

GAHC010038072021



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

Case No. : Bail Appln./544/2021

PRASANTA KUMAR DUTTA
S/O LT. SASHIDHAR DUTTA, R/O HOUSE NO. 6, RUPKONWAR PATH, BYE
LANE NO. 2, UPPER HENGRABARI, GUWAHATI, P.S.-DISPUR, KAMRUP(M),
ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

P R E S E N T

HON'BLE MR. JUSTICE HITESH KUMAR SARMA

For the petitioner : Mr. P. Bora, Advocate

For the Respondent : Mr. D. Das,
Additional Public Prosecutor, Assam

Date of hearing : 14.06.2021

Date of Judgment : 24.06.2021
and order

ORDER
(CAV)

1. Heard Mr. P. Bora, the learned counsel for the petitioner. Also heard Mr. D. Das, the learned additional public prosecutor, Assam for the respondent.
2. Having filed the instant petition under Section 439 of the CrPC, the petitioner, namely, Prasanta Kumar Dutta has prayed for enlarging him on bail in connection with the CID P.S. Case No.21/2021 registered under Sections 120B, 120, 201, 204, 212, 420, 506 read with Section 34 of the IPC and Section 66-B of the Information Technology Act (for short "IT Act") and Sections 25 (1B)(a) and 25 (1B) (h) of the Arms Act and Section 8 of the Prevention of Corruption Act (for short "PC Act"). The petitioner was arrested on 07-10-2020 in connection with the aforesaid case and has been in detention since then.
3. The genesis of the abovementioned criminal prosecution may be traced to the Sub-Inspector (UB) Recruitment Examination (Written) for filling up 597 vacancies in Assam Police, which was to be conducted on 20-09-2020 in all the district headquarters across the State of Assam under the supervision of the District Level Selection Committees constituted by the State Level Police Recruitment Board, Assam. The First Information Report (for short "FIR"), on the basis whereof the aforesaid case was registered, was lodged by Shri Pradeep Kumar, IPS (Retd.), the Chairman of the State Level Police Recruitment Board, Guwahati. It was alleged in the FIR that the question paper of the aforementioned written examination had been leaked and circulated in WhatsApp messenger and as a result of which the written examination had to be cancelled. It was further alleged that the persons involved in the act of

leaking the question paper, with their *malafide* intention, had damaged the image of the Recruitment Board as well as of the Government of Assam, apart from causing financial loss to the State Government and playing with the careers of the aspiring candidates. The complainant furthermore alleged that he had received the information about the leakage of the question paper through WhatsApp message from one Shri Gautam Mech.

4. It is imperative to note that after completion of the investigation into the alleged offences, a charge-sheet has already been laid against 36 accused persons including the present petitioner under Sections 120B, 120, 201, 204, 212, 420, 506 read with Section 34 of the IPC and Section 66-B of the IT Act and Sections 25 (1B) (a) and 25 (1B) (h) of the Arms Act and Section 8 of the PC Act. The allegations leveled against the present petitioner in the said charge-sheet is extracted hereunder:

“2. Sri Prasanta Kumar Dutta, S/O Late Sashidhar Dutta (A-2)

He is found to be one of the prime accused persons along with accused Rubul Hazarika, Saroj Sarma, Kumar Sanjit Krishna and others, who are involved in the offence of entering into a conspiracy for leaking the question papers of the written examination for the post of SI (UB) of Police and circulating the leaked question papers through WhatsApp messages and by other means to different applicants/ guardians of candidates in exchange of huge money. Prasanta Kumar Dutta in connivance with his accomplices, namely, Nripen Nath, Manjit Bora, Jaydip Borooah, Rupam Deka, Jitu Mikir and Anowar Ali opened an office in Hotel Bhargav at Lokhra for organizing physical training to aspiring candidates in order to conceal their design and finally provided the copies of the leaked question papers to a number of candidates in exchange of huge amount of money at Hotel Bhargav Grand in the night of 19-09-2020. During search in his house, recovery of E-Admit Card belonging to accused candidate Hirak Jyoti Baruah, blank signed chques of one candidate, namely, Atul Nath etc. also proves his complicity in the conspiracy. He had taken the 5 No of signed advance cheques from Atul Nath for providing job of SI of police to him. He also contacted another candidate Piku Baishya

through Atul Nath for inducing him to pay money to him. He along with other associates under a deep-rooted conspiracy, on the pretext of providing training to the aspirants for the post of SI (UB) in Assam Police. He arranged/provided rooms to several candidates in the Hotel Bhargav Grand where the students were provided with the leaked question papers in the intervening night of 19-09-2020 for mock test. To keep the conspiracy under cover, he threatened with criminal intimidation to one Smti Banti Baruah, mother of Hirakjyoti Baruah and others. He also caused destruction of evidence like hotel guest registration cards, the banner for training, printed copies of the leaked question papers etc. with the help of his associates. He was also in possession of an illegal fire arms as the licence issued by DM Dhubri had already expired. Prasanta Kumar Dutta asked his accomplice Jaydip Borooah to conceal a part of the illegal crime proceeds in a bag and later on, as led by the arrested accused, Jaydip Borooah, the bag containing a sum of Rs.24,80,000/- was recovered from a vehicle (used by him) within the premises of his house. A few pages were torn from the diary by Prasanta Kumar Dutta in order to destroy the evidence. However, names of few candidates who had paid money to him were detected in the diary."

5. During the course of hearing, Mr. P. Bora, the learned counsel appearing for the petitioner would submit that the petitioner having been arrested on 07-10-2020 has already spent 251 days in detention. He also submitted that the maximum punishment prescribed for the offences alleged to have been committed by the petitioner is only 7 years. It has been also submitted that the petitioner was holding a licensed gun and during the pendency of the renewal application the validity of the arms licence got expired and owing to the Covid-19 pandemic, his licence could not get renewed. As such, the petitioner cannot be said to have been in possession of an illegal arms. Learned counsel Mr. Bora further submitted that the petitioner being a retired police officer, the ingredients of the offence under Section 8 of the PC Act would not be attracted.

6. Mr. Bora furthermore submitted that the petitioner had been tested Covid Positive and had been in quarantine and his negative result came out on 13-09-

2020. His mother had also passed away on 11-09-2020. The son of the petitioner had performed the "Sharddha" of his deceased mother on 21-09-2020. Therefore, the petitioner could not have hatched a conspiracy to leak the question paper as alleged in the charge-sheet as the examination involved in this case was scheduled to be held on 20.09.2020. It was also the submission of the learned counsel that co-accused Sukanya Sarkar was never arrested, although she got the crime proceeds amounting to Rs.40 Lakhs from accused Saroj Sarma through her husband, Subrata Sarkar near Chang-fa restaurant on the night of 18.09.20. That apart, when she appeared in the Court she was granted bail although charge-sheet was laid against her under section 120B/201/204/420/34 IPC and under section 8/12 of the P C Act. He urged that if the petitioner is not granted bail, serious prejudice will be caused to him inasmuch as he has to prepare his defense for trial and that granting bail to the petitioner would not entail any tempering of evidence or intimidation to witnesses and he is ever ready to comply with any condition(s) that may be imposed for such bail.

7. Learned counsel Mr. Bora would also contend that the accused should be released on bail in view of the ongoing pandemic inasmuch as the Covid-19 virus is rapidly spreading in prisons. In order to buttress his argument, Mr. Bora invited the attention of the Court to the order dated 07-05-2021 passed by the Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No.1/2020 (In re: Contagion of Covid-19 virus in prisons)**. In the said order, the Hon'ble Court inter-alia emphasized the needs to strictly control and limit the authorities from arresting accused in contravention of the guidelines laid down in **Arnesh Kumar v. State of Bihar (2014) 8 SCC 273** during the pandemic so that the prisons can be decongested. The Hon'ble Apex Court in **Arnesh Kumar**

(supra) inter alia embargoed the police officers from arresting an accused unnecessarily without complying with the provisions embodied in Section 41 and Section 41(A) of the CrPC in cases where the offence is punishable with imprisonment for a term which may be less than 7 years or which may extend up to 7 years. The Hon'ble Apex Court also directed the learned Magistrates not to authorize detention casually and mechanically without recording his satisfaction on the forwarding report furnished by the police officer. In the order dated 07-05-2021, the Hon'ble Apex Court further directed the High Powered Committees constituted by the State Governments/Union Territories to consider releasing prisoners by adopting the guidelines followed by them last year, at the earliest.

8. Mr. Bora, the learned counsel for the petitioner, in support of his arguments, also placed reliance on the case of **Arnab Manoranjan Goswami v. State of Maharashtra & Others (2020) 13 SCALE 311**. In the said case, the appellant, a journalist and also the Editor-in-Chief of the English News Channel Republic TV, was granted interim bail by the Hon'ble Apex Court in a case in which he was alleged to have committed abetment of suicide as punishable under Section 306 of the IPC. The relevant observations of the Hon'ble Apex Court made in the said case and emphasized by the learned counsel of the petitioner are reproduced herein below:

“63. More than four decades ago, in a celebrated judgment in State of Rajasthan, Jaipur v. Balchand, (1977) 4 SCC 308 Justice Krishna Iyer pithily reminded us that the basic rule of our criminal justice system is 'bail, not jail'. The High Courts and Courts in the district judiciary of India must enforce this principle in practice, and not forego that duty, leaving this Court to intervene at all times. We must in particular also emphasise the role of the district judiciary, which provides the first point of interface to the citizen. Our district judiciary is wrongly referred to as the subordinate judiciary'. It may be subordinate in

hierarchy but it is not subordinate in terms of its importance in the lives of citizens or in terms of the duty to render justice to them. High Courts get burdened when courts of first instance decline to grant anticipatory bail or bail in deserving cases. This continues in the Supreme Court as well, when High Courts do not grant bail or anticipatory bail in cases falling within the parameters of the law. The consequence for those who suffer incarceration are serious. Common citizens without the means or resources to move the High Courts or this Court languish as undertrials. Courts must be alive to the situation as it prevails on the ground – in the jails and police stations where human dignity has no protector. As judges, we would do well to remind ourselves that it is through the instrumentality of bail that our criminal justice system's primordial interest in preserving the presumption of innocence finds its most eloquent expression. The remedy of bail is the –solemn expression of the humaneness of the justice system. Tasked as we are with the primary responsibility of preserving the liberty of all citizens, we cannot countenance an approach that has the consequence of applying this basic rule in an inverted form. We have given expression to our anguish in a case where a citizen has approached this court. We have done so in order to reiterate principles which must govern countless other faces whose voices should not go unheard."

9. Countering the submissions of the learned counsel for the petitioner, Mr. D. Das, the learned additional public prosecutor appearing for the State submitted that the petitioner was one of the prime conspirators of the Recruitment scam involved in this case and he cannot deny his involvement in the said conspiracy just by taking the pleas of his mother's death and his being quarantined for being tested Covid Positive. Mr. Das emphatically argued that mobile phones were extensively used in the commission of the alleged offences. It was submitted that the investigation clearly revealed a deep-rooted conspiracy to leak the question paper of the written examination with the connivance of Sanjit Krishna, the then Superintendent of Police, Karimganj. In pursuance of the said conspiracy, Sanjit Krishna had committed the offence under Section 409 of the IPC (Criminal breach of trust by public servant) by leaking the question paper,

which offence is inter-alia punishable with imprisonment for life. It was next submitted that the present petitioner was a party to the said conspiracy, and, therefore he is squarely liable under Section 120B (1) of the IPC. Referring to the decision of the Hon'ble Apex Court rendered in **State of A.P. v. Kandimalla Subbaiah, AIR 1961 SC 1241**, Mr. Das submitted that criminal conspiracy to commit an offence is a distinct and independent offence and the present petitioner can be separately charged with respect to such conspiracy. In the aforesaid case, the Hon'ble Supreme Court held that *conspiracy to commit an offence is itself an offence and a person can be separately charged with respect to such a conspiracy.*

