201 of the IPC, for granting bail.

3. The aforementioned case has been registered on the basis of an FIR lodged by Dr. Anshumita Gogoi, on 27.10.2016.

4. The essence of allegations made in the FIR dated 27.10.2016, is that one Nabakanta Patir has contacted her and asked her to pay sum of Rs.10,00,000/- for recruiting her in a post of Dental Surgeon, conducted by APSC. And while she came to Dibrugarh to hand over aforementioned sum then Police caught him red handed.

5. The allegation against the present accused is that in the Combine Competitive Examination 2013, conducted by Assam Public Service Commission, he had used illegal means to increase to increase his marks by inserting fake answer script.

6. Mr. Mollah, learned counsel for the accused submits that the accused was arrested on 30.11.2023 and since then he has been languishing in jail hazoot. Mr. Mollah further submits that the at the time of arrest of the accused the I.O. has not given him any Notice as mandated by section 41A Cr.P.C. and as held by Hon'ble Supreme Court in the case of **Satinder Kumar Antil vs. CBI & Another** reported in **(2022) 10 SCC 51**. Further, Mr. Mollah submits that though the case has been registered under section 7/13(1)(a)(b)(d)(2) of the P.C. Act, yet the same are not applicable herein this case in as much as at the

relevant point of time i.e. in the year 2013, the accused was not a public servant. It is the further submission of Mr. Mollah that two co-accused have already been granted the privilege of bail by this court vide order dated 25.01.2024 in BA No. 113 of 2024, and vide order dated 25.01.2024 in BA No. 83 of 2024, and that he is ready to face the trial and therefore, maintaining parity with the said accused persons, it is contended to allow the petition.

7. On the other hand, Mr. R.J. Baruah, the learned Addl. Public Prosecutor, Assam submits that sections 7/13(1)(a)(b)(d)(2) of the P.C. Act are very much applicable herein this case, as the accused was involved in the conspiracy of bribing a public servant and the punishment prescribed for the same are more than 7 years and therefore I.O. has not given any Notice under section 41A Cr.P.C. and that the I.O. has collected sufficient materials and submitted charge sheet against the accused and therefore, it is contended to dismiss the petition.

8. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record.

9. The allegation against the accused, as revealed by the forwarding report is that he has obtained job of Assam Government by adopting unlawful means in collusion with arrested accused Rakesh Kumar Paul and other officials of APSC. Also it appears that he has used illegal means to increase his marks in CCE-2013 by inserting fake Answer Script into his original Answer Script.

10. Admittedly, here in this case the provision of section 41A Cr.P.C. has not been complied with before causing arrest of the accused. The learned Addl. P.P. having obtained necessary instruction as regard the compliance of the provision of aforesaid section had appraised the court that the same was not complied with as the case was registered under sections 7/13(1)(a)(b)(d)(2) of the P.C.

Act, also apart from sections under IPC.

11. Now, the issue before this court is whether there is requirement of compliance under section 41 A- Cr.P.C. It is a fact that the case has been registered under section 7/13(1)(a)(b)(d)(2) of the P.C. Act, apart from some sections under IPC. The contention of the learned counsel for the accused is that though the punishment prescribed under the aforementioned section of P.C. Act is above 7 years after Amendment of the P.C. Act in the year 2018, yet, the occurrence of the present case took place in the year 2013 while the old provision of the Act was in force where punishment prescribed was up to 7 years, and as such, according to learned counsel for the accused, there is requirement of compliance of the provision of section 41A Cr.P.C. and I find substance in the same. The amended provisions of the P.C. Act came in to force with effect from 2018, by which the punishment prescribed in some provisions have been enhanced. However, the occurrence took place in the year 2013. And at that time the old provision of the Act was in force where punishment prescribed was up to 7 years, and as such, there is requirement of compliance of the provision of section 41A Cr.P.C. as held by Hon'ble Supreme Court in the case of **Satinder Kumar Antil** (supra).

12. It is to be mentioned here that in the aforementioned case, while drawing summary/conclusion Supreme Court has held as under:-

“100. In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to State amendments:

100.1. The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

100.2. The investigating agencies and their officers are duty-bound to comply with the mandate of Sections 41 and 41-A of the Code and the directions issued by this

Court in *Arnesh Kumar* [*Arnesh Kumar vs. State of Bihar*, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] . Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

100.3. The courts will have to satisfy themselves on the compliance of Sections 41 and 41-A of the Code. Any non-compliance would entitle the accused for grant of bail....."

13. Also it appears that the accused has been languishing in jail hazoot since 30.11.2023. Investigation of the case has also been completed and charge sheet has already been submitted before the learned court below. Moreover, two co-accused have already been enlarged on bail by this court vide order dated 25.01.2024, in BA No. 113 of 2024, and vide order dated 25.01.2024, in BA No. 83 of 2024. As held by Hon'ble Supreme Court in the case of **Satinder Kumar Antil** (supra) persons accused with same offence shall never be treated differently either by the same court or by different courts. Be it noted here that in the said case it has been held as under:-

"98. Uniformity and certainty in the decisions of the court are the foundations of judicial dispensation. Persons accused with same offence shall never be treated differently either by the same court or by the same or different courts. Such an action though by an exercise of discretion despite being a judicial one would be a grave affront to Articles 14 and 15 of the Constitution of India."

14. Having considered above, and also having adjudged the submissions of learned Advocates of both sides and having gone through the materials placed on record and further balancing the period of detention with that of the nature and gravity of the offence, this Court is of the view that a prima facie case for granting bail to the accused person is made out.

15. Accordingly, it is provided that on furnishing a bond of Rs.50,000/- (Rupees fifty thousand) only, with one surety of like amount to the satisfaction of the learned **Special Judge, Assam**, accused Rakesh Das shall be enlarged on bail, in connection with the Dibrugarh P.S. Case No.936/2016, registered under

Sections 7/13(1)(a)(b)(d)(2) of the P.C. Act read with section 120-B/420 IPC and added section 463/468/471/477(A)/201 IPC. It is being clarified that the observations, made herein above, is only for the purpose of disposing of this bail application not on the merit of the case.

16. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant