

GAHC010061322024



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

Case No. : Crl.Pet./334/2024

SUKANYA DAS
D/O SHRI MADAN CH DAS,
RESIDENT OF GARCHUK CHARIALI, DHANIRAM KACHARI PATH BYE
LANE , GARCHUK, GUWAHATI 781035, KAMRUP M ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP ASSAM

Advocate for the Petitioner : 1. Mr. A.M. Bora, Senior Advocate;
2. Mr. B. Kaushik, Advocate.

Advocate for the Respondent : Ms. B. Bhuyan, Additional Public Prosecutor

Date of Order : 25.04.2024

BEFORE

HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

1. Heard Mr. A.M. Bora, learned senior counsel assisted by Mr. B. Kaushik, learned counsel for the petitioner. Also heard Ms. B. Bhuyan, learned Additional Public Prosecutor.

2. This application under Section 482 of the Code of Criminal Procedure, 1973, has been filed by Smt. Sukanya Das, impugning the order dated 17.01.2004, passed by learned Special Judge, Assam in Special Case No.02/2017 corresponding to Dibrugarh P. S. Case 936/2016 under Section 7/13(1)(a)(b)(d),(2) of the Prevention of Corruption Act, 1988 read with Section 120B /420/ 463/ 468/ 471/ 477A /201 of the Indian Penal Code whereby the status of the petitioner was changed from a witness to an accused.

3. The facts relevant for consideration of instant Criminal Petition, in brief, are as follows:-

i. On 27.10.2016, one Dr. Angshumita Gogoi had lodged an FIR before the Officer-in-Charge of the Dibrugarh Police Station, *inter-alia*, alleging that on Naba Kumar Patir had contacted her over telephone and asked her to pay a sum of Rs. 10 Lakhs for getting appointed to the post of Dental Surgeon through the selection process conducted by Assam Public Service Commission (APSC). He had asked her to bring the money to his residence located at Dibrugarh. The first informant came to Dibrugarh along with one Shri Arup Borkotoki and also informed the matter to the Dibrugarh Police regarding the demand of money by Shri Naba

Kumar Patir. Accordingly, Dibrugarh Police caught Shri Naba Kumar Patir at his residence while he was receiving the demanded money from Dr. Angshumita Gogoi. The first informant also came to know that the accused Naba Kumar Patir was running a network to carry out criminal activities to recruit people in Government Service in connivance with other persons. It was also alleged that he met personally many potential candidates and took money from them by promising them to give them Government jobs in the State of Assam.

ii. On receipt of the said FIR Dibrugarh P. S. Case No. 936/2016 was registered under Sections 7/13(1)(b),(2) of the Prevention of Corruption Act, 1988 read with Sections 120B/420 of the Indian Penal Code.

iii. On 24.01.2017, charge-sheet No. 03/2017 was laid in the case. However, subsequently, 11 supplementary charge-sheet have been filed during the progress of the case. In the meanwhile charges were framed in Special Case No. 02/2017 against the charge-sheeted accused persons; however, further investigation under Section 173(8) of the Code of Criminal Procedure, 1973 was also going on.

iv. The Investigating Officer on 28.02.2017 laid the supplementary charge-sheet No.01 where the present petitioner was shown as prosecution witness No. 4 in the list of witnesses of the said supplementary charge-sheet.

v. On 04.01.2018, another supplementary charge-sheet, i.e., No.2 was laid against some of the accused persons wherein again the name of the petitioner was shown as prosecution witness in the list of witnesses of the said charge-sheet.

vi. It is also pertinent to mention herein that the Government of Assam constituted a Special Investigation Team (SIT) by Notification No. HMA-19011(11)/2/2022-Pol(A)-H & P/38(ECF-206251) dated 30.09.2023 to investigate the Dibrugarh P. S. Case No. 936/2016.

vii. On 23.11.2023, the petitioner received a notice under Section 41A of the Code of Criminal Procedure, 1973 from the SIT, CID to appear before it on 01.12.2023. When the petitioner appeared before the SIT on 04.12.2023, she was arrested by the SIT on the ground that during the course of investigation, sufficient evidence was found against the petitioner to the effect that she obtained job of Assam Government by adopting

unlawful means in collusion with the arrested person Shri Rakesh Kumar Pal and other officials of APSC. The petitioner was initially remanded to police custody for five days and thereafter, was sent to judicial custody on 8.12.2023. It is pertinent to mention herein that by the impugned order dated 17.01.2024, she was also allowed to go on bail with certain conditions.