10. Mr. Das would contend that the petitioner had also abetted the commission of the offence under Section 409 of the IPC which inter-alia prescribes a punishment of imprisonment for life. According to him, the petitioner along with other prime accused had abetted Sanjit Krishna, the then Superintendent of Police, Karimganj to commit the offence under Section 409 of the IPC. He pointed out that Sanjit Krishna had committed criminal breach of trust by leaking the question paper which he was entrusted with. He further pointed out that the main object of the conspiracy was to leak question paper for those candidates who had paid money therefor, and the said object was sought to be achieved by committing an offence under Section 409 of the IPC. Hence, the present petitioner is also liable under Section 109 of the IPC for having abetted the offence defined in Section 409 of the IPC, and therefore he should not be released on bail.

11. The learned additional public prosecutor also urged that the petitioner was a prime conspirator as he had arranged rooms for several candidates in the

Hotel Bhargav Grand, Lokhra where they were provided with the leaked question papers in the intervening night of 19/20-09-2020 for mock test for the examination to be held on 20.09.20 for recruitment of S I of police. Notably, the wife and son of the petitioner are the directors of the company which owns the said Hotel. Mr. Das further submitted that the petitioner had destroyed evidence by deleting messages, call details and by destroying hotel guest registers/registration cards, diaries, banner for training, printed copies of the leaked question papers etc. He had given a bag containing Rs.24, 80,000/- to his aide Jaydip Borooah(co-accused) and left Guwahati and he was apprehended at Indo-Nepal border while trying to escape into Nepal. The said sum of money was recovered from the house of said Jaydip Borooah. According to the learned prosecutor, if the petitioner is released on bail, he may again flee from justice and may temper with evidence and intimidate witnesses and which, in turn, will definitely hamper the trial.

12. Mr. Das also vehemently argued that the offences committed by the petitioner were serious in nature and that the societal interest demands that the petitioner should not be enlarged on bail. According to Mr. Das, about 66,000 (sixty six thousand) candidates had applied for the recruitment to the posts of SI of police, but the illegal activities of the conspirators as indicated above, had deprived the candidates from appearing in the said recruitment examination as the same was cancelled on 20.09.20 (the scheduled date of the examination) in view of leaking out of the question papers which caused public outrage. In order to bring home his argument, Mr. Das referred to the case of **Chandrakeshwar Prasad v. State of Bihar, (2016) 9 SCC 443**, wherein the Hon'ble Supreme Court observed and held as follows:

“10. This Court in Rajesh Ranjan Yadav v. CBI [Rajesh Ranjan Yadav v. CBI, (2007) 1 SCC 70 : (2007) 1 SCC (Cri) 254] balanced the fundamental right to individual liberty with the interest of the society in the following terms in para 16 thereof: (SCC p. 79)

“16. We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into consideration other facts and circumstances, such as the interest of the society.”

13. Mr. Das concluded his arguments by urging that the present case is not a fit case to grant bail to the petitioner who after the cancellation of the written examination had fled away from Guwahati and having destroyed crucial evidence pertaining to the case in hand. Accordingly, he urged for dismissal of the instant petition.

14. I have carefully analyzed the rival submissions, as narrated above, and also perused the scan case diary as well as the entire case record.

15. There can be no doubt with regard to the proposition that there is no hard and fast rule regarding grant or refusal to grant bail and each case must be considered on its individual facts and circumstances and on its own merits. While deciding an application for bail, the Court must exercise its jurisdiction on the basis of a few settled principles having regard to the facts and circumstances of the case. The said principles can be summarized as follows:

- (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the

prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations.

