

GAHC040004042023



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

Case No. : BA 37/2023

1: Dani Tatung
S/o Shri Dani Nani,
Resident of C Sector, Itanagar near womens Hostel, PO/PS Itanagar, District
Papumpare, Arunachal Pradesh.
Mob. No. 7085873894

VERSUS

1: The CBI
Through its Public Prosecutor.

Advocate for the Petitioner : Dicky Panging

Advocate for the Respondent : Marto Kato

BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 20.04.2023

Heard Mr. D. Panging, learned counsel for the petitioner. Also heard Mr. M. Kato, learned Standing Counsel for the CBI.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973, praying for grant of bail to the accused, who has been arrested in

connection with CBI P.S. Case No. RC0172023A0001/2022, under Sections 13(2)/7/8 of the Prevention of Corruption Act *read with* Sections 120(B)/406/409/420 of the Indian Penal Code.

3. The Case Diary has been received and I have perused the same.

4. It is submitted by the learned counsel for the petitioner, Mr. D. Panging, that the accused- Shri John Siram is no way involved in the alleged offence and he has been arrested only on the ground that his name has been utter in the social media that he secured top rank in the examination of AE(Civil) held by the APPSC in the year 2017. Thereafter, on the pressure put forth by the public, the Investigating Agency issued notice to the present accused under Section 41A Cr.P.C. and after receiving the notice, the present accused accordingly appeared before the Investigating Authority. But, to the utter surprise, on the same day, i.e. on 23.02.2023, the present accused was arrested by the CBI after the case was endorsed to the CBI by the SIC(VIG). The present accused was arrested by the CBI only after issuance of NBWA by the learned Court below on the prayer made by the SIC (VIG), the earlier Investigating Agency. And, since then, he is in custody in connection with this case and his statement has already been recorded by the Investigating Agency. The accused is behind the bar for last 57 days and after recording his statement, the CBI is not inquiring about him. However, the allegation leveled against the present accused does not also attracts Sections 406/409 of the Indian Penal Code, rather he is also a beneficiary and he got his appointment after appearing his examination conducted by the APPSC. The present accused is a law abiding person and he will make himself available before the police or before the Court in connection

with the case as and when his presence is required. Being a permanent resident of his addressed locality, there is no chance of absconding if the accused is enlarged on bail.

5. On the other hand, the learned Standing Counsel for the CBI, Mr. M. Kato, raised objection and also vide its written objection, it is submitted that initially the case was investigated by the SIC (VIG), Itanagar, but subsequently it was handed over to CBI for further investigation and accordingly, the CBI took over the case and re-registered the same as RC0172023A0001, under Sections 13(2)/7/8 of the Prevention of Corruption Act *read with* Sections 120(B)/406/409/420 of the Indian Penal Code. It is further submitted that the present accused, in connivance with the accused- Taket Jerang, obtained leaked question papers of AE (Civil) Examination, 2016-2017 and selected with 1st rank in the said examination. However, the Charge-Sheet has not been filed against the present accused, though he is behind the bar for last 57 days. Further it is submitted that the case comes under the socio economic offence and is constituted a class apart and hence, a different approach is needed while considering the bail application in such an economic offence.

6. In support of his submissions, the learned Standing Counsel, CBI, also relied on a decision of Hon'ble Apex Court, which was passed in **Criminal Appeal No. 767 of 2017 (State of Bihar & Anr. Vs. Amit Kumar @ Bachcha Rai)**, wherein, it has been observed that "*we are also conscious that if any 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. Usually socio-economic offence has deep rooted conspiracies affecting the moral fiber of the society and causing irreparable harm, needs to be considered seriously.”

7. Further, it is submitted by the learned Standing Counsel for the CBI, Mr. M. Kato, that there is reasonable apprehension that the accused may indirectly induce or threat to any person acquainted with the facts of this case so as to prevent him from disclosing any such facts to the Court or CBI. Accordingly, it is prayed to dismiss the present bail application filed on behalf of the accused.

8. After hearing the entire submissions made by the learned counsels for the applicant as well as the learned Standing Counsel, SIC, and the learned counsel for the informant, I have also perused the Case Diary, the bail objection and the status of the present case, as filed by the Investigating Authority.

9. On perusal of the Case Diary, it is seen that there are sufficient incriminating materials against the present accused showing his direct involvement in the alleged offence. And the present accused along with the prime accused- Shri Taket Jerang had a criminal conspiracy for leaking the question paper of AE(Civil) Examination 2016-2017 in lieu of some monetary consideration. It is further stated that the whole public in the State have been deeply saddened and shocked by such act thereby it has brought down the trust of the public on the bureaucrats, in which even the honest ones are dragged. As

per the CBI, there is a high probability that he may alert the other accused or may influence the witnesses and thereby cause evidence to disappear if he is released on bail at this stage.

10. It is the admitted fact that even if the allegation is one of the grave economic offence, there cannot be any straight jacket formula to reject the bail petition. But the consideration will have to be on the case to case basis and the facts involved in the case. The allegation in the present case is of economic offence which constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country [(2013) 7 SCC 466].

11. Coming to the question of triple test, it is seen that as per the objection filed by the CBI, there is every probability of hampering or tampering the witnesses by the accused as well as there is also probability of tampering the evidence by the present accused if he is enlarged on bail and in that event, there will be serious hamper in the just and proper investigation of the case.

12. As discussed above, in the present case, the allegation against the accused is of grave and economic offence and hence, while dealing with the bail matters, it has to be viewed seriously considering the entire facts and circumstances of the case and, therefore, the further custodial interrogation of the accused may be necessary to unearth some other facts of the case and also

to book the other culprits whose names are still disclosing by the arrested accused persons in connection with this case including the present accused.

13. Though the learned counsel for the accused mainly stressed on the point that the accused is behind the bar for last 57 days and hence keeping the accused further in the custody will not serve the purpose of investigation. But, considering the nature and gravity of the offence, it is seen that there is every probability of involvement of many more persons in the commission of the alleged offence and further custodial interrogation of the present accused may help the Investigating Authority to book the other culprits who are also involved in the alleged offence.

14. The alleged offence is not a case of cheating simplicitor. But, a cheating to the society at large depriving the genuine intelligent candidate from service for the benefit of the society and State at large and in their place, bringing inefficient, incapable and corrupt persons which in turn degrade the system.

15. In view of the discussion made above and also considering the incriminating materials against the accused as well as the nature and gravity of the offence, this Court is of the view that this is not a fit case where the privilege of bail can be extended to the accused and accordingly, the same stands dismissed

16. The Case Diary be sent back.

JUDGE

Comparing Assistant