viii. On 11.01.2024, Shri Prateek V Thube, IPS, the Investigating Officer of the case filed an application before the learned Special Judge, Assam, which was registered as Petition No. 87/2024 dated 11.01.2024, praying for changing the status of the petitioner from a witness to an accused and then to prosecute her in the case. The Investigating Officer prayed for passing necessary orders to prosecute Smt. Sukanya Das as an accused in the said case.

ix. The counsel for the petitioner, before the Court of learned Special Judge, Assam, objected to the prayer of Investigating Officer by filing written objection.

x. However, by order dated 17.01.2024, learned Special Judge, Assam, allowed the petition filed by the Investigating Officer for changing the status of

the present petitioner from that of a witness to an accused. The said order has been impugned in this criminal petition.

4. For the sake of convenience, the impugned order dated 17.01.2024 passed by learned Special Judge, Assam, in Special Case No. 2/2017 is quoted herein below:

"ORDER

17-01-2024

Prosecution is represented by Ld. Special P.P.

Accused Aoicharjya Jibon Barua, Sajahan Sarkar, Rakesh Das, Sukanya Das and Wahida Begum are produced before me from Central Jail, Guwahati through Video Conferencing.

The accused persons are remanded again till 24-01-2024.

Perused the Petition No. 87/2024 filed by Investigating Officer Prateek V. Thube with a prayer for permission to prosecute the witness namely Sukanya Das as an accused.

Accused Sukanya Das has filed written objection through her advocate Bedanta Kaushik.

Copy is furnished to the prosecution.

Heard learned counsel of the parties.

Learned Special P. P. Mr. P. Kataky has submitted that during Investigation several answer scripts of CC (Mains) Examination 2013 along with one envelope where the name of Sukanya Das was written were recovered from the residence of main accused Rakesh Kr. Paul. So, the former investigating officer examined Sukanya Das; but she did not divulge any other facts except the above recovery of the envelope and on the above related facts, her name was arrayed in the list of PWs in the Supplementary Charge Sheet No. 1. However, in course of further investigation of the case under section 173 (8) Cr. P. C., new evidence have been found against Sukanya Das and the present IO arrested her and produced in the Court. There is no bar in law to change the status of a witness to an accused if sufficient materials are found against the said witness. As the present IO is able to collect sufficient materials against her; so, it becomes necessary to accord necessary permission to convert Sukanya Das from a prosecution witness to an accused.

Learned counsel Bedanta Kaushik appearing for accused Sukanya Das has submitted that during the investigation of the case by former investigating officer, accused Sukanya Das was thoroughly

examined and cited her as witness and the Court accepted the charge sheet and supplementary charge sheets. So, the status of Sukanya Das can be changed only by invoking the provision of section 319 Cr. P. C. So, he has prayed to reject the petition filed by present investigating officer.

The investigating officer has produced the up-to-date case diary.

Perused the same.

It appears that at the accused Sukanya Das was a candidate in the Combined Competitive Examination 2013 conducted by APSC and she was selected for the post of Assam Police Service (Jr. Grade). During investigation the former IO recovered various answer scripts from the residence of accused Rakesh Kr. Paul who was the Chairman of APSC. The statement of accused Sukanya Das was recorded by the former IO and she was shown as witness in Supplementary Charge Sheet No. 1. During the course of further investigation of the case under section 173 (8) of the Cr. P. C., the present investigating officer is able to collect materials against her.

I have perused the materials collected by the investigating officer against accused Sukanya Das during further investigation of the case and also

perused the statement of her recorded by the former IO under section 161 Cr. P. C. In her statement under section 161 Cr. P. C. she has not disclosed anything material which will help the prosecution to establish the case against the accused persons on trial. It is difficult to understand as to why her name has been cited as witness in the Supplementary Charge Sheet No. 1. However during further investigation, the present IO is able to collect sufficient materials against her.

The criminal justice system seeks to maintain order, protect individual rights, and promote justice by investigating and adjudicating crimes, punishing the offenders. There is no bar in the law to change the status of a person from witness to accused.