[Vide ***P. Chidambaram v. CBI*, (2020) 13 SCC 337**]

16. Keeping in mind the aforesaid settled principles let me now advert to the present controversy. From a careful evaluation of the materials on record, statements of witnesses and the findings of the investigation, it appears that there is a prima facie case against the petitioner. Statements of at least five witnesses available in the case diary clearly reveals monetary transactions with the petitioner in the alleged scam. The attendant facts and circumstances of the case show that the petitioner had played a pivotal role in the conspiracy to leak the question paper and to make it available to the candidates from whom the petitioner had taken money by promising them job of sub-inspector in Assam Police. He was actively involved in conducting mock test by providing the leaked question paper to some candidates at Hotel Bhargav Grand which is owned by his relatives as specifically indicated earlier in this order. He also arranged accommodation for the said candidates who paid money for the leaked question paper. The investigation also revealed that the petitioner had destroyed crucial

evidence to cover up the commission of the offences. There is also no denial of the fact that the petitioner had fled away from Guwahati with the help of his associates after the cancellation of the examination to avoid arrest.

17. Recruitment scam in Government Service like the present one undermines public confidence in the system. It causes grave injustice to the deserving and meritorious candidates who burn midnight oil to get selected in the service. Such scams are, therefore, considered as anathema to public and societal interest.

18. While personal liberty of an individual being considered as sacrosanct under Article 21 of the Constitution of India, it is necessary to examine whether such liberty can be upheld when it is pitted against greater public interest. In this context, the Hon'ble Supreme Court in **Masroor v. State of U.P., (2009) 14 SCC 286** aptly observed as follows:

“15. There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned.”

19. It is pellucid from the above that in appropriate cases public interest would prevail over personal liberty of an individual. In other words, a person accused of committing an offence affecting public and societal interest may not be enlarged on bail by a Court of law.

20. As already discussed above, the learned counsel for the petitioner while

arguing the case referred to the case of **Arnab Manoranjan Goswami (supra)** where the Hon'ble Apex Court had granted interim bail to the appellant, a TV journalist, was alleged to have committed abetment of suicide of a private contractor who was involved in the business of architecture and interior designing. I am, however, of the respectful opinion that the facts of the said case and the present one are clearly distinguishable. One must not forget that the present case deals with a scam in the recruitment of sub-inspectors in Assam Police in which 66,253 candidates were supposed to participate causing widespread public outrage and frustration amongst the deserving and meritorious candidates who aspired to get through the recruitment examination by dint of their ability, hard work and perseverance.

21. I am further of the respectful opinion that the present case will not fall within the purview of the guidelines, issued by the Hon'ble Apex Court in **Suo Motu Writ Petition (C) No.1/2020 (supra)** in reference to the case of **Arnesh Kumar (supra)** for releasing prisoners of jail to contain the spread of Covid-19 virus therein as referred to by the learned counsel appearing for the petitioner. The charge-sheet reveals that petitioner and other prime accused persons *prima facie* entered into a conspiracy with Sanjit Krishna, the then Superintendent of Police, Karimganj to leak the question paper. Sanjit Krishna had leaked the question paper and thereby committed the offence defined in Section 409 of the IPC which prescribes imprisonment for life as a mode of punishment. Now, according to Section 120B(1) of the IPC, any person who is a party to a criminal conspiracy to commit an offence punishable inter-alia with imprisonment for life, shall be punished in the same manner as if he had abetted such offence. Again Section 109 of the IPC provides that the abettor of the offence shall, if the act abetted is committed in consequence of the

abetment, punished with the punishment provided for the offence. As such, it appears that if the petitioner is convicted under Section 120B of the IPC, which is an independent offence, after trial, he may be sentenced to imprisonment for life for having committed criminal conspiracy to commit the offence under Section 409 of the IPC. In the circumstances, the aforesaid guidelines will not be applicable to the present case.

22. Long detention *per se* cannot be a ground to grant bail to a person who is accused of a serious and grave offence having a far-reaching social impact. The recruitment scam of the present case had shocked the conscience of the people of the State of Assam and had shaken the credibility of the public service recruitment process. In this regard, I may profitably refer to the case of **State of Bihar v. Amit Kumar, (2017) 13 SCC 751** where the Hon'ble Supreme Court had the occasion to deal with a similar matter. The pertinent observations of the Hon'ble Court are extracted hereunder:

“8. A bare reading of the order impugned discloses that the High Court has not given any reasoning while granting bail. In a mechanical way, the High Court granted bail more on the fact that the accused is already in custody for a long time. **When the seriousness of the offence is such the mere fact that he was in jail for however long time should not be the concern of the courts.** We are not able to appreciate such a casual approach while granting bail in a case which has the effect of undermining the trust of people in the integrity of the education system in the State of Bihar.

9. We are conscious of the fact that the accused is charged with economic offences of huge magnitude and is alleged to be the kingpin/ringleader. Further, it is alleged that the respondent-accused is involved in tampering with the answer sheets by illegal means and interfering with the examination system of Bihar Intermediate Examination, 2016 and thereby securing top ranks, for his daughter and other students of Vishnu Rai College, in the said examination. During the investigation when a search team raided his place, various documents relating to property and land to the tune of Rs 2.57 crores were

recovered besides Rs 20 lakhs in cash. In addition to this, allegedly a large number of written answer sheets of various students, letterheads and rubber stamps of several authorities, admit cards, illegal firearm, etc. were found which establishes a prima facie case against the respondent. The allegations against the respondent are very serious in nature, which are reflected from the excerpts of the case diary. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the credibility of the education system of the State of Bihar.

13. We are also conscious that if undeserving candidates are allowed to top exams by corrupt means, not only will the society be deprived of deserving candidates, but it will be unfair for those students who have honestly worked hard for one whole year and are ultimately disentitled to a good rank by fraudulent practices prevalent in those examinations. It is well settled that socio-economic offences constitute a class apart and need to be visited with a different approach in the matter of bail [Nimmagadda Prasad v. CBI, (2013) 7 SCC 466 : (2013) 3 SCC (Cri) 575; Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439 : (2013) 3 SCC (Cri) 552] . Usually socio-economic offence has deep-rooted conspiracies affecting the moral fibre of the society and causing irreparable harm, needs to be considered seriously.

15. Having bestowed our thoughtful consideration to the gravity of the offence and several other crucial factors which are discussed in detail in preceding paragraphs, we are of the opinion that it is not advisable to release the respondent-accused on bail at this stage.

Accordingly, without expressing any opinion on final merits of the case, we set aside the order of the High Court. The appeal stands allowed."

(Emphasis is mine)

23. Adverting to the present case, it is *prima facie* revealed from the investigation that the petitioner was one of the kingpins of the recruitment scam. As opined by the Hon'ble Apex Court in **Amit Kumar (supra)**, the offences in present case being socio-economic in nature, a different approach must be taken while considering a bail application. It has already been noticed that the petitioner had fled away from Guwahati to avoid arrest immediately after cancellation of the examination and he was apprehended by police at the

Indo-Nepal border while trying to flee to Nepal. He had also destroyed vital evidence to cover up his wrongdoings. The petitioner is a retired DIG (Deputy Inspector General of Police) of Assam Police having considerable influence in his erstwhile department. In the circumstances, it appears to me that the petitioner poses "flight risk" in the sense that, if released on bail, he may again flee from justice which would ultimately delay or frustrate the trial of the case. Besides, the petitioner may also tamper with witnesses and other evidence of the case, as he is an influential man. The charge-sheet discloses that the petitioner had criminally intimidated the mother of one candidate for the aforesaid recruitment. I am, therefore, of the considered view that the enlargement of the accused in bail will not be conducive in view of the nature of his involvement in the alleged offences as well as for a fair and speedy trial.

24. In view of the discussion above and reasons recorded therein, the prayer for bail of the petitioner is rejected.

25. Before parting with the record, I wish to make it clear that the opinions and views expressed by this court hereinabove are only for the limited purpose of deciding this bail application and the same should not be construed as opinions on the merit of the case.

26. This bail application stands disposed of accordingly.

JUDGE

Comparing Assistant