After considering the materials collected by the present IO, I am of the view that for the interest of the proper and effective investigation, change of status of Sukanya Das from prosecution witness to an accused is necessary. Hence, the petition filed by the present IO is allowed and the status of Sukanya Das is changed as an accused from a prosecution witness.

Perused the bail petition No. 12/2024 filed by Madan Ch. Das under section 437 Cr. P. C. for accused

Sukanya Das with a prayer to release her on bail.

Also perused the written objection filed by the Investigating officer.

Learned Sr. Adv. Mr. A. Bora appearing for the bail petitioner has submitted that accused Sukanya Das is a competent police officer who was cited as witness in the Supplementary Charge Sheet No. 1 filed by the former investigating officer and the present investigating officer without obtaining permission from the Court arrested her. This Court has granted bail to accused A. Nanda Babu Singha whom the former investigating officer cited as witness and the present investigating officer arrested him without prior permission from the Court. Besides it, the accused is a woman having a minor child and in judicial custody for more than one month. So, he has prayed to release the accused Sukanya Das on bail.

On the other hand, learned Spl. PP Mr. P. Kataky has submitted that the accused was shown as witness by the former investigating officer; but when the further accused who was a candidate in the Investigation was done it has been revealed that the CCE 2013 examination conducted by APSC was able to select herself by adopting unfair means in

connivance with the then Chairman Rakesh Kr. Paul. During investigation, two answer scripts were recovered from the rented house of the accused Rakesh Kr. Paul and as per FSL Report, the handwritings in the aforesaid answer scripts are of accused Sukanya Das. The accused committed criminal conspiracy, forgery and other offences with the then arrested Chairman of APSC. There is no bar in the law to change status of witness to the accused. As the investigation of the case is still on and her custodial detention is necessary. So, he has prayed not to release the accused on bail.

From the case record and the case diary it appears that on the basis of the written ejahar filed by Dr. Angshumita Gogoi, Officer-in-charge of Dibrugarh P. S. registered the instant case. During investigation, the investigating officer arrested several persons including the then Chairman and two Members of the APSC. The investigating officer by completing the investigation submitted charge sheet and 11 supplementary charge sheets. The cognizance of the offences has been taken and charges have also been framed against the charge sheeted accused persons. The Investigation of the case was on under the provision of section 173 (8) of the Cr. P. C.

From the case record it transpires that on 04-12-2023 the accused Sukanya Das was produced before the Court after arrest and as per prayer of IO she has been given five days police custody and on completion of police custody period she has been taken into judicial custody and since then she is on Judicial custody.

It is a fact that accused Sukanya Das rightly or wrongly, intentionally or unintentionally has been shown as witness in Supplementary Charge Sheet No. 1 by the former investigating officer. Before arresting her, the present investigating officer has not taken permission from the Court. Subsequently the present investigating officer filed a petition seeking permission from this Court to change the status of Sukanya Das from witness to an accused. On the day of arrest i.e. 04-12-2023 the status of the accused was a prosecution witness. During further Investigation, the investigating agency may collect new evidence against a person whom the investigating agency has already shown as witness in their earlier charge sheet. The charge sheet and supplementary charge sheets have already been accepted by the Court and on the basis of the charge sheet and supplementary charge sheets, cognizance of the offences has been taken by the

Court. Under such situation, it was the duty of the Investigating officer to intimate the Court regarding the Involvement of the witness, the materials collected against her and take prior permission from the Court to make him an accused. So, the arrest of Sukanya Das without permission of the Court was not proper.

In view of the above discussion and observation it is decided to consider the bail petition filed for the accused Sukanya Das in the affirmative and allowed.

Accused Sukanya Das is allowed to go on bail of Rs. 50,000/- with two sureties of like amount. One of the sureties must be a government employee either of the Central or State Government.

The accused person is directed: -

1. *To appear before the Investigating Officer as and when he directs and co-operate with the investigation.*
2. *Not to leave the jurisdiction of this Court without prior permission of this Court.*
3. *Surrender the Passport before the Sheristader of this Court. If there is no passport, file an affidavit disclosing the fact having no passport in the name of the*

accused.

4. *The accused shall not directly or indirectly make any Inducement, threat, or promise to any person acquainted with facts of the case so as to dissuade him from disclosing such facts to the Court.*

Perused the Bail Petition No. 86/2024 filed by Amar Das under section 437 Cr. P. C. for accused Rakesh Das with a prayer to release him on bail.

Also perused the written objection filed by the Investigating officer.

Heard learned counsel of the parties.

Learned counsel for the bail petitioner has submitted that the accused Rakesh Das was arrested on 30-11-2023 and since then he is in judicial custody. The accused is 35 years old and his marriage is fixed with a girl on 31-01-2024. The accused is the earning person of his family and the entire liability of his family members depends upon him. The accused has no criminal antecedent. So, he has prayed to release the accused on bail.

Learned Special PP has submitted that the accused during the investigation did not co-operate with the investigating officer. It has been revealed that the

accused was an undeserving candidate, and he was able to manage the then Chairman, APSC R. K. Paul who is also a main accused in this case. The accused was provided fake answer scripts to rewrite the answers in the residence of accused R. K. Paul. The accused confessed before the police that he did not write the answers in the answer scripts of General English and General Studies in CCE 2013. The bail petition filed for the accused has already been rejected by this Court and in the present petition has failed to show any new ground to consider the bail petition. So, he has prayed not to release the accused on bail.

From the case record and case diary it appears that on 19-12-2023, the bail petition filed for the accused Rakesh Das was rejected after considering the materials on the case diary collected by the investigating officer. From the case diary it appears that during the investigation he did not co-operate with the investigating officer. He kept himself hiding in a room locking it from outside. It is revealed that he was not only provided with fake answer scripts to rewrite the answers; but also provided the answers to every question of his optional subjects by absconding accused Rajeev Paul. The accused confessed before the investigating officer that he did

not write the answers in his answer scripts of General English and General Studies in CCE 2013. The Investigating officer has to trace out the person who wrote the answer scripts for the accused Rakesh Das. In the bail petition filed earlier, the bail petitioner has not stated that the marriage of the accused has been fixed on 31-01-2024. So, it is doubtful that during judicial custody period, the marriage of the accused has been fixed.

I have considered his involvement of the accused in the case, his conduct, materials collected by the investigating officer during investigation and find no justifiable reason to release the accused on bail.

Hence the bail petition filed for accused Rakesh Das is rejected.

Return the case diary to IO with a copy of this order.”

5. Mr. A. M. Bora, learned senior counsel for the petitioner, referring to Section 5 of the Prevention of Corruption Act, 1988, has submitted that a Special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 for the trial of warrant cases by the Magistrates.

6. He has further submitted that under Section 173 (2) of the Code of Criminal Procedure, 1973, a Magistrate is empowered to take cognizance of the offence on a police report only. It is also submitted by learned senior counsel for the petitioner that under Section 2(r) of the Code of Criminal Procedure, 1973, a police report means a report forwarded by a police officer to a Magistrate under Sub-Section (2) of Section 173. It is also submitted by learned senior counsel for the petitioner that a police report must conform to all requirements mentioned in Section 173 (2) of the Code of Criminal Procedure, 1973. It is also submitted by learned counsel for the petitioner that even if a further investigation is going on, the Investigating Officer, upon such investigation, obtains further evidence, oral or documentary, he shall have to forward to the Magistrate a further report or reports regarding such evidence in the form prescribed. It is also submitted by learned senior counsel for the petitioner that the provisions of Sub-Sections (2) to (6) shall as far as may be, apply in relation to such report as they apply in relation to report forwarded under Sub-Section (2).

7. Learned senior counsel for the petitioner has submitted that in the instant case the learned Special Judge by allowing the petition, filed by the Investigating Officer on 11.01.2024, and treating the present petitioner as an accused, took cognizance of offence against the present petitioner without there being any police report under Section 173 (8) of the Code of Criminal Procedure, 1973 before it. He has submitted that the Petition No. 87/2024 dated 11.01.2024 filed by the Investigating Officer cannot be treated as a report under Section 173(8) of the Code of Criminal Procedure, 1973, therefore, the learned Special Judge, Assam had erred and acted beyond jurisdiction by allowing the said petition by the impugned order.

8. Learned senior counsel for the petitioner has also submitted that a person can be arrayed as an accused in a case, where charge-sheet has already been laid, only by two modes. Firstly, by way of a report under Section 173(8) of the Code of Criminal Procedure, 1973, after completion of further investigation and secondly, under Section 319 of the Code of Criminal Procedure, 1973 during the course of inquiry or trial, if it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried with other charge-sheeted accused.

9. However, it is submitted by the learned senior counsel for the petitioner that in the instant case, neither there is a police report against the present petitioner under Section 173 of the Code of Criminal Procedure, 1973, nor the Court has exercised its powers under Section 319 of the Code of Criminal Procedure, 1973. Hence, it is prayed that the impugned order is liable to be set aside. Learned senior counsel for the petitioner has also submitted that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. In support of his submission, he has cited following rulings:

i. Nazir Ahmad Vs. Emperor reported in **(1936)38 BOM LR 987**

ii. Syed Muhibur Rahman Vs. Central Bureau of Investigation reported in **(2020) 3 GLR 305**

10. On the other hand, Ms. B. Bhuyan, learned Additional Public Prosecutor has submitted a report dated 07.04.2024 filed by the Investigating Officer of the case and has submitted that the Criminal Petition filed by the

petitioner and the submissions made by the learned senior counsel for the petitioner are premature as in the instant case, the further investigation against the present petitioner is yet to conclude and the police report under Section 173(8) of the Code of Criminal Procedure, 1973, is yet to be filed against the present petitioner. She has submitted that only the status of the present petitioner has been changed from that of a witness to that of an accused as sufficient materials are there against her to do so. However, she has submitted that the case against her is still at the stage of further investigation and the question of taking of cognizance of offence against the present petitioner for the purpose of trial has not yet arisen and therefore, she has prayed for dismissing the Criminal Petition filed by the petitioner.

11. I have considered the submission made by the learned senior counsel for both the sides and have perused the materials available on record.

12. Though, in the Petition No. 87/2024 dated 11.01.2024, the Investigating Officer of the case has sought the permission to prosecute the present petitioner by changing her status from that of a witness to an accused, however, on bare perusal of the impugned order dated 17.01.2024 (*more specifically the last Paragraph at Page No. 4 of the impugned order*) would reveal that learned Special Judge, Assam has allowed the prayer for the change of status of the present petitioner from a prosecution witness to an accused only for the interest of proper and effective investigation. Thus, by the impugned order no cognizance of offence has been taken for the purpose of trial of the accused, it has merely changed the status of the petitioner from a witness to that of an accused in the light of materials revealed, in the Petition No.87/2024 dated 11.01.2024, against the present petitioner, in order to facilitate further investigation against the present petitioner. Even while granting

the bail to the present petitioner, the learned Special Judge had directed her to co-operate in the investigation. There is nothing in the impugned order which shows that the learned Special Judge has taken cognizance of offence, under Section 5 of the Prevention of Corruption Act, 1988, against the present petitioner for the purpose of trial against her. The submission made by the learned Additional Public Prosecutor seems to have force that the plea raised by the learned senior counsel for the petitioner seems to be premature, as the further investigation against the present petitioner is yet to conclude and the Investigating Officer is yet to file the report under Section 173(8) of the Code of Criminal Procedure, 1973, against the present petitioner.

13. It is also pertinent to mention herein that only because prior to arresting the present petitioner, no leave was taken by the Investigating Officer from the Court, she was granted bail by the impugned order. When the name of the petitioner has been shown as a witness in the supplementary charge-sheet -I, it is only a matter of propriety for the Investigating Officer to seek leave of the Court for treating the present petitioner as an accused during the course of further investigation, which was what has been done by the Investigating Officer when he filed Petition No. 87/2024 on 11.01.2024.

14. In the instant case, the report under Section 173(8) of the Code of Criminal Procedure, 1973, against the present petitioner, is yet to be filed. Hence, as against the present petitioner, the cognizance of offence, for the purpose of trial, under Section 5 of the Prevention of Corruption Act, 1988 has not yet been taken by the learned Special Judge, Assam. He has only allowed the prayer for change of status of the petitioner from a witness to that of an accused for the purpose of facilitating further investigation against her.

15. For the reasons mentioned above, this Court finds no error or

irregularity in the impugned order passed by the learned Special Judge, Assam.

16. Hence, this Criminal Petition is hereby dismissed.

JUDGE

Comparing Assistant